

**FIRST AMENDMENT TO MARCH 6, 2006  
DISCLOSURE STATEMENT FOR  
THE RESIDENCES AT SUN PEAKS  
QUARTER INTERESTS**

DATED: April 11, 2006.

**LEGAL NAME OF DEVELOPER:** SP VALLEY DEVELOPMENTS LIMITED  
PARTNERSHIP ("SPVALLEY")

**Business Address, Mailing Address  
and Address for Service of  
Developer:** 1280 Alpine Road  
Sun Peaks, BC V0E 5N0

**AGENTS OF THE DEVELOPER:**

Bill Hanrahan and Lark Frolek-Dale  
Re/Max Alpine Resort Realty Corp.  
3130 Creekside Way  
Sun Peaks, British Columbia  
V0E 5N0

**DISCLAIMER**

**THIS DISCLOSURE STATEMENT HAS BEEN FILED WITH THE SUPERINTENDENT OF REAL ESTATE, BUT NEITHER THE SUPERINTENDENT, NOR ANY OTHER AUTHORITY OF THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA, HAS DETERMINED THE MERITS OF ANY STATEMENT CONTAINED IN THE DISCLOSURE STATEMENT, OR WHETHER THE DISCLOSURE STATEMENT CONTAINS A MISREPRESENTATION OR OTHERWISE FAILS TO COMPLY WITH THE REQUIREMENTS OF THE *REAL ESTATE DEVELOPMENT MARKETING ACT*. IT IS THE RESPONSIBILITY OF THE DEVELOPER TO DISCLOSE PLAINLY ALL MATERIAL FACTS, WITHOUT MISREPRESENTATIONS.**

**NO SECURITIES COMMISSION OR SIMILAR REGULATORY AUTHORITY HAS PASSED ON THE MERITS OF THE SECURITIES OFFERED NOR HAS IT REVIEWED THIS DISCLOSURE STATEMENT AND ANY REPRESENTATION TO THE CONTRARY IS AN OFFENCE.**

## **RIGHT OF RESCISSION**

**Under section 21 of the *Real Estate Development Marketing Act*, the purchaser or lessee of a development unit may rescind (cancel) the contract of purchase and sale or contract to lease by serving written notice on the developer or the developer's brokerage, within 7 days after the later of the date the contract was entered into or the date the purchaser or lessee received a copy of this Disclosure Statement.**

**A purchaser may serve a notice of rescission by delivering a signed copy of the notice in person or by registered mail:**

- (a) the developer at the address shown in the disclosure statement received by the purchaser;**
- (b) the developer at the address shown in the purchaser's purchase agreement;**
- (c) the developer's brokerage, if any, at the address shown in the disclosure statement received by the purchaser; or**
- (d) the developer's brokerage, if any, at the address shown in the purchaser's purchase agreement.**

**The developer must promptly place purchasers' deposits with a brokerage, lawyer, or notary public who must place the deposits in a trust account in a savings institution in British Columbia. If a purchaser rescinds their purchase agreement in accordance with the Act and regulations, the developer or the developer's trustee must promptly return the deposit to the purchaser.**

## **EARLY MARKETING - DEVELOPMENT APPROVAL**

**Pursuant to Policy Statement 5 issued by the Superintendent of Real Estate, a developer may commence marketing prior to being granted development approval if:**

- (a) the estimated date, as disclosed in the Disclosure Statement, for the issuance of a Building Permit is nine months or less from the date the developer filed the Disclosure Statement with the Superintendent;**
- (b) the developer markets the proposed development units under the Disclosure Statement for a period of no more than nine months from the date the Disclosure Statement was filed with the Superintendent, unless an amendment to the Disclosure Statement that sets out the particulars of the issued building permit is filed within that period;**
- (c) Any purchase agreement used by the developer, with respect to any development unit offered for sale or lease before the purchaser's receipt of**

an amendment to the disclosure statement that sets out particulars of the issued building permit, contains the following provisions:

- (i) The purchaser may cancel the purchase agreement for a period of seven days after receipt of an amendment to the disclosure statement that sets out particulars of the issued building permit, if the layout or size of the applicable development unit, the construction of the major common facility, including a recreation centre or clubhouse, or the general layout of the development, is materially changed by the issuance of the building permit;
- (ii) If an amendment to the disclosure statement that sets out particulars of an issued building permit is not received by the purchaser within 12 months after the initial disclosure statement was filed, the purchaser may, at his or her option, cancel the purchase agreement at any time after the end of that 12 month period, until the required amendment is received by the purchaser, at which time the purchaser may cancel the purchase agreement for a period of seven days after receipt of that amendment, only if the layout or size of the applicable development unit, the construction of the major common facility, including a recreation centre or clubhouse, or the general layout of the development, is materially changed by the issuance of the building permit;
- (iii) The amount of the deposit to be paid by a purchaser who has not yet received an amendment to the disclosure statement that sets out particulars of an issued building permit is no more than 10% of the purchase price; and
- (iv) All deposits paid by a purchaser, including interest earned if applicable, will be returned promptly to the purchaser upon notice of cancellation from the purchaser.

#### **FINANCING ARRANGEMENTS**

- (a) The estimated date for obtaining a satisfactory financing commitment as disclosed in the Disclosure Statement, is nine (9) months or less from the date the Developer filed the Disclosure Statement with the Superintendent;
- (b) The Developer markets the proposed development units under the Disclosure Statement for a period of no more than nine (9) months from the date the Disclosure Statement was filed with the Superintendent unless an amendment to the Disclosure Statement that sets out particulars of a satisfactory financing commitment is filed with the Superintendent during that period;

- (c) Any purchase agreement used by the Developer with respect to any development unit offered for sale or lease before the purchaser's receipt of an amendment to the Disclosure Statement that sets out particulars of a satisfactory financing commitment, contains the following terms:
- (i) if an amendment to the Disclosure Statement that sets out particulars of a satisfactory financing commitment is not received by the purchaser within twelve (12) months after the initial Disclosure Statement was filed, the purchaser may at his or her option cancel the purchase agreement at any time after the end of that twelve (12) month period until the required amendment is received by the purchaser;
  - (ii) the amount of the deposit to be paid by a purchaser who has not yet received an amendment to the Disclosure Statement that sets out particulars of a satisfactory financing commitment is no more than 10% of the purchase price; and
  - (iii) all deposits paid by a purchaser, including interest earned if applicable, will be returned to the purchaser upon notice of cancellation from the purchaser.

#### DEEMED RELIANCE

Section 22 of the *Real Estate Development Marketing Act* provides that every purchaser who is entitled to receive this Disclosure Statement is deemed to have relied on any false or misleading statement of a material fact contained in this Disclosure Statement, if any, and any omission to state a material fact. The developer, its directors and any person who has signed or authorized the filing of this Disclosure Statement are liable to compensate the purchaser for any misrepresentation, subject to any defences available under section 22 of the Act.

## **FIRST AMENDMENT TO DISCLOSURE STATEMENT**

This is an amendment or supplement to the original Disclosure Statement dated March 6, 2006 and unless otherwise defined herein, any capitalized words shall have the meaning ascribed thereto in the original Disclosure Statement. Where so indicated, each of the following amendments or supplements is referenced to the section and heading in the original Disclosure Statement.

1. **Section 3.7 - Furniture Fixtures & Equipment.** There have been minor amendments to the furniture fixtures. A revised Exhibit "K" (blacklined to show changes) is attached.
2. **Section 4.2 - Mandatory Hotel Management Agreement.** The Developer has now signed a letter of intent with Delta Hotels Limited ("Delta") to be the hotel manager operating out of the adjacent Delta Resort Hotel. Attached is a copy of the letter of intent and the latest draft of the Hotel Management Agreement which replaces Exhibit "C" to the Disclosure Statement. The basic terms and conditions of the Hotel Management Agreement (as currently being negotiated) is as originally set out in the Disclosure Statement except as further set out below:
  - (a) **Rotation Calendar.** The Developer has extended the Rotation Calendar so that it now encompasses a period of five (5) years. Attached is a replacement Exhibit "E" to the Disclosure Statement with the expanded calendar.
  - (b) **Owner Bookings.** The Rotation Calendar set out each Quarter Interest Owner's rotating seven (7) day use periods ("Periods of Use"). An Owner may book all or a portion of its Periods of Use and is assured the use and availability of its strata lot if booked not less than six (6) months prior to the day in question. Within six (6) months, any days not booked by an Owner may be booked by Delta for hotel guests. An Owner may continue to book further days within its Periods of Use, but bookings within six (6) months will be subject to any prior bookings to hotel guests.
  - (c) **Sharing in Rental Pool.** A Quarter Interest Owner is entitled to share in the rental pool on any given day in its Period of Use if:
    - (i) the Quarter Interest Owner had not booked that day or was not deemed to have booked that day for Owner use;
    - (ii) if the Owner had booked a day or was deemed to have booked a day but cancelled the booking prior to six (6) months before the date in question; or
    - (iii) if the Owner cancelled a booking within six (6) months of the day but the Delta was otherwise able to rent the strata lot to a hotel guest on that date.

An Owner booking a Friday or Saturday will be deemed to have booked for the entire Period of Use and the Owner will not share in the rental pool for any days within that Period of Use unless the Owner booking was cancelled more than six (6) months prior to the day in question or unless the strata lot was actually rented to a hotel guest on that date.

Each Quarter Interest Owner whose strata lot is in the rental pool on a day will be entitled to its share of 60% of the gross revenue from that day (the "Owners' Share") calculated by multiplying the Owners' Share earned on such day by the fraction which has as its numerator the unit entitlement of the strata lot and as its denominator, the aggregate of the unit entitlement of all of the strata lots in the rental pool on that day.

3. **Section 5.11 - Developer's Contribution to Maintenance and Operations.** The existing 5.11 is deleted in its entirety and replaced with the following:

The Developer will be responsible for payment of all fees to the Owners Corp., including strata fees, for all unsold Quarter Interests. The Developer intends to pay these expenses on a monthly basis as and when due. The Developer is also loaning the sum of \$325,000 to the Owners Corp. to create an operating fund. This operating fund is to be repaid after the first year. This operating fund will also stand as security for the Developer's obligation to pay the fees owing to the Owners Corp. for the unsold Quarter. It is expected all of the 164 Quarter Interests will be sold prior to the completion of the sales to purchasers. However, based on expected sales and current sales, around 100 Quarter Interests should be sold within a few months of this Amendment and within a few months sales are expected to reach 100 Quarter Interest with substantially all Quarter Interest expected to be sold during next ski season at the latest. Nevertheless, the Developer has obligations to pay the fees to the Owners Corp. for unsold Quarter Interests and the Developer, in calculating what this obligation is willing to take the larger number and assume no more than 100 Quarter Interests would be sold by the time sales start completing. One year's annual fees for 64 Quarter Interests owned by the Developer (assuming no more units were sold) for the entire first operating year would be approximately \$230,000. Accordingly, the security provided to the Owners Corp. by way of cash contribution more than exceeds the maximum contribution required of the Developer. Again, the Developer intends to make these monthly payments on a monthly basis leaving the entire \$325,000 fund available for any cash flow needs.

4. **Construction Financing.** The Developer has received a conditional financing offer for \$20,000,000 of construction financing which is subject to the Developer entering into a specified number of purchase agreements with prospective purchasers of quarter interests. Each purchase agreement is subject to the Developer confirming that the conditions for the financing have been met within nine (9) months of the date of the original Disclosure Statement. The Developer expects these conditions to be met within the next two or three months. The Superintendent of Real Estate's requirements with respect to financing commitments are being set out in an addendum to the Purchase Agreements a copy of which is attached and will form part of Exhibit "Q" of the Disclosure Statement.

**DECLARATION**

**The foregoing statements disclose, without misrepresentation, all material facts relating to the Development referred to above, as required by the *Real Estate Development Marketing Act of British Columbia* as of \_\_\_\_\_, 2006.**

**SP VALLEY DEVELOPMENTS LIMITED PARTNERSHIP**  
by its General Partner **SP VALLEY DEVELOPMENTS LTD.**

By:

\_\_\_\_\_  
Authorized Signatory

All of the directors of **SP VALLEY DEVELOPMENTS LTD.**

\_\_\_\_\_  
Darcy Alexander

\_\_\_\_\_  
Peter Nixon

**EXHIBIT “K”**

**BLACKLINED FURNITURE, FIXTURES & EQUIPMENT LIST**

**EXHIBIT "K"**

**DESCRIPTION OF FURNISHINGS AND EQUIPMENT**

Location	Item	Quantity	
		1 Bedroom Unit	2 Bedroom Unit
<del>Entry</del>	<del>Message Board</del>	<del>1</del>	<del>1</del>
Living Room	Armoire	1	1
	Sofa Bed	1	1
	<del>Love Seat</del>	1	1
	Occasional Chair	1	1
	<del>Area Rug</del>	1	1
	End Table	1	1
	Coffee Table	1	1
	Table Lamp	1	1
	Floor Lamp	1	1
	Assorted Toss Cushions	Yes	Yes
	Desk		
	Desk Chair	1	1
	Desk Lamp	1	1
	TV and DVD	1	1
		1	1
Dining Room	Dining Table	1	1
	Dining Chairs	4	<del>4</del>
Kitchen	Homewares	Yes	Yes
	Associated Accessories	Yes	Yes
	Stove		
	Fridge	1	
	Dishwasher	1	1
	Microwave	1	1
		1	1
Bathroom (each if more than one)	Framed Mirror	1	1
	Homewares	Yes	Yes
	Assorted Accessories	Yes	Yes
Master Bedroom	Dresser	1	1
	Headboard	1	1

Location	Item	Quantity	
		1 Bedroom Unit	2 Bedroom Unit
	<u>Framed Mirror</u> Night Table Table Lamp <del>Assorted</del> Toss Cushions King Bedding, King Mattress and Frame, Linens <u>Television</u>	<u>1</u> 2 2 Yes <del>Yes</del> <u>Yes</u> <del>Yes</del> <u>Yes</u> 2 1	<u>1</u> 2 2 Yes <del>Yes</del> <u>Yes</u> . <u>1</u>
Second Bedroom (if applicable)	<del>Assorted</del> Toss Cushions Twin Bedding, Twin Mattress and Frame Linens Side Table Table Lamp Framed Mirror <u>Television</u>		Yes  Yes <u>King/twin split</u> Yes <u>2</u> <u>2</u> 1 1 1
Deck (if applicable)	Table Chairs	1 2	1 2
Laundry Closet	Washer <del>/Dryer (stacked)</del>	1 <del>1</del>	1 <del>1</del>
Den (if applicable)	Coffee Table Armoire Double Sofa Bed, <del>Toss</del> Cushions <u>Television</u> <u>Side Table</u> <u>Table lamp</u> <u>Floor lamp</u>	<u>1</u> <u>1</u> <u>1</u> <u>Yes</u> <u>1</u> 1 1 1	
Artwork	Poster Artwork	6	6

**EXHIBIT “C”**

**RENTAL MANAGEMENT AGREEMENT**

## LETTER OF INTENT

### THE RESIDENCES DEVELOPMENT AT SUN PEAKS

April \_\_, 24, 2006

This letter of understanding is between Delta Hotels Limited (“Delta”) and SP Valley Developments Limited Partnership (“SP”) in relation to the proposed development and operation of the Residences, as described below. This letter is non-binding and will not create legal obligations until formal legal documentation has been executed.

The Residences is a condo hotel consisting of 41 residential strata lots with approximately 11 commercial units below. The Residences will be wood frame over concrete foundation construction. The residential units will be “efficiency units” consisting of one bedroom, one bedroom and den and two bedroom units with full kitchen facilities. The Residences is being sold as fractional one-quarter shares. Each one-quarter owner will lease its unit to an Owners’ Corporation, which will in turn, lease back to each one-quarter owner, which ensures the proper rotation of possession amongst the four owners. Each owner will have unlimited use during its periods of possession. Owners may forego their personal usage and, with due notice, may place their unit in the rental pool in exchange for the potential to earn revenue. Rental Pool qualifications to be specified in the Hotel Management Agreement.

It is intended that the Strata Corporation and Owners’ Corporation fees would, as much as possible, include all fixed hotel and property operation expenses such as accounting, insurance, utilities, snow removal, taxes, Resort Association fees, and guest room supplies including laundry and linen.

The Residences is adjacent to the Delta Sun Peaks Hotel, which is owned by Sun Peaks Hotel Limited Partnership (“SPHLP”) and managed by Delta. Due to the efficiency units, the Residences is a complementary property to the Delta Hotel and accordingly, it is proposed that SPHLP and the Delta manage and operate the Residences to be named “The Delta Residences at Sun Peaks” or a similar name. Delta would utilize the physical plant, assets and employees of the SPHLP to manage the Residences and will be paid a fee.

Management of the residences, by Delta, would include all normal hotel management and operation and, in addition, include the Strata Corporation and the Owners’ Corporation in correspondence with the owners.

The Owners Corp. is responsible for collecting and providing to Delta all funds required for operation of the Hotel and for maintenance, repair and replacement to keep the Hotel and the furniture, fixtures and equipment in a first class condition typical of Delta hotels. As well, there is at all times to be an operating line of credit or cash fund in the amount of \$325,000 to cover any timing differences between expenses and revenues and for unanticipated expenses.. If funds are required in excess of funds available, the Owners Corp. must immediately raise and pay to Delta the required amount. Delta is not obligated to fund any shortfalls.

The Residences is intended to be connected to the Delta Hotel with an overhead walkway. As well, occupants of the Delta will have full access to amenities and services in the Delta Hotel including the health and fitness centre and pool and spa (compensated for in item 2. below).

Operation and management of the Residences would be on the following basis:

1. A one-time branding fee of \$25,000 to Delta. In addition, the Strata Corporation or Owners' Corporation will pay Delta centralized service fees for Global Reservations Services, Delta brand sales and Delta brand marketing services. The current fees are attached hereto in Schedule A.
2. A one-time facility fee for access to the Delta Hotel's amenities of \$125,000 to SPHLP.
3. Yearly Hotel operations' expenses including rooms, payroll and expense, G&A payroll and expense, A&P payroll and expense and POMECA payroll and expense to be paid as a percentage of gross Hotel operations revenues. In order to cover operating costs, without debt each year, SPHLP will receive, out of hotel revenues, the greater of \$325,000 or 40% of gross annual revenues each year.
4. The Strata Corporation and the Owners' Corporation agree to maintain the Residences in a first-class condition commensurate with the Delta Standard. There will also be a mechanism to ensure sufficient capital availability to meet the Standard.
5. As operator, Delta will receive a fee of \$120,000 per Fiscal Annum, paid in equal monthly instalments (\$10,000 per month).
6. We confirm that preliminary market testing and advertising will proceed on this letter of intent and that we will strive towards reaching binding agreements as soon as possible. Any promotional or selling activities, verbal, published or otherwise, containing reference to Delta or use of the Delta name will be subject to prior approval by Delta.

The foregoing confirms our intent:

**SP VALLEY DEVELOPMENTS LIMITED PARTNERSHIP,  
by its general partner, SP VALLEY DEVELOPMENTS LTD.**

Per:

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Authorized Signatory

**DELTA HOTELS LIMITED**

Per:

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Authorized Signatory

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**THE RESIDENCES AT SUNPEAKS**

**HOTEL MANAGEMENT AND RENTAL POOL AGREEMENT**

THIS AGREEMENT dated for reference \_\_\_\_\_, 2006

BETWEEN

**SP RESIDENCES OWNERS CORPORATION,**

**(“Owners Corp.”)**

AND

**DELTA HOTELS LIMITED,** a Corporation duly constated under the laws of the Province of Ontario

**(“Delta”)**

AND

**SUN PEAKS HOTEL LIMITED PARTNERSHIP**

**(“SPHLP”)**

**BACKGROUND:**

- A. The Owners Corp. will be the Lessee under a long term head lease in each of the Strata Lots and in turn will sublease each Strata Lot back to the four Quarter Owners of the Strata Lots;
- B. Delta is the operator of the adjacent Delta Resort Hotel owned by SPHLP and Delta is knowledgeable in the operation of First-Class Hotels, and has performed such functions throughout Canada;
- C. The Owners Corp. desires to engage Delta, as the operator of the Delta Resort Hotel to act as the exclusive manager for the operation of the Hotel and rental to Hotel Guests in accordance with the terms and conditions set out in this Agreement;
- D. Delta agrees to perform such services for the Owners Corp. in accordance with this Agreement;
- E. The Owners Corp. will be responsible for supplying, maintaining, repairing and replacing, as need be, all equipment furnishings and equipment, and maintaining the Strata Lots in first class condition; and
- F. SPHLP has agreed to Delta performing its services pursuant to this Agreement using management and employees of SPHLP in accordance with this Agreement.

**AGREEMENTS:**

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions.** The following terms as used in this Agreement have the following meanings, except as otherwise expressly provided or unless the context otherwise requires:

- (a) **“Affiliate”** means, with respect to any person:
  - (i) any person which is Controlled by that particular person; or
  - (ii) any person which Controls that particular person,whether such Control be direct or indirect;
- (b) **“Annual General Meeting”** means the annual general meeting of the Strata Corporation or the Residential Section, as the case may be, pursuant to the *Strata Property Act*
- (c) **“Approved Operating Plan and Budget”** means any Operating Plan and Budget approved pursuant to section 5.1(c) or deemed to be approved pursuant to section 5.1(b);
- (d) **“Arm’s Length”** means “arm’s length” according to the *Income Tax Act* (Canada), determined in accordance with such Act, the interpretation bulletins issued in connection therewith and all relevant case law, all as from time to time in effect;
- (e) **“Base Fee”** means the fee of \$120,000 per annum payable to Delta established and paid pursuant to section 8.1;
- (f) **“Business Day”** means any day which is not a Saturday, Sunday, or a statutory holiday in Vancouver, British Columbia, or Easter Monday or Boxing Day;
- (g) **“Capital Expenditures”** means all expenditures of the Hotel of a capital nature which are not expensed, as determined in accordance with Generally Accepted Hotel Accounting Principles;
- (h) **“Chartered Accountants”** means the firm of chartered accountants selected by Delta and approved by the Owners Corp.;
- (i) **“Commencement Date”** means the date that the Hotel (including the parking areas contained therein) is opened by Delta for business as a “Delta” hotel;
- (j) **“Commercial Strata Lots”** means all strata lots within the Strata Plan other than the Strata Lots and the Hotel Manager’s Strata Lot;
- (k) **“Common Facilities”** means the common facilities within the Common Property (as defined in the *Strata Property Act*);
- (l) **“Common Property”** means the common property (as defined in the *Strata Property Act*) within the Strata Plan, other than any limited common property designated for the exclusive use of any of the Strata Lots, the Hotel Manager’s Strata Lot or the Commercial

Strata Lots or otherwise allocated or designated for the exclusive use of the Strata Lots, the Hotel Manager's Strata Lot or the Commercial Strata Lots;

- (m) **“Control”** means:
  - (i) the right to exercise a majority of the votes which may be put at a meeting of the shareholders of a corporation; and
  - (ii) the right to elect or appoint, directly or indirectly, a majority of the directors of a corporation or other persons who have the right to manage or supervise the management of the affairs and business of a person;
- (n) **“Day”** means, for the purpose of the Rental Pool, a period commencing at 4:00 p.m. on one day and ending at 11:00 a.m. on the ensuing day;
- (o) **“Delta”** means Delta Hotels Limited;
- (p) **“Delta Group”** means the group of hotels located in Canada or the United States as may, from time to time be managed by Delta or any Affiliate of Delta as a “DELTA” hotel using the trademark and tradename “DELTA”;
- (q) **“Delta Marketing and Sales Expenses”** has the meaning set forth in section 8.3;
- (r) **“Delta Reimbursables”** has the meaning set forth in section 8.5;
- (s) **“Delta Resort Hotel”** means the Delta Sun Peaks Resort Hotel located at 3240 Village Way, Sun Peaks, British Columbia;
- (t) **“Developer”** means Sun Peaks Resort Corporation;
- (u) **“Development”** means the hotel development including commercial or retail strata lots, the Strata Lots, the Hotel Manager's Strata Lot, and limited common property and the Common Property to be located on the lands situated in the Kamloops Assessment Area and legally described as:

Parcel Identifier: 026-235-030  
Lot A, District Lot 6330  
Kamloops Division Yale District  
Plan KAP77640;
- (v) **“Employees”** means the employees of SPHLP hired by Delta pursuant to section 10.7;
- (w) **“Escalation Factor”** means the fraction (which may be greater than, equal to or less than one) of which:
  - (i) the numerator is the All-Items Consumer Price Index for Vancouver, British Columbia published by Statistics Canada, or its successor, as of the date that the Escalation Factor is to be determined; and

(ii) the denominator is the All-Items Consumer Price Index for Vancouver, British Columbia published by Statistics Canada, or its successor, as of the prior date to which the date of the determination of the Escalation Factor is being compared,

except that if at any time Statistics Canada no longer publishes an All-Items Consumer Price Index for Vancouver or is no longer operated by the Canadian government, the Escalation Factor will be determined by the agreement of the Owners Corp. and Delta or, failing such agreement, by arbitration in accordance with section 19.1;

- (x) **“FF&E Reserve”** (intentionally deleted);
- (y) **“First-Class Hotel”** means the standards of a first class commercial trade hotel in accordance with hotel industry standards with regard to hotels comparable to the Hotel in the Sun Peaks Resort Area, having regard to the facilities of the Hotel;
- (z) **“Fringe Benefits”** means those benefits normally given from time to time to employees or personnel at any hotel within the Delta Group, including without limitation, pension, medical, health and life insurance and similar employee plans, bonus or gain sharing plan participation, the benefits of any housing loan and relocation costs;
- (aa) **“Furniture, Fixtures and Equipment” or “FF&E”** means all furniture, equipment, fixtures and furnishings necessary for the proper operation of the Hotel and situated in the Hotel Premises, including, without limitation, office equipment and furniture, computers and computer systems, telephones and telephone systems, video machines, mini bars, refrigerators, stoves, kitchen equipment, carpeting, rugs and other floor coverings, draperies, curtains, tapestries, screens, works of art, pictures, paintings, prints, beds, mattresses, bedspreads, pillows, radios and television sets, including such items bearing the Delta name or identifying characteristics as Delta, acting reasonably, considers appropriate;
- (bb) **“Generally Accepted Hotel Accounting Principles”** means generally accepted accounting principles as published and observed by the Canadian Institute of Chartered Accountants and as supplemented by the Uniform System of Accounts for Hotels published by the Hotel Association of New York City, Inc.;
- (cc) **“Gross Revenue”** means all revenue of any kind whatsoever derived directly or indirectly from the Hotel Premises or any portion thereof and the operation of the Hotel, including, without limitation, all of the following:
  - (i) all revenue from the use and enjoyment of the Hotel by Hotel Guests and Owners Corp. pursuant to this Agreement, including room charges, mini-bar revenue (if applicable), room service revenue (if applicable), housekeeping charges, telephone revenue, movie rental revenue and the fees and charges referred to in section 11.6;
  - (ii) all revenue from parking;
  - (iii) proceeds received from any business interruption insurance; and
  - (iv) all other revenue from the operation of the Hotel, including revenue from any business or facility operated within the Hotel Premises, vending machine revenue

and revenue and fees from licensees, lessees or concessionaires within the Hotel Manager's Strata Lot,

excluding, however, all of the following;

- (v) daily clean fees charged to Permitted Owner Users;
  - (vi) revenue from any portion of the Development which is not managed, operated or controlled by Delta;
  - (vii) applicable excise, sales, income, hotel, room, entertainment and use taxes or similar government charges collected directly from Hotel Guests and Owners Corp. or as part of the sales price of any goods or services;
  - (viii) gains arising from the sale or other disposition of capital assets or unwanted inventory;
  - (ix) revenue from expropriation awards or sales or other transfers in lieu of and under the threat of expropriation;
  - (x) proceeds of any insurance other than business interruption insurance;
  - (xi) rebates, discounts or credits of a similar nature (other than credit card discounts, which will be included as an item of revenue and considered a Hotel Expense);
  - (xii) gratuities paid to Employees; and
  - (xiii) payments received at the Hotel for accommodation, goods or services to be provided at other hotels;
- (dd) **“Head Office Personnel”** means any member of the staff of Delta operating on behalf of the Delta Group and not for the Hotel only;
- (ee) **“Hotel”** means the Hotel Premises and the hotel operation known as “The Residences at Sun Peaks”, managed by Delta using the Delta Resort Hotel physical plant, staff and management, but does not include the Commercial Strata Lots or Common Property for the exclusive use of the Commercial Strata Lots,
- (ff) **“Hotel Bank Account”** means the bank account established pursuant to section 9.1;
- (gg) **“Hotel Expenses”** means all expenses properly incurred in accordance with Generally Accepted Hotel Accounting Principles and the terms and conditions set out in this Agreement in connection with the earning of the Gross Revenue and chargeable to the Owners Corp. in accordance with this Agreement, including, without limitation:
- (i) the Base Fee;
  - (ii) the Delta Marketing and Sales Expenses;
  - (iii) the Delta Reimbursables;

- (iv) any amount payable to and in respect of the Employees in accordance with this Agreement, including hiring costs and expenses, Fringe Benefits, withholding amounts and costs of termination;
- (v) utility costs and charges;
- (vi) the cost of the Operating Supplies and Expendables;
- (vii) expenses in connection with the maintenance and repair of the Strata Lots and the maintenance, repair and replacement of any Furniture, Fixtures and Equipment;
- (viii) the cost of operating and maintaining any parking facility within the Hotel Premises;
- (ix) travel agent commissions, credit card commissions and Sun Peaks Resort Association (Tourism Sun Peaks) commissions;
- (x) insurance premiums;

but excluding the following:

- (xi) payments by Owners to the Owners Corp. or strata fees payable by Owners;
  - (xii) depreciation and amortization;
  - (xiii) Capital Expenditures; and
  - (xiv) any taxes personal to the Owners or Owners Corp., including income taxes, capital taxes and large corporation taxes;
- (hh) **“Hotel Guests”** means the users and occupants of the Strata Lots from time to time, other than Permitted Owners Users using the Strata Lots in accordance with this Agreement;
- (ii) **“Hotel Manager’s Strata Lot”** means:
- (i) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

together with any limited common property designated for the exclusive use of any of such strata lot;

- (jj) **“Hotel Manager’s Strata Lot Lease”** means the lease or leases of the Hotel Manager’s Strata Lot made by the Developer or the Strata Corporation in favour of Delta;

- (kk) **“Hotel Premises”** means:
  - (i) the Strata Lots;
  - (ii) the Hotel Manager’s Strata Lot; and
  - (iii) the Common Property.
- (ll) **“Initial Term”** has the meaning set forth in section 2.2;
- (mm) **“Interest Upon Destruction”** means the interest upon destruction of any Strata Lot or Strata Lots, as set out on the Strata Plan;
- (nn) **“Land Title Office”** means the Kamloops Land Title Office or the successor thereto;
- (oo) **“Operating Cash Reserve”** means the reserve to be established pursuant to section 7.6;
- (pp) **“Operating Plan and Budget”** means the marketing and operating plan and budget for the operations of the Hotel for any Operating Year established pursuant to the terms of sections 5.1 and 5.2;
- (qq) **“Operating Supplies and Expendables”** means any operating supplies used by Delta in the operation of the Hotel in accordance with this Agreement, including the terms of any Approved Operating Plan and Budget, including, without limitation, laundry supplies, linens, housekeeping supplies, engineering supplies, accounting supplies, miscellaneous general supply items, uniforms, inventories, paper supplies and other such items that when used once are considered to be disposed of and all other similar items necessary or appropriate for the operation of the Hotel as contemplated by this Agreement;
- (rr) **“Operating Year”** means:
  - (i) firstly, the period from the Commencement Date to and including December 31 in the year after the year in which the Commencement Date occurs; and
  - (ii) thereafter, each period of 12 months from and including the first day of January to and including the last day of December, or the portion thereof in the case of the last year of the Term;
- (ss) **“Owner”** means a holder of an undivided fee simple interest, fractional or otherwise, in a Strata Lot and includes all Quarter Owners;
- (tt) **“Period of Use”** means each scheduled period in which a Quarter Owner is allocated use and possession of its owned Strata Lot, which is currently 7 days, commencing on a Friday at 4:00 p.m. and ending the ensuing Friday at 11:00 a.m.;
- (uu) **“person”** means any individual, corporation, body corporate, partnership, joint venture, trust, unincorporated organization or other entity, government or governmental or regulatory authority, however constituted, or any trustee, executor, administrator or other legal representative;

- (vv) **“Permitted Owner User”** means the Owner and any person authorized by an Owner to use its Strata Lot during a Period of Use, but excluding any person who pays or gives the Owner consideration for such use;
- (ww) **“Prime Rate”** means the floating rate of interest used by the main branch in Vancouver, British Columbia of Royal Bank of Canada from time to time as a reference rate for establishing rates of interest for Canadian dollar loans payable on demand and commonly known as its “prime rate”, except that if at any time Royal Bank of Canada no longer publishes its prime rate, the Prime Rate will be the prime rate published by another chartered bank of Canada, as selected by Delta, and if there is no prime rate published by any other chartered bank of Canada, the Prime Rate will be determined by the agreement of the Directors of Owners Corp. and Delta or, failing such agreement, by arbitration in accordance with section 19.1;
- (xx) **“Quarter Owner”** means an owner of one or more fractional quarter interests in the fee simple of a strata together with a quarter interest sublease and a share in the Owners Corp.;
- (yy) **“Quarterly Statement”** has the meaning set forth in section 7.1;
- (zz) **“Related Person”** means, with respect to any person:
  - (i) any Affiliate of such person;
  - (ii) any person who is not at Arm’s Length to such person or any Affiliate of such person; and
  - (iii) any person who is a director, officer, employee or agent of such person or any Affiliate of such person or any spouse, parent, child or relative (including by marriage) of any of the foregoing;
- (aaa) **“Rental Pool”** means the rental management arrangement in respect of the Hotel Premises undertaken by Delta on behalf of the Owners Corp. pursuant to this Agreement and the pool of revenues which will be distributed to the Owners entitled to share in the rental pool pursuant to section 11.4;
- (bbb) **“Rental Pool Covenant”** means the section 219 Covenant in favour of the Province which requires among other things, each Strata Lot to be available for rental to tourists when not used by the Owner;
- (ccc) **“Residential Section”** means the residential section of the Strata Corporation, created by the bylaws of the Strata Corporation;
- (ddd) **“Restrictive Covenant”** means the restrictive covenant or covenants charging each of the Strata Lots in favour of the Hotel Manager’s Strata Lot prohibiting any rental use of a Strata Lot other than through a single rental pool managed by a hotel operator who has contracted with the Owners Corp. for such service;
- (eee) **“Security”** has the meaning set forth in section 17.6;
- (fff) **“Security Holder”** has the meaning set forth in section 17.6;

- (ggg) **“Special Resolution”** means a resolution passed at a meeting of the Owners Corp. properly convened in accordance with the Owners Corp.’ Bylaws and for which at least 14 days’ notice specifying the purpose of the special resolution has been given provided that the resolution was passed by Owners present or represented by proxy and representing not less than 75% of those Owners voting;
- (hhh) **“Strata Corporation”** means the Owners, Strata Plan No. KAS \_\_\_\_\_ to be created upon the filing of a strata plan;
- (iii) **“Strata Corporation Bylaws”** means bylaws and rules and regulations of the Strata Corporation;
- (jjj) **“Strata Council”** means the members of the executive of the Residential Section, or if there is no executive of the Residential Section, then the members of the strata council of the Strata Corporation who are appointed by the owners of the Strata Lots or who are representatives of the owners of the Strata Lots;
- (kkk) **“Strata Lots”** means all of the residential strata lots that will form part of the Development together with any limited common property designated for the exclusive use of any such strata lots;
- (lll) **“Term”** has the meaning set forth in section 2.2;
- (mmm) **“Unit Entitlement”** means the unit entitlement of any Strata Lot or Strata Lots, as set out in the Strata Plan;
- (nnn) **“Unit Revenue Share”** has the meaning set forth in section 7.2; and
- (ooo) **“Unit Share Ratio”** means, with respect to any Strata Lot, the fraction which has as its numerator the Unit Entitlement of such Strata Lot and as its denominator the aggregate of the Unit Entitlements of all of the Strata Lots. -

**1.2 General Interpretation.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) “this Agreement” means this hotel management and Rental pool agreement, as it may from time to time be supplemented or amended by one or more agreements between the parties in accordance with the terms hereof;
- (b) all references in this Agreement to designated “Articles”, “sections” and other subdivisions are to be designated Articles, sections and other subdivisions of this Agreement;
- (c) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole or not to any particular Article, section or other subdivision;
- (d) the headings are for convenience only and do not form a part of this Agreement and they will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;

- (e) the word “including”, when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation”, without limiting the generality of the foregoing, or “but not limited to” or words of similar import) is used with reference thereto, but rather will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (f) words importing the neuter gender include the masculine or feminine gender and words in the singular include the plural, and vice versa.

**1.3 Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof, and, subject to Article 19, the courts of British Columbia will have exclusive jurisdiction in connection with all matters under this Agreement and the interpretation and enforceability hereof.

**1.4 Statutes.** Any reference in this Agreement to any statute means such statute and any statute or law enacted to supersede or replace such statute.

## **ARTICLE 2 COMMENCEMENT DATE, TERM OF AGREEMENT**

**2.1 Commencement Date.** This Agreement will be a binding agreement and bind the Delta, SPHLP and the Owners Corp. upon the execution and delivery hereof by all parties hereto. The duties and obligations of the parties under this Agreement will come into full force and effect upon the Commencement Date.

**2.2 Initial Term.** The initial term of the appointment of Delta as the Owners Corp.’ manager under this Agreement will be a period commencing on the Commencement Date and continuing for a period of 20 years terminating at midnight at the end of the day prior to the twentieth anniversary of the Commencement Date (the “Initial Term”). For purposes of this Agreement, the word “Term” means the Initial Term and any extensions thereof pursuant to section 2.3.

**2.3 Renewals by Delta.** Following the Initial Term, the appointment of Delta as the Owners Corp.’ manager pursuant to this Agreement will be automatically renewed (without the requirement for notice by either the Owner or Delta) for successive periods of 10 years each (each called a “Renewal Term”), provided that:

- (a) the Owners Corp. have not, prior to the end of the Initial Term or any Renewal Term, elected to terminate the appointment of Delta as manager under this Agreement pursuant to section 16.2;
- (b) Delta has not, prior to the end of the Initial Term or any Renewal Term, elected to terminate the appointment of Delta as manager under this Agreement pursuant to section 16.3;
- (c) SPHLP has not, prior to the end of the Initial Term or any Renewal Term, elected to terminate the use of SPHLP plant, staff and employees under this Agreement;
- (d) the Initial Term has been extended for all prior periods;

- (e) Delta, in its sole discretion, has not given the Owners Corp. written notice of its election not to so renew such appointment on or before the date which is six months prior to the end of the then existing initial Term or Renewal Term, as the case may be; and
- (f) the Owners Corp. have not elected to terminate the appointment of Delta as manager under this Agreement.

Each renewal will be on the same terms and conditions, except that the Base Fee will be increased by the Escalation Factor between the commencement of the Renewal Term and the commencement of the prior term.

### **ARTICLE 3 HOTEL RENTAL MANAGEMENT**

**3.1 Management of Hotel Rental Pool.** The Owners Corp. hereby appoints Delta as their exclusive manager to manage the operation of the Hotel and the Rental Pool in respect thereof in accordance with the terms and conditions set out in this Agreement and to undertake on an exclusive basis, on behalf of and for the account of the Owners Corp., all duties and obligations coming within the scope of the management and marketing of the Hotel Premises, including those specific services as set forth herein. Without limiting any of its duties or obligations set out in this Agreement, Delta agrees to operate the Hotel Premises as a First-Class Hotel, except to the extent that Delta is prevented from maintaining this standard of service due to any default by the Owners Corp. or any Owner pursuant to this Agreement.

**3.2 Hotel Rental Pool.** Delta will manage the rental of the Strata Lots in accordance with this Agreement. The Owners Corp. hereby irrevocably covenants and agrees that all Strata Lots, all Owners and all Quarter Owners will be bound by the rental bookings of its Strata Lot made by Delta in accordance with this Agreement.

**3.3 Use.** The Strata Lots will be used only as strata hotel units and only in accordance with the Rental Pool Covenant, Restrictive Covenant and this Agreement and will not be used for any other purpose without the prior written consent of the Owners Corp., SPHLP and Delta.

**3.4 Owner Use and Bookings.** Owners have unlimited use of their Strata Lots and are assured use of their Strata Lot when booked not less than 6 months in advance. Prior to 6 months, Delta may only book with an Owner's permission. Within 6 months of a given date, Delta may book for Hotel Guests any days not previously reserved for an Owner. Within 6 months, Owners may continue to reserve at any time, and days not then booked for Hotel Guests.

**3.5 Restrictions Re: Strata Corporation Bylaws.** The Owners Corp. and the Owners agree that no Owner will vote in favour of any Strata Corporation Bylaw which conflicts with a term or condition set out in this Agreement.

**3.6 Hotel Manager's Strata Lot.** The Owners Corp. (including the Owner-Developer, as owner of the Hotel Manager's Strata Lot as of the date of this Agreement) and Delta agree that:

- (a) any revenue earned from or in respect of the Hotel Manager's Strata Lot or any portion thereof will be revenue belonging to the Owners (and not to the Strata Corporation or Delta) and will be included in the Gross Revenue; and
- (b) any costs or expenses in respect of the Hotel Manager's Strata Lot (including, without limitation, amounts payable by Delta pursuant to the Hotel Manager's Strata Lot Lease)

will be costs and expenses payable by the Owners Corp. and will not be included in the Hotel Expenses.

#### **ARTICLE 4 OWNERS' DECISIONS**

**4.1 Delta's Participation.** Without limiting any rights of Delta if Delta is an Owner, unless otherwise determined by the Owners Corp., Delta, as manager, will be given notice of and be entitled to attend meetings of the Owners Corp.

**4.2 Major Decisions - Special Resolutions.** The Owners Corp. agrees that it will not, except with the approval of its shareholders by Special Resolution, agree to:

- (a) any amendment to or modification of this Agreement;
- (b) the renewal of the Term pursuant to section 2.3; and
- (c) any other matter which, pursuant to the terms of this Agreement, is required to be approved by a Special Resolution or  $\frac{3}{4}$  vote.

**4.3 Owners to be Bound.** All of the Owners will be bound by any acts and things done by the Owners Corp. in accordance with this Article 4 and this Agreement and any Special Resolutions passed by the Owners at any meeting of the Owners Corp. in accordance with this Article 4 and this Agreement.

**4.4 Head Lease.** The Owners Corp. covenants and agrees that it will not amend, alter or release or agree to any termination of the Head Lease.

#### **ARTICLE 5 OPERATING PLAN AND BUDGET**

**5.1 Operating Plan and Budget.**

- (a) For the first Operating Year, the Operating Plan and Budget will be prepared by Delta and approved by the Owners Corp., prior to the Commencement Date. Such Operating Plan and Budget will be an Approved Operating Plan and Budget.
- (b) After the first Operating Year, on or before December 1 of each year, Delta will prepare and deliver to a meeting of the Owners Corp. duly convened in accordance with this Agreement a preliminary Operating Plan and Budget for the following Operating Year and Delta will review such preliminary Operating Plan and Budget with the Owners Corp. at such meeting. For a period of 30 days after receipt by the Owners Corp. of the preliminary Operating Plan and Budget at such meeting of the Directors of Owner's Corp., the Owners Corp. is entitled from time to time to request further details from Delta and to submit written comments to Delta. The Owners Corp. will give good faith consideration to the preliminary Operating Plan and Budget and not unreasonably refuse to accept any item, provided such item is in accordance with this Agreement. If the Owners Corp. does not respond to the preliminary Operating Plan and Budget within the 30 day period, then the Owners Corp. will be deemed to have approved the preliminary Operating Plan and Budget and such Operating Plan and Budget will be deemed to be an Approved Operating Plan and Budget. If after giving good faith consideration to the preliminary Operating Plan and Budget, the Owners Corp., within such 30 day period,

gives Delta written notice of its objection and proposals for amendment of any disputed items, the Directors of Owners Corp. and Delta, both acting reasonably, will endeavour to resolve any such differences between them.

- (c) Each Operating Plan and Budget is subject to the approval of the Owners Corp. and no Operating Plan and Budget will be an Approved Operating Plan and Budget unless it is approved by the Owners Corp. or otherwise in accordance with this section 5.1(c). If any Operating Plan and Budget is not approved by the Owners Corp., then:
  - (i) pending resolution of any disputed item, the specific disputed items of the Operating Plan and Budget will be suspended and replaced for the Operating Year in question by an amount equal to the lesser of (i) that proposed by Delta for such Operating Year or (ii) such budget item in the Approved Operating Plan and Budget for the Operating Year prior thereto, subject to escalation per item by the Escalation Factor, over the 12 month period immediately preceding the start of the Operating Year in question, provided that if such budget item was not in the Approved Operating Plan and Budget for the Operating Year prior thereto, such item will be suspended pending resolution of such item; and
  - (ii) either the Owners Corp. or Delta may submit the Operating Plan and Budget to be settled by arbitration in accordance with section 19.1.
- (d) Delta makes no assurances that actual performance of the Hotel will correspond to such estimates contained in the Approved Operating Plan and Budget. However, Delta agrees to use its best efforts to operate the Hotel within the Approved Operating Plan and Budget. The Owners Corp. acknowledge that notwithstanding Delta's experience and expertise in relation to the operation of hotels, the projections contained in each Approved Operating Plan and Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond Delta's control.

**5.2 Inclusions in Operating Plan and Budget.** The Operating Plan and Budget will be a reasonably detailed budget of revenue and expenses in connection with the operation of the Hotel, similar in kind and scope to operating plans and budgets prepared by Delta for other hotels in the Delta Group as of the Commencement Date, and will include the following:

- (a) the projected Gross Revenue, detailed as to each source of revenue, together with information and background as to how the various projections have been determined;
- (b) the budgeted Hotel Expenses, by major expense category, together with information and background as to how the various projections have been determined;
- (c) the projected Unit Revenue Share for each Strata Lot;
- (d) the marketing strategy and plan for the Hotel;
- (e) any recommended capital improvements to be made to the Hotel Premises; and
- (f) the basis upon which the Delta Marketing and Sales Expenses and Delta Recoveries will be charged.

**5.3 Owners Corp. Obligations.** The Owners Corp. agrees with Delta and SPHLP that it will pay all Hotel Expenses fixed costs associated with the operation of the Hotel including strata fees, property taxes, heat, utilities, repair and replacement of FF&E, linens and room supplies. The Owners Corp. shall not be responsible for labour and management provided by SPHLP which shall include front desk bookings and reservations (by employees of SPHLP) and management. The Owners Corp. shall, however, be responsible for all labour in connection with Owner's relations for the Hotel and accounting.

**5.4 Budget Summary.** Delta will mail to each of the Owners a summary of each Approved Operating Plan and Budget once it is approved in accordance with this Article 5.

## **ARTICLE 6 CENTRAL RESERVATIONS SYSTEM AND CENTRALIZED SERVICES**

**6.1 Central Reservations System.** Delta shall provide or shall cause any of its Affiliates directly or through other Persons or by a combination of direct and indirect services and resources, to provide for the Hotel and its guests the full benefit of its Central Reservations System to the extent available to other Delta Hotels. The Owners Corp. shall be charged as an Operating Expense a reasonable fixed monthly fee for said service as well as a charge on a per-reservation basis, subject to change in amount or formula and subject to the guidelines and policies approved from time to time by the Delta, so long as such changes, guidelines and policies are on the same basis or formula as charged to other Delta Hotels participating in said service, and the total amount charged to Delta Hotels for such service do not exceed the total costs of the Delta in providing, maintaining, enhancing, and operating the service.

**6.2 Centralized Services.** The Delta shall also provide, or cause any of its Affiliates, directly or through other Persons or by combination of direct and indirect services and resources, to provide, for the Hotel and its guests the full benefit of its centralized services (the "Centralized Services") as normally provided to other Delta Hotels, including, but not limited to, personnel and labour relations services, departmental supervision and control services, employee group benefits, payroll and office management services, finance and accounting services, advertising and public relation services, educational and training programs and facilities, insurance services and computerized management information services. The Owner hereby agrees to participate in the Centralized Services on the terms and conditions specified by the Delta from time to time. The Delta shall charge and the Owners Corp. shall pay for the Centralized Services in accordance with the provisions of Section 6.3.

The charges for Centralized Services are subject to change from time to time. The Delta may introduce new services within the Centralized Services and discontinue or alter the method of delivery, the charges for, and the method of charging or allocating the cost for Centralized Services from time to time.

**6.3 Owner's Contribution.** The Owners Corp. agrees to pay the Delta as and when invoiced by the Delta for the Hotel's pro rata share of the total costs incurred by the Delta in providing the Centralized Services on a system-wide basis to the Delta Hotels, which amount shall be subject to the guidelines and policies approved from time to time by the Delta and may include, without limitation, reimbursement for the costs incurred by the Delta in connection with the salaries (including payroll taxes and employee benefits) of the employees and officers of the Delta and its Affiliates directly involved in the provision of the Centralized Services and the costs of all equipment employed in the rendition of such Centralized Services. The Hotel's pro rata share of the said costs shall be determined in an equitable manner by the Delta and the share so determined shall be an Operating Expense, it being understood that all Delta Hotels will be assessed on a basis conforming to the rules outlined above.

**6.4 Cost of Equipment.** In addition, if equipment required for the rendition of services to the Hotel is installed and maintained at the Hotel in connection with the rendition of the Central Reservations

System or any Centralized Services, all costs thereof shall be identified in the Operating Plan and Budget and be the responsibility of the Owners Corp. and charged as Operating Expenses to the operation of the Hotel either as current expenses or over a period of years, as determined by the Independent Chartered Accountants.

**6.5 Credit Cards.** The Owners Corp. and the Owners authorize the Delta to accept the Delta-sponsored credit cards and all other credit cards designated by the Delta for charges authorized in accordance with the Delta's credit card billing system.

## **ARTICLE 7 OWNERS' REVENUES AND DISTRIBUTIONS TO OWNERS**

**7.1 Calculations by Delta.** For each quarter during the Term, Delta will prepare or cause to be prepared reasonably detailed financial statements, prepared in accordance with Generally Accepted Hotel Accounting Principles and for each such period Delta will calculate the Gross Revenue and no later than the 20th day following the end of each quarter during the Term, Delta will deliver to the Owners Corp. such financial statements, and mail to each of the Owners Corp. a written summary statement (the "Quarterly Statement of Gross Revenue"), thereof, in reasonable detail.

**7.2 Calculations of Unit Revenue Share.** The Owners Corp. and Delta agree that for each day that a Strata Lot is in the rental pool, the Quarter Owner in whose Period of Use that day is, will be entitled to its share in 60% of the Gross Revenue (earned on such day, as calculated by multiplying the Gross Revenue earned on such day by the fraction which has as its numerator the Unit Entitlement of such Strata Lot and as its denominator the aggregate of the Unit Entitlement of all of the Strata Lots in the rental pool on such day.

**7.3 Payments to Owners.** Concurrently with the mailing of the Quarterly Statement, Delta will mail to each Owner a cheque, drawn upon the Hotel Bank Account, in the amount equal to the Owner's revenue share for the quarter for which the Quarterly Statement applies. Delta may withhold from the Owners:

- (a) any unpaid amount then payable by the Owners Corp. to SPHLP;
- (b) any unpaid amount then payable by the Owners Corp. to Delta pursuant to section 7.8;
- (c) any amount deductible therefrom pursuant to section 7.9 or 11.6;
- (d) any other amount payable by the Owners Corp. to Delta pursuant to this Agreement; and
- (e) withholding tax, if applicable.

**7.4 Maintenance and Repair of Strata Lots.** Delta will, for and on behalf of the Owners Corp., keep the Strata Lots and the Hotel Manager's Strata Lot in substantially the same condition they were in as of the Commencement Date, normal wear and tear excepted, and the cost thereof will be a Hotel Expense. The Owners Corp. acknowledges and agrees that the cost of maintaining and repairing the Strata Lots and the Hotel Manager's Strata Lot will be paid for by the Owners Corp..

**7.5 FF&E Reserve/Repair of FF&E.** Delta may establish for and on behalf of the Owners Corp. an FF&E Reserve with the agreement of the Owners Corp. If an FF&E Reserve is not created than cost of replacement of any Furniture, Fixtures and Equipment will be budgeted for and paid by the Owners Corp., as needed.

**7.6 Operating Cash Reserve.** A reserve either in cash, or by way of operating line of credit in the amount of \$325,000 will, at all times, be established by the Owners Corp., for use by Delta as working capital in connection with the operation and marketing of the Hotel. Initially, the Operating Cash Reserve will be loaned by the Developer to the Owners Corp., without interest and placed by the Developer in the Hotel Bank Account. After the first year, the Developer's loan must be repaid and the Owners Corp. agrees with Delta that the Owners Corp. will, in the future, maintain a reserve of not less than \$325,000.

**7.7 Maintain Condition of Hotel.** The Owners Corp. agrees with Delta, as an enforceable obligation, that the Owners Corp. will, on an ongoing basis, agree to budgets and provide funds sufficient for all repairs, replacements and maintenance in order to maintain the Hotel and the FF&E in a first class condition typical of Delta Hotels.

**7.8 Owners Corp. Funding.** If at any time the funds in the Hotel Bank Account are not sufficient to pay when due any Hotel Expenses, Capital Expenditures or capital lease payments payable under this Agreement, (such as in the case of seasonal cash requirements), the Owners Corp. will immediately fund the required amount and if necessary, call a special general meeting to determine how to fund the required amount. In order to maintain its reputation, Delta may enforce this obligation against the Owners Corp. In no circumstance will Delta be required to fund any shortfalls in the Hotel Bank Account to pay Hotel Expenses, Capital Expenditures or capital lease payments.

**7.9 Payment of Owner's Strata Lot Expenses by Owners.** The Owners Corp. will ensure that each of the Owners will promptly pay when due all taxes personal to the Owners in respect of such Owner's Strata Lot, including income taxes, capital taxes, large corporations taxes and goods and services taxes and all amounts owing under any financing of the Owner's Strata Lot arranged by such Owner and all of such Owner's Strata Lot Expenses in respect of or relating to the Owner's Strata Lot. Out of funds provided by the Owners Corp. for administrative purposes, Delta will pay for and on behalf of and in the name of each Owner, the following Owner's Strata Lot Expenses in respect of or relating to such Owner's Strata Lot:

- (a) Sun Peaks Mountain Resort Association dues; and
- (b) monthly maintenance fees payable to the Strata Corporation for the period in which Delta is the strata manager for the Development.

**7.10 GST and Withholding Tax.** The parties agree that:

- (a) each Owner will be responsible for the payment of all goods and services tax and all other applicable taxes, charges, rates and levies in connection with its Strata Lot and each Owner will become registered and maintain its registration for goods and services tax purposes, if requested by Delta at any time, and provide Delta with such Owner's GST registration number;
- (b) Delta will, as agent for and on behalf of the Owners, if required under the applicable legislation, to collect and remit to Revenue Canada and any other applicable authority, within the required time for the remittance thereof, any goods and services tax, hotel tax and other tax collected in connection with the use of the Hotel Premises by Hotel Guests and Owners, and make any necessary filings and reports in respect thereof; and
- (c) Delta may withhold from any of the Owners and remit to Revenue Canada or any other relevant authority any amount required to be withheld or remitted in respect of goods and

services tax or withholding tax or any other applicable statutory tax, charge or levy which Delta is required to withhold or remit.

**7.11 No Separate Revenue for Delta.** Except as specifically set out in this Agreement or any other agreement in writing between Delta and the Owners or the Strata Corporation, neither Delta nor any person Related to Delta will receive any other revenue, profit or reward of any kind or nature from or in respect of the Hotel Premises or the Hotel or any portion thereof. Notwithstanding the foregoing, Delta and any person Related to Delta will be entitled to receive any amount payable to Delta or such person pursuant to this Agreement as an Owner of any Strata Lot.

## **ARTICLE 8 MANAGEMENT AND OTHER FEES AND REIMBURSABLE EXPENSES**

**8.1 Base Fee.** The Owners Corp. agrees to pay to Delta a Base Fee for the period commencing on the Commencement Date and ending at the end of the month on the tenth anniversary of the Commencement Date, \$10,000 per month (with a pro rata portion thereof for a part of a month); and thereafter, the Owners will pay to Delta an annual Base Fee equal to the Base Fee multiplied by the Escalation Factor between the Commencement Date and the tenth anniversary of the Commencement Date payable in monthly instalments in respect of the Gross Revenue for the preceding month.

The Base Fee will be payable as a Hotel Expense in each case upon the delivery of the Monthly Statement in respect of such month.

**8.2 Operator Fee.** To compensate SPHLP for agreeing to allow the Owners Corp. and Delta to utilize the SPHLP physical plant, staff and employees, the Owners Corp. shall pay to SPHLP a fee, being the sum of:

- (a) Owners' Daily Clean Fees; and
- (b) FORTY (40%) PERCENT of Gross Revenues,

provided that the minimum fee shall not be less than \$325,000 per annum.

**8.3 Sales, Reservations, Advertising and Marketing Expenses.** For the services provided by Delta pursuant to Article 10, including, without limitation, the Delta Group advertising and marketing programs, sales and reservation systems, SPHLP will, pay to Delta and its Affiliates the fees and charges set out in section Article 6, (net of any applicable credits) (collectively called "Delta's Marketing and Sales Expenses") . SPHLP acknowledges that the basis and method of calculation of Delta's Marketing and Sales Expenses may change during the Term and SPHLP agrees to any such change provided it is in accordance with section 8.5.

**8.4 Limitation on Delta's Marketing and Sales Expenses.** Delta agrees that none of Delta's Marketing and Sales Expenses will be:

- (a) charged on a basis different than that charged to any other hotel in the Delta Group; or
- (b) calculated by a method other than that set out in the then current Approved Operating Plan and Budget.

**8.5 Delta Reimbursables.** SPHLP agrees to reimburse Delta for all reasonable costs incurred by Delta for SPHLP's account in relation to the Hotel in the ordinary course of business, which costs will be Hotel Expenses including, without limitation, the following:

- (a) the daily per diem rate for those personnel of Delta assigned to special projects relating to the Hotel, which will be based upon each individual's rate of pay and Fringe Benefits (such special projects will include, but not be limited to, special sales or marketing programs, training and installation of capital purchases and reasonable travel and out-of-pocket expenses will be included);
- (b) reasonable travel and out-of-pocket expenses incurred directly in connection with the operation of the Hotel by Head Office Personnel. When such expenses were incurred in visiting a number of hotels within the Delta Group, the cost will be reasonably prorated to all those hotels; and
- (c) the reasonable cost of the standard Delta corporate services utilized by hotels within the Delta Group such as, but not limited to, attendance at Delta's management seminars and other conferences, operating handbooks and manuals, purchasing services, departmental services, and corporate marketing services,

and provided that each of the foregoing is set out in an Approved Operating Plan and Budget or otherwise pre-approved by the Owners Corp..

## **ARTICLE 9 HOTEL BANK ACCOUNT AND BOOKS AND RECORDS**

**9.1 Hotel Bank Account.** Delta will have the right to designate the Canadian Chartered bank having a branch reasonably convenient to the Hotel with which the Hotel will conduct its various banking affairs, and all funds received in the operation of the Hotel will be deposited into a trust account bearing the name of the Hotel in such bank. The Hotel Bank Account will be under the control of Delta. Cheques and other documents of withdrawal will be signed only by persons authorized by Delta. All funds in the Hotel Bank Account will belong to the Owners and SPHLP with respect to its interest in the Operator Fee and will be dealt with in accordance with this Agreement. Delta is hereby authorized to pay all Hotel Expenses, Capital Expenditures, Base Fee and Operator Fees incurred in accordance with this Agreement and all amounts repayable to the Owner-Developer operator pursuant to section 7.6 from funds in the Hotel Bank Account.

**9.2 Books, Records, Financial Statements.** Delta agrees:

- (a) to keep on the Hotel Premises or at the Delta Resort Hotel proper books of account and other records relating to or reflecting the results of the operations of the Hotel in accordance with this Agreement, All books of account and other records are the property of the Owners Corp. and will be available to the Owners Corp. at all reasonable times for examination, audit, inspection and copying. Upon any termination of this Agreement, all financial books and records and a list of the Hotel's individual guests who stayed at the Hotel during the preceding two years (with their names and addresses and the dates of their arrivals and departures) provided that the release of such information is in compliance with all applicable laws, regulations and orders and in particular, privacy legislation and such information will be turned over forthwith to the Owners Corp. to ensure the orderly continuance of the operation of the Hotel. All books and records will thereafter be available to Delta at the Hotel, at all reasonable times, for inspection, audit,

examination and copying. Any costs and expenses incurred in providing books and records to Delta after termination will be paid by Delta;

- (b) send to Quarter Owners an audited financial statement for the Hotel operation on or before the 140<sup>th</sup> day after the end of each financial year of the Hotel;
- (c) send to Quarter Owners interim financial statements on or before the 60<sup>th</sup> day after the date to which they are made up;
- (d) send to Quarter Owners quarterly statements of revenues and expenses for the Hotel on or before the 60<sup>th</sup> day after they are made up; and
- (e) deliver to a subsequent prospective purchaser of a Quarter Interest upon reasonable notice of an intended sale, financial information before an agreement of purchase and sale is entered into.

## **ARTICLE 10 SERVICES TO BE RENDERED BY DELTA**

### **10.1 Management Services.** Delta will:

- (a) subject to the terms of this Agreement and Owner Bookings, use all reasonable efforts to sell room nights in respect of the Strata Lots to Hotel Guests;
- (b) carry out and perform all such acts and things as are reasonably necessary or desirable in connection with the operation of the Hotel as a First-Class Hotel in accordance with this Agreement;
- (c) procure and maintain any licenses and permits which may be required in connection with the carrying out of its duties and obligations under this Agreement;
- (d) strictly observe and abide by the terms and conditions set out in the Rental Pool Covenant; and
- (e) diligently and faithfully perform its duties and obligations under this Agreement as would a reasonably prudent hotel manager in the position of Delta.

### **10.2 General Management.** Subject to the terms and conditions of this Agreement and any Approved Operating Plan and Budget, Delta agrees to perform on behalf of and for the account of the Owners Corp., all appropriate and necessary management services in connection with the operation of the Hotel as a First-Class Hotel, including but not limited to:

- (a) the general organization of the Hotel;
- (b) the development and implementation of sales, advertising, personnel, employment, purchasing and maintenance programs consistent with the provisions of this Agreement;
- (c) the implementation of administrative accounting, budgeting, and operational policies and practices of Delta as used in the hotels within the Delta Group, from time to time. Such policies and practices will be deemed to be in compliance with Delta's obligations hereunder, and the Owners Corp. will accept such policies and practices so long as they

do not conflict with any term or condition of this Agreement or any Approved Operating Plan and Budget;

- (d) the review of the conduct of hotel operations at the Hotel from time to time in accordance with the standards of a First-Class Hotel and established management practices and policies of Delta;
- (e) the establishment and supervision of Delta's standard accounting and inventory control systems which are normally used for the hotels within the Delta Group which are comparable to the Hotel;
- (f) the arrangement for the provision to the Hotel of all goods and services as are necessary for the proper operation and maintenance of a First-Class Hotel as contemplated by this Agreement;
- (g) the establishment of all prices, charges and rates, and in connection therewith, the supervision and control of the collection, receipt and giving of receipts for all goods or services provided or revenue of any nature derived from the operations of the Hotel;
- (h) the determination of the Hotel's purchasing policy, including the selection of the merchandise, supplies and materials and establishment and maintenance of all inventories required for the proper operation of the Hotel, and the selection of the suppliers and negotiation of supply contracts in order to assure purchases on the best available terms;
- (i) the negotiation and execution of contracts which are normally entered into within the scope of hotel operations and preparation of the corresponding legal documents;
- (j) the determination of credit practices applicable to suppliers and to the Hotel's clientele and negotiation of arrangements with credit organizations, in particular those issuing credit cards;
- (k) with the prior approval of the Owners Corporation acting reasonably, instituting in the name of the Hotel any lawsuits or other legal actions having a direct link with the operations of the Hotel and deemed necessary or advisable by Delta; and
- (l) the supervision and control of the activities of Hotel Guests and any tenants, concessionaires and holders of privileges in respect of any portion of the Hotel Premises and their employees, including the dispossession of Hotel Guests and tenants for nonpayment of rent or any other proper cause, or the termination of the rights of concessionaires or licensees for proper cause.

**10.3 Use of Hotel Manager's Strata Lot.** Delta will:

- (a) use and operate the Hotel Manager's Strata Lot as an integrated part of the Hotel, to the standards of a First-Class Hotel in accordance with this Agreement;
- (b) make the Hotel Manager's Strata Lot available as part of the Hotel at all times during the Term and not use the Hotel Manager's Strata Lot for any purpose other than for the operation of the Hotel in accordance with this Agreement; and
- (c) observe and abide by all of the terms and conditions set out in the Hotel Manager's Strata Lot Lease.

**10.4 Maintenance.**

- (a) Delta agrees for the account of the Owners Corp., to cause the Hotel Premises and the Furniture, Fixtures and Equipment to be maintained in good operating condition and repair, normal wear and tear excepted, and Delta will replace, at the expense of the Owners Corp., such items of the Furniture, Fixtures and Equipment and Operating Supplies and Expendables as from time to time may be appropriate in accordance with the then current Approved Operating Plan and Budget. All items of Furniture, Fixtures and Equipment, including those in the Hotel Manager's Strata Lot, forthwith upon acquisition and receipt by Delta of any payment therefor, will become, without further act, the property of the Owners Corp. Upon completion of construction of any change or addition to the Hotel, Delta will furnish to the Owners Corp. any guarantees and warranties relating to any portions of the Hotel or the Furniture, Fixtures and Equipment and Operating Supplies and Expendables. Delta agrees to co-operate with the Owners Corp. to enforce the provisions of such guarantees and warranties. Delta will make no expenditures for the repair and replacement of the Furniture, Fixtures and Equipment or for maintenance and repair which would result in or cause a change in the general character of the interior or exterior of any portion of the Hotel Premises or make any capital improvements except if the same is included in an Approved Operating Plan and Budget or otherwise pre-approved by the Owners Corp..
- (b) The Owners Corp. acknowledges that the Hotel will be operated as a member of the Delta Group and that it will therefore be mandatory for the Hotel Premises and the Furniture, Fixtures and Equipment to be maintained in the manner befitting a First-Class Hotel in order to continue operation of the Hotel as part of the Delta Group.

**10.5 Changes and Alterations.** From time to time during the Term, Delta may make, at the Owners Corp.'s expense, but subject to the terms of this Agreement and the then current Approved Operating Plan and Budget, reasonable changes and alterations to the Hotel Premises, or any part thereof, subject however in all cases to the following:

- (a) no change or alteration will be made which would:
  - (i) change the general character or design of the Hotel;
  - (ii) involve the excavation of any portion of the Hotel Premises; or
  - (iii) include alteration of, or result in increasing the burden upon the foundation of the Hotel Premises;

without the prior consent of the Owners Corp.;

- (b) all permits, licenses and authorizations required to be procured in connection with any change or alteration will be procured (or caused to be procured) by Delta, and the cost of the same will be a Hotel Expense;
- (c) any change or alteration will be made promptly in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations and permits and insurance requirements;
- (d) the cost of any change or alteration will be promptly paid (or caused to be paid) so that the Hotel Premises will at all times be free from any lien, encumbrance, mortgage, chattel mortgage, conditional sales agreement, title retention agreement or other charge for labour, services or material supplied or claimed to have been supplied to the Hotel Premises;
- (e) if any such change or alteration involves an estimated cost of more than \$25,000:
  - (i) Delta agrees to obtain the specific approval (in addition to approval of the Approved Operating Plan and Budget) of the Owners Corp. to such change or alteration prior to Delta proceeding;
  - (ii) if Delta proposes to have such change or alteration supervised by personnel of Delta or the Hotel, Delta will obtain the specific approval of the Owners Corp. as to whether such change or alteration requires the supervision of an independent engineer or architect and the Owners Corp. will pay to Delta its then current technical services fee for such supervision; and
  - (iii) if the Owners Corp. so advises Delta in writing prior to the Owners Corp. approving same, such change or alteration will be made under the supervision of an architect or engineer approved by the Owners Corp. in accordance with detailed plans and specifications approved by the Owners Corp. prepared by such architect or engineer and the Owners Corp. will have the right to approve the contractor and to supervise construction.

**10.6 Capital Expenditures.** Delta is authorized to make Capital Expenditures only in accordance with the terms of the then current Approved Operating Plan and Budget or otherwise pre-approved by the Owners Corp., except where required in an emergency to preserve property or the safety of persons in or about the Hotel Premises.

**10.7 Personnel and Employees.**

- (a) The selection and employment of the general manager and all such other employees and personnel necessary for the proper operation of the Hotel is the responsibility of Delta and all such persons will be employed by Delta as employees of SPHLP. The hiring, promoting and discharging of the general manager and any other employees and personnel and the terms of their employment, including compensation, will be at the sole discretion of Delta, acting reasonably and in the best interest of the Owners Corp.
- (b) Delta may delegate to the general manager of the Hotel, who in turn may delegate to others, the selection and hiring of all employees and personnel required for the operation of the Hotel.
- (c) The general manager may, during the Term be replaced by Delta, and likewise the employment of any other Employee may be terminated by Delta or the general manager or by the person or persons to whom the general manager will delegate such authority. The decision in regard to any such discharge, whether directly or through the general manager of the Hotel, will be at the sole discretion of Delta, acting reasonably.
- (d) SPHLP agrees that all costs and expenses incurred by Delta, acting reasonably and prudently, in connection with the employment of the Employees (including any hiring costs and expenses, Fringe Benefits, withholding amounts and termination costs payable, including the costs of terminating Employees at the end of the Term or earlier termination of the appointment of Delta under this Agreement), will be Hotel Expenses, payable by SPHLP pursuant to this Agreement.

**10.8 Delta Group Advertising.**

- (a) Delta agrees to integrate the Hotel in all corporate publicity, advertising, audio visual and public relation programs and campaigns with respect to hotels affiliated with the Delta Group. Advertising may be implemented on a national or regional basis.
- (b) Delta will cause the hotels in and affiliated with the Delta Group to promote the Hotel with their own clientele in a similar manner to the other hotels in and affiliated with the Delta Group.

**10.9 Marketing at the Hotel.**

- (a) Delta will carry out on behalf of the Hotel all operational marketing activities and the implementation of the Delta Group marketing policy as applied to the Hotel.
- (b) Marketing at the Hotel level will be established and carried out by Delta for the market where the Hotel is located and other markets which Delta reasonably believes relevant considering the nature of the Hotel.
- (c) Delta agrees to establish for the Hotel, as part of the Operating Plan and Budget, an annual marketing plan for each Operating Year, including, but not limited to:
  - (i) the determination of the sales policy of the Hotel;

- (ii) the determination of yearly and long-term objectives regarding occupancy rates, revenues and clientele;
  - (iii) the establishment of all Hotel rates (including the rates for any lounge or bar contained in the Hotel);
  - (iv) the setting of any special sales terms;
  - (v) the determination of credit practices;
  - (vi) the establishment of sales methods and procedures relating to the various clientele segments; and
  - (vii) the analysis of results and permanent control.
- (d) Delta agrees to perform appropriate advertising and promotion services at the Hotel level including:
- (i) the definition of the Hotel policy regarding advertising and promotion;
  - (ii) the preparation of advertising documents and brochures; and
  - (iii) the reasonable distribution of such documents in the hotels of the Delta Group, and other sales outlets.
- (e) Delta agrees to make its central sales office available to the Hotel for marketing action intended for specific territories. Delta will assist the Hotel in reaching specific market segments through the drafting of potential clientele lists, the visiting of selected travel agencies, tour operators and corporations and the following up of such activities in the processing of sales orders.
- (f) Delta may undertake advertising campaigns in specific territories through the Delta Group sales offices if necessary, subject to the Approved Operating Plan and Budget.
- (g) Delta agrees to integrate the Hotel in the various trade shows and exhibitions attended by Delta or recommended for the Hotel.
- (h) The Owners Corp. consent to the integration of the Hotel's guest list and client list into Delta's guest history and client listing data base, which may be accessed by hotels in the Delta Group.

**10.10 Other Delta Systems.** Delta agrees to make available to the Hotel:

- (a) all operational departmental supervision and control and other similar services furnished to other hotels within the Delta Group; and
- (b) all services used by hotels within the Delta Group generally, with regard to the procurement of all Furniture, Fixtures and Equipment and Operating Supplies and Expendables and other goods and services required for the Hotel.

**10.11 Performance of Delta's Services.**

- (a) In its management of the Hotel and to provide the Hotel with the benefits of volume purchasing, market research in the development of new and better equipment and supplies and design, decorating and other services, Delta may, subject to the Approved Operating Plan and Budget or the prior approval of the Owners Corp., purchase goods, supplies and services from or through Delta or any of its Affiliates, so long as the prices and terms are competitive with the prices and terms of goods and services of equal quality available from others.
- (b) Delta may pay to any of its Affiliates a reasonable fee for the negotiation of contracts for the direct purchase by Delta from independent suppliers of goods, supplies and services so long as the prices and terms thereof when added to the fee are competitive. Such fee and the prices and terms of goods and services charged to the operation of the Hotel will be on the same basis as charged to the operation of hotels owned by Delta Affiliates.
- (c) Subject to the Approved Operating Plan and Budget, Delta may retain an Affiliate or division as a consultant and to perform technical services in connection with any substantial remodelling, repairs, construction or other capital improvement to the Hotel and the Affiliate or division will be reasonably compensated for its services.

**10.12 Meetings.** The Owners Corp., SPHLP and Delta all agree to meet not less frequently than annually, upon reasonable written notice from either party, to discuss general Hotel operating procedures, the current Approved Operating Plan and Budget the Operating Plan and Budget for an Operating Year, results of an Operating Year, or any other matter of interest or concern.

**ARTICLE 11  
USE OF STRATA LOTS BY OWNERS**

**11.1 Rotation Calendar.** The Owners Corp. and Delta will, periodically produce and circulate to Quarter Owners a rotation calendar setting out the rotating one week Periods of Use between the four Quarter Owners (A, B, C, and D for the next one or two year period. The rotation calendar will, to the extent possible, attempt to ensure that each of the four Quarter Owners of each Strata Lot will have a Period of Use including Christmas Day, once every four years. There will also be an attempt to ensure fair allocation of other major holidays and weeks.

**11.2 Owner Booking Calendar.** Prior to the commencement of each fiscal year, Delta will circulate to all Quarter Owners a booking calendar for that fiscal year. Each Quarter Owner Period of Use will be divided into seven day periods commencing at 4:00 p.m. on a Friday and terminating at 11:00 a.m. on the ensuing Friday. An Owner is assured the use and availability of its Strata Lot if booked not less than 6 months prior to the day in question. Within 6 months of a Period of Use an Owner may book additional use subject to Hotel Guest bookings by Delta. Any days of use selected by the Owner on the booking calendar returned to Delta on or before the commencement of the fiscal year will be reserved for and guaranteed to the Quarter Owner.

**11.3 No Private Rentals.** An Owner may not, at any time, privately rent the Strata Lot during its Period of Use. If a Quarter Owner breaches this obligation, the Owners Corp. will pay to SPHLP a payment of \$200 per day of private rentals (plus an Escalation Factor from the Commencement Date) as liquidated damages. Delta and the Owners Corp. may deduct the fee from the Quarter Owner's revenues.

**11.4 Sharing in Rental Pool.** A Quarter Owner is entitled to share in the Rental Pool on a given day if the Quarter Owner whose Period of Use of that Strata Lot includes that day if:

- (a) the Quarter Owner had not booked that day for Owner use or was not deemed to have booked that day for Owner use;
- (b) if the Owner booked or was deemed to have booked the use of that day, but cancelled the booking of that day or another day such that the Owner was no longer deemed to have booked that day, and the cancellation occurred prior to six months before the day in question; or
- (c) if the Owner cancelled a booking within six months of the day, but the Delta was otherwise able to rent the Strata Lot to a Hotel Guest on that day.

**11.5 Deemed Bookings of Days.** An Owner use booking on a Friday or Saturday will be deemed to be an Owner booking for the entire Period of Use week and the Owner will not share in the Rental Pool for that Period of Use except as provided in section 11.4.

**11.6 Daily Cleaning/Changeover Fees.** The Quarter Owners will pay, upon checkout, Delta's daily mandatory base clean charge, daily optional full clean charge and mandatory changeover fees payable by a Quarter Owner for the periods in which the Quarter Owner or a Permitted Owner User uses the Quarter Owner's Strata Lot. As of the Commencement Date, such fees and charges are as follows:

<u>Unit Type</u>	<u>Mandatory Base Clean</u>
One Bedroom	\$20
One Bedroom and Den and Two Bedroom	\$25

The daily clean fee is intended to correspond with the actual costs of the clean and Delta may change the fee on an annual basis to ensure full cost recovery. In addition, the Quarter Owners and the Permitted Owner Uses will pay the standard charges established by Delta for the following:

- (a) long distance calls;
- (b) movie rentals;
- (c) vending machine charges; and
- (d) purchases of other goods and services offered by Delta.

**11.7 Use of Common Property and Parking.** Except as set out in the preceding section, Delta will not charge any Permitted Owner User for the use or enjoyment of its Strata Lot or any portion of the Hotel Premises. A Permitted Owner User will be entitled to the use of one parking stall free of charge and a second subject to availability. Further stalls will be at Hotel Guest rates and subject to availability.

**11.8 Request to use Different Strata Lot.** If a Strata Lot is reserved by the Owner, Delta may at any time request the Permitted Owner User to use a Strata Lot other than the Permitted Owner User's Strata

Lot, but such request will be subject to the agreement of the Permitted Owner User in his or her sole discretion.

**11.9 Use by or on behalf of Owner.** No Owner will use or permit any person to use the Owner's Strata Lot or the Common Property or Common Facilities except in accordance with this Article 11 or with the prior written consent of Delta in its sole discretion.

## **ARTICLE 12 COVENANTS, REPRESENTATIONS AND WARRANTIES**

**12.1 Covenants.** All of the terms and provisions of this Agreement will be deemed and construed to be "covenants" to be performed by the respective parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

**12.2 Representations and Warranties of Delta.** Delta represents and warrants, as representations and warranties that are true as of the date hereof and will be true at all times during the Term, as follows:

- (a) it is a corporation duly constated existing under the laws of the Province of Ontario and is duly qualified as a corporation authorized to do business in British Columbia and is extraprovincially registered under the laws of the Province of British Columbia;
- (b) it has full corporate power, authority and legal right to operate the Hotel and to perform and observe the provisions of this Agreement; and
- (c) this Agreement constitutes a binding obligation of Delta enforceable in accordance with its terms; and

covenants that it will, during the Term, preserve and keep in effect, at its own expense and not as a Hotel Expense, its corporate existence, rights and licenses as required to carry on business in the Province of British Columbia.

**12.3 Representations and Warranties of Owners Corp.** The Owners Corp. and each of the Owners represent and warrant, as representations and warranties that are true as of the date hereof and will be true at all times during the Term, as follows:

- (a) unless otherwise disclosed by each Owner to Delta in writing, each Owner is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (b) if an Owner is a corporation, it is a corporation duly authorized to do business under the laws of the Province of British Columbia;
- (c) it has full power, authority and legal right to own real property in British Columbia and to execute and deliver, and to perform and observe the provisions of this Agreement;
- (d) this Agreement constitutes the valid and binding obligations of the Owners Corp. enforceable in accordance with its terms; and

covenants that if such Owner is a corporation, it will, during the term of this Agreement, preserve and keep in effect, at its own expense, its corporate existence, rights and licenses to carry on business in the Province of British Columbia.

**ARTICLE 13  
TRADEMARKS**

**13.1 Trademarks.** The parties agree that:

- (a) during the Term, the Hotel will at all times be known and designated as follows:

“The Residences,  
A Delta Suite Hotel”

or such other name as may be agreed by Delta and the Owners Corp..

It is however, agreed between the parties hereto that the name “DELTA”, when used alone or in conjunction with some other work or words, is and will remain the exclusive property of Delta which has all rights to the names “DELTA”, “DELTA HOTELS”, “DELTA HOTELS & RESORTS” and “DELTA SUITE HOTEL”; and

- (b) upon termination of this Agreement for any reason whatsoever or Delta removing the “Delta” brand, the Owners Corp. will remove the names “DELTA”, “DELTA HOTELS”, “DELTA HOTELS & RESORTS” and “DELTA SUITE HOTEL” from all locations within the Hotel and from all advertising or other materials used by the Hotel, and will cease absolutely the use of the names “DELTA”, “DELTA HOTELS”, “DELTA HOTELS & RESORTS” and “DELTA SUITE HOTEL” in any trademark thereof with respect to the Hotel. The Owners Corp. hereby give Delta a power of attorney to cancel any licence agreement granted hereunder for the use of such names.

**ARTICLE 14  
INSURANCE**

**14.1 Insurance.** Delta will, for itself and the Owners Corp., at the sole cost and expense of the Owners Corp. as a Hotel Expense, take out and maintain at all times during the Term:

- (a) insurance in respect of all the Furniture, Fixtures and Equipment, including those in the Strata Lots, against loss or damage by fire and all other reasonably insurable perils included in the broad form extended coverage endorsement available under fire policies in an amount not less than the actual replacement cost;
- (b) comprehensive public, products and innkeepers’ liability and property damage insurance against claims for personal and bodily injury or death and property damage occurring in or about the Hotel Premises, or the Common Property, with a single limit of not less than \$50,000,000 per occurrence, wherever practicable, or such higher amount as the Owners Corp. and Delta may agree, acting prudently;
- (c) reasonable levels of business interruption insurance, as determined by Delta, acting reasonably;
- (d) employer’s liability insurance, with a minimum liability limit of \$1,000,000;
- (e) employee honesty insurance in the amount of \$500,000 per occurrence; and

- (f) reasonable levels of boiler and machinery insurance, except to the extent that the Strata Corporation is responsible therefor,

in all cases to the extent that such insurance is available.

**14.2 Insurance For Owners Contents.** The Owners will each be responsible for insuring their own personal belongings (other than any Furniture, Fixtures and Equipment) contained in their Strata Lots from time to time. Owners shall remove all personal belongings from a Strata Lot upon check-out, save and except items that are locked in the allocated drawer in each Strata Lot.

**14.3 Parties Insured.** All insurance policies provided for in section 14.1 will, to the extent reasonably possible, include the Owners Corp. and Delta as parties insured as their interests may appear. All insurance policies referred to in section 14.1 will provide that the same may not be cancelled or materially modified until at least 10 days after prior notice to the Owners Corp. and Delta. Delta and the Owners Corp. will be provided copies of all such policies.

**14.4 Insurance by Delta.** The cost of furnishing any insurance pursuant to section 14.1 will be borne by the Owners and charged by Delta to the Owners Corp. as a Strata Expense.

**14.5 Schedules of Insurance.** Delta will provide the Owners Corp. with copies of insurance certificates for any insurance obtained pursuant to section 14.1. At least once during each Operating Year, Delta will furnish to the Owners Corp. a schedule of insurance, listing the number of the policies of insurance obtained by Delta then outstanding and in force with respect to the Hotel Premises, or any part thereof, the names of the companies issuing such policies, or dates of such policies and the risks covered thereby.

## **ARTICLE 15 TITLE**

**15.1 Title.** Each Owner represents, warrants, covenants and agrees that:

- (a) it has, and that throughout the Term it will maintain, full leasehold ownership of the Strata Lots and ownership of the Furniture, Fixtures and Equipment therein, free and clear of all liens and encumbrances except those registered against title as of the Commencement Date, any Security and any other liens or encumbrances which do not materially affect the operation of the Hotel by Delta, and those hereafter approved in writing by Delta;
- (b) the Owners Corp. will not remove, and will not permit any person claiming under the Owners to remove, any item of FF&E in the Strata Lots except in accordance with this Agreement; and
- (c) Delta, upon fulfilling its duties and obligations herein, will and may peaceably and quietly possess, manage and operate the Strata Lots and the Furniture, Fixtures and Equipment therein during the Term.

Each Owner will, at its own expense, undertake and prosecute any appropriate action, judicial or otherwise, to assure peaceful and quiet possession of such Owner's Strata Lot by Delta. Each Owner further agrees that throughout the Term it will observe and perform all terms, covenants, conditions, duties and obligations required under any lease, mortgage, or other agreement creating a lien on the

Owner's Strata Lot and the Furniture, Fixtures and Equipment therein and pay all property taxes and other charges levied by the taxing authority with the property taxes.

## **ARTICLE 16 TERMINATION**

**16.1 Events of Default.** The following will constitute events of default on the part of Delta:

- (a) the filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Delta;
- (b) the consent to an involuntary petition in bankruptcy or the failure to vacate within 60 days from the date of entry thereof any order approving an involuntary petition by Delta;
- (c) the entering of an order, judgement, or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Delta a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgement or decree will continue unstayed and in effect for a period of 120 consecutive days; and
- (d) the failure of Delta to perform, keep or fulfil any of its material covenants, undertakings, obligations or conditions set forth in this Agreement.

**16.2 Remedies for Owners Corp.** If Delta is in default pursuant to section 16.1, the Owners Corp. may give to Delta notice of its intention to call a meeting of the Owners Corp. to terminate the appointment of Delta under this Agreement after the expiration of a period of 15 days from the date of such notice. Notwithstanding the foregoing, with respect to events of default referred to in section 16.1(a) and (d), upon receipt of such notice if Delta, promptly and with all due diligence, proceeds to cure the default referred to in section 16.1(d), or if such default is not susceptible of being cured within a 15 day period, Delta will take and continue action to cure such default with all due diligence until the same is cured, such additional period not to exceed 90 days from such notice. Once a cure has been effected the notice will be of no effect. If, following the expiration of such period such default has not been cured. The Owners Corp. may, by Special Resolution, terminate the appointment of Delta pursuant to this Agreement. The remedies granted in this section 16.2 will not be in substitution for, but will be in addition to any rights and remedies otherwise available for breach of contract or otherwise.

**16.3 Termination by Delta.** Delta may terminate its appointment as manager under this Agreement at any time upon 60 days' written notice to the Owners Corp. if the Owners fail to make or authorize Delta to make (at the sole cost and expense of the Owners) Capital Expenditures without which the Hotel cannot be operated as a First Class Hotel (and Delta hereby acknowledges and agrees that as of the Commencement Date the capital improvements within the Hotel Premises are sufficient for the Hotel to be operated s a First Class Hotel).

Any termination by Delta pursuant to this section 16.3 is without prejudice to any other rights that Delta might otherwise have against the Owners Corp. or any Owner.

**16.4 Remedies for Delta.** The Owners Corp. acknowledge and agree that if any Owner or the Owners Corp. are in breach of any of their duties or obligations under this Agreement Delta may seek an injunction or the specific performance by such Owner or Owners Corp. of such duties or obligations, instead of or in addition to seeking damages against such Owner or Owners Corp.

**16.5 Obligations on Termination.** Upon termination or expiry of the appointment of Delta under this Agreement, the following may apply:

- (a) Delta and the Owners Corp. will cooperate with respect to all matters relating to the transition of the Management of the Hotel;
- (b) all fees and payments payable to Delta in accordance with this Agreement, other than those referred to will be paid to Delta when due, provided that Delta will not be entitled to any Base Fee, Incentive Fee, Delta Marketing and Sales Expenses or Delta Recoveries for any period following such termination or expiry;
- (c) all fees and payments due to Delta in accordance with this Agreement which are computed on an annual or other periodic basis will be annualized, prorated and paid within 30 days after termination of the appointment of Delta under this Agreement, including all deferred, accrued and unpaid fees;
- (d) Delta will peacefully vacate and surrender the Hotel Manager's Strata Lot and the Hotel Manager's Strata Lot Lease to the Strata Corporation and the management of the Hotel to or to the order of the Owners Corp.; and
- (e) Delta will deliver to the Owners Corp. all the Owners Corp.' books and records respecting the Hotel in the custody and control of Delta, and assign and transfer to or to the order of the Owners Corp. all of Delta's right, title and interest in and to all licenses and permits, if any, used by Delta in the operation of the Hotel, provided that if Delta has expended any of its own funds in the acquisition of such licenses or permits, the Owners Corp. will reimburse Delta therefor if the Owners Corp. request assignment and transfer of such licenses and permits.

## **ARTICLE 17 OWNER-DEVELOPER, STRATA LOTS, DISPOSITIONS**

**17.1 Initial Agreement.** The parties acknowledge and agree that this Agreement will run with each of the Strata Lots and bind the Owners Corp. and the Owners from time to time of all of the Strata Lots and all of the Strata Lots will continue to be in the Rental Pool in accordance with the terms and conditions of this Agreement.

**17.2 Limitation of Owner's Liability.** Notwithstanding anything contained in this Agreement, the duties, obligations and liabilities of each Owner pursuant to this Agreement will be limited to:

- (a) with respect to the duties and obligations relating directly to the Strata Lots, to such Owner's duties and obligations arising directly in respect of any Strata Lot owned by such Owner; and
- (b) with respect to duties and obligations of the Owners collectively under this Agreement, to such Owner's proportionate share of such duties and obligations, as calculated in accordance with the Unit Share Ratio,

and without limiting the generality of the foregoing:

- (c) Delta will not look to any Owner for the payment of any amount in connection with this Agreement except as is expressly set out herein, and

- (d) no Owner will be liable for any act or omission of any other Owner.

The duties and obligations of the Owners are several only and not joint duties or obligations.

**17.3 Sale of Strata Lot by any Owner.** The Owners Corp. and Delta agree that if at any time any Owner wishes to sell, lease or otherwise directly or indirectly dispose of its Strata Lot or any interest therein to any person (in this section 17.3 called a “Transferee”) (other than by way of financing to any Security Holder):

- (a) prior to entering into any contract or agreement with any Transferee, the Owner will notify the proposed Transferee of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot are subject to the rights of Delta and the Hotel Guests pursuant to this Agreement and the Rental Pool, notify the proposed Transferee of any bookings of the Strata Lot by the Owner pursuant to Article 11 and provide the proposed Transferee with a true copy of this Agreement;
- (b) the Owner will not directly or indirectly sell, lease or otherwise directly or indirectly dispose of the Strata Lot or any interest therein unless prior to the completion of such transaction the proposed Transferee covenants pursuant to an agreement in writing in favour of Delta, in the form and content of Schedule A, to fully assume and be bound by this Agreement insofar as it relates to such Strata Lot, and Delta will provide the Owner and the Transferee with copies of such agreement, duly executed by Delta, as soon as reasonably possible thereafter;
- (c) upon written request from the Owner, Delta will provide any prospective Transferee therein with details of any bookings of the Strata Lot by the Owner pursuant to Article 11;
- (d) the Owner or the Transferee will notify Delta of the completion of the sale, lease or other disposition of the Strata Lot and provide Delta with reasonable evidence thereof, together with the assignment and assumption agreement in the form of Schedule A, duly executed by the Owner and the Transferee;
- (e) Delta will not be required to make any adjustments as between the Owner and any Transferee and Delta will be deemed to have fully discharged its obligations hereunder if Delta pays the Unit Revenue Share payable to such Owner in accordance with section 7.3 to or to the order of the person who was, according to the records of Delta, the registered owner of the Strata Lot on the days such Unit Revenue Share is payable to such Owner in accordance with section 7.3; and
- (f) subject to Delta’s approval, acting reasonably, the Transferee may upon not less than 30 days’ notice to Delta, reschedule the use by the Transferee pursuant to Article 11.

**17.4 Obligations - Real Estate Securities.**

- (a) Upon Delta receiving a notice of proposed transfer by an Owner, Delta will forthwith notify the Developer and Delta will deliver to the prospective purchaser financial information consisting of audited annual financial statements for the most recent financial year which include financial statements to the prior comparative year and interim periods after the most recent financial year;
- (b) Delta will send to Owners audited financial statements within 140 days of the end of each Operating Year; and
- (c) On or before the 60 days after they are made up, Delta shall send to Owners quarterly statements of revenues and expenses and interim financials.

**17.5 Assumption and Release.** Upon the execution and delivery of the assignment and assumption agreement in the form of Schedule A by the vendor and purchaser of any Strata Lot and the transfer of title of such Strata Lot to the purchaser thereof:

- (a) the vendor of such Strata Lot will be released from its duties and obligations under this Agreement insofar as such duties and obligations relate to such Strata Lot for the period from and including the date of such transfer of title, provided that the vendor of such Strata Lot will not be released from any of its duties or obligations under this Agreement in respect of any other Strata Lot owned by such vendor; and
- (b) the purchaser of such Strata Lot will be responsible for all duties and obligations under this Agreement insofar as such duties and obligations relate to such Strata Lot for the period from and including the date of such transfer of title.

**17.6 Financing of Strata Lots.** If title to any Strata Lot is at any time to be subject to any mortgage, assignment of rents or other security registered or to be registered by any Owner against title to its Strata Lot, including any renewals, modifications, replacements or extensions thereof (collectively called the "Security"), then:

- (a) prior to granting any Security, the Owner of such Strata Lot will notify the proposed holder of such Security (the "Security Holder") of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot are subject to the rights of Delta and the Hotel Guests pursuant to this Agreement and the Owner will provide the Security Holder with a true copy of this Agreement; and
- (b) if requested by Delta, a non-disturbance agreement in the form of Schedule B will be obtained from the Security Holder.

**17.7 Estoppel Certificates.** Delta will, from time to time, upon not less than 10 days' prior notice by any Owner or any Security Holder, execute and deliver to such Owner or Security Holder, a certificate in writing certifying that this Agreement is unmodified and in force (or, if there have been modifications, that the same is in force as modified and stating the modifications), stating such facts as to this Agreement as such Owner or Security Holder reasonably requires, and stating whether or not to the best knowledge of the signer of such certificate, there exists any default in the performance of any duty or obligation contained in this Agreement, and, if so, specifying each such default of which the signer may have knowledge. Any certificate so delivered may be relied upon by such Owner and by any such Security

Holder or prospective Security Holder. Delta, upon similar notice, will be entitled to a similar certificate from each Owner.

**17.8 Attornment by Delta.** Delta agrees to attorn to and become the manager, in accordance with this Agreement, of any purchaser, mortgagee or trustee who becomes entitled to possession of any Strata Lot in accordance with any requirements set out in this Article 17.

## **ARTICLE 18 ASSIGNMENT BY DELTA**

**18.1 Assignment by Delta.** Delta has the right to assign its rights under this Agreement as security to its bankers, provided prior thereto the assignee agrees to be liable hereunder for the obligations of Delta to the Owners Corp. upon any enforcement by the assignee of its security comprising Delta's rights under this Agreement. Delta has the further right, so long as it is not then in default under this Agreement, to assign its rights under this Agreement:

- (a) to an Affiliate of Delta; or
- (b) to any successor assignee of Delta which may result from any merger, transfer, consolidation or reorganization,

provided in any such case that such assignee enjoys the benefits of the organization of Delta and that Delta will continue to be liable for its obligations hereunder and following any such assignment, Delta will deliver to the Owners Corp. an agreement pursuant to which such assignee agrees to assume and be bound by all of the provision of this Agreement on terms and conditions determined by Delta, acting reasonably. Except as provided, Delta will not directly or indirectly assign, transfer, convey or otherwise dispose of this Agreement, any interest in this Agreement or any of its rights or duties and obligations under this Agreement without the Owners Corp.' prior approval by Special Resolution.

## **ARTICLE 19 ARBITRATION**

**19.1 Arbitration.** Where pursuant to the terms and conditions of this Agreement a matter is submitted to arbitration, such matter will be settled by arbitration in accordance with this section 19.1. If any such matter is so submitted to arbitration, the arbitration will be final and binding upon the parties and will be conducted as follows:

- (a) The rules of procedure (the "Rules") for domestic arbitrations of the British Columbia International Commercial Arbitration Centre (the "Centre") will apply to the arbitration, except as otherwise provided in this section 19.1.
- (b) Such matter will be determined by a single arbitrator agreed upon by the parties, or, failing agreement on the arbitrator by the date which is 10 days after the party submitting the matter to arbitration has notified the other party that it wishes the matter to be determined by arbitration, the arbitrator will be appointed by the Centre, upon request by either party at any time after such date.
- (c) The arbitrator will be an experienced hotel consultant or such other person as is approved by Delta and the Owners Corp..

- (d) The arbitrator will make his determination on the basis of written submissions and affidavits (including expert evidence) submitted by the parties, without any hearing, unless the arbitrator determines that a hearing is necessary, and the arbitrator may require the parties to make further and other written submissions or provide further and other affidavits. Each party will receive a copy of each such submission and affidavit.
- (e) The arbitrator's decision will be final and binding on the parties.
- (f) The parties will share all costs of the arbitrator equally, unless otherwise determined by the arbitrator.
- (g) The parties acknowledge and agree that they have provided for arbitration to determine the matters set out in this section 19.1 so as to promote the efficient, expeditious and inexpensive resolution of the issue. The parties agree to act at all times so as to facilitate, and not frustrate nor delay, such efficient, expeditious and inexpensive resolution of the issue. The arbitrator is authorized and directed to make orders, on his initiative or upon application of either party, to ensure that the arbitration proceeds in an efficient, expeditious and inexpensive manner, and, in particular, to enforce strictly the time limits provided for in the Rules or as set by order of the arbitrator, unless the arbitrator considers it inappropriate to do so. The parties acknowledge and agree that it is their wish that the issue be determined within 30 days after appointment of the arbitrator, subject to an order of the arbitrator extending the date.

## **ARTICLE 20 MISCELLANEOUS**

**20.1 Cooperation.** Subject to the terms and conditions set out in this Agreement, the parties will at all times during the Term act in good faith, cooperate and act reasonably in respect of all matters within the scope of this Agreement.

**20.2 Canadian Funds.** All amounts payable by either party to the other hereunder will be paid in Canadian funds.

**20.3 No Waiver of Breach.** No failure by Delta or the Owners Corp. to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach, will constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach will affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

**20.4 Severability of Provisions.** If any provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

**20.5 Notices.** All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement will be in writing and addressed to the parties as follows:

(a) if to Delta:

DELTA HOTELS LIMITED  
Canadian Pacific Tower  
100 Wellington Street West  
Suite 1200  
P.O. Box 227, Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1J3

Attention: Chairman

Fax No.: (416) 926-7875

and:

(b) if to the Owners Corp.:

c/o Delta Sun Peaks Resort  
3240 Village Way  
Sun Peaks, BC  
VOE 5N0

Attention: General Manager

Fax No.: (250) 578-6001

and

(c) if to SPHLP:

c/o Davis & Company LLP  
2800 - 666 Burrard Street  
Vancouver, BC  
V6C 2Z7

Attention: P. Anthony McArthur

Fax No.: (604) 687-1612

or, in any case, at such other address as the party to whom the notice is sent will have designated in accordance with the provision of this section 20.5. All notices will be delivered personally, transmitted by fax or mailed by postage prepaid mail (provided that in the event of a disruption in mail services, notices will be delivered personally or transmitted by fax). Notices will be deemed to be received:

(d) on the date of delivery or transmittal thereof if delivered personally or sent by fax; or

(e) on the fifth Business Day after the mailing thereof, if sent by mail.

**20.6 Successors and Assigns.** Subject to section 17.5, this Agreement will enure to the benefit of and will be binding upon the heirs, executors, successors, legal representatives and permitted assigns of the parties.

**20.7 Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original, but all of which will constitute but one and the same instrument.

**20.8 Waiver.** No provision of this Agreement may be changed orally, but only by an instrument in writing signed by the party against which the enforcement of the change is sought.

**20.9 No Partnership or Joint Venture.** Nothing contained in this Agreement will constitute or be deemed to create a partnership or joint venture between the Owners Corp. and Delta.

**20.10 Approvals.** Except as expressly set out herein, whenever any party hereto is requested to give its approval to any matter, such approval will not be withheld or delayed unreasonably. If a party will desire the approval of the other party hereto to any matter, such party will give notice to such other party that it requests such approval, specifying in such notice the matter (in reasonably detail) as to which such approval is requested.

**20.11 Force Majeure.** If a party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of Act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood, interruption or delay in transportation, war, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or materials, economic or market conditions, plant breakdown or failure of operation equipment or any disabling cause (other than lack of funds), without regard to the foregoing enumeration, beyond the control of either party or which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay will not be deemed to be a breach of this Agreement but performance of any of the said obligations or requirements will be suspended during such period or disability and the period of all such delays resulting from any such thing required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto will be extended by the total period of all such delays.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

**DELTA HOTELS LIMITED**  
by its authorized signatories

\_\_\_\_\_  
\_\_\_\_\_

**SP RESIDENCES OWNERS CORPORATION**  
by its authorized signatories

\_\_\_\_\_  
\_\_\_\_\_

**SUN PEAKS HOTEL LIMITED PARTNERSHIP**  
by its general partner 19959 YUKON INC.  
by its authorized signatories

\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE A**

**THE RESIDENCES**

**ASSIGNMENT AND ASSUMPTION OF RENTAL MANAGEMENT AGREEMENT**

“Delta”      **DELTA HOTELS LIMITED**  
Canadian Pacific Tower  
100 Wellington Street West  
Suite 1200  
P.O. Box 227, Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1J3  
  
Fax: (416) 926-7875

“Vendor”      \_\_\_\_\_ (name)  
\_\_\_\_\_  
\_\_\_\_\_ (address)  
\_\_\_\_\_  
\_\_\_\_\_

“Purchaser”	_____	_____
	Name	Name
	_____	_____
	Address	Address
	_____	_____
	Telephone: (Home) _____ (Work) _	Telephone: (Home) _____ (Work) _
	Fax: _____	Fax: _____
	This Purchaser’s GST Registration Number is _____	This Purchaser’s GST Registration Number is _____
	This Purchaser’s Social Insurance Number is _____	This Purchaser’s Social Insurance Number is _____
	This Purchaser [ is / is not ] resident in Canada for the purposes of the <i>Income Tax Act</i>	This Purchaser [ is / is not ] resident in Canada for the purposes of the <i>Income Tax Act</i>

“Strata Lot” \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

“Sale Date” Anticipated to be \_\_\_\_\_,  
but for the purpose of this Agreement shall  
be the actual date of transfer of title to the  
Strata Lot from the Vendor to the  
Purchaser

**BACKGROUND:**

- A. The Vendor is the owner of the Strata Lot;
- B. The Vendor and the Purchaser have entered into a contract for the sale of the Strata Lot from the Vendor to the Purchaser on the Sale Date;
- C. The Vendor and Delta are parties to a hotel management and Rental pool agreement dated for reference ♦, 2006 between Delta Hotels Limited and the Owners Corp. of the Strata Lots (as defined therein), as amended by the amendments, if any, described in section 5 below (collectively called the “Rental Management Agreement”) in respect of The Residences (the “Development”); and
- D. The parties are required to enter into this Agreement in accordance with the Rental Management Agreement.

NOW THEREFORE in consideration of the transfer of he Strata Lot from the Vendor to the Purchaser on the Sale Date and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all of the parties, the parties agree as follows:

- 1. Assignment to Purchase. Effective as of the Sale Date, the Vendor hereby absolutely assigns, transfers and conveys, effective from and including the Sale Date, all of the Vendor’s right, title and interest in and to the Rental Management Agreement insofar as they arise from ownership of and relate to the Strata Lot, and all rights and benefits to be derived thereunder (including any amounts payable to the Vendor thereunder) insofar as such rights and benefits arise from ownership of and relate to the Strata Lot.
- 2. Direction to Pay. The Vendor and the Purchaser hereby direct Delta to pay any amounts payable under the Rental Management Agreement in respect of the Strata Lot from and including the Sale Date (whether or not such amounts relate to any period before the Sale Date) to the Purchaser at the address set out above.
- 3. Assumption and Indemnity by Purchaser. The Purchaser hereby assumes, from and including the Sale Date, all of the duties and obligations of the Vendor under the Rental Management Agreement and the Restrictive Covenant (as defined in the Rental Management Agreement), insofar as such duties and obligations arise from ownership of and relate to the Strata Lot, and covenants and agrees with the

Vendor and Delta to perform and observe all of such duties and obligations from and including the Sale Date.

4. Other Strata Lots Excluded. This Agreement relates only to the Strata Lot and not to any other strata lots in the Development.

5. Amendments to Rental Management Agreement. The Vendor represents to the Purchaser that the Rental Management Agreement has not been amended except as follows [NIL if not completed:]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Miscellaneous. If either the Vendor or the Purchaser is comprised of more than one person, the covenants and agreements of the Vendor or the Purchaser, as the case may be, are joint and several covenants and agreements. This Agreement will be binding upon and enure to the benefit of the heirs, executors, successors, legal and personal representatives and assigns of the parties, as applicable.

7. **Purchaser's Acknowledgement.** **The Purchaser acknowledges that the Purchaser has received a copy of and has been given an opportunity to read the Rental Management Agreement (including any amendments set out in section 5 above).**

DATED \_\_\_\_\_

BY THE VENDOR:

**BY THE PURCHASER:**

WITNESS: \_\_\_\_\_  
Signature

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
Address

\_\_\_\_\_  
(witness as to all signatures)

**SCHEDULE B**

**THE RESIDENCES**

SECURITY HOLDER'S NON-DISTURBANCE AGREEMENT

THIS AGREEMENT made \_\_\_\_\_

BETWEEN:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Name, address and fax number of the Lender]**

(the "Lender")

AND:

**DELTA HOTELS LIMITED**

Canadian Pacific Tower  
100 Wellington Street West  
Suite 1200  
P.O. Box 227, Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1J3  
Fax: (416) 926-7875

("Delta")

**WHEREAS:**

A. \_\_\_\_\_ [Insert name of Owner(s)] (the "Owner") is the owner of the lands and premises situated in the Kamloops Assessment Area, British Columbia and legally described as follows:

Parcel Identifier \_\_\_\_\_

Strata Lot \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(the "Strata Lot");

B. The Owner is party to a hotel management and Rental pool agreement dated for reference ♦, 2006 between Delta and the Owners Corp. of the Strata Lots (as defined therein) (the “Rental Management Agreement”), which has been assigned to and assumed by the Owner insofar as it relates to the Strata Lot;

C. The Owner has granted to the Lender a \_\_\_\_\_ [describe security] (the “Security”) in favour of the Lender, which Security is registered in the Land Title Office against title to the Strata Lot under instrument no(s). ♦.

NOW THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement, the Lender and Delta hereby promise and agree as follows:

(a) The Lender covenants with Delta that if either:

- (i) any proceedings are brought by the Lender for foreclosure or sale or other suit, sale or proceeding under the Security in respect of the Strata Lot; or
- (ii) the Lender becomes the owner of the Strata Lot pursuant to the proceedings referred to in subsection 1(1) above or of any transfer or quit claim in respect of the Strata Lot is made by the Owner to the Lender,

then:

- A. the Lender will not interfere with any of the rights and privileges of Delta under the Rental Management Agreement;
- B. the Lender shall not, except as may be necessary or required in accordance with any applicable law, make Delta a party to any foreclosure or other suit, sale or proceeding under the Security and the same shall not affect the rights or estate of Delta under the Restrictive Covenant or the Rental Management Agreement; and
- C. the Lender shall, upon the issue of a writ of possession, transfer or quit claim of the Strata Lot in favour of the Lender, or upon the Lender becoming the owner of the Strata Lot, assume and observe and perform all of the obligations of the Owner under the Restrictive Covenant and the Rental Management Agreement accruing on and after such date and shall be entitled to all of the rights and benefits of the Owner on and after such date, including any rights of termination.

(b) If the Lender succeeds to the interest of the Owner in the Strata Lot:

- (i) Delta will be bound to the Lender as under all of Delta’s promises and agreements contained in the Rental Management Agreement, insofar as such promises and agreements relate to the Strata Lot, for the balance of the term of the Rental Management Agreement, as if the Lender were the owner of the Strata Lot under the Rental Management Agreement; and
- (ii) the Lender will be bound to Delta as under all of the Owner’s promises and agreements contained in the Restrictive Covenant and the Rental Management Agreement, insofar as such promises and agreements relate to the Strata Lot, for

the balance of the term of the Rental Management Agreement, as if the Lender were the owner of the Strata Lot under the Rental Management Agreement.

- (c) Delta will, from and after the Lender’s succession to the interest of the Owner in the Strata Lot, have the same remedies against the Lender for any breach of the Rental Management Agreement as Delta would have had under the Rental Management Agreement, as the case may be, against the Owner if the Lender had not succeeded to the interest of the Owner, provided that the Lender will not be:
  - (i) liable for any act or omission of any prior owner of the Strata Lot, including the Owner; and
  - (ii) subject to any set-off or defence that Delta may have against any prior owner of the Strata Lot, including the Owner.
- (d) If the Lender realizes upon the Security, the Lender will not transfer or cause to be transferred title to the Strata Lot to any person unless prior thereto the Lender has caused the transferee to execute and deliver to Delta the Assignment and Assumption Agreement in the form and content of Schedule A to the Rental Management Agreement.

8. The Lender will not assign or transfer the Security unless the Lender requires the assignee or transferee to execute and deliver to Delta an agreement with Delta on the same terms and conditions as this Agreement.

9. This Agreement may only be modified by an agreement in writing signed by the parties hereto.

10. This Agreement will be governed and construed in accordance with the laws of British Columbia.

11. This Agreement will enure to the benefit of and be binding upon the successors and assigns of the parties.

12. **The Lender acknowledges that the Lender has received a copy of and has been given an opportunity to read the Rental Management Agreement.**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**BY THE LENDER:**

\_\_\_\_\_  
[Name of Lender]

Per: \_\_\_\_\_

**BY DELTA:**

DELTA HOTELS LIMITED

Per: \_\_\_\_\_



**EXHIBIT "E"**  
**ROTATION CALENDAR**

# The Delta Residences at Sun Peaks

A,B,C,D Friday - Friday Change Over

Owner Usage Calender - Quarter Interest



Extra Summer Week

Rotation Dates - Page One

2006			2007			2008		
Quarter	Start	End	Quarter	Start	End	Quarter	Start	End
A	01-Dec-06	08-Dec-06	A	29-Dec-06	05-Jan-07	D	28-Dec-07	04-Jan-08
B	08-Dec-06	15-Dec-06	B	05-Jan-07	12-Jan-07	A	04-Jan-08	11-Jan-08
C	15-Dec-06	22-Dec-06	C	12-Jan-07	19-Jan-07	B	11-Jan-08	18-Jan-08
D	22-Dec-06	29-Dec-06	D	19-Jan-07	26-Jan-07	C	18-Jan-08	25-Jan-08
			A	26-Jan-07	02-Feb-07	D	25-Jan-08	01-Feb-08
			B	02-Feb-07	09-Feb-07	A	01-Feb-08	08-Feb-08
			C	09-Feb-07	16-Feb-07	B	08-Feb-08	15-Feb-08
			D	16-Feb-07	23-Feb-07	C	15-Feb-08	22-Feb-08
			A	23-Feb-07	02-Mar-07	D	22-Feb-08	29-Feb-08
			B	02-Mar-07	09-Mar-07	A	29-Feb-08	07-Mar-08
			C	09-Mar-07	16-Mar-07	B	07-Mar-08	14-Mar-08
			D	16-Mar-07	23-Mar-07	C	14-Mar-08	21-Mar-08
			A	23-Mar-07	30-Mar-07	D	21-Mar-08	28-Mar-08
			B	30-Mar-07	06-Apr-07	A	28-Mar-08	04-Apr-08
			C	06-Apr-07	13-Apr-07	B	04-Apr-08	11-Apr-08
			D	13-Apr-07	20-Apr-07	C	11-Apr-08	18-Apr-08
			A	20-Apr-07	27-Apr-07	D	18-Apr-08	25-Apr-08
			B	27-Apr-07	04-May-07	A	25-Apr-08	02-May-08
			C	04-May-07	11-May-07	B	02-May-08	09-May-08
			D	11-May-07	18-May-07	C	09-May-08	16-May-08
			A	18-May-07	25-May-07	D	16-May-08	23-May-08
			B	25-May-07	01-Jun-07	A	23-May-08	30-May-08
			C	01-Jun-07	08-Jun-07	B	30-May-08	06-Jun-08
			D	08-Jun-07	15-Jun-07	C	06-Jun-08	13-Jun-08
			A	15-Jun-07	22-Jun-07	D	13-Jun-08	20-Jun-08
			B	22-Jun-07	29-Jun-07	A	20-Jun-08	27-Jun-08
			C	29-Jun-07	06-Jul-07	B	27-Jun-08	04-Jul-08
			D	06-Jul-07	13-Jul-07	C	04-Jul-08	11-Jul-08
			A	13-Jul-07	20-Jul-07	D	11-Jul-08	18-Jul-08
			B	20-Jul-07	27-Jul-07	A	18-Jul-08	25-Jul-08
			C	27-Jul-07	03-Aug-07	B	25-Jul-08	01-Aug-08
			D	03-Aug-07	10-Aug-07	C	01-Aug-08	08-Aug-08
			A	10-Aug-07	17-Aug-07	D	08-Aug-08	15-Aug-08
			<b>A</b>	<b>17-Aug-07</b>	<b>24-Aug-07</b>	<b>D</b>	<b>15-Aug-08</b>	<b>22-Aug-08</b>
			B	24-Aug-07	31-Aug-07	A	22-Aug-08	29-Aug-08
			C	31-Aug-07	07-Sep-07	B	29-Aug-08	05-Sep-08
			D	07-Sep-07	14-Sep-07	C	05-Sep-08	12-Sep-08
			A	14-Sep-07	21-Sep-07	D	12-Sep-08	19-Sep-08
			B	21-Sep-07	28-Sep-07	A	19-Sep-08	26-Sep-08
			C	28-Sep-07	05-Oct-07	B	26-Sep-08	03-Oct-08
			D	05-Oct-07	12-Oct-07	C	03-Oct-08	10-Oct-08
			A	12-Oct-07	19-Oct-07	D	10-Oct-08	17-Oct-08
			B	19-Oct-07	26-Oct-07	A	17-Oct-08	24-Oct-08
			C	26-Oct-07	02-Nov-07	B	24-Oct-08	31-Oct-08
			D	02-Nov-07	09-Nov-07	C	31-Oct-08	07-Nov-08
			A	09-Nov-07	16-Nov-07	D	07-Nov-08	14-Nov-08
			B	16-Nov-07	23-Nov-07	A	14-Nov-08	21-Nov-08
			C	23-Nov-07	30-Nov-07	B	21-Nov-08	28-Nov-08
			D	30-Nov-07	07-Dec-07	C	28-Nov-08	05-Dec-08
			A	07-Dec-07	14-Dec-07	D	05-Dec-08	12-Dec-08
			B	14-Dec-07	21-Dec-07	A	12-Dec-08	19-Dec-08
			C	21-Dec-07	28-Dec-07	B	19-Dec-08	26-Dec-08

**ADDITION TO EXHIBIT “Q”**

**ADDENDUM TO CONTRACT OF PURCHASE AND SALE**

**ADDENDUM TO CONTRACT OF PURCHASE AND SALE**

The Developer has a financing commitment for construction financing which is subject to sales of not less than \$10,800,000. It is expected this condition will be met within 2 or 3 months. As required by the Superintendent of Real Estate:

- (a) If an amendment to disclosure statement is not received by purchaser by March 6, 2007 the purchaser at its option may cancel the purchase agreement at any time after the 12 month period until the required amendment is received by purchaser;
- (b) The amount of the deposit to be paid by a purchaser who has not yet received an amendment to the disclosure statement that sets out particulars of a satisfactory financing commitment is no more than 10% of the purchase price; and
- (c) all deposits paid by a purchaser including interest earned if applicable.

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2006.

**SP VALLEY DEVELOPMENTS LIMITED PARTNERSHIP**  
by its General Partner **SP VALLEY DEVELOPMENTS LTD.**

By:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser