

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM ) TUESDAY, THE 16<sup>TH</sup>  
 )  
JUSTICE CONWAY ) DAY OF FEBRUARY, 2021

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O.  
1990, c. C.43, AS AMENDED

AND IN THE MATTER OF THE ADMINISTRATION  
PROCEEDINGS OF **CARRIAGE HILLS VACATION  
OWNERS ASSOCIATION**

**RECEIVER'S COLLECTION PLAN ORDER**

**THIS MOTION**, made by BDO Canada Limited (“**BDO**”), in its capacity as receiver (in such capacity, the “**Receiver**”) over all of the assets, properties and undertakings of Carriage Hills Vacation Owners Association (the “**Applicant**”) and all the lands and premises on which the Applicant operated the Carriage Hills Resort (the “**Resort Property**”), appointed by Order of the Court with effect as of January 6, 2021 (the “**Receivership Order**”), for an Order (the “**Receiver’s Collection Plan Order**”) approving a procedure for the identification, quantification, and resolution of the Receiver’s Claims (defined below), was heard this day via Zoom judicial video conference due to the COVID-19 pandemic

**ON READING** the Motion Record of the Receiver dated February 5, 2021 (the “**Motion Record**”), the First Report of the Receiver dated February 5, 2021 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, counsel for Wyndham Worldwide Corporation, and counsel for Lori Smith and Karen Levins and the submissions of Christopher Diana, no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Christine Doyle sworn February 7, 2021,

## **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service and filing of this motion is hereby validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that, in addition to terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) **“Acceptance of Settlement Deadline”** means the date that is thirty (30) days from the Date of Service of the Claims Package;
- (b) **“Appeal Period”** means the period that concludes on the fifteenth calendar day following the issuance of a Claims Decision in respect of a Receiver’s Claim by the Claims Officer;
- (c) **“BIA”** means the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- (d) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (e) **“Claims Decision(s)”** means the Claims Officer’s written decision following his determination of each Disputed Claim, to be issued by the Claims Officer to the Receiver and the applicable Subject Member;
- (f) **“Claims Officer”** means the individual appointed to act as a claims officer for the purpose of this Receiver’s Collection Plan Order, as set out in paragraph 21 of this Order;
- (g) **“Claims Officer’s Report(s)”** means one or more reports prepared by the Claims Officer summarizing the Claims Decisions which are not appealed within the applicable Appeal Period;

- (h) “**Claims Package**” means a package including the applicable Receiver’s Claim, the Notice to Subject Members, the Instruction Letter, a blank form of Notice of Dispute, and any other documentation the Receiver may deem appropriate;
- (i) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended;
- (j) “**Comeback Date**” means the date of the Comeback Hearing or, if no Comeback Hearing is required or held, the date that is twenty (20) days following the date of this Receiver’s Collection Plan Order;
- (k) “**Comeback Hearing**” means a hearing before the Court, as described in paragraph 60 of this Order;
- (l) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (m) “**Date of Service**” means that date of effective service of a Claim Package having regard to paragraph 52 of this Order;
- (n) “**Default Judgment Report(s)**” means one or more reports prepared by the Claims Officer setting out its recommendations as to the quantum of any default judgments to be issued in respect of any Undefended Claims;
- (o) “**Defaulting Subject Member(s)**” means any Subject Member who fails to conclude a settlement by the Acceptance of Settlement Deadline and/or submit a Notice of Dispute by the Notice of Dispute Deadline;
- (p) “**Dispute Package**” means a package including the applicable Receiver’s Claim, the applicable Notice of Dispute filed by the Subject Member in respect of the Receiver’s Claim, any supporting documentation filed by the Subject Member, and ancillary documentation;
- (q) “**Disputed Claim(s)**” means a Receiver’s Claim in respect of which a completed Notice of Dispute has been submitted to the Receiver by the Notice of Dispute Deadline;

- (r) **“Instruction Letter”** means the instruction letter to Subject Members, substantially in the form attached as **Schedule “A”** hereto, regarding the completion of a Notice of Dispute by the Subject Member, and the Receiver’s Collection Plan described herein;
- (s) **“Non-subject Member”** means a member of the Applicant:
  - (i) who owes a debt to the Applicant that is the subject of either:
    - (1) a legal proceeding for the collection thereof already commenced by the filing of a claim; or
    - (2) a payment plan agreed to between the member and the Applicant’s collections agent, where the member is not in default under such plan,  
  
but only in regard to such debt, and not in regard to any other debt owed by the same member to the Applicant not falling under (1) or (2) above; or
  - (ii) who is the subject of BIA bankruptcy or proposal proceedings.
- (t) **“Notice to Subject Members”** means the notice for publication by the Receiver as described in paragraph 9 hereof, in the form attached as **Schedule “B”** hereto;
- (u) **“Notice of Dispute”** means the notice referred to in paragraph 20 hereof substantially in the form attached as **Schedule “C”** hereto which must be delivered to the Receiver by any Subject Member wishing to dispute a Receiver’s Claim, with reasons for its dispute and supporting documentation;
- (v) **“Notice of Dispute Deadline”** means the date that is thirty (30) days from the Date of Service of the Claims Package;
- (w) **“Person”** means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union,

government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

- (x) “**Protocol**” means the E-Service Protocol of the Commercial List;
- (y) “**Subject Member(s)**” means members of the Applicant from whom the Receiver seeks payment pursuant to this Receiver’s Collection Plan, as described in greater detail in the First Report, which, for greater certainty, excludes any member to, and only to, the extent they are a Non-subject Member;
- (z) “**Receiver’s Claim**” means the Receiver’s Claim referred to in paragraphs 13 to 14 hereof to be filed by the Receiver, substantially in the form attached as **Schedule “D”** hereto;
- (aa) “**Receiver’s Website**” means the website maintained by the Receiver at the following URL: <https://www.bdo.ca/en-ca/extranets/carriage/>;
- (bb) “**Settlement Offer**” means a notice setting out the payment amount that the Receiver is prepared to accept in settlement of the applicable Receiver’s Claim which payment amount, for greater certainty, can be less than or equal to the amount of the applicable Receiver’s Claim;
- (cc) “**TSA**” means, collectively, the Time-Sharing Agreements dated June, 25, 1997, June 28, 1999 and June 30, 2000, as amended, between the Applicant, Carriage Hills Resort Corporation and Carriage Hills Hospitality Inc., to which each Subject Member is bound pursuant to an Adherence Agreement;
- (dd) “**Undefended Claim(s)**” means any Receiver’s Claim in respect of which the Receiver does not receive a Notice of Dispute by the Notice of Dispute Deadline, or payment of the amount set out in the applicable Settlement Offer by the Acceptance of Settlement Deadline.

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”.

5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

### **GENERAL PROVISIONS**

6. **THIS COURT ORDERS** that the form and substance of each of the Receiver’s Claim, Notice to Subject Members, Instruction Letter, and Notice of Dispute, substantially in the forms attached as schedules hereto, are hereby approved. Despite the foregoing, the Receiver may, from time to time, make such minor changes to such forms as the Receiver, in consultation with the Claims Officer, considers necessary or desirable.

7. **THIS COURT ORDERS** that the Receiver shall send a copy of this Receiver’s Collection Plan Order to each Subject Member by ordinary mail or email to the last known address or email address of the Subject Member, within seven (7) days following the issuance of the Receiver’s Collection Plan Order.

8. **THIS COURT ORDERS** that the Receiver shall cause the Receiver’s Collection Plan Order to be posted to the Receiver’s Website as soon as reasonably practicable after its issuance, and cause it to remain posted thereon until its discharge as Receiver.

9. **THIS COURT ORDERS** that the Receiver shall cause the Notice to Subject Members to be published in the next available Saturday or Wednesday national edition of *The Globe and Mail*.

### **NOTICE TO SUBJECT MEMBERS**

10. **THIS COURT ORDERS** that the Receiver shall send a Claims Package to each Subject Member by ordinary mail or email to the last known address or email address of the Subject

Member, within seven (7) days following the Comeback Date. The Claims Package shall contain (each as defined herein):

- (a) the applicable Receiver's Claim;
- (b) the Notice to Subject Members;
- (c) the Instruction Letter;
- (d) a blank form of Notice of Dispute; and
- (e) the applicable Settlement Offer.

11. **THIS COURT ORDERS** that the Receiver shall cause the Notice to Subject Members, the Instruction Letter, and a blank form of Notice of Dispute to be posted to the Receiver's Website as soon as reasonably practicable, and cause them to remain posted thereon until its discharge as Receiver.

12. **THIS COURT ORDERS** that upon request by a Subject Member for a Claims Package or documents or information relating to the Receiver's Collection Plan, the Receiver shall forthwith send the applicable Claims Package, direct such Subject Member to the documents posted on the Receiver's Website, or otherwise respond to the request for information or documents as the Receiver considers appropriate in the circumstances.

#### **RECEIVER'S CLAIMS**

13. **THIS COURT ORDERS** that the Receiver's Claim shall constitute the Receiver's formal request for payment of the outstanding indebtedness owing by each Subject Member, calculated in accordance with the TSA, as described in the First Report.

14. **THIS COURT ORDERS** that the Receiver's Claim shall constitute an initiating process against the applicable Subject Member. The service and adjudication of each Receiver's Claim in accordance with the terms of this Receiver's Collection Plan Order shall form a sufficient basis upon which this Court may grant judgment against the applicable Subject Member.

15. **THIS COURT ORDERS** that all Receiver's Claims shall be denominated in the original currency of the Receiver's Claim. Where no currency is indicated, the Receiver's Claim shall be

presumed to be in Canadian Dollars. Any Receiver's Claims denominated in a foreign currency shall be converted to Canadian Dollars based on the Bank of Canada's daily average rate for that currency against the Canadian Dollar in effect on the date of this Receiver's Collection Plan Order.

#### **RESOLUTION OF RECEIVER'S CLAIMS**

16. **THIS COURT ORDERS** that the Receiver shall include in each Claims Package a Settlement Offer setting out the amount that the Receiver is prepared to accept in full and final settlement of the applicable Receiver's Claim.

17. **THIS COURT ORDERS** that each Settlement Offer shall remain open for acceptance until the Acceptance of Settlement Deadline.

18. **THIS COURT ORDERS** that where a Subject Member pays the full amount of the Settlement Offer to the Receiver by the Acceptance of Settlement Deadline, the Receiver will provide the applicable Subject Member with written confirmation that the Receiver's Claim has been satisfied.

19. **THIS COURT ORDERS** that nothing herein derogates from the Receiver's power, pursuant to subparagraph 4(g) of the Receivership Order, to otherwise negotiate with the Subject Members, for the purpose of resolving the Receiver's Claims on terms acceptable to the applicable parties.

#### **NOTICES OF DISPUTE**

20. **THIS COURT ORDERS** that any Subject Member who disputes the Receiver's Claim against them shall submit to the Receiver a Notice of Dispute, together with copies of all documents relied upon by such Subject Member, by the Notice of Dispute Deadline.

#### **CLAIMS OFFICER'S APPOINTMENT**

21. **THIS COURT ORDERS** that Tim Duncan of Fogler, Rubinoff LLP shall be and is hereby appointed as the Claims Officer, with the rights, duties, responsibilities and obligations prescribed by this Receiver's Collection Plan Order. The Claims Officer's duties shall



commence upon his receipt of the first Dispute Package from the Receiver, pursuant to paragraph 30 of this Order.

### **CLAIMS OFFICER'S ROLE**

22. **THIS COURT ORDERS** that the Claims Officer, in addition to its prescribed rights, duties, responsibilities and obligations under this Receiver's Collection Plan Order, shall assist the Receiver and the Subject Members in the determination of the Receiver's Claims, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Receiver's Collection Plan Order or incidental thereto.

23. **THIS COURT ORDERS** that the Claims Officer shall track and allocate its fees and disbursements on a Disputed-Claim-by-Disputed-Claim basis to facilitated the potential cost awards contemplated by paragraph 34 of this Order.

24. **THIS COURT ORDERS** that in carrying out his mandate, the Claims Officer may, among other things:

- (a) make all necessary inquiries, take accounts, and assess costs;
- (b) adopt processes which, in his discretion, he considers appropriate to facilitate the adjudication of the Receiver's Claims, having regard for the principles set out in Rule 2 of the *Rules of Civil Procedure*, and with a view to proceeding in the simplest, least expensive and most expeditious fashion;
- (c) consult the Receiver, the Subject Member, and any other persons the Claims Officer considers appropriate;
- (d) report to the Court as prescribed herein, in stages if necessary or appropriate; and
- (e) apply to this Court for advice and directions as, in his discretion, the Claims Officer deems necessary.

25. **THIS COURT ORDERS** that the Claims Officer is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Receiver's Collection Plan Order,

including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

26. **THIS COURT ORDERS** that the Claims Officer, once appointed, is hereby authorized (i) to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where they are satisfied that a Receiver's Claim has been adequately proven, waive strict compliance with the requirements of this Receiver's Collection Plan Order as to completion and execution of such forms, and (ii) to request any further documentation or other evidence from the Receiver, the Subject Members and/or third parties that may reasonably be required in order to determine the validity of a Receiver's Claim, including any defences thereto.

27. **THIS COURT ORDERS** that (i) in carrying out the terms of this Receiver's Collection Plan Order, the Claims Officer shall have all of the protections given him by this Receiver's Collection Plan Order, and as an officer of this Court, including the stay of proceedings in his favour, (ii) the Claims Officer shall incur no liability or obligation as a result of the carrying out of the provisions of this Receiver's Collection Plan Order, except to the extent that the Claims Officer has acted with gross negligence or willful misconduct, (iii) the Claims Officer shall be entitled to rely on the books and records of the Applicant and the Subject Members, and any information provided by the Receiver and the Subject Members, all without independent investigation, and (iv) the Claims Officer shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any party, except to the extent that the Claims Officer has acted with gross negligence or willful misconduct. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the CJA.

28. **THIS COURT ORDERS** that the Receiver shall pay from the Applicant's estate the reasonable professional fees and disbursements of the Claims Officer on presentation and acceptance of invoices from time to time. The Claims Officer shall be entitled to a reasonable retainer against his fees and disbursements which shall be paid upon request by the Receiver.

29. **THIS COURT ORDERS** that the Claims Officer shall pass its accounts from time to time, and for this purpose the accounts of the Claims Officer are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADJUDICATION OF DISPUTED CLAIMS**

30. **THIS COURT ORDERS** that, following the Notice of Dispute Deadline, the Receiver may, at its discretion, file with the Claims Officer a Dispute Package in respect of any Disputed Claim(s) that it intends to pursue. Each Dispute Package shall include:

- (a) the applicable Receiver's Claim;
- (b) the applicable Notice of Dispute, together with any supporting documentation filed by the Subject Member; and
- (c) any ancillary documentation.

31. **THIS COURT ORDERS** that the Receiver shall be entitled to abandon any Disputed Claim, without costs, at its discretion, provided that the Disputed Claim has not yet been referred to the Claims Officer.

32. **THIS COURT ORDERS** that the Receiver shall provide notice to the applicable Subject Member as to whether a Disputed Claim has been referred to the Claims Officer or abandoned, within seven (7) days of the Disputed Claim being so referred or abandoned.

33. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the validity and amount of each Disputed Claim referred to the Claims Officer. In doing so, the Claims Officer shall be empowered to determine the process by which further evidence may be brought before him, if necessary, as well as any other procedural matters which may arise in respect of the determination of any Disputed Claim.

34. **THIS COURT ORDERS** that the Claims Officer shall be entitled to decide the Disputed Claims on the basis of the written record contained within the applicable Dispute Package, in his discretion.

35. **THIS COURT ORDERS** that the Claims Officer shall be empowered to make an award of costs against the Subject Member, having regard for the factors set out in Rule 57.01 of the *Rules of Civil Procedure*, as part of his determination of the Disputed Claims. To the extent a Claims Decision affirms a Receiver's Claim, the cost award shall, at minimum, reflect the fees and disbursements incurred by the Claims Officer in determining the validity and amount of a Disputed Claim on a solicitor and client basis.

36. **THIS COURT ORDERS** that, following his determination of each Disputed Claim, the Claims Officer shall prepare a Claims Decision, in writing, and provide a copy of same to the Receiver and the applicable Subject Member.

### **RIGHT OF APPEAL**

37. **THIS COURT ORDERS** that each of the Receiver and the Subject Member shall be entitled to appeal the applicable Claims Decision to the Court by serving upon the other, within the Appeal Period, a notice of appeal returnable on a date to be fixed by this Court.

38. **THIS COURT ORDERS** that if a notice of appeal is not served within such period, then the applicable Claims Decision shall be deemed to be final and binding and there shall be no further right of appeal, review or recourse to the Court from the Claims Decision.

39. **THIS COURT ORDERS** that, following the expiry of the Appeal Period, the Receiver will seek the direction of the Court regarding the procedure for the hearing of the appeals commenced pursuant to paragraph 37 of this Order. All appeals shall proceed as true appeals on the basis of the record before the Claims Officer, and not as hearings *de novo*. The Claims Officer shall not have any role in the appeal process.

40. **THIS COURT ORDERS** that, to the extent that appeals raise common issues, the Receiver may seek to have such appeals consolidated.

41. **THIS COURT ORDERS** that, for clarity, the Receiver shall have the power to settle or abandon any appeals brought pursuant to this Order.

### **DEFAULT PROCEEDINGS**

42. **THIS COURT ORDERS** that any Subject Member who fails to:

- (a) conclude a settlement by the Acceptance of Settlement Deadline; and
- (b) submit a Notice of Dispute by the Notice of Dispute Deadline,

shall be deemed to be in default (the “**Defaulting Subject Members**”).

43. **THIS COURT ORDERS** that each Defaulting Subject Member shall be deemed to admit the truth of all allegations of fact made in the applicable Undefended Claim, including the amount(s) owing by them.

44. **THIS COURT ORDERS** that, upon satisfying the Claims Officer (in his sole discretion) that the Claims Package was duly served on the Subject Member in accordance with this Order, the Receiver shall be entitled to default judgment against the Defaulting Subject Members in the amounts set out in the Undefended Claims.

45. **THIS COURT ORDERS** that, following the passage of the Acceptance of Settlement Deadline and the Notice of Dispute Deadline, the Receiver shall refer the Undefended Claims to the Claims Officer.

46. **THIS COURT ORDERS** that the Claims Officer shall review the Undefended Claims, and shall prepare a Default Judgment Report. The Receiver shall be entitled to an omnibus default judgment against the Defaulting Subject Members, in the amounts set out in the Default Judgment Report, to be issued by the Court.

#### **ISSUANCE OF JUDGMENTS**

47. **THIS COURT ORDERS** that following the expiry of the Appeal Period, the Claims Officer shall prepare and file with the Court the Claim’s Officer’s Report.

48. **THIS COURT ORDERS** that the Receiver shall be entitled to judgment against the applicable Subject Members in the amounts identified in the Claims Officer’s Report, and shall bring a motion to the Court for the purpose of obtaining such judgments.

49. **THIS COURT ORDERS** that the Receiver need not provide said Subject Members with notice of this motion for judgment.

50. **THIS COURT ORDERS AND DECLARES** that the Receiver has the authority to exercise the Applicant's right to enforce judgment against a Subject Member by, among other methods, payment of the judgement amount in whole or in part from any distribution from the Applicant's estate to which the Subject Member is entitled.

51. **THIS COURT ORDERS** that, other than by payment from distribution pursuant to paragraph 50 of this Receiver's Collection Plan Order, enforcement of judgments obtained pursuant to this Order against Subject Members shall be stayed until the earlier of the date of closing of a sale of the Resort Property and further Order of this Court.

#### **SERVICE AND NOTICES**

52. **THIS COURT ORDERS** that the Receiver may, unless otherwise specified by this Claims Procedure Order, serve and deliver the Receiver's Collection Plan Order, the Claims Package, and any letters, notices or other documents to the Subject Members or any other interested person by forwarding true copies thereof by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email to such persons at the physical or electronic address, as applicable, last shown on the books and records of the Applicant. Any such service and delivery shall be deemed to have been received: (a) if sent by ordinary mail or registered mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, through the administration of the Receiver's Collection Plan, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

<https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective upon transmission.

54. **THIS COURT ORDERS** that any notice or communication (including Notices of Dispute) to be given under this Receiver's Collection Plan Order to the Receiver shall be in writing in substantially the form, if any, provided for in this Receiver's Collection Plan Order, and will be sufficiently given only if delivered by email, or if it cannot be given by email by prepaid registered mail, courier or personal delivery, addressed to:

BDO Canada Limited  
20 Wellington Street East, Suite 500  
Toronto, ON M5E 1C5

Attention: Carriage Hills Collections

Email: [BDOCarriageHills@bdo.ca](mailto:BDOCarriageHills@bdo.ca)

Any such notice or communication shall be deemed to be received upon actual receipt thereof during normal business hours on a Business Day or if delivered outside of normal business hours, the next Business Day.

55. **THIS COURT ORDERS** that in the event that this Receiver's Collection Plan Order is later amended by further order of the Court, the Receiver shall post such further order on the Receiver's Website, and such posting shall constitute adequate notice to Subject Members of such amended Receiver's Collection Plan.

56. **THIS COURT ORDERS** that this Receiver's Collection Plan Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*.

#### **NON-SUBJECT MEMBERS**

57. **THIS COURT ORDERS** that, to the extent a member of the Applicant, due to the nature of certain of its debts, falls under the definition of Subject Member, it will be treated, and must act, as a Subject Member, as regards only to the Receiver's Claim corresponding to such

debts, even if the member also falls under the definition of Non-subject Members due to the nature of other of its debts.

58. **THIS COURT ORDERS AND DECLARES** that the Receiver has the authority to exercise, in its discretion, the Applicant's rights against a Non-subject Member by, among other methods:

- (a) payment of the amount of any judgment obtained in a legal proceeding commenced against the Non-subject Member; and
- (b) payment of any amount outstanding under the payment plan agreed to between the member and the Applicant's collections agent,

from any distribution from the Applicant's estate to which the Non-subject Member is entitled.

59. **THIS COURT ORDERS AND DECLARES** that:

- (a) where a legal proceeding has been commenced against a Non-subject Member wherein no judgment has yet been obtained or other final resolution reached; or
- (b) where a Non-subject Member is or was bankrupt or in BIA proposal proceedings, and to the extent that the Receiver's Claim is stayed or compromised in such BIA proceedings,

the Receiver may, in its discretion, hold in reserve any distribution from the Applicant's estate to which the Non-subject Member is otherwise entitled pending resolution of such legal proceeding or agreement with the Non-subject Member and/or its trustee in bankruptcy or proposal trustee, as applicable, for distribution from the Non-subject Member's estate to satisfy the amount owed to the Applicant or any lesser amounts accepted in settlement thereof.

### **COMEBACK HEARING**

60. **THIS COURT ORDERS** that any affected party who seeks to vary or set aside any provision of this Receiver's Collection Plan Order in accordance with Rule 37.14 must, within twenty (20) days of this Receiver's Collection Plan Order, set a hearing date with the Court



office, on at least seven (7) days notice to the Receiver. On expiry of such twenty (20) day period, the Receiver may seek to consolidate any such scheduled hearings into a single comeback hearing (the “**Comeback Hearing**”).

## **MISCELLANEOUS**

61. **THIS COURT ORDERS** that the Receiver or the Claims Officer may from time to time apply to this Court to amend, vary or supplement this Receiver’s Collection Plan Order or for advice and directions in the discharge of their respective powers and duties hereunder.

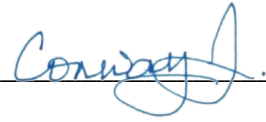
62. **THIS COURT ORDERS** that the filing of a jury notice by any Subject Member is hereby prohibited pursuant to Section 108(3) of the *Courts of Justice Act* (Ontario).

63. **THIS COURT ORDERS** that all Subject Members are required to preserve evidence which they know or ought to know is relevant to a Receiver’s Claim.

64. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Receiver, the Claims Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and to the Claims Officer, as officers of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Receiver and the Claims Officer and their respective agents in carrying out the terms of this Order.

65. **THIS COURT ORDERS** that each of the Receiver and the Claims Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that this Receiver's Collection Plan Order and all of its provisions are effective from the as of 12:01 a.m. Eastern Standard Time on the date of this Order without any need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal black line.

**SCHEDULE "A"**

**FORM OF INSTRUCTION LETTER**

## Instruction Letter

**Step 1:** Review the Receiver's Collection Order, the Receiver's Claim, the Notice to Subject Members) and the Settlement Offer delivered along with this Instruction Letter and any other documentation in the Claim Package. Further information with respect to the Receiver's Collection Plan, including the Receiver's Collection Order and the First Report of the Receiver filed with the Court in connection with the Receiver's Collection Plan, is available on the Receiver's website: <https://www.bdo.ca/en-ca/extranets/carriage/>.

**Step 2:** If you do not dispute the amount of the Receiver's Claim and are prepared to accept the Settlement Offer, you may notify the Receiver in writing of your acceptance and arrange for payment of the Settlement Amount by no later than **thirty (30) days from the date of service of the Settlement Offer as calculated under paragraph 52 of the Receiver's Collection Order**. Any notice or communication to be given to the Receiver must be in writing and delivered by email, or if it cannot be given by email by prepaid registered mail, courier or personal delivery, addressed to:

**BDO CANADA LIMITED**  
20 Wellington Street East, Suite 500  
Toronto, ON M5E 1C5

Attention: Carriage Hills Collections

Email: [BDOCarriageHills@bdo.ca](mailto:BDOCarriageHills@bdo.ca)

**Step 3:** If you do dispute the amount of the Receiver's Claim, and do not accept the Settlement Offer, you must complete a **Notice of Dispute** form. State what you disagree with and why, and if there is anything you agree with. Attach copies of any documents that help your case. If you want to pay all or part of the amount owing to the Receiver, state how much you will pay and when you will pay.

**Step 4:** Deliver your completed Notice of Dispute form and any attachments to the Receiver by email, or if it cannot be given by email, by prepaid registered mail, courier or personal delivery to the address above, by no later than **thirty (30) days from the date of service of the Settlement Offer** as calculated under paragraph 52 of the Receiver's Collection Order.

**NOTE: Any Subject Member who fails to submit either payment of the Settlement Amount or a Notice of Dispute within 30 days from the date of service of the Settlement Offer as calculated under paragraph 52 of the Receiver's Collection Order, shall be deemed to admit the amount(s) owing by them as set out in the Receiver's Claim, and the Receiver shall be entitled to seek default judgment against said Subject Members in the said amounts.**

**Step 5:** Subject to further order of the Court, the Claims Officer appointed to administer the Receiver's Collection Plan may determine the validity and amount of the Receiver's Claim against you if you have filed a Notice of Dispute within the required time lines. Following the determination of the Receiver's Claim against you, the Claims Officer will notify both you and the Receiver of his or her decision, in writing (the "**Claims Decision(s)**").

**Step 6:** You or the Receiver will be entitled to appeal the Claims Decision to the Court by serving upon the other and filing with the Court, within fifteen (15) calendar days of notification of the Claims Decision (the "**Appeal Period**"), a notice of appeal returnable on a date to be fixed by the Court. If a notice of appeal is not filed within such period, then the Claims Decision in respect to the Receiver's Claim shall be deemed to be final and binding upon you.

**SCHEDULE "B"**

**FORM OF NOTICE TO SUBJECT MEMBERS**

## CARRIAGE HILLS VACATION OWNERS ASSOCIATION COLLECTION PROCESS

### NOTICE TO SUBJECT MEMBERS (DELINQUENT MEMBERS)

#### SUBJECT MEMBERS OF CARRIAGE HILLS VACATION OWNERS ASSOCIATION

Please read this notice carefully as it may affect your legal rights.

If you are **Delinquent Member** of the Carriage Hills Vacation Owners Association (the "**Association**"), you may be a Subject Member.

#### PURPOSE OF THIS NOTICE

BDO Canada Limited has been appointed as the receiver (the "**Receiver**"), of the assets, undertakings and properties of the Association and of property and assets of the Carriage Hills resort in an application commenced by the Association at the Ontario Superior Court of Justice (Commercial List) bearing Court File No. CV-20-00640265-00CL.

By way of an Order of the Honourable Justice Conway dated February 16, 2021 (the "**Receiver's Collection Order**"), the Receiver has established a process (the "**Receiver's Collection Plan**") for the identification and determination of claims by the Receiver against certain members of the Association for unpaid Basic Charges, Special Charges, Personal Charges, late penalties and interest.

You are a Subject Member if you have a delinquent account in connection with your ownership in the resort and you have not already entered into a payment arrangement to satisfy such claim or it is not yet assigned for litigation. If you are a Subject Member, your legal rights will be affected by the Receiver's Collection Plan.

#### THE RECEIVER'S COLLECTION PLAN

The Receiver's Collection Plan can be summarized as follows:

- a) **Claim Package.** A Subject Member will receive a Claim Package including the Receiver's Claim, this Notice to Subject Members, an Instruction Letter, a blank Notice of Dispute form and a Settlement Offer, along with any other documentation the Receiver may deem appropriate, by mail or email.
- b) **Settlement of Claims.** If you do not dispute the amount of the Receiver's Claim and are prepared to accept the Settlement Offer, you may notify the Receiver in writing of your acceptance and arrange for payment of the Settlement Amount by no later than thirty (30) days from the date of service of the Claim Package (the "**Acceptance of Settlement Deadline**"). Any notice or communication to be given to the Receiver must be in writing and delivered by email, or if it cannot be given by email by prepaid registered mail, courier or personal delivery, addressed to:

#### **BDO CANADA LIMITED**

20 Wellington Street East, Suite 500  
Toronto, ON M5E 1C5

Attention: Carriage Hills Collections

Email: BDOCarriageHills@bdo.ca

- c) **Notice of Dispute.** If you do dispute the amount of the Receiver's Claim, and do not accept the Settlement Offer, you must complete and deliver the **Notice of Dispute** form and any attachments to the Receiver by email, or if it cannot be given by email, by prepaid registered mail, courier or personal delivery to the address above, by no later than thirty (30) days from the date of service of the Claim Package (the "**Notice of Dispute Deadline**").

**NOTE: If a Subject Member fails to pay the Settlement Amount or deliver to the Receiver a Notice of Dispute within 30 days of the date of service of this Claims Package as calculated under paragraph 52 of the Receiver's Claims Order, judgment may be given against them in their absence and without further notice.**

- d) **Determination of Unsettled Disputes by Claims Officer.** Subject to further order of the Court, the Claims Officer appointed to administer the Receiver's Collection Plan will determine the validity and amount of each disputed Receiver's Claim. Following the determination of a Receiver's Claims, the Claims Officer will notify the Receiver and the applicable Subject Member of his or her decision, in writing (the "**Claims Decision(s)**").
- e) **Right of Appeal.** The Receiver and each Subject Member will be entitled to appeal the Claims Decisions to the Court by serving upon the other and filing with the Court, within fifteen (15) calendar days of notification of the Claims Decisions (the "**Appeal Period**"), a notice of appeal returnable on a date to be fixed by the Court. If a notice of appeal is not filed within such period, then the Claims Decisions shall be deemed to be final and binding.

### **ADDITIONAL INFORMATION**

Further information, including the Receiver's Collection Order and the First Report of the Receiver filed with the Court in connection with the Receiver's Collection Plan, is available on the Receiver's website: <https://www.bdo.ca/en-ca/extranets/carriage/>.

### **INTERPRETATION**

This notice is a summary of the terms of the Receiver's Collection Order. If there is a conflict between the provisions of this notice and the terms of Receiver's Collection Order, the Receiver's Collection Order prevails.

Any party affected by the Receiver's Collection Order should obtain such legal advice as they deem appropriate as soon as possible to address the matters set out in the Receiver's Collection Order.

**THIS NOTICE WAS APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**



**SCHEDULE "C"**

**FORM OF NOTICE OF DISPUTE**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

CARRIAGE HILLS VACATION OWNERS ASSOCIATION by its Court-  
appointed receiver, BDO CANADA LIMITED

Claimant

and

THE SUBJECT MEMBER IDENTIFIED IN THE ATTACHED SCHEDULE A

Respondent

**NOTICE OF DISPUTE**

**Respondent**

Last name, or name of company		
First name	Second name	Also known as
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code		Fax no.
Representative (if any)		LSO #
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code		Fax no.

**THIS NOTICE OF DISPUTE IS BEING DELIVERED ON BEHALF OF:** (Name(s) of respondent(s))

and I/we: (Check as many as apply)

- Dispute the claim made against me/us.
- Admit the full claim and propose the following terms of payment:

\$ \_\_\_\_\_ per \_\_\_\_\_ commencing \_\_\_\_\_, 20 \_\_\_\_\_ .  
(Amount) (Week/month)

Admit part of the claim in the amount of \$ \_\_\_\_\_ and propose the following terms of payment:  
\$ \_\_\_\_\_ per \_\_\_\_\_ commencing \_\_\_\_\_, 20\_\_\_\_\_.  
(Amount) (Week/month)

**REASONS FOR DISPUTING THE CLAIM AND DETAILS:**

Explain what happened, including where and when. Explain why you do not agree with the claim made against you.

If you are relying on any documents, you **MUST** attach copies to the Notice of Dispute. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

- What happened?**
- Where?**
- When?**

**Why I/we  
disagree with all  
or part of the  
claim:**

**ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.**

Prepared on: \_\_\_\_\_, 20 \_\_\_\_\_  
(Signature of defendant or representative)

This Notice of Dispute should be deliver to the Receiver by email or, if it cannot be given by email, by prepaid registered mail, courier or personal delivery, addressed to:

**BDO CANADA LIMITED**  
20 Wellington Street East, Suite 500  
Toronto, ON M5E 1C5

Attention: Carriage Hills Collections  
Email: [BDOSCarriageHills@bdo.ca](mailto:BDOSCarriageHills@bdo.ca)

**CARRIAGE HILLS VACATION OWNERS ASSOCIATION,  
by its Court-appointed receiver, BDO CANADA LIMITED**

and

**THE SUBJECT MEMBER IDENTIFIED IN THE ATTACHED  
SCHEDULE A**

Claimant

Respondent

Court File No. CV-20-00640265-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT TORONTO**

**NOTICE OF DISPUTE**

**SCHEDULE "D"**  
**FORM OF RECEIVER'S CLAIM**

Court File No. CV-20-00640265-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CARRIAGE HILLS VACATION OWNERS ASSOCIATION by its  
Court-appointed receiver, BDO CANADA LIMITED

Claimant

and

THE SUBJECT MEMBER IDENTIFIED IN THE ATTACHED  
SCHEDULE A

Respondent

**RECEIVER'S CLAIM**

**TO THE SUBJECT MEMBER IDENTIFIED IN THE ATTACHED SCHEDULE A:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Claimant. The details of the claim made against you are set out in the following pages. The amount of the claim against you is set out at Schedule A hereto.

Please refer to the Instruction Letter that was enclosed with this Receiver's Claim for instructions as to how to respond to this Receiver's Claim. A copy of the Instruction Letter may also be found at: <https://www.bdo.ca/en-ca/extranets/carriage/>

**NOTE: If you fail to respond to this Receiver's Claim as instructed in the Instruction Letter, judgment may be given against you in your absence and without further notice.**

Date: \_\_\_\_\_

## RECEIVER'S CLAIM

1. BDO Canada Limited, in its capacity as Court-appointed receiver over all of the assets, properties and undertakings of (in such capacity, the "Receiver") of the Carriage Hills Vacation Owners Association (the "Claimant") and the Carriage Hills Resort (as defined below), claims as against the Subject Member identified in Schedule A hereto (the "Subject Member"), damages as set out in Schedule A hereto, consisting of:

- (a) any indebtedness owing to the Claimant by the Subject Member, which was incurred during the period from <\*> to January 6, 2021, pursuant to the TSA (as defined below) (the "Indebtedness");
- (b) interest on the Indebtedness calculated at a rate of <\*>% per annum in accordance with the TSA (or alternatively, at the rate prescribed by the Courts of Justice Act, R.S.O. 1990 c. C. 43, as amended (the "CJA")), from <\*> to the date of judgment;
- (c) post-judgment interest at a rate of <\*>% per annum, in accordance with the TSA (or alternatively, at the rate prescribed by the CJA);
- (d) a fee of \$500 representing an estimate of legal and collection costs incurred to the date of issuance of the Receiver's Collection Plan Order (defined below) (the "Issuance Date");
- (e) the Receiver's costs of this proceeding from the Issuance Date on a complete or, in the alternative, substantial indemnity basis, plus all applicable disbursements and taxes; and
- (f) such further and other relief as the Claims Officer (defined below) or the Court may deem just.



## **Procedural Background**

2. The Claimant was established as a not-for-profit entity and incorporated by letter patent on August 6, 1996, as a corporation without share capital under the *Corporations Act* (Ontario) to operate, maintain, improve and protect the Carriage Hill time-sharing resort in Horseshoe Valley, Ontario (the “Carriage Hills Resort”).
3. The Applicant is comprised of its members (the “Members”), each of whom is an owner as tenant-in-common of an undivided interest in the real property on which the Carriage Hills Resort operates (the “Resort Property”).
4. The Receiver was appointed by way of the Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “Court”) with effect as of January 6, 2021.
5. By order dated February 16, 2021, the Court authorized the Receiver to collect certain amounts owing to the Applicant by its members, by way of a simplified procedure described therein (the “Receiver’s Collection Plan Order”). A copy of the Receiver’s Collection Plan Order is publicly available at the Receiver’s website located at: <https://www.bdo.ca/en-ca/extranets/carriage/>.
6. Pursuant to the Receiver’s Collection Plan Order, the Court appointed a claims officer (the “Claims Officer”) to adjudicate claims brought pursuant to the Receiver’s Collection Plan Order, including the within Receiver’s Claim.

## **The TSA**

7. The Claimant, Carriage Hills Resort Corporation and Carriage Hills Hospitality Inc., entered into Time Sharing Agreements dated June, 25, 1997, June 28, 1999 and June

30, 2000 (collectively, and as amended, the "TSA"), each relating to a different phase of development of the Resort Property.

8. The Subject Member is party and signatory to an Adherence Agreement, which binds it to the TSA.
9. The Receiver pleads and relies upon all of the terms of the TSA. Pursuant to the terms of the TSA, the Subject Member agreed, among other things, to pay the following charges, in proportion to the number of time-share intervals owned by the Subject Member, where applicable:
  - (a) the Subject Member's share of a "Basic Charge" comprised of Carriage Hills resort expenses ("Resort Expenses"), due yearly, in advance;
  - (b) the Subject Member's share of any "Special Charge" that may be assessed if the Basic Charges prove to be insufficient to pay Resort Expenses; and
  - (c) any "Personal Charges" resulting from the Subject Member's own acts, such as telephone charges or repair of damage caused by the Subject Member.

#### **The Subject Member's Obligations to the Claimant**

10. Between the period from <\*> to January 6, 2021, the Subject Member incurred the Indebtedness in the form of Basic Charges, Special Charges and Personal Charges in its capacity as a member of the Claimant. Pursuant to the Order of this Court dated July 2, 2020, the Subject Member was assessed a \$1,000 Delinquency Fee on October 1, 2020.

11. The Subject Member is also liable under the TSA for all interest accrued and accruing on the Indebtedness. Such interest, along with the Delinquency Fee, now form part of the Indebtedness.
12. To date, despite the Claimant's and the Receiver's efforts to recover the Indebtedness, the Indebtedness remains outstanding.
13. The Receiver states that it is entitled to payment of the Indebtedness from the Subject Member, pursuant to the terms of the TSA.
14. The Receiver further states that by non-payment of the Indebtedness, the Subject Member has been unjustly enriched, to the detriment of the Claimant and the Claimant's other members, for which enrichment there is no juristic reason. The Receiver pleads and relies upon the principle of unjust enrichment and seeks a disgorgement from the Subject Member in an amount equivalent to the Indebtedness.
15. The Receiver pleads and relies upon the terms of the Receiver's Collection Plan Order, and any applicable Rules and/or statutes referred to therein.
16. If necessary, this Receiver's Claim may be served on a party outside of Ontario without leave in accordance with Rule 17.02 of the Rules of Civil Procedure because it relates to a contract that was made in Ontario.
17. This Receiver's Claim will be prosecuted before the Claims Officer in Toronto in accordance with the Receiver's Collection Plan Order.

Date: <\*>, 2021

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, Ontario  
M5J 2T9

**Sanjeev P.R. Mitra (LSO # 37934U)**  
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*Lawyers for BDO Canada Limited*

CARRIAGE HILLS VACATION OWNERS ASSOCIATION, by and  
its Court-appointed receiver, BDO CANADA LIMITED

Claimant

THE SUBJECT MEMBER IDENTIFIED IN THE ATTACHED  
SCHEDULE A

Respondent

Court File No. CV-20-00640265-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT TORONTO**

**RECEIVER'S CLAIM**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Sanjeev P.R. Mitra (LSO # 37934U)**

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Fax (416) 863-1515

*Lawyers for the Claimant*

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O

AND IN THE MATTERS OF THE ADMINISTRATION PROCEEDINGS OF CARRIAGE HILLS VACATIONS OWNERS ASSOCIATION

Applicant

Court File No. CV-20-00640265-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceedings commenced at Toronto**

**RECEIVER'S COLLECTION ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

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Fax (416) 863-1515

*Lawyers for BDO Canada Limited in its capacity as the  
court-appointed Receiver of Carriage Hills Vacation  
Owners Association*