

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**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 RIDGE OWNERS  
ASSOCIATION (the “Applicant”)**

**APPLICATION RECORD  
(Returnable May 7, 2020)**

April 30, 2020

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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# TAB 1





Court File No. CV-20- 00640266 -00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**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 RIDGE OWNERS  
ASSOCIATION**

**Applicant**

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for hearing before Justice Conway of the Ontario Superior Court of Justice (Commercial List), on May 7, 2020 at 10:00 a.m., and heard by judicial video conference via Zoom at Toronto, Ontario, in accordance with the Changes to Commercial List operations in light of COVID-19 and the Notice to the Profession updated April 2, 2020, issued by Chief Justice Morawetz. Please refer to the conference details attached as Schedule "A" hereto in order to attend the hearing and advise if you intend to join the hearing by emailing Mitch Grossell at [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca).

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU OR YOUR LAWYER WISH TO PRESENT AN AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two

days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: April 30, 2020

Issued by:

*A. Cardoso*

Alexandra Medeiros Cardoso  
~~Registrar, Superior Court of Justice~~

Local Registrar

330 University Avenue  
9<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1R7

**TO: THIS HONOURABLE COURT**  
**AND TO: THE SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF THE PROCEEDINGS OF  
CARRIAGE RIDGE OWNERS ASSOCIATION (the  
“Applicant”)**

**SERVICE LIST  
(as at April 30, 2020)**

<p><b>THORNTON GROUT FINNIGAN LLP</b></p> <p>100 Wellington St. West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p><b>Leanne M. Williams</b> Tel: 416-304-0060 Email: <a href="mailto:lwilliams@tgf.ca">lwilliams@tgf.ca</a></p> <p><b>Mitchell W. Grossell</b> Tel: 416-304-7978 Email: <a href="mailto:mgrossell@tgf.ca">mgrossell@tgf.ca</a></p> <p>Lawyers for the Applicant</p>	<p><b>BDO CANADA LIMITED</b></p> <p>20 Wellington Street East, Suite 500 Toronto, ON M5E 1C5</p> <p><b>Brad Newton</b> Tel: 416-775-7829 Email: <a href="mailto:bnewton@bdo.ca">bnewton@bdo.ca</a></p> <p>Proposed Administrator of the Applicant</p>
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<p><b>WYNDHAM WORLDWIDE CORPORATION</b></p> <p>6277 Sea Harbor Dr. Orlando, FL 32821 ATTN: Legal Department – Resort Operations</p> <p><b>Gord Minor</b> Email: <a href="mailto:gord.minor@wyn.com">gord.minor@wyn.com</a></p> <p><b>Sheriff Masry</b> Email: <a href="mailto:sheriff.masry@wyn.com">sheriff.masry@wyn.com</a></p> <p><b>Michael Lazinsk</b> Email: <a href="mailto:michael.lazinsk@wyn.com">michael.lazinsk@wyn.com</a></p>	

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## APPLICATION

1. The Applicant makes an application for an Order substantially in the form of the draft Order included at Tab 3 of the Application Record (the “**Administration Order**”), that includes, *inter alia*:
  - (a) appointing BDO Canada Limited (“**BDO**”) as administrator, without security, of the Applicant, all of the property, assets and undertakings of the Applicant (collectively, the “**Property**”) and all of the lands and premises (the “**Resort Assets**”) on which the Applicant operates the timeshare resort known as Carriage Ridge Resort (the “**Resort**”) that is collectively owned by the owners of the Applicant (the “**Owners**”) as tenants in common, pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”);
  - (b) empowering BDO to, among other things, review potential options to restructure the Applicant, advise the Applicant with respect to the preparation of its cash flow statements, monitor the Applicant’s receipts and disbursements, report to the Court, and assist the Applicant with the dissemination of information to the Owners;
  - (c) allowing the Applicant to remain in possession and control of the Property and to continue to manage the Resort Assets, including authorization for the Applicant to continue to incur and pay disbursements in the ordinary course from the Property;
  - (d) granting a stay of proceedings in respect of the Applicant, the Resort Assets, the directors and officers of the Applicant and the Administrator, and prohibiting any person providing goods or services to the Applicant from discontinuing the provision of such goods or services to the Applicant by commencement of these proceedings;
  - (e) granting an administration charge in favour of the Administrator, counsel to the Administrator and counsel to the Applicant, up to the maximum amount of \$150,000, as security for the fees and disbursements incurred in respect of these proceedings



- (f) authorizing a noticing procedure that is tailored to these proceedings that provides the best opportunity for notice of these proceedings to be provided to interested Owners; and
2. Such further and other relief as this Court deems just.

**THE GROUNDS FOR THIS APPLICATION ARE:**

***Background***

- 3. The Resort is a timeshare resort located in Horseshoe Valley, Township of Oro, Ontario. It is the “sister resort” to Carriage Hills Resort, located on the land adjacent to the Resort. The Resort is comprised of 78 residential units in three buildings, with certain amenities.
- 4. The Applicant was established as a not-for-profit corporation made up of members who each own an undivided interest of the Resort Assets as tenants in common. The Applicant oversees the Resort through a volunteer board of directors comprised of three individuals who do not receive remuneration for their services.
- 5. The Resort is comprised of 5,365 Intervals owned by 4,127 members. As a result, title to the Resort Assets is divided into 5,365 tenancies in common among 4,127 Owners.
- 6. Pursuant to a Time Sharing Agreement (“TSA”), each Owner has a right to use the Resort for a certain period of time, depending on the interest that such Owner purchased, known as an “Interval”. In accordance with the contractual relationships governing the Applicant and the Owners, the only way for an Owner to terminate its ownership is to sell the Owner’s Interval to a third party.
- 7. The Resort is managed by Carriage Hills Hospitality Inc. (the “Manager”), a subsidiary of Wyndham Worldwide Corporation, for profit. The Manager is responsible for maintaining all licenses and permits, and the general administration and management of the Applicant and the Resort. The Applicant has no employees. All personnel required to operate the Timeshare Resort are provided and employed by the Manager.

***Funding of the Resort***

8. The Resort is funded by the Owners. The TSA obligates the Owners to proportionally contribute annually to the costs of maintaining the Resort (the “Charges”). Due to the age of the Resort, it will require significant capital improvements over the next several years.
9. As a not-for-profit corporation, the Charges are calculated in order to break-even in respect of annual operating costs, while establishing an appropriate reserve for future capital expenditures.
10. In the event that an Owner fails to pay its respective Charges, the Applicant is forced to re-evaluate and increase the annual Charges to compensate for delinquencies and lower than expected cash flow. Effectively, the Owners in good standing are required to bear the costs of the non-payment of the defaulting Owners.

***Financial Duress***

11. As at February 29, 2020, Owners were in arrears on account of Charges and related interest and penalties owing to the Applicant totalling approximately \$9.6 million. Those arrears pertain to 1,022 Owners that hold 1,192 Intervals, which is approximately 25% of all Intervals.
12. Due to rising delinquencies, the Applicant has been forced to increase the annual Charges payable by Owners. While this has been a temporary solution that has balanced the annual operating receipts and disbursements, it is unsustainable to continue to increase the Charges. Further, the Applicant requires significant capital improvements over the next few years due to the age of the Resort.
13. It has become apparent that the market for timeshare Intervals has steadily declined over the last several years. This decline in the ability to sell Intervals has led to sentiment among certain Owners that they are trapped in a perpetual and unworkable situation in which they are facing significant increased Charges.
14. The financial duress experienced by the Resort has been exacerbated by the COVID-19 pandemic as Owners are not allowed to use their Intervals at the Resort until at least June 1, 2020. It is anticipated that the COVID-19 pandemic may also lead to additional defaults



in respect of the payment of Charges by the Owners as those Owners are unable to use their Intervals and may experience personal financial hardship.

15. The Applicant's decreasing revenue collection and increasing Charges are both due to and contributing to each other in a downward spiral that, if permitted to continue, will culminate in the compromise of the continued viability of the Resort. Due to its corporate structure as a non-share corporation and the contractual limitations of the TSA, the Applicant does not have a viable way to remedy the underlying issues outside of a Court-supervised restructuring.
16. The relief sought in the proposed Initial Order is intended to lay the foundation for a transparent and flexible process, under the supervision of the Court, to restructure the Resort for the benefit of its stakeholders.
17. The relief is necessary at the present time to prevent a further deterioration of assets of the Applicant due to the current unsustainable situation. If the *status quo* is allowed to persist, there may be further disengagement by the Owners and the Applicant may lose its window of opportunity to plan, canvas support of, and implement a viable restructuring plan.
18. It is just and convenient for an administrator to be appointed in order to:
  - (a) bring immediate stability and non-partisan oversight to the current issues facing the Applicant and the Resort;
  - (b) develop a restructuring plan that will provide for an opt-out process for Owners and streamline a process to enforce the Applicant's contractual rights against defaulting Owners; and
  - (c) accomplish these objectives in a manner which addresses the underlying issues and which will provide for a viable and sustainable Resort.
19. BDO has consented to act as Administrator.
20. Section 101 of the CJA and Rules 1.04, 2.01, 2.03, 3.02(1), 14.05, 16.04, 16.08 and 41.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

21. Such further and other grounds as counsel may advise and this Court may permit.
22. The following documentary evidence will be used at the hearing of the Application:
  - (a) the Affidavit of Martin Ginsherman, to be sworn, and the exhibits annexed thereto;
  - (b) the proposed Administrator's pre-filing report;
  - (c) the Consent of BDO Canada Limited to act as Administrator; and
  - (d) such further and other evidence as counsel may advise and this Court may admit.

April 29, 2020  
30 AE

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Lawyers for the Applicant, Carriage Ridge Owners  
Association



**Schedule "A"**

**Zoom Video Conference Details**

**Join Zoom Meeting**

<https://us02web.zoom.us/j/87847563077>

Meeting ID: 878 4756 3077

One tap mobile

+13017158592, 87847563077# US (Germantown) 13126266799, 87847563077# US  
+(Chicago)

Dial by your location

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

Meeting ID: 878 4756 3077

Find your local number: <https://us02web.zoom.us/j/87847563077>

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c.C.43, AND IN THE MATTER OF THE  
ADMINISTRATION PROCEEDINGS OF **CARRIAGE RIDGE OWNERS ASSOCIATION**

Applicant

Court File No.: CV-20- 00640266 -00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced in Toronto

**NOTICE OF APPLICATION**

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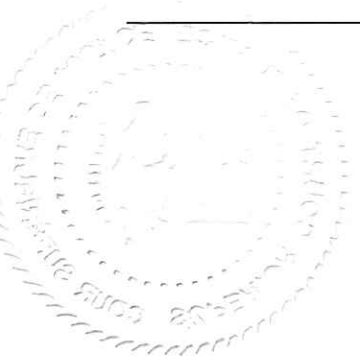
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Lawyers for the Applicant, Carriage Ridge Owners  
Association



## TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF THE PROCEEDINGS OF  
CARRIAGE RIDGE OWNERS ASSOCIATION (the  
“Applicant”)**

**AFFIDAVIT OF MARTIN GINSHERMAN  
(sworn April 30, 2020)**

I, Martin Ginsherman, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. This affidavit is in support of the Applicant’s application for an order appointing BDO Canada Limited (“**BDO**”) as administrator of the Applicant and related relief under s. 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”).
2. I have been a director of the Applicant since October 2015 and its president since 2019, and have been an Owner (as defined below) since 2004. As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have referred to them and believe their content to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors of the Applicant and other members of the board of directors of the Applicant and been referred to the applicable portions of the relevant documents.

**I. OVERVIEW**

3. The Applicant is a corporation without share capital vested with the operation, maintenance, alteration, improvement and protection of a timeshare resort located in Horseshoe Valley, Ontario, known as the Carriage Ridge Resort (“**Carriage Ridge**” or the “**Timeshare Resort**”). As a non-share capital corporation, the Applicant is not carried on for profit or gain and is run by a volunteer board of three directors who receive no

remuneration, except in respect of expenses incurred in their duties as directors of the Applicant.

4. Instead of shareholders, the Applicant is comprised of members. Each member is an owner as tenant in common (an “**Owner**”) of an undivided interest in the real property municipally known as 3303 Line 3 North, Oro-Medonte, Ontario and legally described in **Exhibit “A”** (the “**Carriage Ridge Property**”), on which the Timeshare Resort is operated. Each Owner has a right to use the Timeshare Resort for a certain period of time, depending on the interest that such Owner purchased, known as “**Intervals**”. An Owner may own more than one Interval.
5. Based on the most up-to-date information available, the Applicant is comprised of 4,127 Owners who own 5,365 Intervals, which excludes the maintenance intervals. As a result, title to the Carriage Ridge Property is divided into 5,365 tenancies in common owned by 4,127 different tenants in common.
6. The main source of revenue generated by the Applicant is funded by the Owners who are contractually required to pay dues on an annual basis to maintain and operate the Timeshare Resort. As a not-for-profit corporation, the annual dues are calculated in order to break-even in respect of annual operating costs, while establishing an appropriate reserve account for future capital expenditures. In the event that an Owner fails to pay its annual dues, the Applicant is required to increase annual dues for all Owners to compensate for delinquencies. As a result, the Owners in good standing are required to bear the costs of the non-payment of the defaulting Owners.
7. As a result of the terms of the agreements governing the Applicant and the Owners, the only way for an Owner to terminate its ownership is to sell the Intervals to a third party. As a result of a dramatically decreasing market for timeshare intervals, many Owners have abandoned their Intervals and simply stopped paying their share of the operating costs, which has resulted in continually rising annual dues that are paid by the Owners in good standing. The resulting increased costs have caused even more Owners to default on their payments to the Applicant, perpetuating the financial distress. In addition, due to

precautionary measures taken as a result of the COVID-19 pandemic, Owners are not allowed to use their Intervals at the Timeshare Resort. At this time, it is unclear how long the Owners' use will be suspended for.

8. The Timeshare Resort, as a result of its age, is also in need of significant capital improvements in the next few years that must be funded by the Owners. The estimated cost of capital expenditures through 2025 is thought to be approximately \$8.9 million, peaking in 2025 with an estimated \$3.1 million required.
9. Absent a practical restructuring solution, this spiral of decreasing revenue collection coupled with increasing operational and capital expenditure costs, will cause the Applicant and the Timeshare Resort to fail. A restructuring is required to prevent this failure. The root causes of the current problems must also be addressed, to prevent a recurrence.
10. Certain Owners have been increasingly pressing the Applicant to rectify the current untenable situation to preserve the Timeshare Resort before it becomes unviable and the Owners are unable to utilize their Intervals.
11. The proposed proceedings are intended to give the Applicant the ability to restructure the Timeshare Resort, which is not possible outside of a proceeding for the reasons more particularly described herein. The initial focus of these proceedings is to devise a process to: (i) enable Owners to opt-out of their Intervals on reasonable terms and conditions, (ii) determine the best solution for the continued operation of the Timeshare Resort, and (iii) sell any of the Carriage Ridge Property which is determined to be excess to the continuing Timeshare Resort.
12. Although the Timeshare Resort's neighbouring "sister" resort, known as "**Carriage Hills**", is a larger operation, it and its members' association, the Carriage Hills Vacation Owners Association ("**CHVOA**") are in a nearly identical situation and CHVOA is applying for substantially identical relief in a separate proceeding, with the intent that motions in both proceedings be heard together unless it becomes unnecessary or inappropriate. This will allow both applicants to share the costs of substantially the same services, without



duplication. Moreover, collaborative proceedings are expected to yield additional restructuring options, benefitting both of the applicants' owners and other stakeholders.

## **II. BACKGROUND**

13. In 1996, the Shell Vacations Club group of companies ("**Shell**") developed Carriage Hills and in 2004 developed the real property on which Carriage Ridge is situated (collectively, the "**Lands**") into timesharing resorts now known as Carriage Hills and Carriage Ridge (collectively, the "**Resorts**"). The Lands are adjacent properties located in Horseshoe Valley, Ontario. It is my understanding that Wyndham Worldwide Corporation ("**Wyndham**") acquired Shell on September 13, 2012.
14. The Timeshare Resort is comprised of 78 residential units in three buildings, together with certain amenities such as swimming pools, a sauna and a playground in a separate common building. Each unit is comprised of a one bedroom suite and a second bedroom studio. The units are used by the Owners for their personal use, renters by agreement with an Owner and by members of timeshare exchange networks.
15. The Applicant was incorporated on August 7, 2003 by Letters Patent under the Ontario *Corporations Act* (Ontario) (the "**CA**"). Attached as **Exhibit "B"** is a copy of the corporation profile report for the Applicant.
16. In 1996, Shell incorporated (i) Carriage Hills Resort Corporation ("**CHRC**") to acquire and develop the Lands to eventually sell Intervals for profit, and (ii) Carriage Hills Hospitality Inc. (the "**Manager**") to provide paid management services to the Applicant in respect of Carriage Hills and later Carriage Ridge, for profit. These entities became indirect subsidiaries of Wyndham after its acquisition of Shell.
17. CHRC (as a subsidiary of Wyndham) owns 356 Intervals which constitutes approximately 7% of the ownership of the Timeshare Resort.

## **III. CONTRACTUAL STRUCTURE**

18. CHRC, the Manager and the Applicant entered into a Time Sharing Agreement dated August 8, 2003 (the "**TSA**"), which was registered against title to the Carriage Ridge

Property. The TSA is the main document setting out the Applicant's powers and responsibilities and the Owners' rights and obligations as to the use of the Timeshare Resort. Attached as **Exhibit "C"** is a copy of the TSA.

19. At the time of purchase, prospective Owners are provided with copies of the TSA, the By-Laws of the Applicant, Rules and Regulations, the Current Operating Budget and an Adherence Agreement (as such terms are defined in the TSA), which contractually binds the Owner to the TSA. These documents are not open to negotiation by prospective owners. Attached as **Exhibit "D"** is a summary of the key terms of the Applicant's By-Laws.
20. Pursuant to the terms of the TSA, an Owner's obligations to the Applicant are in perpetuity and may only be terminated upon a transfer of their Interval. In other words, the only way for an Owner to terminate its relationship with the Applicant is to sell their Interval to another party.
21. There is no mechanism for an Owner to transfer for nominal value or gift their Interval back to CHRC or to the Applicant and, upon the death of an Owner, the Interval becomes an asset of their estate which is then obligated to pay the associated liabilities to the Applicant in perpetuity.
22. It has become apparent that the market for timeshare Intervals has steadily declined over the last several years. This decline in the ability to sell Intervals has led to a feeling among certain Owners that they are trapped in a perpetual and unworkable situation. This has caused certain Owners to abandon their Intervals and cease paying annual dues to the Applicant. It is the intention of the Applicant to address the perpetual nature of the Intervals as part of this restructuring.
23. Under the terms of the TSA, the Timeshare Resort is to remain in effect in perpetuity unless: (i) all units are destroyed and a decision has been made not to rebuild them, or they are condemned, or (ii) if at any special meeting, the Owners of at least 75% of Intervals vote to declare that the Timeshare Resort "has reached an undesirable state of disrepair or is obsolete". This would require Owners holding more than 4,000 Intervals to make such

a declaration. Due to the rigid and structured terms of the TSA, it is not feasible to achieve a permanent contractual restructuring solution.

#### **IV. STAKEHOLDERS OF THE APPLICANT**

##### **A. Owners**

24. The primary stakeholders of the Applicant are the Owners. Unlike many other timeshare properties, Owners have a proportionate ownership interest in the Carriage Ridge Property and not only contractual rights of use. Each Interval is either (i) an “**Every Year Interval**” which includes ownership of a 1/3,978 undivided interest as a tenant in common in the Carriage Ridge Property, or (ii) an “**Every Other Year Interval**”, which consist of “Odd Year Intervals” and “Even Year Intervals” which both include a 1/7,956 undivided interest as a tenant in common in the Carriage Ridge Property.
25. It is my understanding that there are currently 4,127 Owners (including CHRC) that own 5,365 Intervals, comprised of 2,591 Every Year Intervals and 2,774 Every Other Year Intervals. This means title to the Carriage Ridge Property is currently divided into 5,365 tenancies in common owned by 4,127 tenants in common. Owners other than CHRC own approximately 93% of the Carriage Ridge Property.
26. It is also my understanding that there are 1,647 Owners, including CHRC, who also own an Interval at Carriage Hills (collectively, the “**Common Owners**”). The Common Owners represent approximately 40% of the Applicant’s Owners. The Common Owners collectively own approximately 2,490 or 46.4% of all Intervals at the Timeshare Resort.
27. Adding to the complexity is the fact that the Lands’ parcel registers are the only ones in Ontario that could not be imported into the Teraview electronic system due to the exceedingly high number of owners and fractional interests. This means that the original parcel registers collectively consist of tens of thousands of pages held in the Barrie, ON registry office. I have been advised by the Applicant’s counsel that certified copies of the parcel registers have recently become available and will require considerable time to review. Thus, all title-based information, including the number of Owners and mortgagees,

is based on secondary sources, such as information obtained by BDO from the Manager, and remains subject to verification.

28. It is my understanding that certain Owners may have mortgaged their tenancy in common interests in the Carriage Ridge Property. Over the years since the resort was built, CHRC offered to extend mortgage loans to Interval purchasers leading me to believe that the Carriage Ridge Property may be encumbered. As a result of the status of the certification of the Lands, I do not know, at this time, exactly how many mortgages encumber the Carriage Ridge Property.

***B. Manager***

29. The TSA provides that the Applicant must maintain a manager at all times. Based on my review of the Management Agreement, I understand that the Manager has managed the Timeshare Resort since 2007. Attached as **Exhibit “E”** is a copy of the Management Agreement dated November 30, 2006 (as amended and restated on November 30, 2016 and October 5, 2017) between the Manager and the Applicant (the “**Management Agreement**”). The current term of the Management Agreement expires on December 31, 2022.
30. Pursuant to the Management Agreement, the Manager receives \$206,055.50 annually, adjusted for inflation based on the Consumer Price Index. As consideration for that compensation, the Manager is responsible for maintaining all licenses and permits, and the general administration and management of the Applicant and the Timeshare Resort. In addition, the Applicant reimburses the Manager for expenses incurred, among other things, wages for employees engaged by the Manager (such as cleaning staff, accounting and bookkeeping staff and maintenance staff).
31. The Applicant has no employees. All personnel required to operate the Timeshare Resort are provided and employed by the Manager.

**C. Secured Creditor**

32. There is one *Personal Property Security Act* (“**PPSA**”) registration against the Applicant and CHVOA in favour of RoyNat Inc. with a collateral description of “portable office(s), mobile office(s), office complex(s), complex(s), portable structure(s), portable building(s)” together with attachment, substitutions, and proceeds. It is my understanding that this registration is in respect of a lease agreement and that as of April 16, 2020, the Applicant is current in its payments thereunder. Attached as **Exhibit “F”** is a true copy of the certified PPSA search in respect of the Applicant, current as of April 15, 2020.

**D. Other Suppliers**

33. The Applicant has several contracts with other suppliers, the most important of which include:
- (a) Affiliation Agreements with RCI Canada Inc. and Interval International Inc., for inter-resort exchange programs for members in participating timeshare resorts;
  - (b) director’s and officer’s liability insurance policies with Travelers;
  - (c) Inventory Rental Agreements with Extra Holidays, LLC, whereby units in the Timeshare Resort may be added from time to time to Extra Holiday’s rental platform, including the use periods of defaulting Owners which the Applicant elects to rent pursuant to the rights and remedies available under the TSA; and
  - (d) Several contracts with trade suppliers including for internet, cable television, electricity, garbage disposal, snow removal, landscaping and security.
34. The Applicant proposes to continue paying its suppliers in the ordinary course, including any outstanding pre-filing obligations.

**V. FUNDING OF THE TIMESHARE RESORT**

35. The Owners are responsible for the operational costs of the Timeshare Resort. The Owners’ responsibility is proportional to the number of Intervals owned, through the payment of a “Basic Charge”, a “Special Charge” and a “Personal Charge”, as such terms

are defined in the TSA (collectively, the “**Charges**”). The Charges amount to approximately 91% of the Applicant’s total revenues as of February 29, 2020.

36. The most significant Charge borne by the Owners is the Basic Charge, which is comprised of their individual share of “Resort Expenses”. Resort Expenses include, but are not limited to, property taxes, utilities, insurance, annual maintenance fees, and all amounts necessary to provide for contingencies and reserves and to cover any shortfall in funds necessary for continued operations. The Basic Charge for the next year is payable in advance as a lump sum amount or through a monthly payment plan. The Applicant issues assessments for Basic Charges in or around October each year, with payment due in or around the end of the following November or monthly thereafter.
37. Owners are also responsible for any Special Charges that may be assessed if the Basic Charges prove to be insufficient to pay Resort Expenses on a current basis. A Special Charge is payable pursuant to the Applicant’s assessment. Personal Charges result from the individual acts of Owners for things like telephone charges and the repair of any damage caused by that Owner.
38. As at February 29, 2020, Owners were in arrears on account of Charges and related interest and penalties owing to the Applicant totalling approximately \$9.6 million. Those arrears pertain to 1,192 Intervals, which is approximately 22% of all Intervals, and 1,022 Owners, which is approximately 25% of all Owners, excluding CHRC. The following chart illustrates the escalation in Owners’ defaults on account of Charges since 2010:

<b>SUMMARY OF DELINQUENT ACCOUNTS</b>												
<b>(in 000's</b>												
<b>\$CAD)</b>												
<b>Year</b>											<b>Cumulative</b>	
<b>04 - 09</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>Total</b>
<b>98</b>	<b>104</b>	<b>153</b>	<b>219</b>	<b>306</b>	<b>526</b>	<b>793</b>	<b>937</b>	<b>1,193</b>	<b>1,515</b>	<b>2,029</b>	<b>1,751</b>	<b>9,624</b>

39. The Applicant is pursuing collection actions against defaulting Owners. The number of collection actions is anticipated to increase as it becomes clear that additional Owners have abandoned their interest in the Timeshare Resort. As a result of the COVID-19 pandemic, these collection actions have been temporarily suspended. Likewise, collection calls have also been put on hold due to the current circumstances. The failure to pursue collections has further exasperated the deteriorating cash position of the Applicant.
40. The amount of the annual Basic Charge for 2020 was increased by approximately 12%. Based on the current financial position of the Applicant, it is expected that the 2021 Basic Charge may increase by an additional 5% from the previous year to meet future cash requirements. It is further anticipated that, in the following years, the Basic Charges will continue to increase, due to decreasing Charge collection and increasing capital expenditures, which are discussed in further detail herein.
41. Due to the underlying contractual structure of the Timeshare Resort, the significant year-over-year increase to the Basic Charge is both a cause of the Applicant's revenue issues (as Owners cease paying increasing charges) and an effect of the Applicant's revenue issues (as higher delinquency rates require higher annual Basic Charges to pay for ongoing operations). This untenable situation is fast approaching a point where the Timeshare Resort will no longer be able to continue operating and is at risk of failing.

## **VI. THE APPLICANT'S FINANCIAL POSITION**

### **A. *Assets and Liabilities***

42. The Applicant's most significant assets are cash, investments and accounts receivable, collectively amounting to approximately 99% of the Applicant's assets as of February 29, 2020.
43. The Applicant's most significant liability is deferred revenue, amounting to approximately 98% of the Applicant's liabilities as of February 29, 2020. There are also accounts payable and accrued liabilities totalling \$0.3 million, which in large part relate to normal operating obligations and Resort Expenses.

44. The most significant operating expenses are for housekeeping, resort management, and utilities.
45. For the two month period ending February 29, 2020, there was a deficiency of revenues over expenditures of approximately \$184,000.

***B. Increasing Capital Expenditures***

46. The Applicant's capital expenditures have steadily increased since 2017, from \$0.8 million in that year to \$1.4 million in 2019. This is due to the aging of the Timeshare Resort. Renovation and improvement projects have been conducted over the last several years and it is estimated that additional capital expenditures in the aggregate amount of \$8.9 million will be required for the period 2020 to 2025, peaking at \$3.1 million in 2025. In order to finance these capital expenditures, the Applicant will have no other option but to levy increased Charges.
47. Based on the historical increase in default rates among the Owners, it is expected that such increased Charges will lead to further payment defaults by those Owners who no longer wish or cannot afford to enjoy the Timeshare Resort. This will require the Applicant to further increase the Charges, perpetuating the Applicant's viability issues.

***C. Decreasing Cash Reserves***

48. The TSA requires that funds collected from Owners be split and held in an account earmarked for either general operations (the "**Operating Account**") or future improvements (the "**Savings Account**") and together with the Operating Account, the "**Accounts**").
49. The Applicant's finances and expenses are managed by the Manager pursuant to the TSA and the Management Agreement. The TSA requires the Applicant to delegate all of the Applicant's powers and duties to the Manager, unless any of the applicable documents expressly provide that the Applicant shall exercise a particular power or duty. The Management Agreement grants the Manager broad authorization and powers to use the Applicant's funds collected by the Applicant under the TSA.



50. As of December 31, 2019, the aggregate cash balance in the Accounts was approximately \$1.5 million. This represented a decline of approximately \$330,000 from the cash balance in the Accounts as of December 31, 2018. The decline was attributable to increasing defaulting Owners and capital improvements of approximately \$1.3 million, approximately \$350,000 greater than receipts collected in 2019 allocated to the Savings Account. Between 2016 – 2019, the Savings Account has declined from a balance of \$1.3 million in 2016 to \$1.1 million in 2019. Although modest, the Applicant expects significant capital improvements will be required within the next couple of years. If this trend continues, the Savings Account will be depleted and there will be no funds available for the upcoming necessary capital expenditures that the Timeshare Resort requires to continue operating.
51. Although the Applicant has generally balanced its operating receipts and expenditures in the Operating Account, that can be attributable to increased Charges to Owners. As described herein, it is not sustainable to continue to increase the Charges and delinquency rates among the Owners has increased over the years as a result. By way of example, if the Applicant only used the 2021 Basic Charge collections for fiscal 2021 expenses, it is anticipated that the Applicant's year-end Operating Account would be in a deficit of approximately \$184,000.
52. This situation, coupled with the increase in defaulting Owners, has become untenable and can no longer persist.

## **VII. Owners' Concerns**

53. In my capacity as a director and the president of the Applicant, and an Owner, I have acquired information that the Owners have varying levels of dissatisfaction with the current circumstances for a number of reasons, such as:
- (a) there is no provision for the Owners to end their respective obligations to the Applicant, save for a valid assignment, which issue is exacerbated because the market for Intervals suggests that they may only be sold for nominal consideration, if at all
  - (b) the rate of increase of the Charges is unsustainable; and

(c) the current rate of the Charges is too high.

54. Owners have raised these concerns directly with me by telephone, email and in-person at the Timeshare Resort, including at the annual meeting held in October 2019. I am also aware that certain Owners have expressed these concerns through the Owners' personal social media pages.
55. The Applicant also believes that the situation will be exasperated by the fact that the Owners are aging and their heirs will not necessarily want to be responsible for the ongoing obligations of the Resort given the alternatives now available, including Airbnb.
56. The Applicant disclosed the engagement of restructuring professionals on its Owner-only, password-protected website, and has posted updates in respect thereto. As recently as March 30, 2020, the Applicant advised that an all-encompassing review of the Carriage Hills and Carriage Ridge situations is ongoing, intending to address, among other things, the perpetuity of the obligations and the increasing Charges.

#### **VIII. THE EFFECT OF COVID-19**

57. On April 7, 2020, the Applicant issued a public statement on its website advising that it would not be accepting any reservations through to at least May 15, 2020 which may be extended depending on ongoing COVID-19 pandemic.
58. It is anticipated that the COVID-19 pandemic may also lead to additional defaults in respect of the payment of Charges by the Owners as those Owners are unable to use their Intervals and may experience personal financial hardship.

#### **IX. NEED FOR REQUESTED RELIEF**

59. The Applicant's decreasing revenue collection and increasing Charges are both due to and contributing to each other in a downward spiral that if permitted to continue, will culminate in the compromise of the continued viability of the Timeshare Resort. Due to its corporate structure as a non-share corporation and the contractual limitations of the TSA, the Applicant does not have a viable way to remedy the underlying issues outside of a Court-supervised restructuring.

60. The relief sought in the proposed Initial Order is intended to lay the foundation for a transparent and flexible process, under the supervision of the Court, to restructure the Timeshare Resort for the benefit of its stakeholders. In this initial phase, if the Initial Order is granted, the Applicant, its assets and the Carriage Ridge Property would become subject to the Court's jurisdiction. This would permit the Applicant, with the Administrator's assistance, to formulate and seek Court approval of various steps and processes that are necessary before a definitive restructuring plan can be implemented. For example, one such process would be an opt-out mechanism allowing Owners to dispense with their Interval ownership and future obligations to the Applicant, subject to and on certain terms and conditions.
61. It is anticipated at this early stage of the proceedings that a restructuring and associated transactions could include any one or more of the following elements, either on a stand-alone basis or together with CHVOA:
- (a) the Timeshare Resort could be downsized to a smaller number of units and facilities appropriate for the number of Owners electing not to opt-out, provided that such number is sufficient to make the restructured Timeshare Resort viable and sustainable going forward;
  - (b) surplus Carriage Ridge Property not required for a downsized Timeshare Resort could be sold or redeveloped pursuant to a Court-approved and supervised process; and
  - (c) the proceeds of any such sales or redevelopments would be distributed as lawful and appropriate in the circumstances.
62. The relief is necessary at the present time to prevent a further deterioration of assets of the Applicant due to the current unsustainable situation. If the *status quo* is allowed to persist, there may be further disengagement by the Owners and the Applicant may lose its window of opportunity to plan, canvas support of, and implement a viable restructuring plan.

**X. RELIEF SOUGHT****A. *Appointment of BDO as “Administrator” and the Administrator’s Powers***

63. BDO has advised the Applicant for several months and is thus knowledgeable of the business and affairs of the Applicant. I believe that BDO is an established and qualified firm for the Administrator appointment. BDO has consented to act as Administrator. Attached as **Exhibit “G”** is a true copy of BDO’s consent.
64. The draft Initial Order uses the term “administrator” rather than “receiver” because the relief sought is not typical of a receivership and I believe that “administrator” more accurately reflects the proposed powers of the Court officer and avoids some of the negative connotations that the term “receiver” implies.
65. The proposed Initial Order generally gives the Administrator non-intrusive, supervisory and assistive powers. If necessary and appropriate, the Applicant may seek to expand the powers of the Administrator at a later date and on notice to the stakeholders engaged in the process.
66. The relief sought contemplates that the Administrator be appointed not only in respect of the Applicant and its assets and proceeds, but also in respect of the Carriage Ridge Property, including the Owners’ interests therein. This will assist the Applicant in developing various processes and considering various restructuring options and associated transactions that may include the Carriage Ridge Property. The proposed Initial Order does not allow the Administrator to seize, take possession of or borrow on the security of the Owners’ interests in the Carriage Ridge Property, nor is the Carriage Ridge Property subject to the proposed Court-ordered charge.

**B. *Debtor-in-Possession***

67. The proposed Initial Order generally provides that the Applicant will remain in possession of its assets and continue to manage its affairs, subject to and pursuant to the terms of all applicable agreements, with certain exceptions relating to capital expenditures. It is expected that these measures will contribute to the stability of the Timeshare Resort and

permit the Applicant to continue operations in the ordinary course during the restructuring period.

**C. *Funding of Restructuring***

68. The draft Initial Order approves the Applicant's use of funds in its Savings Accounts to pay for operating expenses, including restructuring costs, during the present proceedings to allow it to effect a restructuring to achieve the long-term viability of the Timeshare Resort for the benefit of its stakeholders.

**D. *Notice Provisions***

69. The Applicant is proposing a procedure to notify as many Owners as possible in the circumstances using electronic messaging, the Applicant's website and BDO's case website.

**E. *Restructuring Charges***

70. The draft Initial Order provides for a super-priority Administration Charge. At this stage of the restructuring, the Administration Charge is limited to a security interest on the property of the Applicant, being primarily comprised of the cash in the Accounts, and not on the Carriage Ridge Property or the Owners' interests therein.
71. The Administration Charge, which is limited to \$150,000 in respect of CROA, is required for the professionals to remain involved throughout the restructuring, which is essential.

**F. *Stay of Certain Corporate Governance Matters***

72. The draft Initial Order provides for a stay of some aspects of the Applicant's corporate governance, including the obligation to call and hold an annual or special meeting of Members, the expiration of a director's term, and the Member's ability pursuant to the TSA to veto or direct any action of the Applicant. Such stay is necessary to provide stability in the Applicant's governance during the restructuring.

**G. *Appropriateness of Parallel Proceedings with CHVOA***


73. Although the Timeshare Resort's neighbouring "sister" resort, Carriage Hills, is larger, CHVOA and the Applicant now find themselves subject to the same pressures and challenges, and are interrelated in several important respects. This is acknowledged by Darren Chapelle in his affidavit sworn April 30, 2020 in support of CHVOA's companion application, which I have read.
74. The proposed Initial Order provides that all costs in respect of professional services relating to both the Applicant and CHVOA will be split between the Applicant and CHVOA in a 31/69% proportion, respectively, which is the same proportion agreed to between the Applicant and CHVOA in respect of other joint expenses.
75. Since the potential restructuring options for each applicant will be greater if they collaborate, the Applicant and CHVOA are seeking virtually identical initial orders contemplating joint hearings in the two applications.

**XI. CONCLUSION**

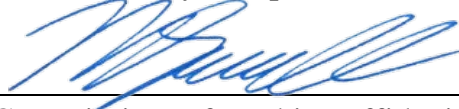
76. This affidavit is sworn in support of the application by the Applicant for the draft Initial Order appointing BDO as the "administrator" of the Applicant and for no other or improper purpose.

**SWORN BEFORE ME** by videoconference  
at the City of Toronto, in the Province of  
Ontario, this 30<sup>th</sup> day of April, 2020

  
\_\_\_\_\_  
Commissioner for taking affidavits

  
\_\_\_\_\_  
Martin Ginsberman

This is Exhibit "A" referred to in the  
Affidavit of Martin Ginsberman sworn before me  
this 30<sup>th</sup> day of April 2020.



---

A Commissioner for taking affidavits

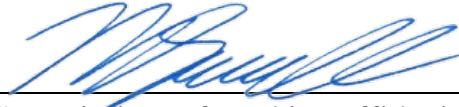
## **LEGAL DESCRIPTION OF CARRIAGE RIDGE PROPERTY**

Parcel 1-27 Section 51-ORO-3, being Part of Lots 1 and 2  
Concession 3, designated as Part 1 on Plan 51R-31409  
Township of Oro-Medonte  
County of Simcoe.

Land Titles Division of Simcoe (No. 51).



This is Exhibit "B" referred to in the  
Affidavit of Martin Ginsberman sworn before me  
this 30<sup>th</sup> day of April 2020.



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A Commissioner for taking affidavits

Request ID: 024387245  
Transaction ID: 75088391  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 14:12:07  
Page: 1

Certified a true copy of the data as recorded on the Ontario Business Information System.



Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
1575349	CARRIAGE RIDGE OWNERS ASSOCIATION	2003/08/07
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO CORP NON-SHARE	ACTIVE	NOT APPLICABLE
<b>Head Office Address</b>		<b>Date Amalgamated</b>
ESA PALTANEN 90 HIGHLAND DRIVE		NOT APPLICABLE
		<b>Amalgamation Ind.</b>
		NOT APPLICABLE
<b>Suite # 2268</b>		<b>New Amal. Number</b>
ORO-MEDONTE		NOT APPLICABLE
ONTARIO		<b>Notice Date</b>
CANADA LOL 2LO		NOT APPLICABLE
		<b>Letter Date</b>
<b>Mailing Address</b>		NOT APPLICABLE
ESA PALTANEN		<b>Revival Date</b>
90 HIGHLAND DRIVE		NOT APPLICABLE
		<b>Continuation Date</b>
<b>Suite # 2268</b>		NOT APPLICABLE
ORO-MEDONTE		<b>Transferred Out Date</b>
ONTARIO		NOT APPLICABLE
CANADA LOL 2LO		<b>Cancel/Inactive Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
		<b>Date Commenced in Ontario</b>
		NOT APPLICABLE
		<b>Date Ceased in Ontario</b>
		NOT APPLICABLE
<b>Activity Classification</b>		
NOT AVAILABLE		

Request ID: 024387245  
Transaction ID: 75088391  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 14:12:07  
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Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1575349

**Corporation Name**

CARRIAGE RIDGE OWNERS ASSOCIATION

**Corporate Name History**

CARRIAGE RIDGE OWNERS ASSOCIATION

**Effective Date**

2003/08/07

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:**

**Name (Individual / Corporation)**

MARTIN

GINSHERMAN

**Address**

141 NORTH MEADOW CRESCENT

THORNHILL  
ONTARIO  
CANADA L4J 3C4

**Date Began**

2015/10/21

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 024387245  
Transaction ID: 75088391  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 14:12:07  
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Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1575349

**Corporation Name**

CARRIAGE RIDGE OWNERS ASSOCIATION

**Administrator:**

**Name (Individual / Corporation)**

MARTIN

GINSHERMAN

**Address**

141 NORTH MEADOW CRESCENT

THORNHILL  
ONTARIO  
CANADA L4J 3C4

**Date Began**

2019/10/22

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Administrator:**

**Name (Individual / Corporation)**

LAURIE

KENNEDY

**Address**

95 MERTON STREET

RICHMOND HILL  
ONTARIO  
CANADA L4E 4P5

**Date Began**

2019/09/16

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 024387245  
Transaction ID: 75088391  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 14:12:07  
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Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1575349

**Corporation Name**

CARRIAGE RIDGE OWNERS ASSOCIATION

**Administrator:**

**Name (Individual / Corporation)**

MAUREEN  
LEE AH YEN

**Address**

40 CUSTOMLINE DRIVE  
  
BRAMPTON  
ONTARIO  
CANADA L7A 3C2

**Date Began**

2019/05/23

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

**Administrator:**

**Name (Individual / Corporation)**

MAUREEN  
LEE AH YEN

**Address**

40 CUSTOMLINE DRIVE  
  
BRAMPTON  
ONTARIO  
CANADA L7A 3C2

**Date Began**

2019/05/23

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

Request ID: 024387245  
Transaction ID: 75088391  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 14:12:07  
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Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

Ontario Corp Number

1575349

Corporation Name

CARRIAGE RIDGE OWNERS ASSOCIATION

Last Document Recorded

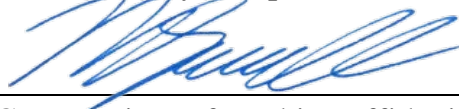
Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2020/02/26

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this certified report in electronic form is authorized by the Ministry of Government Services.

This is Exhibit "C" referred to in the  
Affidavit of Martin Ginsberman sworn before me  
this 30<sup>th</sup> day of April, 2020.



---

A Commissioner for taking affidavits

FOR OFFICE USE ONLY

SC141617  
 Certificate of Receipt  
 Certificat de Récépissé  
 AUG 14 2003 1047

*[Signature]*  
 Land Registrar / Registrateur. Simcoe #51 Barrie

(1) Registry <input type="checkbox"/>	Land Titles <input checked="" type="checkbox"/>	(2) Page 1 of 44 pages				
(3) Property Identifier(s)	Block	Property				
(4) Nature of Document <b>Application to Register Notice of an Agreement (Section 71 - Land Titles Act)</b>						
(5) Consideration Dollars \$						
(6) Description <b>Parcel 1-27 Section 51-ORO-3, being Part of Lots 1 and 2 Concession 3, designated as Part 1 on Plan 51R-31409 Township of Oro-Medonte (formerly Township of Oro) County of Simcoe.</b>  Land Titles Division of Simcoe (No. 51).						
(7) This Document Contains: <table style="width: 100%; border: none;"> <tr> <td style="border: none;">(a) Redescription</td> <td style="border: none;">(b) Schedule for:</td> </tr> <tr> <td style="border: none;">New Easement Plan/Sketch <input type="checkbox"/></td> <td style="border: none;">Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/></td> </tr> </table>			(a) Redescription	(b) Schedule for:	New Easement Plan/Sketch <input type="checkbox"/>	Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/>
(a) Redescription	(b) Schedule for:					
New Easement Plan/Sketch <input type="checkbox"/>	Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/>					

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule

(8) This Document provides as follows:  
**CARRIAGE HILLS RESORT CORPORATION, the registered owner of the aforesaid lands, has an unregistered estate, right, interest or equity in the land registered in the name of Carriage Hills Resort Corporation in respect of the land described above and hereby applies under Section 71 of the Land Titles Act for entry of a Notice of Agreement dated the 8th day of August, 2003, between Carriage Hills Resort Corporation and Carriage Ridge Owners Association.**

The evidence in support of this application consists of an executed copy of the aforesaid Agreement.

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest) Name(s)	Signature(s)	Date of Signature Y M D
<b>CARRIAGE HILLS RESORT CORPORATION</b>	<i>[Signature]</i>	2003 08 08
I have authority to bind the Corporation.	Per: <b>John Boville</b> Title: <b>Vice-President</b>	

(11) Address for Service: **R. R. #1, 1101 Horseshoe Valley Road, Comp.112, Barrie, Ontario, L4M 4Y8**

(12) Party(ies) (Set out Status or Interest) Name(s)	Signature(s)	Date of Signature Y M D
<b>CARRIAGE RIDGE OWNERS ASSOCIATION</b>		

(13) Address for Service: **R. R. #1, 1101 Horseshoe Valley Road, Comp. 58, Barrie, Ontario, L4M 4Y8**

(14) Municipal Address of Property  
 3303 Third Line North  
 Township of Oro-Medonte

(15) Document Prepared by:  
**Samuel H. Nash Esq.**  
**Goldman Sloan Nash & Haber LLP**  
 250 Dundas Street West  
 Suite 700  
 Toronto, Ontario  
 M5T 2Z5

Fees and Tax	
Registration Fee	
<b>Total</b>	<b>70</b>



**TIME SHARING AGREEMENT**

**THIS AGREEMENT** made August 8, 2003.

**BETWEEN:**

**CARRIAGE HILLS RESORT CORPORATION,**  
a corporation incorporated under the laws of the  
Province of Ontario,

(hereinafter called "**Carriage Hills**")

OF THE FIRST PART

- and -

\_\_\_\_\_,  
(hereinafter called the "**Purchaser**")

OF THE SECOND PART

- and -

**CARRIAGE HILLS HOSPITALITY INC.,**  
a corporation incorporated under the laws of the  
Province of Ontario,

(hereinafter called the "**Manager**")

OF THE THIRD PART

- and -

**CARRIAGE RIDGE OWNERS  
ASSOCIATION,** a not for profit corporation  
incorporated under the laws of the Province of  
Ontario,

(hereinafter called the "**Association**")

OF THE FOURTH PART

**RECITALS**

**WHEREAS:**

1. Carriage Hills is the registered owner of the Property;
2. Carriage Hills is constructing seventy-eight Units in three (3) buildings on the Property;
3. Carriage Hills is constructing recreational facilities on the Property;
4. Carriage Hills intends on operating the Property as a Resort;
5. Carriage Hills has agreed to sell to Purchaser, as a tenant in common with it, an Undivided Interest, and plans to sell other Undivided Interests to others, also as tenants in common;
6. It is the intent that each tenant in common shall be entitled to the use of a Unit for an agreed Interval and shall not be entitled by reason of being a tenant in common to possession or use of the Unit during other times of the year;

7. To give effect to the foregoing time sharing arrangement it is necessary that all tenants in common be or become parties to this Agreement;
8. The Manager has agreed to join herein for the purpose of providing certain services;
9. Association has agreed to assume the duties herein provided;

**WITNESSETH** that for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

#### **ARTICLE I - DEFINITIONS**

- 1.01 In this Agreement:
- (a) "Act of Default" is defined in Section 8.01;
  - (b) "Act of Infringement" is defined in Section 5.04;
  - (c) "Act of Trespass" is defined in Section 1.01(mmmm);
  - (d) "Act of Vandalism" is defined in Section 1.01(ssss);
  - (e) "Adherence Agreement" means the agreement attached as Exhibit "B";
  - (f) "Agreement" means this Time Sharing Agreement;
  - (g) "Assigned Time" is defined in Section 2.06;
  - (h) "Assigned Unit" is defined in Section 2.06;
  - (i) "Association Property" means all real and personal property, fixtures, apparatus, equipment, appliances, furnishings, furniture, supplies and other items owned by the Association for the benefit of Owners and includes Common Furnishings;
  - (j) "Assumption and Consent Agreement" means an agreement defined in Section 5.05 and attached as Exhibit "C";
  - (k) "Basic Charge" is defined in Section 6.03(c);
  - (l) "Board" means board of directors of Association;
  - (m) "Bonus Use Time Program" means the reservation and use by an Owner, in addition to the reservation and use of his Assigned Unit at his Assigned Time and upon the payment of a use fee in addition to his Basic, Special and Personal Charges, of any Unconfirmed and/or unoccupied Unit any time for all or any portion of a Use Period;
  - (n) "Budget" is defined in Section 6.03;
  - (o) "By-laws" means the By-laws of the Association;
  - (p) "Calendar" is defined in Section 2.05;
  - (q) "Centre" means the adjacent lands presently owned by Horseshoe Valley Resort Limited;
  - (r) "Charter" means the Articles of Incorporation of the Association;
  - (s) "Co-Owner" means an ownership interest where an Interval is owned by more than one Owner;
  - (t) "Common Furnishings" means furniture, appliances, equipment and furnishings in Unit;

- (u) "Complete Taking" is defined in Section 10.01;
- (v) "Confirmed Use Period" is defined in Section 2.08;
- (w) "Deed" is the document registered at the registry office transferring Interval to Owner;
- (x) "Defaulting Person" is defined in Section 8.01;
- (y) "Destruction" is defined in Section 10.01;
- (z) "Easement Agreement" means agreements with the adjacent landowner (Horseshoe Valley Resort Limited) with respect to rights of way, utilities, driveways and other like uses, subjecting the Property and benefiting the Property;
- (aa) "Even Year" is defined in Section 2.06(b);
- (bb) "Every Year" is defined in Section 2.06(b);
- (cc) "Exchange" means the exchange by Owners of their Use Periods with owners or holders of use periods in other time sharing projects, or in other real estate that is not in a time share project. This is called "External Exchange". An Exchange is not a change in ownership of Use Periods. Owners simply exchange use of their Use Periods on a temporary basis;
- (dd) "Exchange Agreement" means an agreement to provide a program for External Exchange made with one or more independent Exchange Agents, approved by Carriage Hills;
- (ee) "Exchange Agent" is a person who operates any Exchange Program. It may be an independent company and/or Association;
- (ff) "Exchange Program" means a service whereby Owners may Exchange their Use Periods Externally;
- (gg) "Exchange User" means the person who receives, through an External Exchange Program, the right to use a Unit during a Use Period;
- (hh) "Expropriation" is defined in Section 10.01;
- (ii) "Fair Rental Value" for a Unit means the cost of renting on a daily basis a comparable place to stay elsewhere near the Resort;
- (jj) "Fidelity Bond" is defined in Section 9.02(d);
- (kk) "Fixed Time" is defined in Section 2.06(c);
- (ll) "Floating Time" is defined in Section 2.06(c);
- (mm) "Floating Unit Right" is defined in Section 2.06(a);
- (nn) "General Account" is defined in Section 6.04;
- (oo) "Improvement" is defined in Section 3.09;
- (pp) "Infringing Owner" is defined in Section 5.04;
- (qq) "Injured Person" means every Owner, Exchange User or Occupant who cannot use a Unit because of an Act of Trespass or Vandalism. There can be several Injured Persons. For example, a Unit may be damaged so that it cannot be used for later Use Periods. Each person who had the right to use the Unit during later Use Periods would be an Injured Person;

- (rr) "Interval" means an Interval Ownership;
- (ss) "Interval Identification Number" is defined in Section 2.01;
- (tt) "Interval Owner" or "Owner" means a person who from time to time is an Owner of an Undivided Interest in the Property who has become a party to this Agreement, either by being an original party, as in the case of Carriage Hills, or, the Purchaser, or, by being a New Owner;
- (uu) "Interval Ownership" or simply an "Interval" means:
  - (i) one ownership share, being seven consecutive days, in the Property (including an undivided fee simple interest in the land); plus
  - (ii) the right to reserve and use for a period of about one week:
    - (1) a Unit as assigned by Manager;
    - (2) every year, or every other year on the odd or even years; and on
    - (3) a fixed time or floating time basis; plus
  - (iii) membership in Association.

These 3 parts of an Interval are indivisible;
- (vv) "Interval Ownership Program" is the common scheme and plan for the Intervals;
- (ww) "Investment Policy" is defined in Section 6.06;
- (xx) "Joint Use Agreement" is an agreement with the adjacent landowner (Horseshoe Valley Resort Limited) providing for joint use of certain facilities located at the Centre;
- (yy) "Liquidated Damages" means the amount of damages that has been agreed to in advance equal to 200% of the Fair Rental Value of Unit for each day or part of a day during which Trespasser or Vandal prevents use of that Unit. Association will decide Fair Rental Value. Association's decision is final;
- (zz) "Manager" means the Party of the Third Part and any successor;
- (aaa) "Major Service Period" is defined in Section 2.03;
- (bbb) "Minor Service Period" is defined in Section 2.03;
- (ccc) "Mortgage" means every kind of security device;
- (ddd) "Mortgagee Clause" is defined in Section 9.02(a);
- (eee) "New Owner" is defined in Section 3.01;
- (fff) "Obsolescence" is defined in Section 11.05;
- (ggg) "Occupant" means each Owner, Exchange User and their Renter and Visitor when on any part of Property. It also includes Visitor of an Occupant who is not an Owner or Exchange User;
- (hhh) "Odd Year" is defined in Section 2.06;
- (iii) "One Share" is defined in Section 6.02(b);
- (jjj) "Partial Destruction of Units" is defined in Section 10.01;

- (kkk) "Partial Destruction Not Affecting the Units" is defined in Section 10.01;
- (lll) "Partial Taking" is defined in Section 10.01;
- (mmm) "Partial Taking of Units" is defined in Section 10.01;
- (nnn) "Partial Taking Not Affecting the Units" is defined in Section 10.01;
- (ooo) "Partition" means a legal proceeding to divide land and give part to each of the Co-Owners, or a court ordered sale of the land and divide the sale proceeds among the Co-Owners;
- (ppp) "Personal Charges" is defined in Section 6.02(e);
- (qqq) "Prior Owner" is defined in Section 3.01;
- (rrr) "Proceeds" is defined in Section 6.18;
- (sss) "Program" means the Interval Ownership Program;
- (ttt) "Program Documents" are the documents accrediting and governing the Program;
- (uuu) "Program Rules" means the rules for the Program made by Carriage Hills, Board or Manager;
- (vvv) "Property" means the land described in Exhibit "A";
- (www) "Renter" means each person to whom an Owner or Exchange User rents the Use Period he is entitled to use;
- (xxx) "Reserve Account" is defined in Section 6.05;
- (yyy) "Reserved Rights" is defined in Section 11.02;
- (zzz) "Resort" means the Units and recreational facilities built on the Property;
- (aaaa) "Resort Expenses" is defined in Section 6.02(a);
- (bbbb) "Restoration Funds" is defined in Section 10.01;
- (cccc) "Season" is defined in Section 2.05;
- (dddd) "Service Period" is defined in Section 2.03;
- (eeee) "Special Charge" is defined in Section 6.02(d);
- (ffff) "Subsidy Agreement" is the agreement attached as Exhibit "D";
- (gggg) "Supplemental Budget" is defined in Section 6.07;
- (hhhh) "Threatened Owner" is defined in Section 5.04;
- (iiii) "Time Period" is defined in Section 2.03;
- (jjjj) "Total Destruction" is defined in Section 10.01;
- (kkkk) "Total Taking" is defined in Section 10.01;
- (llll) "Transfer" includes:
  - (i) a sale, voluntary or forced, including a judicial or power of sale;

- (ii) a gift or bequest pursuant to a will at a person's death; and
  - (iii) a transfer by operation of law upon death, if there is no will;
- (mmmm) "Trespasser" means any Owner, Exchange User or other Occupant who:
- (i) does not vacate a Unit at the end of the Use Period;
  - (ii) who uses a Unit during someone else's Use Period without permission;
  - (iii) who by any other act or failure to act prevents someone else from using a Unit he is entitled to use; or
  - (iv) does any one of these things as an "Act of Trespass";
- (nnnn) "Undivided Interest" means the Undivided Interest or share in the Property owned by him as a tenant in common;
- (oooo) "Unit" or "Units" means the residential resort units to be built on the Property;
- (pppp) "Unused Use Periods" is defined in Section 4.17(b);
- (qqqq) "Use Period" is defined in Section 2.03;
- (rrrr) "Use Year" is defined in Section 2.03;
- (ssss) "Vandal" means any Owner, Exchange User or other Occupant who damages a Unit or Common Furnishings so that the Unit cannot be lived in during any Use Period. Making a Unit so it cannot be lived in is an "Act of Vandalism"; and
- (tttt) "Visitor" means the family, guest, and other people allowed or invited onto the Property by an Owner, Exchange User or Occupant, but Visitor does not include Renter or Exchange User themselves.

## ARTICLE II - CREATION OF INTERVAL OWNERSHIPS AND RESERVATION AND USE RIGHTS

- 2.01 Creation of Intervals. For each Unit 51 separate Every Year Intervals are here and now created. Carriage Hills may further divide each Every Year Interval into 1 Odd Year Interval and 1 Even Year Interval. Thus, there are at least 51 Intervals and may be as many as 102 Intervals per Unit, depending on the number of Every Year Intervals Carriage Hills divides into Odd and Even Year Intervals. For every Odd Year Interval there will be a corresponding Even Year Interval. Per Unit there may be any combination of one or more Every Year Intervals and one or more pairs of Odd and Even Year Intervals.
- Every Year, Odd Year and Even Year Intervals have the respective ownership shares stated in Section 2.02, and have reservation and use rights Every Year or Every Other Year, respectively, as stated in Section 2.06(b).
- Each Interval will be assigned an "Interval Identification Number".
- 2.02 The nature of one ownership share. Each Every Year Interval and each Odd or Even Year Interval has, as an ownership share, an Undivided Interest as tenant in common. An Every Year Interval shall have a 1/3978 Undivided Interest in the Property. An Odd or Even Year Interval shall have a 1/7956 Undivided Interest in the Property.
- 2.03 Creation of Use Periods and Service Periods.
- (a) There are 52 Time Periods per Unit per Use Year. 52 "Time Periods" during each Use Year are here and now established for each Unit. A "Use Year" is the approximately one

year period beginning on the first check-in day for each Unit in a calendar year and ending on the first check-out day for that Unit the following calendar year.

- (b) These Time Periods will be divided into Use Periods and Service Periods. The 52 Time Periods per Unit will be further divided into:
- (i) 51 Use Periods. A "Use Period" is the seven day period starting at check-in in the afternoon and ending at check-out in the morning seven days later. A Use Period will be identified by the number of its corresponding Time Period;
  - (ii) Check-in/Check-Out Day and Time. Check-in and check-out day for each Time and Use Period in each Unit will be either a Friday, Saturday or Sunday, as may be scheduled each Use Year by Manager. Manager may change the scheduled check-in/check-out day for any Unit during any Use Year by extending or shortening the Major Service Period or any unreserved, unconfirmed or unused Use Period for that Unit, provided that no Owner's Assigned Time is affected (i.e., either extended or shortened). There is no requirement that: the check-in/check-out day be the same for each Unit; or that any particular Unit have the same check-in/check-out day each Use Year or during any Use Year; or that the mix of check-in/check-out days among all Units be the same each Use Year or during any Use Year. The exact check-in and check-out times each day will be stated in Program Rules.
- (c) Service Periods. The times between Use Periods and that Time Period during each Use Year that is not a Use Period in each Unit are called "Service Periods". The Time Period that is not a Use Period is a "Major Service Period". On a Unit by Unit and yearly basis, Manager will designate which Time Period will be the Major Service Period. It does not have to be the same for each Unit or the same Time Period each Use Year. However, when designating a Major Service Period, Manager may not deprive any Owner of his Assigned Time. The periods between the end of one Use Period and the beginning of the next are called "Minor Service Periods". If an Owner has two or more consecutive Use Periods, the Owner's Use Periods will run continuously from check-in for his first Use Period to check-out for the last Use Period. There will be no Minor Service Periods in between. If that Owner so requests, however, Association must service his Unit at the end of each Use Period at no extra expense to the Owner.
- (d) The 53rd Time Period. In certain Years there will be 53 Use Periods instead of 52 and the extra Use Period will be reserved for use by Carriage Hills.
- 2.04 Service Periods for maintenance and repairs. Association must use Service Periods to get the Unit ready for the next person to use and to do maintenance and repairs.
- 2.05 Each Use Period is in one of Two Seasons. Each Use Period is in the "Season" that is set out in a "Calendar" that is published by Carriage Hills from time to time.
- 2.06 Reservation and use rights. Each Interval includes the right to reserve and then use one Use Period. As of the date of this Agreement there are alternative reservation and use systems: Floating Unit; Every Year versus Odd or Even Year; and Fixed versus Floating Time. Each Owner's reservation and use rights must have one of each of these alternatives. If anything said in the Program Rules about reservations and confirmations conflicts with what is said here or elsewhere in this Agreement, what is said in this Agreement controls and must be obeyed.
- (a) Floating Unit Rights.
- (i) "Floating Unit Right" means that the Owner has the right to reserve and use any Unit as assigned by Association.
  - (ii) Floating Unit Rights does not allow you to reserve or confirm use of any Specific Unit. Each Owner with Floating Unit Rights will not be able to reserve or confirm the use of any specific Unit. Instead, Association will assign any one Unit upon arrival. This Unit will be that "Assigned Unit".

(b) Every Year, or Every Other Year (i.e. Odd Year or Even Year) Rights.

- (i) "Every Year" means Owner has the right to reserve and use every Use Year.
- (ii) "Every Other Year", "Odd Year or Even Year" means Owner has the right to reserve and use only every other Use Year. If Owner has Odd Year rights, he may reserve and use only during those Use Years ending in an odd number (for example, 2003, 2005). If Owner has Even Year rights, he may reserve and use only during those Use Years ending in an even number (for example, 2004, 2006).
- (iii) Whether Owner has Every Year or Odd Year or Even Year rights will be stated in Buyer's Acknowledgement. Carriage Hills will irrevocably divide Every Year Interval into 1 Odd Year Interval and 1 Even Year Interval. Carriage Hills will expressly state whether Owner has Every Year or Odd Year or Even Year rights.

(c) Fixed or Floating Time Rights.

- (i) "Fixed Time" means Owner has the right to reserve and use only for a specifically numbered Use Period. It is that Owner's "Assigned Time". That Owner has a permanent reservation. However, the check-in/check-out day will not be fixed. Instead, an Owner with Fixed Time must request a specific check-in/check-out day. Association will assign a specific check-in/check-out day depending on availability. There is no guarantee that the specific check-in/check-out day assigned will be the day Owner requests.
- (ii) "Floating Time" means that Owner has the right to reserve and use a Use Period in that Owner's Season, as assigned by Association in accordance with the reservation system. That Use Period will be that Owner's "Assigned Time".
- (iii) Whether Owner has Fixed or Floating Time rights will be stated in Buyer's Acknowledgement. Carriage Hills will provide a Buyer's Acknowledgement stating: (a) whether Owner has Fixed or Floating Time rights; and (b) if Fixed, the number of the Use Period for which Owner has a permanent reservation; and (c) if Floating, Owner's Season.
- (iv) Limits on the number of Fixed Time Rights. Carriage Hills may not grant Fixed Time rights for more than twenty-five percent (25%) of the total number of Time Periods in any Season in any Use Year for all Units.
- (v) Owner with Fixed Time Rights does not have to reserve or confirm his Assigned Time. An Owner with Fixed Time rights automatically has a reservation to use his Assigned Time, without having to do anything else. However, for each Use Year in which he has these reservation and use rights, the Owner should reserve and confirm, as required by the Program Rules, a specific check-in/check-out day (either Friday, Saturday or Sunday). Otherwise, Association will, on its own, assign the check-in/check-out day. Association will assign the check-in/check-out day depending on availability. There is no guarantee that the Owner will receive the check-in/check-out day he requests. If anything said in the Program Rules about reservations and confirmations conflicts with what is said here or elsewhere in this Agreement, what is said in this Agreement controls and must be obeyed.
- (vi) Owner may convert his Fixed Time Rights to Floating Time Rights:
  - (1) Permanently: An Owner may request that his Fixed Time rights be changed to Floating Time rights. Owner may do so by delivering a request to this effect to Association. The Owner will then have Floating Time rights and must reserve and confirm a Use Period in the Season in which his Assigned Time existed, on the same basis as other Owners with Floating Time rights.



- (2) During any Use Year if permitted: If then permitted by and in accordance with Program Rules, an Owner with Fixed Time rights may convert to Floating Time rights during any Use Year for the Season in which his Fixed Time occurred.
- (vii) Reservations must be made and confirmed each year if you have Floating Time Rights. For each Use Year, an Owner with Floating Time rights must reserve and confirm in his Season his one Use Period per Interval, including the specific check-in/check-out day. Program Rules will govern how these reservations must be made and confirmed. But if anything said in the Program Rules about reservations and confirmations conflicts with what is said here or elsewhere in this Agreement, what is said in this Agreement controls and must be obeyed. The Use Period the Owner thus reserves will be that Owner's "Assigned Time".
- (d) Other rules about reservation and use rights.
- (i) Co-Owners may reserve only one Use Period per Interval. Co-Owners may not reserve separate Use Periods for each Co-Owner.
- (ii) No carry-over of reservation and use rights. No carry-over of any right to reserve and use from one Use Year to the next or later Use Years or to the next or later Odd or Even Year will be allowed.
- (iii) You cannot reserve, use or exchange unless you have paid all your Charges. Owner (except Carriage Hills) must pay all Basic Charges Special Charges and other amounts that may be assessed in advance before he may reserve, use or exchange during that Use Year.
- (iv) Compensation for loss of use due to error. At Association's expense, Association must find another place near the Resort for an Owner to stay during his Assigned Time if a Unit is not then available for that Owner's confirmed use because of an error by Association or Manager.
- 2.07 How changes may be made to reservation procedures. If Manager decides that any reservation system is not manageable or fair, with Board's approval, it may revise this system. All changes must be made in the Program Rules. Owners may change the reservation system upon the affirmative vote of a majority of all Owners. Without an Owner's consent, his ownership share, Floating Unit rights, Every Year or Odd or Even Year rights, and Fixed or Floating Time rights, cannot be changed.
- 2.08 Your use rights during your Confirmed Use Period. The Use Period which each Owner reserves and confirms, whether he has Fixed or Floating rights, is called his "Confirmed Use Period". During his Confirmed Use Period, each Owner will have:
- (a) exclusive right to occupy and use his Assigned Unit and its Common Furnishings; and
- (b) non-exclusive right to use and enjoy Resort along with other Occupants and Owners.

### **ARTICLE III - ASSOCIATION AND MANAGEMENT OF THE RESORT**

- 3.01 Voting Rights and Member of Association. Each Owner is automatically a member of Association. Only Owners are members. When a person acquires an Interval, that person (the "New Owner") becomes the Owner and an Association member. At that same time, the person from whom the New Owner acquired his Interval (the "Prior Owner") ceases to be the Owner of that Interval and an Association member.
- 3.02 One vote per Interval. Each Owner has one vote for each Interval. When more than one person owns an Interval, they are all Association members, but only one vote can be cast per Interval. The vote for their Interval will be cast as stated in the By-laws.

- 3.03 There are two classes of voting rights. Even though each Owner has only one vote for each Interval he owns, the votes of Owners of Odd and Even Year Intervals will count half as much as the votes of the Owners of Every Year Intervals.
- 3.04 By-laws govern Voting. The By-laws govern how voting will be done and how other decisions will be made. If anything stated in the By-laws conflicts with what is stated in this Agreement, what is stated in this Agreement is paramount.
- 3.05 Owners will manage the Resort through Association. Each Owner:
- (a) gives Association all rights and powers to manage according to what is said in the Program Documents, including the right to hire a Manager; and
  - (b) agrees that what Association decides and does in accordance with the Program Documents is binding on him.
- Management is the responsibility of Association, subject to the Program Documents.
- 3.06 Association's powers and duties. Subject to the Program Documents, Association can do all things it considers to be necessary, desirable or appropriate for the:
- (a) operation, management, administration, and protection of Resort; and
  - (b) maintenance, repair, alteration, addition, improvement, rebuilding and restoration of Resort.
- 3.07 Specific Powers and Duties. Some of the specific things Association may or must do are explained throughout this Agreement and Program Documents. They are not stated or summarized in any one section. All of Association's powers and duties are not described expressly and specifically in Program Documents. This does not mean that Association does not have a power or duty that is not expressly and specifically described. Program Documents are to be interpreted to give Association broad and general powers and duties and Association may exercise these powers and duties even on matters that are not expressly and specifically covered in Program Documents.
- 3.08 Specific authorizations and directions to Association. Association is authorized and directed specifically as follows:
- (a) To Administer and act for the Owners under the Joint Use Agreement and Easement Agreement. To represent and act for the Owners, administer and perform and observe all of the obligations and conditions to be performed and observed by the Owners and/or Association, under the Joint Use Agreement and Easement Agreement, including without limitation the making of any amendments thereto.
  - (b) To accept the conveyance of various utilities as provided in the Easement Agreement. To accept the conveyance by the adjacent landowner of utility systems and rights as provided for in the Joint Use Agreement and Easement Agreement.
  - (c) To enter into joint arrangements with the Centre. To enter into arrangements for services and supplies jointly with the Centre.
- 3.09 Maintenance, repair, rebuilding and restoration. Association has the general powers and duties that are stated in this Agreement. Without further direction or approval from Owners, Association must maintain and repair each Unit, Association Property, and Common Furnishings, and keep them in a neat and attractive condition, including:
- (a) cleaning and getting each Unit ready for the next Occupant; doing routine and special maintenance and repair to each Unit during the Service Periods;
  - (b) replacing by lease or purchase as Board may decide Association Property including the Common Furnishings;

- (c) restoring Association Property or any portion thereof. All available insurance and expropriation proceeds must be used for this purpose.

Board will decide exactly when and how these things will be done. Board must immediately repair or replace things that are damaged or destroyed (other than by ordinary wear and tear), except as otherwise provided in this Agreement.

Association may provide optional maid service to Occupants during their Use Period, as determined by Board. If this service is provided, it will be furnished to each Occupant only at his request and added expense as a Personal Charge. Association also may (but unless provided for in any approved Budget is not required to) make changes, additions and improvements ("Improvement(s)") to the Property beyond needed maintenance and repair as determined by Board. However, if any Improvement is not provided for in an approved Budget and Board reasonably estimates that the cost thereof would exceed \$25,000, then Association must first hold a meeting at which the Improvement is considered. Association may make the Improvement unless Owners of more than fifty percent (50%) of the Intervals represented at the meeting vote against the Improvement. If there are not enough funds on hand to pay for any authorized work, Board may assess a Special Charge to the Owners.

- 3.10 Association will act through Board. Board may exercise all of the powers of Association and must perform all of its duties under the Program Documents, unless these documents expressly restrict what Board is to do.
- 3.11 Carriage Hills will appoint the first Board. The first Board is made up of the persons named in the Charter. This Board will act until the first annual meeting of Association which will take place in accordance with the By-laws of the Association.
- 3.12 Board must keep a Manager at all times and may delegate powers and duties to it.
- (a) Prior to Association's first annual meeting, Carriage Hills will engage and maintain a Manager for Association. At Association's first annual meeting, Association must adopt the contract Carriage Hills signed with the Manager and agree to obey it. On behalf of Association, Carriage Hills may hire itself or a related or affiliated entity as the Manager and may also hire a subcontractor (which may also be itself or a related or affiliated entity) to perform some or all of the obligations as Manager.
- (b) Board must keep a Manager at all times and may delegate all of Association's powers and duties to the Manager, unless the Program Documents expressly say that Association or Board must exercise a particular power or perform a particular duty itself. If this restriction is not stated, Board must give that power and duty to the Manager.
- (c) Each contract with a Manager must say that:
- (i) The term may not be longer than five years, but shall provide for automatic five year renewals after the end of the initial term and each subsequent renewal term.
  - (ii) The Manager is always subject to the direction of Board.
  - (iii) The Manager may delegate its powers and duties to one or more sub-agents for any period and upon any terms it decides is proper.
  - (iv) The Association or the Manager may terminate the contract upon not less than ninety (90) days written notice. If the written notice is given by Board, it shall not be given unless such notice is given pursuant to a resolution of Association passed by 66 2/3 % of the Owners at a regularly constituted meeting of Association.
  - (v) On or before the effective date of any resignation by Manager, or of any termination of the contract, Manager must turn over to Board all books and registers, employee and employment registers, licenses and permits, relating to the management and operation of the Resort, whether maintained or held in the Manager's name or in the name of Association or the Resort and whether in

written form or as computer data or otherwise, all of which are and shall be Association Property.

- (d) Any subcontract between the Manager and a subcontractor must incorporate into it the same provisions referred to in subparagraph (c) above.
- 3.13 Board may delegate powers. Subject to the Charter and this Agreement, Board may delegate its powers and duties to others as stated in the By-laws. Board may also hire other persons to perform services. This includes (but is not limited to) lawyers and accountants.
- 3.14 Adoption of Program Rules. Carriage Hills may adopt and change the Program Rules at any time until the first annual meeting of Association. Program Rules must be obeyed by all Owners. At its first annual meeting and at every annual meeting thereafter, Board elected by the Owners must review the Program Rules and may make any changes or new Program Rules it decides are appropriate that are consistent with the other Program Documents. At any time, Board or the Manager, with Board's approval, may also make changes or make new Program Rules. All Program Rules must not be in conflict with the other Program Documents (including but not limited to the provisions of the Program Documents giving Carriage Hills special rights and privileges), and must apply equally to all Owners and their Intervals or to all established classes of Owners and their Intervals (except to the extent that Carriage Hills has special rights and privileges under this Agreement and the Program Documents).
- 3.15 Board will Represent the Owners. Board or Manager, if authorized by Board, may represent Association in any lawsuit or other legal proceedings about the Resort, Association, Units or the Property.
- 3.16 Limitations on Association's powers and duties.
- (a) Association does not have to act if it does not have enough money. No matter what the Program Documents may say, Association (Board, Manager and anyone else acting on its or their behalf) are not required to take any action if Association does not have money on hand to pay for it. Association may wait until it raises enough money from the Owners.
- (b) Owners may veto any direct action taken by Board or Manager. Unless a higher percentage of Owners is expressly required by any part of the Program Documents, a majority of Owners may veto any action of Association, Board or the Manager, or may direct that certain actions be taken.
- (c) General limitations on contracts Board may make. Board may not make a contract to furnish goods or services for a period longer than one (1) year, unless the Owners are first given a chance to vote on the contract and a majority of all Owners do not vote against the contract. This rule will not apply to:
- (i) the management contract and any management subcontract;
  - (ii) any contract for utility services;
  - (iii) insurance policies;
  - (iv) a lease of Common Furnishings;
  - (v) an Exchange Agreement;
  - (vi) Joint Use Agreement; and
  - (vii) Easement Agreement.
- 3.17 No Responsibility. Carriage Hills, Association, Board or Manager (or anyone acting on their behalf) are not responsible for acts or Omissions of any Owner or Occupant.

**ARTICLE IV - PROVISIONS ABOUT USE**  
**PART A - EXCHANGE USE**

4.01 External Exchange is allowed. External Exchange with one or more Exchange Agents is allowed, as approved by Carriage Hills.

4.02 Arrangements for Exchange Programs.

- (a) External Exchange. Association must use reasonable efforts to have an External Exchange Program at all times, unless a majority of all Owners vote not to do so. Initially, Carriage Hills must approve and may make arrangements for an External Exchange and on behalf of Association may sign Exchange Agreement with an Exchange Agent. Association may sign Exchange Agreement with Carriage Hills approval, renew them, and (if lawful to do so) cancel and try to make arrangements with another Exchange Agent, with the approval of Carriage Hills.

Association must keep each Unit and the Property in condition sufficient to comply with the standards set by the Exchange Agreement.

4.03 Risk and Expense. Owner may take part in any Exchange Program at his own option, risk and expense. Any charges made and rules imposed by an Exchange Program will not change or suspend the Charges and duties imposed on Owner by the Program Documents, with these exceptions:

- (a) Owner is not responsible for any Exchange User that uses Owner's Use Period; and
- (b) Owner is not responsible for any Occupant using his Use Period, if he has externally exchanged its use.

Owner must notify Association in writing if he takes part in an Exchange. Owner must pay for his own Exchange and other fees.

4.04 Exchange Users must obey Program Documents. Exchange Users are governed by the Program Documents and must obey them. Exchange User may be required to sign an agreement to this effect and if he does not sign, he and his Renters and Visitors may be refused occupancy. Exchange User is jointly and severally liable and responsible for his Renters and Visitors, even if the Exchange User himself never occupies.

4.05 Carriage Hills, Association and the Manager are not responsible for:

- (a) any External Exchange Program or Agent;
- (b) anything any External Agent does or does not do;
- (c) anything done or not done by any Exchange User; and
- (d) Exchange Users, Renters and Visitors.

**PART B - GENERAL USE RIGHTS,  
RESTRICTIONS AND OBLIGATIONS**

4.06 Owner must stay out of Units except during Assigned Use Period. Owner (except Carriage Hills) must stay out of all Units except that during his Use Period he may use his Assigned Unit.

4.07 Restrictions on Uses; No Pets. Each Unit will be used only for resort purposes, for transient vacation and other rentals, and for time sharing, and no Unit may be used to carry out any other trade or business. No pets will be allowed in any Unit (seeing eye dogs are not considered to be pets). The number of Occupants in each Unit will be limited to the maximum number allowed by law and the Program Documents.

- 4.08 Who may use your Use Periods. An Owner may let Renters, Visitors and Exchange Users use the Unit during the Use Period he reserves and confirms or gets through External Exchange if allowed by the Exchange Program. As an Owner, Exchange User, or Occupant, you will be responsible for Visitors and Renters.
- 4.09 Rental Pool. Every Owner (other than Carriage Hills) promises not to enter into a rental pooling agreement, pooling agreement, or similar program that is not provided for by the Manager. These are programs where Owner's Use Period is rented or placed in a pool together with other Owners' Use Periods and rented out, or where rental income and/or expenses are shared. This restriction will last until December 31, 2005.
- 4.10 Changes to Unit, Building, or Common Furnishing. Association will make all decisions about and be responsible for the colour, decor, Common Furnishings, changes, additions and other improvements to the Property.
- 4.11 Maintenance and Repair. Association will make all decisions and be responsible for normal and other maintenance and repair of the Property. Each Occupant has the duty:
- (a) not to damage, beyond normal wear and tear, any part of the Property; and
  - (b) to keep the Unit (and Common Furnishings) in good order and condition (except for reasonable wear and tear).
- 4.12 Association's right to enter. Each Occupant must allow Association or Manager to enter his Unit during his Confirmed Use Period:
- (a) to inspect the Unit; and
  - (b) to maintain, repair and replace any part of the Unit or the Common Furnishings.

For these purposes Association may enter as allowed by the Program Rules. Association must give reasonable notice before entering, and must try to avoid or reduce interference with an Occupant's use. In case of emergency, Association may enter at any time without notice. Association may also enter to stop any nuisance.

- 4.13 How you must act as an Occupant. Occupant must obey all of the Program Documents and must also obey all local laws and the laws of Ontario and of Canada. Owner must also not act in any way:
- (a) that causes any danger to any person or property;
  - (b) that is unlawful or disorderly;
  - (c) that would damage or injure the welfare or interests of: (i) any other Occupant or any Owner, (ii) Manager or managing agent, or (iii) Association;
  - (d) that is in violation of any part of the Program Documents;
  - (e) that would be harmful or offensive; or
  - (f) that would cause any other nuisance.

Occupant will be responsible for and pay all costs and damages caused by his not doing any of these things. Occupant may be required to sign an agreement to obey the Program Documents before he is allowed to occupy.

4.14 Rules on Vacating Units:

- (a) Duty to Vacate. Occupant must: (i) vacate the Unit occupied at the end of his Confirmed Use Period, or the last date occupancy is allowed under Bonus Time, rental, or other programs (ii) leave the Unit and Common Furnishings in good and sanitary condition (except for reasonable wear and tear), and (iii) obey all Program Rules for check-out.

- (b) Personal Effects. At the end of the Use Period, Occupant must remove all personal effects such as clothing, food, liquor, luggage, etc. No one will be responsible for any personal effects that are left behind. In fact, personal effects not removed will be considered abandoned. Association has the right to dispose of them and if Association sells them, may keep the sale proceeds.

4.15 Unauthorized use of a Unit or a Unit made unusable.

- (a) Eviction. Each Trespasser, Vandal or Occupant found to be utilizing any Unit for unlawful purposes may be removed from the Property at once and waives all eviction notices the law may require.
- (b) Pay Costs and Liquidated Damages. Each Trespasser, Vandal or Occupant must repay Association and each Injured Person for all their costs and expenses caused by the Act of Trespass, Vandalism or unlawful use. These costs include (but are not limited to) costs of another place to stay and extra travel costs and all collection and enforcement costs. To obtain another place to stay, it may be necessary to rent for a period of time longer than the time use is actually prevented. If this happens, the cost of another place to stay includes all of the rent for this longer period of time. Association will decide if it is necessary to rent for a longer time. Association's decision will be final.

Occupant who commits an Act of Trespass, Vandalism or use for unlawful purposes must also pay Liquidated Damages to each Injured Person to compensate the Injured Person for the added damages of losing the use and enjoyment of his Assigned Unit.

- (c) What Association must do. Association must take all reasonable steps to evict the Trespasser or Vandal. Association must help each Injured Person to find another place to stay, at Association's expense. Also at Association's expense, Association must try to collect all costs and Liquidated Damages for the Injured Person, if asked to do so by the Injured Person. (Expenses like these which Association pays out at first, but which are to be paid back, are called advances.)

4.16 Each Occupant may be required to sign an agreement to obey the Program Documents. At the time Occupant checks in (or later), he may be required to sign an agreement to obey the Program Documents. He may be refused occupancy if he will not sign.

4.17 Special Rights of Carriage Hills. No matter what is said in any other part of the Program Documents, Carriage Hills has and keeps these special rights and privileges:

- (a) To reserve and use Intervals. Carriage Hills can reserve and confirm Use Periods it owns on the same basis as other Owners with Floating Unit and Floating Time Rights.
- (b) To use unreserved, unconfirmed or unused Use Periods. Carriage Hills can use Use Periods that for any reason are not reserved, or if reserved are not confirmed if and as required, or if reserved and confirmed, are not used. These Periods are called "Unused Use Periods".
- (c) To rent its Confirmed Use Periods and Unused Use Periods and to use them for sales purposes. Carriage Hills may use its own Confirmed Use Periods and all Unused Use Periods for any purpose, including rentals, sales and other commercial activities permitted by law free from the restrictions imposed by the Program Documents. If Carriage Hills does rent these Use Periods, it alone is entitled to the rental proceeds.
- (d) To use the Resort at all times that it owns any Interval or any Unit for any purpose permitted by law. Similarly, at all times that Carriage Hills is the Owner of any Interval, Carriage Hills may use the Resort for any purpose permitted by law free from the restrictions imposed by the Program Documents.

4.18 Law governing rental use. Ontario law will govern the rental of all Use Periods.

- 4.19 Use Restrictions and Obligations. The use restrictions and obligations imposed are cumulative and not exclusive. People must obey each and every one of the restrictions imposed in Program Documents. Obeying some but not all is not enough.

### **PART C - BONUS USE TIME PROGRAM**

- 4.20 Bonus Use Time Program. Association must provide for a Bonus Use Time Program in the Rules, unless a majority of all Owners vote not to do so. Association must use reasonable efforts to set the daily Bonus Use fee so that it equals or exceeds the average daily costs per use incurred by Association in making available and operating the Bonus Use Time Program, but, if possible, is substantially less than the Fair Rental Value.

### **ARTICLE V - TRANSFERS OF INTERVALS AND OTHER PROVISIONS ABOUT OWNERSHIP**

- 5.01 Owner may Transfer or Mortgage Interval with the Consent of Association. Each Owner, with the consent of Association may Transfer or Mortgage an Interval. If an Owner owns more than one Interval, each can be treated separately. Owner is not required to do with all his Intervals what he does with any one of them.

You may also own an Interval together with others. Two or more people may own an Interval but only if they each own an undivided share. Each person would own a percentage of the Interval.

- 5.02 Each Owner's rights, privileges and duties as a tenant in common are subject and subordinate to the Program Documents. Each Owner waives all rights he may have to Partition for as long as this Agreement remains in effect. An Interval itself cannot be Partitioned. Anyone who is a Co-Owner of an Interval can ask a court to sell the Interval and divide the sale proceeds among all Co-Owners.

- 5.03 You may not Transfer, Mortgage or in any other way infringe on:

- (a) Other Owners' Intervals. The right to Transfer and Mortgage applies only to each Owner's Interval;
- (b) The Property. An Owner can Transfer or Mortgage only his own Interval;
- (c) Each Owner is also prohibited from:
  - (i) doing or allowing anything to happen that would make any other Owner's Interval, the Property, or Association Property or Funds the subject of any lien, attachment or other similar proceeding;
  - (ii) doing or allowing anything to happen against him or his Interval:
    - (1) which may result in sale or threatened sale of the Interval of any other Owner or the Property;
    - (2) which would result in a sale or threatened sale or other action which would cause any interference in the use and enjoyment by any other Owner of their Interval.

- 5.04 Indemnification. Each Owner promises to defend and indemnify each of the other Owners, Carriage Hills and the Association against all claims, liabilities, damages, judgments, costs and expenses including legal fees, any of them has or gets because of the non-compliance with the provisions in this Article.

An Owner who does or permits anything to happen in violation of this Article is called an "Infringing Owner". What an Owner does or permits is called an "Act of Infringement". Each Owner whose Interval or whose use and enjoyment of his Interval is being infringed on is called a "Threatened Owner".



A Threatened Owner may act on his own to protect himself, or he may act with other Threatened Owners or under the authority of Association. He may (but does not have to) settle or compromise any threatened or actual Act of Infringement. In doing so, he may pay all or any part of the money that is being claimed. Threatened Owner does not have to check first if the amount is proper or the claim is valid. Acting on behalf of any Threatened Owner, Association has these same rights. Association also has the same rights to protect any part of the Property or the Funds it holds. Association may also advance to any Threatened Owner all amounts he paid and costs (including legal fees) he incurred. On demand, the Infringing Owner must pay back the Threatened Owner or Association.

- 5.05 Effect of the Restriction on Title on the Transfer of an Interval. In order to protect all Owners and the integrity of the Program, Carriage Hills has filed a Restriction on Title which requires Association's consent to a Transfer of an Interval.

Association must grant consent if New Owner executes and delivers to Association:

- (a) an Assumption and Consent Agreement in the form attached hereto as Exhibit "C"; and
- (b) an Adherence Agreement in the form attached as Exhibit "B".

- 5.06 Transferring an Interval.

- (a) Owner must reference Interval Identification Number. Documents must accompany the Transfer which reference the Interval Identification Number.
  - (b) Owner must give notice to Association. At least ten (10) days before any Transfer, Owner must notify Association in writing of the Transfer. The notice must give: (1) name and address of the New Owner; (2) date of Transfer; (3) copy of Transfer; (4) Interval Identification Number; (5) Assumption and Consent Agreement executed by New Owner; and (6) Adherence Agreement executed by New Owner. Association's consent to the Transfer will not be given and the Transfer will not be recognized if all elements of the notice are not provided.
  - (c) Unless and until this notice is given:
    - (i) Association will not provide its consent to the Transfer nor recognize New Owner;
    - (ii) Registrar of Land Titles will not accept the Transfer for registration; and
    - (iii) Owner will remain fully liable.
  - (d) Release from any further obligations. No Owner is liable for anything done after his Transfer is recognized by Association, but he is and remains liable for things that happened before the Transfer is recognized by Association.
  - (e) Transfer Fees. A Transfer fee may be assessed on each Transfer.
- 5.07 What is automatically included in any Transfer. Transfer includes the interest, if any, of the Owner in Funds in the hands of Association.
- 5.08 Transfer and Mortgage are subject to the Program Documents. An Interval transferred or mortgaged continues to be governed by the Program Documents. A New Owner must obey all the Program Documents.
- 5.09 Unpaid Charges. There is a lien on the Interval to secure payment of Charges. If the Owner has not paid all Charges, the Interval is subject to this lien. The lien is subordinate to any Mortgage. As a part of any Transfer or Mortgage, any party may ask Association for a certificate of unpaid Charges. Within ten (10) days after receiving the request, Association must give the certificate. The certificate will limit the lien rights to those unpaid Charges disclosed, but only as against the person receiving the certificate.

- 5.10 Association must keep a list of Owners. Association will keep a current Owners list but will not provide a copy to Owners in order to protect the privacy of the Owners.

#### ARTICLE VI - FINANCES

- 6.01 Costs will be incurred to run the Resort. These costs will be shared and paid for by the Owners and other people who use the Property, as spelled out in this Article.

6.02

- (a) "Resort Expenses" includes all costs of maintaining the Resort and all charges imposed on the Property. It does not matter who is billed for them. For example, even if Association or Carriage Hills is billed, the charge is still a Resort Expense and is to be shared among all Owners.

Resort Expenses include:

- (i) property and other governmental taxes and charges;
- (ii) utilities (electricity, water, and so on);
- (iii) maid service (other than optional maid service);
- (iv) insurance;
- (v) liabilities and damages;
- (vi) application, renewal and cancellation fees charged by Exchange Programs;
- (vii) expenses pursuant to the Joint Use Agreement, and the Easement Agreement;
- (viii) Personal Charges that Board decides cannot be collected;
- (ix) all other costs incurred except for Personal Charges.

Resort Expenses must also include amounts to provide for the repair, replacement, and/or refurbishment of Association Property, and, any shortfall for any reason in funds to pay costs on a current basis.

- (b) "One Share" means for Every Year Interval Owners:

$$\frac{1}{51 \text{ times the total number of all Units then in the Program;}}$$

For Odd and Even Year Interval Owners, "One Share" means:

$$\frac{1}{102 \text{ times the total number of all Units then in the Program.}}$$

- (c) "Basic Charge" is the regular charge for each Interval. It will be for One Share of Resort Expenses, as estimated in the Budget, plus late charges and interest if the Basic Charge is not paid when due, and all costs of collecting unpaid Basic Charges which include but are not limited to the cost of collection, court costs and legal fees.
- (d) A "Special Charge" is an added charge as needed for each Interval. It will be for One Share of the amount of money needed to keep paying Resort Expenses on a current basis, as estimated in a Supplemental Budget, plus late charges and interest if a Special Charge is not paid when due, and all collection costs on unpaid Special Charges.
- (e) "Personal Charges" means all expenses that result from the act or the failure to act of any Owner, Exchange User, or Occupant (except failure to pay any Basic or Special Charge). Among other things, they include all:

- (i) extra services requested by an Owner, Exchange User or Occupant, including optional maid service, long distance telephone charges;
- (ii) late charges and interest on unpaid Personal Charges;
- (iii) collection costs on unpaid Personal Charges and costs of enforcing the Program Documents including fines, court costs and legal fees;
- (iv) costs to repair any damage (other than ordinary wear and tear) caused by: (i) that Owner, Exchange User or Occupant, or (ii) Renters, Visitors or other Occupants during the time that he is entitled to use;
- (v) costs of replacing Common Furnishings that are lost or missing;
- (vi) damage and injury to any other Owner, Occupant or Association due to his violation of the Program Documents; and
- (vii) any advances made by Association for any Owner, Exchange User or Occupant. Advances are costs incurred by Association in: (i) doing what that Owner was required to (but did not) do, or (ii) repairing or correcting any damage that person caused or is responsible for.

Personal Charges also include Personal Charges against his Renters and/or Visitors.

#### **PART A - HOW COSTS WILL BE SHARED AND MONEY HANDLED**

##### 6.03 How Basic Charges are to be determined and assessed.

- (a) Establishing the Budget and One Share of Resort Expenses. "Budget" means the estimated amount of Resort Expenses for each fiscal year. Before the start of each calendar year, Manager must prepare an estimate of Resort Expenses. Upon review and approval by Board, this estimate (with any changes Board may make) will become the Budget for that year. Board must budget for Reserves. Budget must establish and maintain Reserve Accounts as required by this Article, and must deal with surplus funds from earlier years as required by this Article.
- (b) Adjusting the Budget and One Share of Resort Expenses. Board may (but is not required to) adjust the Budget during any year if it decides that there is or will be more money than Association needs. One Share of Resort Expenses will be adjusted or determined again at the same time the Budget is adjusted.

An Owner will not have the right, because of an adjustment in Budget: (1) to get a refund of any Basic Charge already paid; or (2) not to pay any Basic Charge due but unpaid.

- (c) Assessing the Basic Charge. Manager will assess each Owner for his Basic Charge. Basic Charge will be payable in one lump sum in advance, unless Board decides on a different payment schedule.
- (d) Carriage Hills may establish Budget and assess Basic Charge until Board is elected.

##### 6.04 "General Account". Association must establish: (a) one or more General Accounts; and (b) Reserve Accounts. All Accounts must be established with a bank or other financial institution in the Province of Ontario. All funds received must be used only to pay Resort Expenses.

##### 6.05 "Reserve Accounts" are accounts in which money is to be saved up over a period of years to pay for major repairs, replacements and refurbishment of Association Property. The cost of such major repairs, replacements and refurbishments will be estimated, and an estimated life and date given in a Reserve study. An initial Reserve study will be completed by Association within one year after Association's first full year of operation. The initial cost of such Reserve study and every update thereafter will be a cost of the

Association. The initial Reserve study, and every update thereafter, will be reviewed and approved by the Board in conjunction with the annual Budget process.

Board may consider investments and interest earned on the Reserve Accounts in making Budget decisions. The amounts which Board decides must be reserved for each year must be included in the Budget and billed as a part of the Basic Charge. The amounts collected must be put into one or more Reserve Accounts separate from the General accounts. Upon completing the initial Reserve study and within one year after the same, the Board will adopt an "Investment Policy". The Investment Policy will amongst other things outline the nature of the Reserve Account investments and provide for rules governing the same. Board may select, and utilize an independent analyst in drafting of and ongoing management of Associations investments.

With approval of Board, Manager may make withdrawals from any Account for the purposes allowed by the Program Documents. Withdrawals will be consistent with and limited to the approved Budget, Reserve study and Investment Policy.

- 6.06 Surplus Funds. Surplus funds left over at the end of any year must be used to pay Resort Expenses (except for Improvements) in the next year. At the annual meeting Association must adopt a resolution that requires this. For this purpose, each Owner gives Board President a proxy, and makes Board President his special attorney in fact, to adopt this resolution. Board must use these surplus funds to pay Resort Expenses for the next year.
- 6.07 How Special Charges are to be determined and assessed. If for any reason Association does not have enough money to pay Resort Expenses, on a current basis, Manager must:
- (a) Establish the Supplemental Budget. Prepare a revised Budget. Upon review and approval by Board, this revision (with any changes Board may make) will become the "Supplemental Budget" for that year. A Supplemental Budget may be established as many times each year as is needed. It may also be established due to any extraordinary item. This is any major item which was not provided for in the current Budget or in any Reserve Account;
  - (b) Assess an Accrued Deficit in the next Budget. A Deficit Assessment may be necessary when for any reason the Association does not have enough money to pay all Resort Expenses on an annual basis. It may also be established due to any extraordinary item. This is any major item which was not provided for in the current Budget or in any Reserve Account. Upon review and approval by the Board, this Deficit amount in any one or more fiscal periods (with any changes Board may make) will become a "Deficit Assessment" for the next Budget year. A Deficit Assessment will be adopted by the Board as a part of the annual Budget process and will become an amount due by each Owner; or
  - (c) Assess a Special Charge. When it will be due. Once a Supplemental Budget or Deficit Assessment is established, Manager will assess each Owner a Special Charge. A Special Charge may be made payable in one lump sum or in instalments as approved by Board.
- 6.08 How Charges will be assessed for the year of purchase. Charges will be assessed to and be payable in full by an Owner for the Use Year in which he purchased if and only if in that Use Year that Owner's Season or Fixed Use Period starts or occurs after the date of closing.
- 6.09 Board must give out financial statements. Board must give Owner a copy of the Budget and Supplemental Budget. Upon request of an Owner, Board shall make available, at Owner's expense, copy of Annual Audit.

The Budget must be sent to each Owner at least thirty (30) days before the annual meeting of Association. The Budget for the first calendar year must be sent out as soon as reasonably possible.

The Annual Audit must be prepared in accordance with generally accepted accounting principles by an independent accountant. Full and adequate books and registers

reflecting the results of operations of the Resort must be kept, maintained and made available to all Owners for review upon advance request made to Manager, during business hours. Manager may charge a reasonable fee for any copies or reproductions requested by an Owner.

**PART B - THE FINANCIAL OBLIGATIONS OF OWNERS,  
EXCHANGE USERS, AND OCCUPANTS**

- 6.10 As an Owner, Exchange User and/or Occupant you promise to pay the Charges. Each Owner must pay when due all Charges. Each Owner, Exchange User and Occupant must pay all Personal Charges.
- Carriage Hills may pay a subsidy instead of Charges. Instead of paying Basic and Special Charges on Intervals it owns, Carriage Hills may elect to pay a subsidy. The subsidy will be calculated substantially as stated in the form of "Subsidy Agreement" attached as Exhibit "D". Carriage Hills has this right until all Intervals are transferred.
- 6.11 You cannot avoid paying by giving up your Interval. No Owner, Exchange User or Occupant can avoid his obligation to pay. An Owner cannot avoid it by: (i) waiving any of his rights as an Owner; or (ii) by abandoning his Interval; or (iii) by abandoning use of his Use Period.
- 6.12 When you must pay. A bill for Personal Charges is due at check out time.
- 6.13 Interest, late charges, collection and enforcement costs. Interest will be assessed at such rate as Board shall establish in the Program Rules on each Charge that is not paid when due. A late charge will also be assessed for extra handling costs. Costs to collect Charges and to enforce any other duties under the Program Documents will also be assessed, if incurred by Association. These costs are called collection and enforcement costs. They include but are not limited to court costs and legal fees.
- 6.14 Personal Charges paid in advance. Association may require advance payments or a security deposit from any Owner, Exchange User or Occupant. Association may use these funds until all his Charges are paid. Carriage Hills, Association, Board, and Manager are not responsible for any unpaid Personal Charges, even if they did not ask for or get or keep an advance payment or security deposit. Each Owner, Exchange User and Occupant must pay his Personal Charges, whether or not he made an advance payment, or put up a security deposit, or was refunded any amount paid in advance or deposited.
- 6.15 Association agent only. Association, Board, and Manager act as agent for the Owners, and do not have any personal liability for Resort Expenses or Personal Charges.

**PART C - PROTECTIONS AGAINST NONPAYMENT; LIEN  
AND SALE RIGHTS**

- 6.16 Interval is automatically subject to a lien for each Charge. Association has a lien and charge on the Interval of each Owner. This lien is to secure the payment of Basic Charges and Personal Charges by an Owner (and all interest, late charges and collection and enforcement costs). If such Basic Charges and Personal Charges are unpaid for longer than two (2) months, this lien or charge shall be enforceable by the same remedies as are available to a mortgagee (including, without limitation, a power of sale as provided in Section 6.19. Association shall provide a statement of any amount claimed in respect of such lien and charge to any person requesting same. Association may at its option from time to time postpone or waive such lien or charge.
- 6.17 Under this Lien your Interval may be sold. If payment of Charges is not made, Association can sell the Interval.
- 6.18 Proceeds from your Interval are also subject to this lien. This lien also covers Proceeds. "Proceeds" means all money and other things received on account of an Interval and its use. Proceeds include all rents; insurance and Expropriation Proceeds; sales Proceeds; and cash and non-cash Proceeds.

- 6.19 Provided and it is hereby agreed that if an Owner shall make default in the payment of any Basic Charge or Personal Charge, and two (2) months shall have elapsed without such payment being made, it shall be lawful for Association, after having given written notice to the persons and in the manner and form prescribed by Part III of the Mortgages Act, R.S.O. 1990, not less than thirty-five (35) days previous, without any further consent or concurrence of the Owner in default, to sell and absolutely dispose of his Interval, subject to the provision of this Agreement, with the appurtenances, by public auction or private contract, and to convey and assure the same when so sold to the New Owner thereof and to do and execute all such assurances, acts, matters or things as may be found necessary for the purposes aforesaid, provided always that the Program Documents are complied with, and the Association shall stand and be possessed of and be interested in the monies to arise and be produced by such sale in the first place to pay and satisfy any Mortgage, in the next place to pay and satisfy the costs and charges of preparing for and making the sale as aforesaid, and all other costs, charges, damages and expenses which the Association shall bear, sustain or be put to for taxes, insurance and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts and duties hereby imposed on Association, and in the next place to pay and satisfy the Basic Charges and Personal Charges, or so much thereof as shall remain unpaid up to and including the day on which same is satisfied, and finally, to pay the surplus, if any, to the Owner. Provided always and it is hereby further agreed and declared that notwithstanding this power of sale, Association shall have and be entitled to its rights of foreclosure of the equity of the Owner in default in the Interval and/or the right to sue for the payment provided for in Article VI hereof as fully and effectually as if this power of sale had not been contained herein.
- 6.20 Priority of Lien. This lien is prior and superior to all other rights in that Interval except the lien is subject and subordinate to any Mortgage.
- 6.21 Owner's Personal Liability and the Lien.
- (a) An Owner must pay: (1) Personal Charges, and (2) Basic and Special Charges due or incurred while an Owner. Owner remains personally liable for these Charges (and interest, late charges, and collection costs on them), even after the Transfer to New Owner.
- (b) A New Owner is not personally liable for Charges and obligations of Prior Owner, if the New Owner receives a certificate from the Association that there are no unpaid Charges. Interval remains subject to a lien for all Prior Owner's unpaid Charges (including interest, late charges and collection and enforcement costs) unless New Owner obtains a clearance certificate.

**ARTICLE VII - THE RESPONSIBILITIES OF OWNER,  
EXCHANGE USER AND OCCUPANT FOR OTHER PEOPLE**

- 7.01 Each Owner agrees that he is personally liable for his Renters and Visitors, as follows:
- (a) Each Owner promises and guarantees his:
- (i) Renters and Visitors will obey the Program Documents;
- (ii) Renters and Visitors will make the payments they are required to make and will act the way they are supposed to act according to Program Documents; and
- (iii) Renters and Visitors do all the things set out herein.

If his Renters and Visitors do not pay or act as required, each Owner must pay and be fully responsible for them. Owner must also pay for all damages and liabilities, and all interest, late charges and collection and enforcement costs. This includes all damages and liabilities caused and incurred as a Trespasser or Vandal. Owner will be assessed as a Personal Charge.

- (b) Each Owner also agrees to indemnify the other Owners, Manager and Association from his Renters and Visitors. Owner promises to pay for all claims, liabilities, damages, judgments, costs and expenses, including interest, late charges and collection and enforcement costs and Personal Charges.

7.02 Each Exchange User and Occupant is personally liable for his Renters and/or Visitors. Each Exchange User and Occupant makes the same promises, guarantees and indemnities about his Renters and/or Visitors, that an Owner makes in Section 7.01 above. Each Exchange User and Occupant is jointly and severally liable with his Renters and/or Visitors, and will be assessed with a Personal Charge.

7.03 Each Co-Owner is jointly and severally liable under this Agreement. Co-Owners are also jointly and severally liable for each other's Renters and Visitors.

### **ARTICLE VIII - DEFAULT AND ENFORCEMENT**

8.01 "Defaulting Person" means any Owner, Exchange User, Occupant or other person who violates any part of the Program Documents, or is in default of any Mortgage. A Defaulting Person includes anyone who:

- (a) does not pay the money he owes to the Association or any Mortgagee;
- (b) acts contrary to, or fails to act, the way he is required to; or
- (c) does not obey the Program Documents in any other way.

A Defaulting Person also includes any Trespasser or Vandal and any Infringing Owner. Doing any one of the things stated in this Section or acting as a Trespasser, Vandal or Infringing Owner is an "Act of Default".

Association may force a Defaulting Person to comply, and may seek any relief and has all the remedies for an Act of Default which: (1) the law generally gives or allows; and (2) are specifically given or allowed by the Program Documents.

8.02 Association may stop any activity in violation of the Program Documents. If necessary to do so, Association can enter any Unit at any time. Association may, in its discretion, use any means and as much force as is reasonable. However, Association and Board, Manager, and anyone else acting for it are not responsible for not stopping any violation of the Program Documents, and are also not responsible for anything that happens if an attempt is made to stop any violation. Each Owner, Exchange User and/or Occupant must comply with each part of the Program Documents, whether or not an attempt is made to stop the violation.

8.03 Association may advance funds to force compliance or to correct a violation or to correct and repair any damage caused. Association may also advance funds to any Injured Person, Threatened Owner or any other person who is damaged by an Act of Default to compensate them for their expenses (including legal fees). The Defaulting Person must pay back all advances as a Personal Charge.

8.04 To collect any money that is owed by a Defaulting Person, Association can debit Funds held by the Association on behalf of the Defaulting Person. The Defaulting Person must restore any Funds that are taken.

8.05 Association may fine Defaulting Person as allowed in the Program Rules. Until Act of Default is cured, Association may also suspend or take away from Defaulting Person his:

- (a) right to reserve and/or use his Use Period;
- (b) right to exchange the use of his Use Period;
- (c) right to reserve and/or use Bonus Use Time;

- (d) other privileges of ownership and Association membership, including voting;
- (e) utility services to the Unit; and
- (f) services such as optional maid service.

A suspension or fine will become effective when notice of it is sent to the Owner.

Association may not suspend an Owner's use rights if an Exchange User has a confirmed reservation to use that Owner's Confirmed Use Period. Association must notify the Exchange Agent of any suspension.

Unless the suspension is due to the Owner's failure to pay his Charges, Board must also give Defaulting Person notice and the opportunity to appear before it in a hearing and oppose the suspension or fine. Defaulting Person must be sent notice of hearing. Notice must state the purpose of the hearing, reasons for suspension, and place and date of hearing. Notice must be mailed addressed to Defaulting Person at least twenty-five (25) days before hearing date. Board's decision made after the hearing will be final, whether or not Defaulting Person attends. Board must give written notice of its decision to him.

- 8.06 If Association has suspended an Owner's right to use his Use Period, Association may use his Use Period and let others use it. In doing so, Association may without delay evict the Owner and any people he has let use his Confirmed Use Period. Association will not be liable to anyone for any damages for taking possession. It may also rent the Use Period and apply the monies received, after deducting its costs, to the Owner's debts.
- 8.07 Association may take all rents and other monies arising from the Use Period of a Defaulting Person. For this purpose, Association is authorized by each Owner to act as that Owner's attorney in fact. Association may charge a reasonable fee, as stated in the Program Rules, and must apply all rents and other monies it collects (after deducting its fee) to the Owner's unpaid Charges.
- 8.08 A lawsuit may be commenced against the Defaulting Person for any remedy or relief generally given or allowed by law or specifically given or allowed by the Program Documents. This includes:
  - (a) obtain judgment and collect money;
  - (b) stop any violation; and
  - (c) specifically enforce the Program Documents.
- 8.09 Association may sell an Owner's Interval without first going to court.
  - (a) Initial Procedures. Before any sale of the Interval may occur:
    - (i) Association must give notice to Defaulting Person. Notice of default must state:
      - (1) the nature of the default;
      - (2) the total of any unpaid amounts; and
      - (3) a demand for payment.
    - (ii) If default is not cured within fifteen (15) days after the notice is given, a second notice must be given to the Defaulting Person. It must state:
      - (1) the amount claimed to be due;
      - (2) that a lien is claimed against that Interval for the default in the amount



stated, plus interest, late charges and collection and enforcement costs; and

- (3) that Association intends to have the Interval sold.
- (b) If default is cured before the sale occurs, Association must cancel the sale.
- (c) Proceeds from sale will be applied to: (1) payment of any outstanding Mortgage; (2) costs and expenses of sale; (3) payment of Charges; and (4) if any amount is left, to Owner.
- (d) New Owner must execute Assumption and Consent Agreement and Adherence Agreement.

The sale may not produce enough money to pay all Charges, interest, collection and enforcement costs. If this happens, Defaulting Person must pay the deficiency. Association may, to the full extent permitted by law, sue him to collect this unpaid amount, plus interest on it and collection costs.

### ARTICLE IX - INSURANCE

- 9.01 Board must review the insurance at least once a year. Manager must prepare (or have an insurance agent prepare) an analysis of:
- (a) the insurance needs of Association and the Owners; and
  - (b) how well the existing insurance covers these needs.

Board must review this analysis. Board may then make any changes to the insurance it decides. All Board decisions are final.

Board may obtain insurance directly for Association, and/or arrange insurance jointly with the Centre and/or Carriage Hills, and may be covered by blanket policies.

Board has the right to decide to increase coverage or obtain more beneficial terms than those stated herein. Board also may buy additional kinds of insurance that are not mentioned herein. All Board decisions are also final.

Board also has the right to decide to decrease coverage or obtain less beneficial terms, if it decides the coverage or terms are too expensive or not affordable.

9.02 Property; Liability; Directors and Officers; and Fidelity Bond.

(a) Property Insurance:

- (i) Basic Risks Fire Policy. An All Risk or equivalent Fire Policy:
  - (1) Extended Coverage, if available, to include direct loss from risks generally covered by a standard Extended Coverage Endorsement, such as windstorm, hail, smoke, explosion, riot, civil commotion, aircraft, vehicles and so on; and
  - (2) Vandalism and malicious mischief. Coverage must include, if available, loss due to vandalism and malicious mischief.
- (ii) Minimum amount with Inflation Guard. Coverage must include:
  - (1) 100% of the full cost of replacing Units, Buildings, other improvements on Association Property including Common Furnishings; and
  - (2) Inflation Guard endorsement.
- (iii) Form of policy:

- (1) Policy is to be written with Association as a named insured, for the benefit of all Owners and their Mortgagees;

- (2) Required and prohibited clauses. Policy should say that:

Coverage should not be affected, reduced or lost by any action or negligence by Association, Board, Manager, Owner or Occupant;

Policy cannot be cancelled or substantially changed by insurer without at least sixty (60) days written notice to Board and Manager;

Insurer does not have the right to require that any part of Property be restored or replaced, if Owners decide not to do so; and

Insurer waives all subrogation rights against Association, Owners and Occupants.

- (3) Policy should also contain a standard clause ("Mortgagee Clause") for the benefit of anyone who holds a Mortgage on an Interval. Mortgagee Clause should say that:

Each Mortgagee who gives its name to Board and the insurer should be added as an insured party;

Coverage for a Mortgagee's benefit will not be affected or lost by any action or negligence of Association, Board, Manager or any Owner or Occupant;

Insurer will provide at least thirty days advance written notice of cancellation and/or material change in coverage directly to any Mortgagee who submits proof of the Mortgagee's interest to and requests such notice from the insurer;

Insurer waives:

Any right to deny coverage for the Mortgagee's benefit because Mortgagee does not notify the insurer of any hazardous use or vacancy;

Any requirement the Mortgagee pay the premium. But Mortgagee will have the right to pay to prevent termination for nonpayment;

Any right to be subrogated to the Mortgagee's rights against anyone causing the loss, or the right to require that the Mortgagee assign its interest to the insurer;

Any right to set off, recoup, counterclaim, or otherwise deduct funds from any payment due or to become due on any required insurance.

Reference to pay any Mortgagee will include all Mortgagees, whether or not they are named in this policy.

- (b) Liability Insurance:

- (i) Association must obtain comprehensive third party bodily injury and property damage liability insurance on an occurrence basis, including coverage for premises/operations, products and completed operations, professional, and blanket constructive liabilities, to the extent such coverage is available. This comprehensive policy should protect Association, Board, Manager, officers, directors and employees of Association, Owner and if possible each Occupant and Mortgagee. Coverage should protect against claims for personal injury, death and

property damage due to the condition of, and activities and construction on, the Property. The Policy must be a Comprehensive General Liability form. Limits for each accident or occurrence may not be less than:

- (1) \$2,500,000 for personal injury and death; and
  - (2) \$300,000 for property damage.
- (ii) This policy should provide that:
- (1) coverage should not be affected, reduced or lost because of any increased danger or hazard on the Property, if Association, Board, or Manager or Owners collectively, could not have controlled the hazard or danger;
  - (2) coverage should not be affected, reduced or lost by any action or negligence by Association, Board, Manager or any Owner or Occupant;
  - (3) it cannot be cancelled or substantially changed without at least sixty (60) days written notice to Board and Manager;
  - (4) insurer waives all subrogation rights against Association and Owners and Occupants; and
  - (5) insurer is prevented from denying the claim of Owner because of any action or negligence of Association, Board, Manager or any other Owner or Occupant.
- (c) Directors and Officers. Insurance policy is to be obtained to protect Manager and all officers and directors of Manager and Association from liability for claims based on their errors and omissions, negligence, or breach of duty. Policy should also provide coverage to pay any amount that Association has to pay to the officers and directors according to the sections of the Charter and By-laws which obligates Association to indemnify them; or alternatively, this policy should be in a pay on behalf of form, so that Association may be relieved of the burden of having to indemnify directors and officers and then waiting for reimbursement from the insurer.

This policy should also provide:

- (i) a severability of interest clause so that the insurer is prevented from denying the claim of any Owner or Association; and
- (ii) that this policy cannot be cancelled or substantially changed without at least sixty (60) days written notice to Board and Manager.

Limits of this policy should be not less than \$500,000 for a single occurrence and \$500,000 for all occurrences.

Directors and Officers coverage may be provided as a part of the Liability Policy or as a separate policy.

- (d) A "Fidelity Bond" covers the loss of money while it is being handled. Subject to what is said in Section 9.01, a Fidelity Bond should be kept covering all directors, officers, employees and agents of Association who handle or are responsible for Funds. Fidelity Bond should name Association as the person who is protected and gets paid in case of loss. Coverage should be at least two (2) times Resort's estimated monthly expenses.

This Fidelity Bond should say that:

- (i) it may not be cancelled or substantially changed without at least thirty (30) days advance written notice to Board and Manager; and

(ii) people who provide services without pay are covered.

9.03 Each Owner has the right to buy additional insurance for his benefit at his expense.

9.04 Insurer is to provide a summary of all insurance at the time the policy is obtained and on each anniversary date of the policy. Summary must describe the type of policy, coverage and limits, amount of the annual premium, and renewal dates.

Each policy and its written summary may be seen at Manager's office by any Owner, Mortgagee or person having a contract to buy an Interval. A copy of each policy and its written summary will be furnished upon request and payment of a reasonable fee.

9.05 Owners, Exchange Users and Occupants are excused from any personal liability they may have for damages, to the extent that the loss is paid for by insurance. Each Owner, Exchange User, Occupant and Association here and now releases all claims against each other to this extent.

#### **ARTICLE X - DAMAGE, DESTRUCTION, EXPROPRIATION AND RESTORATION**

10.01

- (a) "Destruction" means any damage to or destruction of the Property, or any part thereof, as a result of the occurrence of fire or other casualty. There can be a Partial Destruction or a Total Destruction. There are two kinds of Partial Destruction. A "Partial Destruction Not Affecting the Units" exists whenever, as a result of fire or other casualty Association Property has been damaged, but not any of the Units. A "Partial Destruction of Units" exists whenever, as a result of any fire or other casualty any one or more but less than all of the Units have been damaged. A "Total Destruction" exists whenever, as a result of any casualty all of the Units have been damaged.
- (b) "Expropriation" means the taking of any interest by a governmental authority, or the transfer of such interest in anticipation of such exercise. There can be a "Partial Taking" or a "Total Taking". There are two kinds of Partial Taking. A "Partial Taking Not Affecting the Units" means the expropriation of any portion of Resort or Association Property, but not of any of the Units. A "Partial Taking of Units" means the Expropriation of any one or more but less than all of the Units. A "Complete Taking" means the Expropriation of all of the Units.
- (c) "Restoration" following Expropriation means the repair or reconstruction of the remaining portion of the Property, to restore the Property to an attractive, sound, functional and desirable condition as a time share resort, including, if Board deems it desirable or necessary, replacement of any improvements taken. In either case, if reasonably possible, taking into account the portions of the Property damaged or destroyed by any Destruction or taken by Expropriation, Restoration shall be in conformance with the original plans and specifications; but if Board decides that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then Restoration shall be of a kind and quality substantially the same as the condition in which such portions of the Property existed before the Destruction or Expropriation.
- (d) "Restoration Funds" in the case of any Destruction, means: (1) Insurance Proceeds, which are all proceeds of insurance received by Association as a result of the Destruction of any portion of the Property, but deducting therefrom reasonable and necessary costs and expenses incurred, if any, to collect the same, including, without limitation, legal fees, appraiser's and adjuster's fees and court costs; and (2) any surplus funds and those amounts, if any, held in the Reserve Accounts of Association which are attributable to the portion of the Property damaged. "Restoration Funds" in the case of Expropriation means: (1) Expropriation proceeds which are the entire amount received by Association as compensation for any Expropriation, including without limitation any amount awarded as special damages, but deducting therefrom reasonable and necessary costs and expenses incurred, if any, to collect the same, including without limitation, legal fees, appraiser's

fees and court costs; and (2) any surplus funds and those amounts, if any, held in the Improvement Savings Accounts of Association which are attributable to the portion of the Property taken by Expropriation.

10.02 After any Partial or Total Destruction or Partial Taking, Association must undertake Restoration without first seeking any direction or approval from the Owners, unless:

- (a) cost as reasonably estimated by Board exceeds Restoration Funds by more than product of the number of Intervals then in the Resort times \$2,500; or
- (b) cost as reasonably estimated by Board exceeds Restoration Funds by more than product of the number of Intervals then in the Resort times \$1,500, and Owners of at least twenty-five percent (25%) of the Intervals petition or request a special meeting of Association be called to consider the Restoration, which petition or request must be received by Manager or Board no later than the earlier of sixty (60) days after the Partial or Total Destruction or Partial Taking or the special meeting of Association described below.

If the Property or any portion of it becomes the subject of or is threatened by any Expropriation or is otherwise sought by any expropriating authority (or if any significant Destruction occurs), Association shall give timely written notice of any proceeding or proposed acquisition (or of the fact of such Destruction) to the Owners and to each Mortgagee. If the cost of Restoration as reasonably estimated by Board exceeds Restoration Funds by more than product of the number of Intervals then in the Resort times \$1,500, before undertaking any Restoration, Association must also give timely notice of this fact to the Owners.

In the circumstances stated above, as soon as is practical, Association must first hold a special meeting to consider Restoration. Association must restore the Property unless: (1) in the case of a Partial Destruction or Taking, Owners of at least seventy-five percent (75%) of the Intervals then in the Resort agree in writing prior to or vote at a special meeting of Association that the Property not be restored; or (2) in the case of a Total Destruction, Owners of more than fifty percent (50%) of the Intervals then in the Resort agree in writing prior to or vote at a special meeting of Association that the Property not be restored.

10.03 In the event Association undertakes Restoration of the Property and the costs of Restoration, as reasonably estimated by Board, exceed \$50,000, Board must contract with a licensed contractor or contractors who shall be required to post a suitable performance bond. Contract shall provide for the payment of a specified sum for completion of the work and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by Board.

10.04 Upon receipt by Association of any insurance Proceeds, Expropriation awards or other monies resulting from Destruction or Expropriation in excess of \$50,000, Board shall deposit same into a bank or other financial institution selected by Board. If Restoration is undertaken, Board shall also cause the balance of any Restoration Funds to be deposited with the financial institution, plus all Funds collected as a result of any Special Charge to make up any deficiency. Disbursement of funds shall be made only upon the signatures of two Directors. Disbursements to contractors performing any repair or reconstruction or any Restoration shall be made periodically as the work progresses.

10.05 If Restoration is to be undertaken and the Restoration Funds are, or appear to Board to be, insufficient to pay all of the costs of Restoration, Board shall assess a Special Charge on all Owners to make up any deficiency. If after Restoration is completed, there remain any Restoration Funds after all costs of Restoration are paid, the excess shall be used by Association as Board shall determine.

10.06

- (a) If Restoration is not undertaken following any Destruction or Expropriation, or, if, after the completion of the Restoration, there are less Units in the Resort than existed prior to

the Destruction or Expropriation, any insurance Proceeds or Expropriation Proceeds shall be disbursed as follows:

- (i) If there occurs a Total Destruction or Taking, a portion of the Restoration Funds equal to each Owner's Share of Resort Expenses shall be disbursed to that Owner and to his Mortgagee as their interests may appear; provided that on or before any disbursement to each such Owner, that Owner must pay all of his debts accrued and owing to Association.
- (ii) If:
  - (1) there occurs a Partial Taking of Units that results in the taking of a Unit or of any portion of a Unit such that the remaining portion cannot be repaired or rebuilt or such Unit cannot be replaced by the construction of another Unit, all in a manner satisfactory to Board; or
  - (2) there occurs a Partial Destruction To Units or a Total Destruction and, in either event, the plan for Restoration satisfactory to Board does not provide for the Restoration of any Unit or Association determines not to restore any Unit;

then, in either case that portion of the Expropriation Proceeds or insurance Proceeds allocable to the eliminated Unit shall be disbursed to those Owners whose Intervals have the same Interval Identification Number as the Unit eliminated, and to their Mortgagees as their interests may appear;

PROVIDED that Owners who voted against Restoration at special meeting of Association, if any, shall be substituted for those Owners with Intervals having the applicable Interval Identification Number, as selected by Board on a random basis by lottery or otherwise;

PROVIDED FURTHER the Interval of each Owner thus selected shall cease to be part of the Resort, each such Owner shall cease to have reservation and use rights and to be a member of Association, and his ownership share shall automatically become vested in Association;

BUT NEVERTHELESS each of the Owners thus selected shall promptly release his ownership share to Association in a suitable registerable document, and each such Owner must do so on or before any disbursement to him or to his Mortgagee, and on or before any disbursement to each such Owner (but not his Mortgagee), he must also pay all of his debts accrued and owing to Association.

The Resort shall then be reconstituted without the eliminated Unit and the Intervals vested and released to Association, the ownership share of the remaining Owners shall be adjusted.

- (b) If there occurs a Partial Destruction or Taking Not Affecting the Units, the Restoration Funds shall be used first by Association to arrange for necessary repairs and then be held and used for such purposes as Board shall determine.
- 10.07 If any Destruction or Taking makes a Unit unusable, pending Restoration and/or reconstitution of the Resort, all reservation and use rights of those Owners whose Interval Identification Number corresponding to the number of that Unit shall be suspended.
- 10.08 Board may, without any vote of the Owners, undertake any repair which it deems reasonably necessary to avoid further Destruction or reasonably necessary to avoid substantial reduction in the value of the Property, or any portion of it.
- 10.09 Board is hereby granted the power and authority, on behalf of the Owners, to sue for or settle upon the amount of insurance Proceeds and Expropriation Proceeds. Any settlement made by Board is final and binding on all Owners.

**ARTICLE XI - CHANGING AND TERMINATING THE RESORT  
AND THE PROGRAM DOCUMENTS**

**PART A - CHANGING THE PROGRAM DOCUMENTS, AND  
CARRIAGE HILLS' RESERVED RIGHTS**

- 11.01 Reserved Right to add additional Improvements. Carriage Hills may, but is not obligated to, add any additional Improvements to the Property at any one or more times including without limitation: (i) laundry facilities and equipment, (ii) temporary sales facilities, and (iii) buildings, including marketing and sales and office purposes, and which Carriage Hills may dedicate to use by Association as a registration desk, or for office or any other purpose permitted by law.
- 11.02 Reserved Right to amend the Program Documents. Carriage Hills may, but is not obligated, to amend the Program Documents to provide for any of the events or circumstances referred to herein or to make the Program Documents comply with the laws and rules of any province or country in which Carriage Hills intends to sell Intervals or with requests for changes by any lender of Carriage Hills.

All of the special rights Carriage Hills has and keeps whether stated or reserved in this Section or in any other Section of this Agreement (the "Reserved Rights") may be exercised and assigned by Carriage Hills, without the consent or joinder of any Owner, Mortgagee, or any other party, person or entity.

By acquiring an Interval, each Interval Owner, his Mortgagee and every other party, person or entity:

- (a) acknowledges, accepts and agrees that Carriage Hills, and its successors in interest, has, keeps and may exercise and assign any one or more of the Reserved Rights at any one or more times without the consent or joinder of anyone else;
  - (b) automatically consents to each such exercise and assignment;
  - (c) agrees, at the request of Carriage Hills or any of its successors in interest, to sign and have registered or filed such document or documents, including without limitation, amendments to this Agreement and the Program Documents, any Deed of an Interval, and any petition for or other document consenting to subdivision, consolidation and/or resubdivision and any setback variance or other variance from applicable governmental ordinances, rules and regulations, and to do such other acts and things, as Carriage Hills, or any of its successors in interest, decides is necessary or useful, to confirm the acknowledgments, acceptances, agreements and consents referred to in this Section, and to confirm the appointment made in this Section as their respective attorney in fact; and
  - (d) appoints Carriage Hills, with power of substitution as their respective attorney in fact to execute and have registered or filed such documents and to do such other acts and things as said attorney in fact shall consider necessary or useful, with respect to the exercise or assignment of any of the Reserved Rights.
- 11.03 How the Agreement may be changed by the Owners. Except as otherwise stated herein, the Owners may amend the Program Documents at any regular or special meeting of Association, if Owners of a majority of all Intervals vote for the change. But if a percentage greater than a majority is required by law or by any other part of the Program Documents, Owners of that percentage of Intervals must vote for the change.

However, the following changes may not be made unless persons affected also give their written approval:

- (a) Without that Owner's written consent, Program Documents may not be amended to change:
  - (i) ownership share;

- (ii) Floating Unit and Time Rights; or
- (iii) voting rights.

These changes also may not be made without the written consent of Owner's Mortgagee.

Except for amendments made pursuant to the exercise of Reserved Rights, the consent of Mortgagees encumbering not less than 50% of all Intervals shall be required for any amendment or action which would (a) abandon or terminate the Program; (b) change the method of calculating pro rata interest or obligations of any Interval for the purpose of: (i) levying assessments or Charges or allocating distributions of insurance Proceeds or Expropriation awards or (ii) determining the pro rata share of ownership of each Owner; (c) permit insurance proceeds to be used for purposes other than repair of the insured casualty until such repair has been completed and paid for in full; or (d) amend the provisions of this Section.

- (b) When Carriage Hills' consent is required. Without Carriage Hills' written consent the Program Documents may not be amended:
  - (i) to change the rights and privileges Carriage Hills has under the Program Documents; and
  - (ii) so as to not comply with the laws and rules of any province or country in which Carriage Hills is selling Intervals.

- 11.04 When an amendment becomes effective. Unless otherwise provided to the contrary, an amendment that complies with the other parts of this Article 11 will become effective when: (1) it is signed by at least two officers of Association; and (2) these officers sign a sworn statement that the requirements of this Section have been met.

#### **PART B - TERMINATING THE RESORT**

- 11.05 The Resort will remain in effect in perpetuity unless any one of these things happen:
- (a) All Units are destroyed and the decision not to rebuild them has been made, or all units are condemned; or
  - (b) If, at any special meeting, the Owners of at least seventy-five percent (75%) of Intervals then in the Resort vote to declare that Obsolescence has occurred. "Obsolescence" means that the Property, or a substantial portion thereof, has reached an undesirable state of disrepair or is obsolete, such that the Property is no longer an attractive, sound, functional and desirable time share resort.

Provided, however, the Program Documents will remain in effect until the Property is sold and Association is wound up; thus until such time: (i) Owners will remain personally liable for all their Charges then accrued; and (ii) Association will continue to exist and its lien and security interest will remain on the Owner's ownership share in the Property and its proceeds, until all such Charges (including interest, late charges and collection and enforcement costs) have been paid in full and Association's affairs are taken care of. Association will also keep all its other rights and remedies, including but not limited to its other rights and remedies to collect.

If Resort is terminated for any reason, Association, as attorney in fact for all Owners, shall sell the Property, on such terms and conditions as Board shall determine. However, before any sale is consummated, Association must hold a special meeting to consider the sale. Board may consummate the sale unless Owners of at least seventy-five percent (75%) of the Intervals then in the Resort vote against the sale. Pending consummation of a sale, Property shall continue to be used, operated, maintained and administered as if Resort remained in effect. Upon the consummation of any such sale, Association shall disburse to each Owner and to his Mortgagee a portion of the proceeds thereof equal to each Owner's Share, provided that on or before any disbursement to each Owner, that



Owner must pay all of his debts accrued and owing to Association.

## **ARTICLE XII - MINISTRY OF ENVIRONMENT**

- 12.01 Owners acknowledge that the servicing of the Resort was approved by the Ontario Ministry of Environment and Energy on the basis of a private Sequence Batch Reactor (sewage disposal system), which system will not be considered for assumption and public use by the Municipality. Owners acknowledge that Horseshoe Valley Resort Limited and/or AWS Water Services Inc. are the operator and/or owner of said system.

## **ARTICLE XIII - GENERAL AND MISCELLANEOUS PROVISIONS**

- 13.01 Notices must be given in writing. Notices may be personally delivered, or if mailed, by registered, postage prepaid mail, addressed to an Owner at the last known address he gives to Association, and, addressed to Association at its registered office address prescribed by the records of the Ministry of Consumer and Commercial Relations.

Each Owner appoints Association as his attorney for the purpose of receiving any notice required to be given by the Municipality of the Corporation of the Township of Oro-Medonte (or its successor) pursuant to the Municipal Act, Municipal Tax Sales Act, Expropriations Act, Planning Act, Development Changes Act, Local Improvement Act, and/or any other applicable statute (and any regulation relating to any of the foregoing statutes). In other words, each Owner hereby acknowledges and agrees that the Corporation of the Township of Oro-Medonte (or its successor) shall not be required to identify and notify each Owner individually. Any notice required to be given to any and all Owners shall be effectively given to such parties if such notice is given to the Association in accordance with the notice provisions of this Agreement. The parties acknowledge and agree that this provision shall not be amended without the prior written consent of the Corporation of the Township of Oro-Medonte (or its successor).

Notices will be considered given and received when they are personally delivered, or if mailed four (4) days after they are deposited with Canada Post. As long as the notice complies with this Section, it will be considered received, even if the addressee does not actually get the notice.

If more than one person is listed as an Owner, notice to all Owners of that Interval may be made by giving notice to any one of them.

Each Owner, Association and Manager may change his address for the purposes of this Section by giving notice of the change. But, unless notice of an address change is actually received, the last address will still be considered as the address for all purposes.

- 13.02 In this Agreement, each Owner appoints Association as his attorney in fact for several purposes. For each of these purposes, each Owner also: (a) authorizes Association to substitute any member of Board or Manager to act as his attorney in fact; and (b) agrees that he cannot take away Association's power and right to substitute these persons to sign for him. Each of these appointments is called a special power of attorney, with the power of substitution. Because Association has an interest in the matters on which each Owner gives it these powers, they are coupled with an interest and are irrevocable. Each Owner agrees that these special powers of attorney cannot be terminated during the term of this Program, even if he becomes disabled or dies.
- 13.03 Everything about the Property, Program, Association and Resort is governed by the laws of the Province of Ontario.
- 13.04 A violation of any part of the Program Documents does not excuse that person or anyone else from his duty to obey that and all other parts of these Documents. This rule applies even if Association, Board or Manager does not try to correct the violation. Rights to enforce all parts of the Program Documents are not waived by any one or more failures to enforce.

- 13.05 This Agreement shall be construed with all changes of number and gender required by the context.
- 13.06 Titles to Articles have been inserted as a matter of reference only and do not define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.
- 13.07 If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or beyond the powers or capacity of the Party or Parties bound thereby, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect, *mutatis mutandis*.
- 13.08 This Agreement shall, subject to its terms, enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

**CARRIAGE HILLS RESORT CORPORATION**

Per:



\_\_\_\_\_

John Boville - President

I have authority to bind the Corporation.

**(PURCHASER)**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**CARRIAGE HILLS HOSPITALITY INC.**

Per:



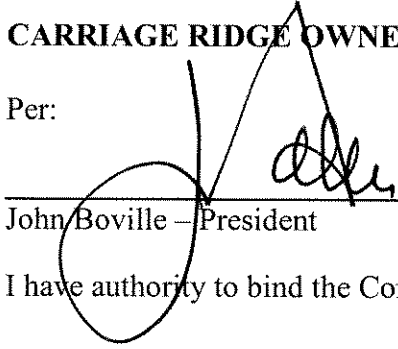
\_\_\_\_\_

John Boville - President

I have authority to bind the Corporation.

**CARRIAGE RIDGE OWNERS ASSOCIATION**

Per:



\_\_\_\_\_

John Boville - President

I have authority to bind the Corporation.

**EXHIBIT "A" – LEGAL DESCRIPTION**

Parcel 1-27 Section 51-ORO-3  
Township of Oro-Medonte  
County of Simcoe

Land Titles Division of Simcoe (No. 51)

**EXHIBIT "B" - ADHERENCE AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**B E T W E E N:**

**CARRIAGE HILLS RESORT CORPORATION,**  
a corporation incorporated under the laws of the  
Province of Ontario,

(hereinafter called "**Carriage Hills**")

OF THE FIRST PART

- and -

\_\_\_\_\_  
(hereinafter called "**New Owner**")

OF THE SECOND PART

**RECITALS**

**WHEREAS:**

1. Carriage Hills has agreed to sell an Interval to the New Owner.
2. The said sale is conditional upon the New Owner entering into this Adherence Agreement for the purpose of becoming an additional party to an agreement (the "**Time Sharing Agreement**"), which is registered in the Land Titles Division of Simcoe.
3. Carriage Hills enters into this Adherence Agreement in its own capacity and as agent of the other Owners, the Manager and the Association.

**WITNESSETH** that for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. In this Adherence Agreement capitalized terms not defined herein have the same meaning as is given them in the Time Sharing Agreement.
2. New Owner shall be entitled and is hereby granted ownership of 1/\_\_\_\_\_ **interest for \_\_\_\_\_ Year Interval.**
3. New Owner covenants and agrees that he shall have the right to use only such Interval which he has properly exercised his reservation and use rights. It is further expressly understood that the assignment of an Interval Identification Number to New Owner shall not be deemed to grant him any interest or other rights in or with respect to a Unit.
4. New Owner hereby covenants that as of, from and after the date hereof, he shall be and be deemed to be a party to the Time Sharing Agreement to the same extent as if he were an original party thereto as purchaser. New Owner further covenants that he will observe and perform the covenants and agreements made by and the obligations and duties imposed upon him as an Owner by the Time Sharing Agreement, and will in all respects abide by the By-laws and the Rules of the Association to the same extent as if he had executed the Time Sharing Agreement and that the same may be enforced against him by the Manager, the Association, or any other Owner to the same extent as if he had executed the Time Sharing Agreement as an original party thereto.
5. Without limiting the foregoing:
  - (a) New Owner agrees to comply with all the terms of the Time Sharing Agreement;

- (b) New Owner agrees to pay when due his Charges, Personal Expenses and interest thereon, and further agrees that Association is hereby granted and will have the lien upon the Interval for such amounts as provided in the Time Sharing Agreement and with the remedies, as set out in the Time Sharing Agreement;
- (c) New Owner consents and agrees to the Manager duly performing the services and obligations assigned to it by the Time Sharing Agreement and agrees not to interfere with such performance;
- (d) New Owner expressly confirms and agrees that he will not sell, lease or in any other manner dispose of or permit the disposition of his Interval or part thereof or mortgage the same, nor will he agree or attempt to do so except in compliance with the Time Sharing Agreement.

6. Carriage Hills' covenants and agreements as set out in the Time Sharing Agreement are extended to the New Owner.

**IN WITNESS WHEREOF** the parties hereto have executed this Adherence Agreement.

<b>SIGNED, SEALED AND DELIVERED</b>	)	<b>CARRIAGE HILLS RESORT</b>
	)	<b>CORPORATION</b>
in the presence of:	)	
	)	Per:
	)	_____
	)	Authorized Signing Officer
	)	I have authority to bind the Corporation.
	)	
	)	
_____	)	_____
Witness	)	New Owner
	)	
	)	
_____	)	_____
Witness	)	New Owner

**EXHIBIT "C" - ASSUMPTION AND CONSENT AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**B E T W E E N:**

\_\_\_\_\_  
(hereinafter called "**New Owners**")

OF THE FIRST PART

- and -

**CARRIAGE RIDGE OWNERS  
ASSOCIATION,**

(hereinafter called the "**Association**")

OF THE SECOND PART

**RECITALS**

1. \_\_\_\_\_, (the "**Prior Owner**") has heretofore been the Owner of an Undivided Interest in the Property herein, as tenant in common with all other Owners;
2. By reason of a Time Sharing Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is registered in the Land Titles Division of Simcoe as No. \_\_\_\_\_ and by reason of a previous transfer dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Prior Owner was assigned Interval Identification Number \_\_\_\_\_.
3. The Prior Owner is desirous of transferring his Undivided Interest to the New Owner subject to the provisions of the Time Sharing Agreement, and has requested the requisite consent of the Association, which has agreed to grant same provided the New Owner enters into this Assumption and Consent Agreement.

**WITNESSETH** that in consideration of the consent and agreements herein contained, the parties agree as follows:

1. In this Assumption and Consent Agreement, unless otherwise defined, capitalized terms have the meanings ascribed to them in the Time Sharing Agreement.
2. New Owner represents and warrants that the Undivided Interest owned by the Prior Owner is being conveyed and assigned to New Owner as of the date hereof subject to the consent of the Association.
3. New Owner covenants and agrees as of, from and after the date hereof to assume and be bound by all the covenants and agreements of the Prior Owner, and to observe and perform the obligations and duties of an Owner contained in the Time Sharing Agreement in all respects and that the same may be enforced against him by the Association or any of the other Owners, to the same extent as if he had entered into the Time Sharing Agreement.
4. Without limiting the foregoing:
  - (a) New Owner appoints the Association as his attorney or agent for the purpose set out in the Time Sharing Agreement;

- (b) New Owner agrees to indemnify the other Owners, the Manager and the Association and each of them as provided in the Time Sharing Agreement;
- (c) New Owner agrees to pay when due the Basic Charges, Special Charges and Personal Charges and interest thereon, if any, and further agrees that the Association shall have a lien and charge on the Undivided Interest being acquired by New Owner for such amounts, if such are unpaid, and with the remedies set out in the Time Sharing Agreement;
- (d) New Owner specifically acknowledges and agrees that the Association may use the irrevocable Power of Attorney, executed by the New Owner contemporaneously with this Assumption and Consent Agreement, to transfer title in accordance with the Time Sharing Agreement;
- (e) New Owner consents and agrees to the Association duly performing the services and obligations designated to it by the Time Sharing Agreement and agrees not to interfere with such performance;
- (f) New Owner expressly confirms and agrees that he will not sell, lease or in any other manner dispose of or permit the disposition of his Undivided Interest or part thereof or Mortgage the same, nor will he agree or attempt to do so except in compliance with the provisions of the Time Sharing Agreement.

5. In order to protect the Owners and ensure the integrity of the Program, a Restriction has been registered against the title to the Property under Section 118 of the Land Titles Act. The Association, in consideration of the New Owner's representations and agreements herein, hereby consents to the transfer to the New Owner of the Undivided Interest as herein set out. Association further agrees to execute any further consent that may be required by the Land Registrar pursuant to the registered Restriction.

IN WITNESS WHEREOF the parties hereto have executed this Assumption Agreement.

SIGNED, SEALED AND DELIVERED )

in the presence of: )

\_\_\_\_\_  
Witness )

\_\_\_\_\_  
New Owner )

)  
) **CARRIAGE RIDGE**  
) **OWNERS ASSOCIATION**

) Per:

) \_\_\_\_\_  
) Authorized Signing Officer

) I have authority to bind the Corporation.

## EXHIBIT "D" - SUBSIDY AGREEMENT

THIS LIMITED SUBSIDY AGREEMENT (the "**Subsidy Agreement**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between Carriage Ridge Owners Association, an Ontario non-profit corporation (the "**Association**"), and Carriage Hills Resort Corporation, an Ontario corporation (the "**Carriage Hills**"), with reference to the following facts and circumstances:

### RECITALS

- A. Carriage Hills is the owner of certain real property (the "**Property**") located in the Township of Oro-Medonte, County of Simcoe, Province of Ontario, as more particularly described on Exhibit "A", attached hereto and made a part hereof.
- B. Carriage Hills has registered a Time Sharing Agreement in the Registry Office of the Land Titles Division of Simcoe County, Ontario (the "**Time Sharing Agreement**"). Except as otherwise defined herein, each defined term used herein shall have the meaning set forth in the Time Sharing Agreement.
- C. The Time Sharing Agreement provides for the operation and maintenance by the Association of the Resort and the Units.
- D. Carriage Hills and the Association intend to establish by this Subsidy Agreement a program whereby Carriage Hills will provide for the payment of Carriage Hills' appropriate share of the costs and expenses. It is the intention of Carriage Hills and the Association that Carriage Hills shall, pursuant to the terms and conditions set forth below, pay all of the "**Deficiencies**" (defined below) of the Association and by its payments hereunder eliminate any need for a Special Assessment during the term hereof other than Special Assessments approved by the Board and, if necessary, by Owners, for capital expenditures during the term hereof.

### TERMS AND CONDITIONS

#### 1. Definitions

For purposes of this Subsidy Agreement, the following terms shall have the following meanings:

- 1.1 "**Deficiencies**" means, for each fiscal year of the Association, the amount by which (a) the cumulative total amount of the actual expenses attributable to the maintenance and repair of the Resort and the operation of the Interval Ownership Program which are incurred by the Association (excluding all Reserve Assessments) for such fiscal year for the period commencing, in the first such fiscal year, on the Starting Date, and in each subsequent fiscal year, on the first day of such fiscal year, and ending on the last day of the calendar month preceding the month in which payment of the Deficiencies is made by Carriage Hills exceeds (b) the cumulative total amount of Basic Charges for such fiscal year payable to the Association by Owners other than Carriage Hills for the same period.

In addition to the obligation for payment of Deficiencies hereinabove referenced, Carriage Hills will pay to Reserve Account the amount of \$100.00 for each and every Interval sold.

- 1.2 "**Original Deed**" means the Deed from Carriage Hills Time Sharing Agreement conveying an Interval, excluding, however, any Deed which conveys all or substantially all of the Intervals then owned by Carriage Hills and which expressly recites that it is not an Original Deed.
- 1.3 "**Resort**" means that certain real and personal property which is operated and maintained by the Association pursuant to the provisions of the Time Sharing Agreement.



1.4 "Starting Date" means the date on which the first Original Deed is recorded.

2. Payment of Deficiencies.

Carriage Hills shall pay the Deficiencies as necessary throughout each fiscal year for as long as this Subsidy Agreement is in effect in order to ensure the payment of Association's monthly Budgeted expenses. Within sixty (60) days after the end of the fiscal year of the Association in which the term of this Subsidy Agreement terminates, the Association shall reimburse Carriage Hills for the amount, if any, by which the total of all sums paid by Carriage Hills during such fiscal year to the Association as and for the Deficiencies exceeds the cumulative total amount of Assessments which would otherwise have been payable by Carriage Hills for such fiscal year in the absence of this Subsidy Agreement with respect to the Undivided Interests owned by Carriage Hills.

3. Term.

The term of this Subsidy Agreement shall commence on the Starting Date and shall terminate on the earlier to occur of (a) the date upon which Carriage Hills shall convey the last Interval it owns or (b) the date on which Carriage Hills elects, by written notice to the Association, to terminate this Subsidy Agreement. This means that Carriage Hills may elect in any fiscal year of the Association, including the first year, to terminate the term of this Subsidy Agreement by giving prior written notice to the Association.

4. Effect of Subsidy Agreement Upon Carriage Hills' Assessment Obligations.

Provided Carriage Hills shall not be in default in the performance of any of its obligations hereunder, Carriage Hills shall not be required to pay to the Association the Charges attributable to Intervals owned by Carriage Hills pursuant to the terms and provisions of the Time Sharing Agreement. In the event Carriage Hills shall default in the performance of any of its obligations hereunder and such default shall not have made a reasonable attempt to cure within thirty (30) days after notice of default is given to Carriage Hills by the Association, (a) Carriage Hills' obligations to pay to the Association the Basic Charges shall resume, (b) Carriage Hills' default hereunder shall be deemed a default in the payment of Charges under the Time Sharing Agreement, which default shall be deemed to have occurred on the date of expiration of the grace period set forth herein, and (c) the Association shall have the right to exercise each and all of the rights and remedies set forth herein and in the Time Sharing Agreement with respect to the nonpayment of the Basic Charges by Carriage Hills provided, however, that notwithstanding Carriage Hills' failure to cause any default hereunder within the time period specified, Carriage Hills shall have the right thereafter to cure such default, and upon so doing, Carriage Hills may notify the Association of Carriage Hills' intention thereafter to comply with the terms of this Subsidy Agreement in which case all of the rights, duties and obligations of Carriage Hills and the Association hereunder shall continue unabated and any Basic Charges paid by Carriage Hills shall be treated as having been paid with respect to Carriage Hills' obligations under this Subsidy Agreement.

5. Municipal Obligations.

During the term of this Subsidy Agreement, in the event that the Association fails to pay any amount owing to The Corporation of the Township of Oro-Medonte (or its successor) when due, Carriage Hills covenants and agrees to pay such amount directly to The Corporation of the Township of Oro-Medonte (or its successor) forthwith after written demand from The Corporation of the Township of Oro-Medonte (or its successor).

6. Miscellaneous.

6.1 Notices. Any notice, request, demand, instruction or other document to be given hereunder to any party shall be in writing and shall either be personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by mail,

sent by registered mail, return receipt requested, as follows:

If to the Association:	Carriage Ridge Owners Association 1101 Horseshoe Valley Road Comp 58 R.R. #1 Barrie, Ontario L4M 4Y8 Attn: Board of Directors
If to Carriage Hills:	Carriage Hills Resort Corporation 1101 Horseshoe Valley Road Comp 112 R.R. #1 Barrie, Ontario L4M 4Y8 Attn: President

Notices so mailed shall be deemed to have been given forty-eight (48) hours after the deposit of same in any post office in the Province of Ontario. The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addressee stated by notice, or as provided herein if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

- 6.2 Waiver. The waiver or failure to enforce any provision of this Subsidy Agreement shall not operate as a waiver of any future breach of such provision or of any other provisions hereof.
- 6.3 Merger. All understandings and agreements heretofore had between the parties respecting the subsidization contemplated by this Subsidy Agreement are merged by this Subsidy Agreement and the exhibits attached hereto, all of which fully and completely express the agreement of the parties. There are no agreements except as specifically set forth in this Subsidy Agreement or to be set forth in the instruments or other documents delivered or to be delivered hereunder.
- 6.4 Amendments. No change in or addition to, or waiver or termination of this Subsidy Agreement or any part thereof shall be valid unless in writing and signed by or on behalf of each of the parties hereto.
- 6.5 Section Headings. Section headings are for the purposes of identification only and shall not be considered in construing this Subsidy Agreement.
- 6.6 Successors and Assigns. All of the terms and provisions of this Subsidy Agreement shall be binding upon, enure to the benefit of and be enforceable by the parties and each of their respective successors and assigns.
- 6.7 Legal Fees. In the event any controversy, claim or dispute between the parties hereto, arising out of or relating to this Subsidy Agreement or the breach thereof, results in arbitration or litigation, the prevailing party in such proceedings shall be entitled to recover from the losing party its reasonable expenses, including legal fees, and costs. In addition to the foregoing, the prevailing party shall be entitled to its reasonable fees, costs and expenses incurred in any post-judgment proceedings to collect or enforce the judgment.

6.8 Severability. Every provision of this Subsidy Agreement is intended to be several. Any provision of this Subsidy Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

**CARRIAGE HILLS RESORT  
CORPORATION**

By: \_\_\_\_\_ c.s.

Name & Title: \_\_\_\_\_

**CARRIAGE RIDGE  
OWNERS ASSOCIATION**

By: \_\_\_\_\_ c.s.

Name & Title: \_\_\_\_\_

This is Exhibit "D" referred to in the  
Affidavit of Martin Ginsberman sworn before me  
this 30<sup>th</sup> day of April, 2020.



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A Commissioner for taking affidavits

## Key Terms of CROA By-laws

- **Membership**

Each Owner of an Undivided Interest is a member of CROA [s. 2.1]

- **Membership Appurtenant to Undivided Interest**

Membership is not to be assigned or alienated in any way except on transfer of title to Undivided Interest to transferee, upon which membership is automatically transferred to new Owner of Undivided Interest [s. 2.2]

- **Voting Rights** – 2 classes of voting membership:

Class A – all Owners of Undivided Interests except CHRC:

Owners of Every Year Undivided Interests: 2 votes for each such interest owned

Owners of Every Other Year Undivided Interests: 1 vote for each such interest owned

Class B – CHRC: 8 votes for each Every Year Undivided Interest and 4 votes for Every Other Year Undivided Interest owned [s. 2.3]

Board may suspend voting rights where an Owner is delinquent in payment or other defaults and may impose monetary penalties [s. 4.3]

- **Membership Charges**

To be paid by Members and fixed, levied and collected by Board as provided in TSA [s. 3.1]

- **Lien Rights**

As set out in TSA and enforceable by Board as set forth in TSA and at law or equity [s. 3.2]

- **Rules Governing Annual and Special Meetings of Members: Article 5**

- **Directors**

Affairs of CROA – to be managed by Board of 5 directors; each must be Member entitled to vote or a representative of CHRC designated by CHRC; from and including the first election of the Board by members, at least one Board member shall be elected by votes of Members other than CHRC; subject to the special election procedures specified [s. 6.1]

Quorum – a majority of the Board [s. 6.11]

Open meetings – all Board meetings are open to Members, who may not participate in any deliberation or discussion unless authorized by a majority of a quorum of the Board; such majority may adjourn and reconvene in executive session on personnel matter, litigation and orders of business of a similar nature after announcing the nature of the business to be considered [s. 6.13]

Committees – Board may appoint an Executive Committee and other committees and delegate powers to them, except the powers listed [s. 6.15]

Powers and Duties – Subject to the limitations of the Articles, By-laws, the TSA and the Ontario *Business Corporations Act*, as to actions required to be approved by the Members, all CROA powers and duties including those set forth in the TSA shall be exercised by or under the authority of the Board, and the business and affairs of CROA shall be controlled by the Board [s. 6.16]

- **Officers**

There must be a President, Vice President and Secretary (who must be Board members) and such others as the Board deems necessary. Each officer must be a member of CROA or designated by CHRC. Board may appoint subordinate officers. [s. 7.1 and 7.2]

- **Indemnification of Directors, Officers and Others**

General – There are provisions for CROA indemnifying directors, officers, employees or other agents, subject to the terms set out [Article 8]

Insurance – Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of directors, officers, employees or other agents [s. 8.9]


- **Miscellaneous**

Execution of Contracts and Instruments – Except as otherwise provided, Board may authorize any officer(s) or agent(s) to enter into any contract or execute any instrument in the name of and on behalf of CROA, with general or specific authority [s. 9.2]

Corporate Records – The minutes and accounting books and records shall be open to inspection on written demand of any member (seems to include Board minutes) [s. 9.5]

This is Exhibit "E" referred to in the  
Affidavit of Martin Ginsberman sworn before me

this 30<sup>th</sup> day of April, 2020.



---

A Commissioner for taking affidavits

**AMENDED & RESTATED MANAGEMENT AGREEMENT  
BETWEEN  
CARRIAGE HILLS HOSPITALITY INC.  
AND  
CARRIAGE RIDGE OWNERS ASSOCIATION**

**THIS MANAGEMENT AGREEMENT** (this "Agreement") is made and entered into as of the 5<sup>th</sup> day of October, 2017, but for all purposes effective as of the 1<sup>st</sup> day of January, 2018 ("Effective Date"), by and between Carriage Hills Hospitality Inc., a corporation organized under the laws of the Province of Ontario, Canada (hereinafter the "Management Firm"), and Carriage Ridge Owners Association, a not for profit corporation incorporated under the laws of the Province of Ontario, Canada (the "Association"). (Hereinafter, the Management Firm and the Association may be referred to collectively as the "Parties" or individually as a "Party").

**W I T N E S S E T H**

**WHEREAS**, the Association, through its Board of Directors (the "Board"), is the entity responsible for the operation, management and maintenance of that certain Interval Ownership Program consisting of Interval Ownership interests within certain Property (hereinafter the "Program"), located at the Carriage Ridge Resort in Oro-Medonte Township, Ontario, Canada (the "Resort"); and

**WHEREAS**, the Association and Management Firm entered into that certain Management Agreement dated November 30, 2006, as amended by that certain First Amendment to Management Agreement dated November 30, 2016, (hereinafter collectively, the "Former Agreement"), for the management and operation of the Program; and

**WHEREAS**, the Parties wish to enter into this Agreement to amend, restate and replace the Former Agreement and, upon execution hereof, the Former Agreement shall be deemed to have terminated; and

**WHEREAS**, the Board, for and on behalf of the Association, wishes to engage Management Firm to provide certain management services and functions on its behalf in connection with the management and administration of the Program, and Management Firm, itself or through its agents, affiliates, or subsidiaries ("Affiliates") wishes to provide such services and perform such functions pursuant to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:



1. **Incorporation of Recitals.** All of the foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2. **Definitions.** All capitalized terms used in this Agreement, but not defined herein, shall have the meanings ascribed to them in that certain Time Sharing Agreement and By-laws establishing the Program, as the same have or may be amended or supplemented from time to time (hereinafter collectively the "Governing Documents"), unless the context herein clearly requires otherwise.

3. **Appointment of Management Firm.** The Association does hereby appoint the Management Firm, and the Management Firm hereby accepts the appointment, as the exclusive manager of the Program and agent of the Association, subject to the terms, conditions and restrictions hereinafter provided or as may be set forth in the Governing Documents, the terms of which are hereby incorporated by this reference. The Parties agree that they will cooperate fully with one another in the performance of their respective duties and responsibilities set forth in this Agreement.

4. **Term and Termination.** The term of this Agreement shall be effective and commence as of the Effective Date and shall continue for a term of five (5) years, unless sooner terminated pursuant to the terms of this Agreement or applicable law. Thereafter, this Agreement shall automatically renew on the same terms and conditions as stated herein for successive periods of five (5) years, unless, not less than one hundred twenty (120) days prior to the expiration of the then current term, either Party provides written notice of its intent not to renew, in which event this Agreement shall then terminate upon the last day of such term. Any such notice by the Association must have been approved by the greater of (i) the affirmative majority vote of 66 2/3 of voting interests in the Association, or (ii) otherwise as may be required under the Governing Documents or applicable law. Notwithstanding the foregoing, the Management Firm may, subject to the terms of Article 5, terminate this Agreement at any time, with or without cause and without penalty, upon not less than one hundred twenty (120) days prior written notice to the Association. Upon any expiration or termination of this Agreement, all rights and obligations of the Parties hereunder shall also terminate, except as may be otherwise specifically provided herein.

In the event that the Association and/or the Program created pursuant to the Governing Documents shall be terminated in accordance with the terms of the Governing Documents and any amendments thereto, then the Owners may, as to their separate interests, continue to be parties to this Agreement and be bound by the provisions hereof, and Management Firm shall manage such interests pursuant to the provisions of this Agreement, as the nature of such interests and the context of this Agreement shall permit.

5. **Transition.** Notwithstanding anything to the contrary, in the event of any expiration or termination of this Agreement, Management Firm shall be entitled to receive any and all outstanding amounts due and owing under this Agreement through and including the date of expiration or termination, including without limitation all outstanding Management Fees (as

defined in Article 12) and other charges and expenses incurred by Management Firm or its employees, agents or subcontractors that are to be paid or reimbursed under this Agreement. Such sums shall be immediately due and payable by the Association.

Additionally, upon any expiration or termination of this Agreement, Management Firm shall agree to provide reasonable assistance in facilitating an orderly transition. Such transition shall be for a term not less than thirty (30) days and not to exceed ninety (90) days, and Management Firm shall be entitled to Management Fees (including reimbursements for all costs and expenses relating to the operation of the Program) for and during such transition period on a per diem basis, based upon the average daily Management Fee for the previous calendar year, which fees shall be due and payable monthly in advance. Additionally, within thirty (30) days after expiration or termination, Management Firm shall supply the Board with a final statement of account and shall make all records, books and accounts of the Association reasonably available to the Board, as such may be required to continue to maintain and administer the Program.

6. **Powers of Management Firm.** Except as otherwise provided or limited herein, or as may be specifically required by the Governing Documents or by applicable law, the Management Firm shall have all the powers, duties and licenses set forth herein (or as incidental or otherwise reasonably necessary to perform the services set forth in this Article 6) and as may be otherwise directed by the Board from time to time for the purpose of managing the affairs of the Association and of managing and operating the Program. The powers and duties of Management Firm shall include, but not be limited to, the following:

(a) *Books and Records.* Management Firm shall keep and maintain all books and records of the Association, including, by way of example, minutes of meetings, correspondence, Governing Documents, rules and regulations, maintenance, financial and reservation records and insurance certificates for contractors and vendors. The Association understands and agrees that all books and records of any kind kept by Management Firm for or on behalf of the Association shall be maintained in accordance with the pertinent provisions of Management Firm's corporate record retention policy, as the same may be amended from time to time ("Retention Policy"). Unless otherwise expressly directed by the Association, such books and records within Management Firm's custody shall be kept only for so long as required under the Retention Policy or otherwise as mandated by applicable law. Such books and records shall be reasonably available for inspection by the Board, the Owners and their respective authorized representatives at reasonable times and upon reasonable notice as may be more specifically provided in the Governing Documents or applicable law. It is understood that any such inspection shall be conducted without cost to the Management Firm and without unreasonable disruption to the employees and operation of the Management Firm or the Resort. Any expense associated with the copying of records shall be a cost of the Association, unless the request for copies is made by an Owner or group of Owners individually, in which case the cost shall be borne by such Owner or group of Owners in accordance with the Governing Documents and applicable law. Any qualified expert

representing an Owner, the mortgagee of an Owner or the Association may also conduct an external audit of the books and records, provided that the cost for the same is paid by the party requesting the audit.

(b) *Business Correspondence.* Management Firm shall receive and respond to all general business correspondence on behalf of the Association in a timely manner, pursuant to applicable law. Management Firm shall complete and file any documents required on behalf of the Association or the Program, as may be required by applicable law.

(c) *Owner's List.* Management Firm shall use commercially reasonable efforts to maintain a "master list" of the Owners of the Association, including to the extent possible, the names, addresses, phone numbers and email addresses of the Owners. The master list shall be updated with such frequency as required by applicable law or else as Management Firm deems reasonably necessary. Except as (i) permitted under applicable law, (ii) required in furtherance of legitimate Association business, or (iii) reasonably required to perform its duties under this Agreement, Management Firm shall not publish or otherwise furnish the name, address or electronic mail address of any Owner to any other person or entity without the prior written approval of the Owner whose information is being disclosed. Further, in no event shall Management Firm publish or otherwise distribute the master list of Owners in a manner that would violate applicable law.

(d) *Maintenance.* Management Firm shall perform, or cause to be performed, all regular and customary maintenance, repair, clean-up, alterations, additions, replacements and refurbishing to the Units and the common elements forming a part of the Program, including the personal property (except for the personal property belonging to any Owner or Occupant) and furnishings located therein, it being understood and agreed that all replacements shall be such so as to maintain an equal or greater standard of quality of the furniture, other personal property and décor, as originally contained within the Program. Management Firm shall use commercially reasonable efforts to obtain the best price available for any service, material or labor as may be in the interests of the Association, subject to paragraph 6(h) below. For any one instance of maintenance, repair, replacement or refurbishing, the expense incurred shall not exceed the amount budgeted therefor, unless specifically authorized by the Board, except however, in the event of an emergency, as determined by the Management Firm, in which case Management Firm is hereby authorized to expend any sum reasonably necessary to protect and preserve the Program or any portion thereof, and upon such event Management Firm shall promptly provide the Board with notice of the actions taken and funds expended. Management Firm shall perform periodic inspections of the Program, and provide the Board with written reports (sent via Canada Post, facsimile or electronic mail) of any recommended repairs, remediations or improvements. It is understood and agreed that Management Firm shall have no liability hereunder for any recommended repairs, remediations or improvements, which the Board delays, rejects or refuses to undertake.

(e) *Repair of Units.* Management Firm shall have the authority and responsibility to maintain and replace the personal property within the Units, and in such capacity, the Management Firm shall make determinations as to replacements of personal property within such Units, the décor, and all other judgments relating to the Units, except that all replacements shall be such so as to maintain an equal or greater standard of quality of the furniture, other personal property and décor, as originally contained in such Unit. It is understood by both Parties that any determinations as to replacements or repairs and the application of any or all of the reserves set aside for the same made by the Management Firm shall be in accordance with the approved annual budget or other actions of the Board.

(f) *Contracts for Services, Leases and Concessions.* Management Firm shall be authorized and have the power, on behalf of the Association, to enter into any contract, lease, equipment lease, agreement, purchase order, service contract (for garbage, trash removal, vermin extermination, telephone, cable, telecommunications, security or other services or utilities) or other arrangement as may be reasonably necessary or advisable, in its discretion, for the operation of the Program. Notwithstanding the foregoing, Management Firm shall not, except as permitted under applicable law, enter into any contract on behalf of the Association without the consent of the Board (i) which would cause an expenditure of more than the amount budgeted therefor, or (ii) that has a term of greater than two (2) years. Unless otherwise agreed, all such contracts and purchases shall be on behalf and entered into in the name of the Association. It is understood and agreed that nothing in this Agreement shall preclude Management Firm from providing any services provided above or otherwise through an Affiliate, agent or subcontractor of Management Firm, provided however the fees for such services are reasonably comparable with the then current rates charged by independent third parties for comparable services.

(g) *Equipment.* Management Firm shall have use of all machinery and equipment of the Association, shall inspect such machinery and equipment on a regular basis, and shall cause the same to be maintained in good repair and condition. Management Firm shall purchase any additional machinery, equipment, tools, appliances, goods, supplies and materials as shall be reasonably necessary to perform its duties, including the maintenance, upkeep, repair, replacement, refurbishing and preservation of the common elements forming a part of the Program and the Units. Any such purchases may be made on behalf and at the expense of the Association and shall remain the property of the Association.

(h) *Bid for Services.* Notwithstanding anything to the contrary set forth in this Agreement, the Management Firm shall not be responsible for obtaining the best price available as to any service, maintenance, material or purchase, but shall, with impunity, purchase or contract for such service, maintenance, material or purchase with such person or party as it deems advisable and in the best interest of the Association, without the necessity of searching for the best price, unless otherwise directed by the Board or required by applicable law. When competitive bidding is utilized with regard to the

procurement of any goods or services for the operation, management and maintenance of the Association and the Program, such bid process will be conducted so that the bid solicitation and the selection of the provider will be completed within the most appropriate and reasonable time possible.

(i) *Housekeeping.* Management Firm shall perform or cause to be performed the regular or other reasonably necessary cleaning of the Units (including a change of linens) and the common elements of the Program, which shall be performed with such frequency as shall be determined by Management Firm or as directed by the Board from time to time. Management Firm shall supervise all aspects of the housekeeping service, performing inspections of the Units prior to each arrival. Management Firm shall provide an on-going preventative maintenance program, and shall schedule an annual deep cleaning during the low occupancy season. Management Firm shall maintain an inventory control system of the Association's linens, which shall include count, distribution and replacement recommendations.

(j) *Access.* Management Firm and its Affiliates shall have the authority to enter any portion of the Resort, including the Units, under the terms and conditions of this Agreement, for the purposes set out in the Governing Documents, and as may otherwise be required to perform its duties hereunder, including without limitation for the purposes of making repairs and for confirming compliance with the Governing Documents.

(k) *Employees.* Management Firm shall cause to be hired, paid and supervised, all persons necessary to be employed so to properly maintain and administer the Program, including at least one (1) employee to perform and/or supervise the performance of services pursuant to this Agreement, it being understood and agreed that such employee(s) may also perform and/or supervise the performance of services under similar agreements with other condominium or timeshare associations managed by Management Firm. Except for any vendor or subcontractor providing services pursuant to paragraph 6(f) or Article 26, or any of their respective employees, it is expressly understood and agreed that all personnel will be the employees of Management Firm for all purposes, including without limitation, domestic or foreign, federal, provincial, territorial or local tax reporting purposes, except that all expenses incurred in connection with all on-site employees and other employees dedicated solely to support the Program (including without limitation wages, salaries, bonuses, commissions, severance, employee benefits, recruitment, training, workers compensation, and unemployment insurance, all of which shall be determined at the reasonable discretion of Management Firm), whether or not incurred during the term of this Agreement or in connection with any expiration or termination hereof, will be on behalf and at the expense of the Association. Management Firm shall further cause to be discharged all persons whom it deems to be unnecessary or undesirable. Furthermore, to the extent applicable, Management Firm shall have the right to bargain on behalf of the Association with respect to any union or collective bargaining unit. If required by law, Management Firm shall be responsible for the proper licensing of all employees required to be licensed as a community association manager or

otherwise as required by applicable law.

(l) *Experts.* Management Firm may, but shall not be obligated to, retain and employ, at the expense of the Association, attorneys, tax consultants, accountants and other such professionals and experts on behalf of the Association (and in the Association's name) whose services may be required to effectively administer the Program under the Governing Documents or applicable law (hereinafter collectively "Experts"). The foregoing shall not be a limitation on the right of the Association, itself or through its Board, to independently employ or retain other such Experts as it may desire, provided however that the employment of any Experts by the Association shall negate the obligation of the Management Firm to employ the same on behalf of the Association. Notwithstanding the foregoing, the Management Firm shall take commercially reasonable efforts work with all of the Experts engaged on behalf of the Association, whether retained by the Association or Management Firm.

(m) *Financial Services.* Management Firm may perform and supervise certain financial and accounting services, as are more fully described below. If the Management Firm is the actual provider of the same, it shall be entitled to reimbursement pursuant to Article 10.

(1) *Management of Funds.* Management Firm shall establish the depository and reserve accounts, as may be prescribed by law or the Governing Documents, and shall maintain the same in accordance with the investment policies of the Association as may be required by applicable law or determined by the Board from time to time. Management Firm shall deposit all funds collected from the Owners, or otherwise accruing to the Association, in such accounts respectively.

(2) *Disbursements.* Management Firm shall maintain the accounts payable of the Association and shall have the authority to draw on such accounts for the discharge of any liabilities or obligations incurred pursuant to this Agreement. Management Firm shall, to the extent funds are available and consistent with the budget and/or any other agreements or arrangements of the Association or acts of the Board, disburse from the accounts of the Association any and all amounts required for the payment of all expenses of the Association and the Program, including without limitation the Management Fee and other costs or reimbursements due hereunder. Management Firm shall have the responsibility to prioritize the payment of bills in its reasonable discretion, provided however that all payments due to Management Firm under this Agreement shall take priority over the other expenses of the Association and the Program.

(3) *Accounting Functions & Financial Statements.* Management Firm shall maintain the accounting functions and records of the Association in

accordance with generally accepted accounting principles. Management Firm shall maintain records of the Association's financial transactions and provide periodic reports to the Board with such reasonable frequency as requested by the Board but not more often than quarterly. The financial statements for the operation of the Program shall be provided to the Board in a manner consistent with the Governing Documents and in accordance with generally accepted accounting principles, and shall include, when applicable, bank statements, check registers, general ledger reports, delinquent account records, investment and escrow fund records, cash flow records, balance sheets and income statements. The failure of Management Firm to timely deliver the financial statements required hereunder shall not be deemed to be a default of this Agreement.

(4) *Payroll Processing.* Management Firm shall administer and process all employee payroll and contractor fees accruing on behalf of the Association.

(5) *Bank Statement Reconciliation.* Management Firm shall perform a periodic cash reconciliation of the bank balance of the Association's cash accounts against the financial statement balances.

(6) *Budget.* On an annual basis, Management Firm shall prepare the proposed operating budget for the Association, setting forth the anticipated income and expenses for the year, the recommended reserves, and specifying therein the amount of Basic Charges for all of the Units. The Management Firm shall submit the proposed annual budget to the Board for approval in accordance with the provisions of the Governing Documents. Should a Special Charge be required during the year, the Management Firm shall also, from time to time as may be applicable, submit a proposal for Special Charge to the Board for approval. In the event that the Management Firm fails to timely submit a proposed operating budget for the ensuing year, or should the Board delay or disapprove of the proposed budget submitted, the operation of the Program shall continue based on one hundred five percent (105%) of the previous year's approved operating budget, unless otherwise limited by applicable law, until such time as a new operating budget is approved by the Board.

(7) *Income Taxes & Annual Audit.* Management Firm shall cause to be filed all required tax returns and payments on behalf of the Association. Further, as required by applicable law, Management Firm shall employ, at the sole cost and expense of the Association, an independent auditor approved by the Board in accordance with applicable law to prepare a general accounting and audit verifying the financial records of the

Association, which audit shall be conducted in accordance with generally accepted accounting principles. The Association, itself and through its Board, and Management Firm hereby agree to extend reasonable cooperation to the firm conducting any such audit. Management Firm shall cause a copy of such annual audit to be provided to the Board.

(8) *Basic Charge Billing and Collection.* Management Firm shall invoice and collect all Basic Charges, Special Charges, late charges, interest fees and other sums due to the Association from all Owners (including without limitation any Basic Charges for maintenance, repairs or replacements caused by the negligence or misuse by an Owner or Occupant, which increases the costs of maintenance and/or repair, or increases the insurance rates and premiums), subject to the provisions in the Governing Documents and the approval of the Board. Management Firm shall apply any amounts collected as required hereunder and in a manner consistent with the Governing Documents and/or as directed by the Board. Management Firm shall distribute late notices on any account that is unpaid in accordance with the Governing Documents and the collection policies determined by the Board from time to time. Upon the continued delinquency of any Owner, the Management Firm, as agent of the Association, may initiate telephone reminders concerning the late payment and/or prepare additional late notices. For those accounts remaining delinquent after any calling campaign and second notice, Management Firm may assist the Association in (i) entering into an agreement with a collection agency in order for such agency to pursue collection of delinquent payments of Basic Charges or other charges, and/or (ii) refer such delinquency to outside counsel for the enforcement of lien and/or to pursue any other remedies available at law. It is understood and agreed that, absent a separate written agreement between the Parties, Management Firm shall not undertake any collection or foreclosure activities beyond the scope of this paragraph 6(m)(8), and in the event of any such separate agreement, such additional activities shall be performed pursuant to and under the scope of such separate agreement.

(n) *Insurance and Risk Management.* Management Firm shall cause to be placed or kept in force and effect all insurance required pursuant to the Governing Documents or as may be authorized by the Board, provided the same is commercially available to the Association at a reasonable cost. Management Firm shall act as agent for the Association and each Owner having an insurable interest thereunder, and shall have the power to exercise all of the rights, powers and privileges of the insured parties under the policies of insurance. Management Firm shall work with the insurance carrier and the Board to file and adjust all claims arising under the policies of insurance, to bring suit thereunder and to deliver releases upon payment of claims. At Management Firm's option, Management Firm shall, at no cost or expense to Management Firm, be listed as



an additional insured on any policies of liability for personal injury and/or property damage. Additionally, if required by applicable law, Management Firm shall procure either a fidelity bond or other similar instrument or insurance covering acts of employee dishonesty, forgery, theft of money and securities, and computer fraud by the Management Firm and its employees. It is understood and agreed that the Association retains the right to file a claim under such bond or insurance policy for any material wrongdoing under this Agreement by Management Firm or its employees.

(o) *Reservation, Inventory Management & Owner Services.* Management Firm shall operate and maintain systems for reservations, inventory management and owner services. The services hereunder to be performed by Management Firm shall include, without limitation, reservation, exchange and inventory management, exchange program administration, and the general administrative and customer support in connection therewith. Management Firm shall implement such procedures as are consistent with the Governing Documents and as agreed by the Board to effectuate the reservation, inventory management and owner services hereunder. The reservation system provided by Management Firm shall include sufficient detail to reflect reservations made and used, and such other information as may be reasonably necessary to efficiently coordinate the reservation, inventory management and owner services provided to the Association.

(p) *Client Services.* Management Firm shall provide general client services to the Association. Management Firm shall coordinate meetings, including preparing agendas, furnishing notices to required parties, and otherwise assisting in the administration of meetings of the Board and the Association in accordance with the Governing Documents, unless the same are otherwise delegated to and accepted by the Board. Management Firm may, when requested by the Board, take the minutes of all of the Association's meetings, whether of the Owners or the Board, and the possession of the minute book shall be in the custody of the Management Firm.

(q) *Check-in Check-out Services.* Management Firm shall provide a full service front desk, which shall be operated in a professional manner and staffed twenty-four (24) hours per day seven (7) days per week, unless otherwise determined by the Management Firm from time to time. Management Firm shall prepare and cause the front desk staff to provide check-in and check-out services to all Owners and Occupants having a right to use a Unit at the Resort.

(r) *IT Services.* In support of many of the services provided under this Agreement, Management Firm may, from time to time, install, develop and otherwise provide access to various hardware, software and other technological services for the operation and management of the Program, including all updates, improvements, maintenance, reporting and support thereof (collectively "IT Services"). Such IT Services may be provided by Management Firm directly, or may be outsourced pursuant to the provisions of this Agreement. Notwithstanding anything to the contrary provided herein, it is understood and agreed that all personal and intellectual property of the Management

Firm, including without limitation all computers, hardware, software, reservation systems, and other technological services or systems, are and shall at all times remain the property of Management Firm.

(s) *Rules and Regulations.* Management Firm shall have the right to enforce all Rules and Regulations, restrictions and other provisions of the Governing Documents, pursuant to terms thereof and applicable law.

(t) *Association Meetings.* The Management Firm shall, in its capacity as manager of the Program, shall attend meetings of the Owners and of the Board.

(u) *Compliance With Law.* Management Firm shall take such action as may be necessary to comply with all applicable laws, statutes, ordinances, and rules and of all appropriate governmental authorities.

(v) *Use of Marks.* For all purposes contemplated under this Agreement, the Association grants to Management Firm a non-exclusive, royalty free right and license to use, copy, disclose, distribute, transfer, publish, modify, reproduce and display any and all trademarks, service marks and trade names, whether registered or unregistered, and any trade dress (including logos, designs, company names, business names, fictitious names and other business identifiers) of the Association and the Resort.

7. **Standard of Performance.** It is expressly understood and agreed that Management Firm shall perform the aforementioned services, itself or through its Affiliates, employees, agents or subcontractors, subject to the annual budget and the Governing Documents, and otherwise pursuant to the direction of the Board (as such direction may be provided through the approved annual budget, the annual business plan, resolutions of the Board, or other written instruction received from the Board from time to time). Subject to the foregoing, the services, obligations and responsibilities to be performed by Management Firm hereunder shall be performed as determined by Management Firm in its sole discretion and in accordance with applicable law, it being understood that Management Firm shall use commercially reasonable judgment to set staffing levels, identify on-going staff training and determine frequency of services. Management Firm and the Association agree that the Program shall be operated in accordance with the service and quality standards recommended by Management Firm and otherwise prevailing in the industry for similar condominium/timeshare projects in the area of comparable type, size and character, and subject to the terms and conditions of this Agreement.

8. **Management Facilities.** Upon request by the Management Firm, the Association shall provide Management Firm with an office and such other space at the Resort as may be reasonably necessary for Management Firm to perform the services required pursuant to this Agreement and the Governing Documents. Such space shall be provided at no cost or expense to Management Firm. In addition, Management Firm shall be entitled to utilize any unoccupied Unit or any portion of the common elements of the Resort for any legitimate storage, maintenance, management or administrative purpose. Management Firm covenants and agrees

to keep any such office or other space delegated to or used by Management Firm hereunder in as good condition as when received, reasonable wear and tear excepted.

9. **Consolidated Services.** The Association recognizes that the Management Firm, its Affiliates, and/or their respective employees and agents may be performing services similar to the services performed hereunder for other associations, condominiums and timeshare plans. In this connection, the Management Firm is authorized to provide or cause to be provided such services as are appropriate on a consolidated basis, whereby such services are provided to more than one association, condominium or timeshare plan. To require the Management Firm to cost account with regard to each association, condominium or timeshare plan and between the Association and other persons in interest as to other properties managed by Management Firm, would substantially increase the costs of administration hereunder borne by the Association. Accordingly, the Management Firm is hereby granted the power to allocate to the Association its appropriate and fair sharing of such costs and expenses as are general, and as to those that are not general, to charge the same to the appropriate party or parties on such basis (weighted or not) as the Management Firm deems fair and equitable, it being understood and agreed that such expenses may include, without limitation, the salaries and related costs associated with regional, area or district management employees supervising or assisting in the administration of the Program.

10. **Operation and Maintenance Costs.** The Association and Management Firm acknowledge and agree that the Management Firm will not pay any operation, maintenance and/or other costs and expenses applicable to the Association or the Program from its own funds or from the Management Fee, as hereinafter defined, and that the Management Firm shall perform all of the services required at no cost or expense whatsoever to itself, but solely at the cost and expense of the Association. Further, the Management Firm shall be entitled to reimbursement for the actual costs or expenses incurred by Management Firm or its Affiliates in connection with the provision of the services required pursuant to this Agreement. All such reimbursements shall be at cost, and identified or estimated by Management Firm in conjunction with its preparation of the annual budget. In the event the actual cost of a particular service cannot be adequately determined, Management Firm may allocate the same pursuant to such formula or methodology as may be reasonably determined by Management Firm pursuant to Article 9, as the same shall be identified in the annual budget. Approval of the annual budget by the Board shall be deemed as approval of the amounts proposed by the Management Firm for the provision of such services. The Association understands and agrees that it shall be responsible for payment, from its own funds, of all items identified in its annual operating budget, including without limitation any line items that represent a reimbursement due to Management Firm thereunder, and all such reimbursements are separate and apart from the Management Fee.

Management Firm shall provide the services hereunder and make disbursements to the extent only that, and only so long as, payments received from Basic Charges or other revenue, if any, of the Association are sufficient to pay such costs and expenses, and provided that the Management Firm remains an authorized signatory on the accounts of the Association. If it shall appear to the Management Firm that the Basic Charges and other revenue, if any, of

the Association are insufficient to pay the operation and maintenance costs and expenses of the Association and/or the Program, the Management Firm forthwith shall determine such additional Special Charges as are required and advise the Board of the same. Further, in the event that Management Firm is not the actual provider of the billing and collection services and/or if Management Firm is not an authorized signatory on the accounts of the Association, the Association hereby covenants and agrees to establish and maintain an operating account, funded in advance not less frequently than monthly, upon which Management Firm is an authorized signatory, to satisfy the operational needs of the Association and the Program. The Association agrees that it shall fund any such account monthly based upon the projected expenses and cash requirements for the upcoming month, as such are determined by the approved operating budget.

Notwithstanding anything to the contrary stated in this Agreement, Management Firm shall have no liability hereunder for any default of this Agreement caused by or resulting from insufficient revenue of the Association, including without limitation any act or failure of Management Firm to act by reason thereof, and the same shall not in any way constitute a default of Management Firm's obligations under this Agreement.

11. **Advances.** Notwithstanding anything to the contrary provided in this Agreement, the Management Firm shall have no obligation to advance funds to or on behalf of the Association, provided however that should the Management Firm, in its sole discretion, elect from time to time to make any advance, the Association shall promptly reimburse the Management Firm, pursuant to the terms of this Agreement, for all such expenses advanced in connection with or relating to the Program and/or the Association (including its operation and employees) within thirty (30) days from receipt of a statement of such expenses. Any advances made hereunder to the Association shall be evidenced by a promissory note and shall bear interest at a rate equal to Prime Rate (as published in *The Globe & Mail* on the last business day of the previous month) plus one percent (1%), subject to applicable usury limitations. As security for the repayment of any such advance, the Association hereby grants Management Firm a security interest on the future Basic Charges collected by Management Firm on behalf of the Association in an amount equal to the amount of the advance plus interest and a reasonable administrative fee. Except as may be required by applicable law or in the event of an emergency, any advance made hereunder shall require the approval of a majority of the Directors in attendance at a duly called meeting of the Board. The failure of the Association to make a promissory note as required by this Article 11 shall not invalidate any of the rights or obligations set forth in this Article 11.

12. **Management Fee.** In consideration of this Agreement, and the services provided hereunder, the Association shall pay to the Management Firm an annual management fee as described below (the "Management Fee"):

- (a) For the first fiscal year of this Agreement, commencing January 1, 2018 and continuing through December 31, 2018, the Management Fee shall equal the aggregate sum of Two Hundred Six Thousand Fifty-Five Dollars and 50/100 Canadian Dollars (CAN\$206,055.50), which is based on the management fee in effect as of December 31, 2017, plus the percentage increase (if any) in the Canadian Consumer Price Index, All

Items, Index Province of Ontario, with the Base Period (1992=100) ("CPI") as of December 31, 2016 for the prior twelve (12) month period, less and except any provincial or federal taxes and fees. The 2017 management fee was Two Hundred One Thousand Eight-Hundred Seventeen and 34/100 Canadian Dollars (CAN\$201,817.34) and the CPI increase as of December 31, 2016 was 2.1%.

(b) For the fiscal year commencing January 1, 2019, and annually thereafter, the Management Fee shall equal the prior year's Management Fee plus the CPI increase as of December 31<sup>st</sup> of two years prior, less and except any provincial or federal taxes and fees. (By way of example only, the Management Fee for 2018 will be increased based on the CPI increase for the twelve (12) months prior as of December 2016, the Management Fee for 2019 will be increased base on the increase in the CPI as of December 2017, and so forth).

The Management Fee shall be a net fee, free from all charges and expenses, and shall be payable, in Canadian dollars, in advance in twelve (12) equal monthly installments. The Management Fee shall be due and payable on the first (1<sup>st</sup>) day of each month during the fiscal year of the Association allocable to such Management Fee. It is understood and agreed that, irrespective of any accounting rules or revenue recognition treatment to the contrary, all amounts payable hereunder shall be deemed earned, without refund, at the time they are paid to Management Firm. For the term of this Agreement, including any renewals, the Management Fee due hereunder shall be adjusted annually to reflect the increases in the CPI (as applicable).

13. **Special Projects.** In the event that any special projects arise which are outside the purview of the budget and if the Management Firm is requested by the Association or its Board to supervise the same, the Management Firm shall be entitled to reimbursement of all expenses plus a fee to be negotiated and agreed by the Parties in advance of the commencement of any work relating to the project. Each such special project shall be evidenced by a resolution of the Board and will be provided on such terms and conditions as agreed pursuant to a separate contract between the Board and the Management Firm. Special projects may include, without limitation, additional audits, Special Charge billings, title transfer services, supervision of construction or refurbishment projects, procurement and installation of property systems, or any capital improvements not otherwise covered by the budget, but shall not include any services for which Management Firm receives compensation pursuant to Article 12. All amounts due under this Article shall be in addition to, and not in lieu of, the Management Fee and other costs or reimbursements due hereunder.

14. **Reimbursements For Common Expenses.** Separate and apart from the Management Fee, the Management Firm shall be entitled to be reimbursed as common expenses (payable through the Basic Charges made pursuant to the Governing Documents), all costs and expenses associated with (i) Management Firm's operation of the Program, including, but not limited to, office supplies, telephone services, facsimile machines and computer equipment; (ii) an annual use fee for the use of machinery, equipment, furniture and fixtures purchased at the expense of

Management Firm or its Affiliates and used in connection with the management or operation of the Program (including without limitation any telephone switch or other property service or system not part of the common elements or common furnishings), it being understood that the annual use fee shall not exceed the depreciation cost of the particular asset; (iii) an annual use fee for the use of any facilities and other property held and used in connection with the management of the Association and the Program, it being understood that the annual use fee shall not exceed the depreciation cost of the particular asset; (iv) the Basic Charges levied against any Units, facilities or other property owned or operated by Management Firm or its Affiliates and used in connection with the management hereunder; (v) all ad valorem real property taxes and governmental special assessments levied against any such Units, facilities or other property of Management Firm or its Affiliates and used for management pursuant to this Agreement; and (vi) all premiums for policies of insurance associated with the machinery, equipment furniture, fixtures and other items of personal property contained in the Units, facilities or other property of Management Firm or its Affiliates held and used for management hereunder. It is expressly understood and agreed, that nothing contained herein is intended to convey any ownership or other rights in or to the Units, machinery, equipment, furniture, fixtures, services and systems, facilities and other property of Management Firm or its Affiliates herein referred, and unless otherwise expressly stated in the Governing Documents, the Units, machinery, equipment, furniture, fixtures, services and systems, facilities and other property referenced in this Article 14, shall continue to be owned by Management Firm or its Affiliates and none of the same shall be deemed to be owned by or held in trust for the Association.

15. **Rental Programs.** Subject to the Governing Documents, Management Firm may from time to time, in its sole discretion, itself or through its Affiliates, establish and conduct rental programs at the Resort for Owners who desire to participate in such rental programs, such rental programs to be operated in such manner and pursuant to such terms as Management Firm shall deem, in its sole discretion, reasonable or appropriate (the "Rental Program"). Pursuant to the separate rental agreements with the individual Owners, Management Firm (or its Affiliate, as appropriate) shall be entitled to receive rental commissions for all such Rental Program activities at the Resort, and such commissions shall be in addition to, and not in lieu of, the Management Fee and other costs or reimbursements due under this Agreement. The Association hereby represents that it will recommend such Rental Program as the 'preferred' rental program of the Association.

16. **Advertising.** In further support of the Rental Program, Management Firm, itself or through its Affiliates, shall be entitled to determine and implement all phases of advertising, promotion and publicity relating to the rental accommodations at the Resort. Such programs shall be at the sole cost and expense of Management Firm, and may use brochures, print media, direct mail advertising, telemarketing and/or any other mediums as Management Firm or its Affiliates shall reasonably determine.

17. **Signage.** During the term of this Agreement and any renewals thereof, Management Firm may, at its sole cost and expense, have the right, but not the obligation, to add or replace existing signage and logos at the Resort with signage and logos of the Management Firm or its Affiliates,

provided however that Management Firm determines the Resort to be of such quality and service standards as are consistent with the quality and service standards of other resorts managed or branded with Management Firm or its Affiliates' signage. All such signage may be placed by Management Firm in or about the building exteriors and interiors, lobby, hallways and other common areas, entryways to and from private or public roads, and directional signage within the Resort, and such signage may be replaced, modified or removed in Management Firm's sole and absolute discretion. Management Firm shall, at its sole cost and obligation, repair any portion of the Resort damaged by the installation, maintenance, repair or removal of the Management Firm's signs and logos. Notwithstanding anything to the contrary provided herein, the Association expressly agrees that, so long as the Management Firm is the exclusive manager of the Program, the Association shall not (to the extent within its reasonable control) permit any other person or entity to place any signage, logos or other materials in or about the Resort that would advertise, promote or otherwise publicize any other person or entity engaged in similar or competing businesses as Management Firm or its Affiliates. Further, the Association understands and agrees that all Resort entry and directional signage shall be at the sole cost and expense of the Association.

18. **No License.** The Association understands and agrees that nothing provided in this Agreement is intended to give the Association or the Owners any right, title or interest in or to any trademark, service mark or trade name, whether registered or unregistered, or any trade dress (including logos, designs, company names, business names, fictitious names and other business identifiers) of the Management Firm or its Affiliates (collectively "Company Marks"). Neither the Association nor the Owners shall have any rights to copy, use, display, distribute, transfer, publish or reproduce any of the Company Marks in any medium, whether print, electronic or otherwise, without the express written consent of Management Firm as to each such use or reproduction, which consent may be withheld or conditioned in Management Firm's sole and absolute discretion. Further, neither the Association nor the Owners shall directly or indirectly (i) apply for any rights or interests in or to the Company Marks in any jurisdiction, (ii) infringe the Management Firm's rights in the Company Marks in any way, (iii) contest or aid others in contesting the validity, ownership or right to use the Company Marks, or (iv) take any other action in derogation of the Company Marks.

19. **Activities by Management Firm.** Neither Management Firm nor any of its Affiliates is restricted from owning, operating, licensing, franchising, managing, advising, or otherwise associating in any way with any other hotel, condominium, timeshare facility, interval ownership facility, vacation club, residential facility, food and beverage operation, spa, or other business of any kind, whether or not such business may be considered in competition with the Program and whether or not such business is located within the immediate vicinity of the Resort, and it is expressly agreed that Management Firm and/or its Affiliates may, in their sole discretion, properly engage in any or all of such activities. Further, the Association acknowledges that Management Firm's skills and the value of the programs it makes available to the Program have been obtained and will be improved, to the benefit of the Program and the Association, by Management Firm's engagement in such activities and its continued ability to pursue the same.

20. **Sufficiency of Basic Charges.** The Association covenants and agrees that all Basic Charges will at all times be maintained so that the amount produced thereby shall be sufficient to provide the monies necessary to pay all items set forth in the Governing Documents and this Agreement, and to realize a sum sufficient to meet the requirements of the annual budget adopted pursuant to the provisions of the Governing Documents of the Association.

21. **Assistance of the Association.** Except for duties beyond the scope of this Agreement, the Association shall neither interfere with, nor permit, allow or cause any of its officers, directors or Owners to interfere with, the Management Firm in the performance of its duties or the exercise of any of its powers hereunder. The Association, itself and through its Board, shall aid and assist the Management Firm in any reasonable manner requested by the Management Firm to perform its duties hereunder, including without limitation (i) assisting Management Firm in the collection of Basic or Special Charges, (ii) aiding in simplifying the method of collecting the Basic Charges due from Owners, (iii) cooperating with any requests made by Management Firm to a vendor, contractor or other service provider to conduct background investigations, testing and/or require bonding of the employees, agents or subcontractors of such vendor, contractor or service provider, and (iv) maintaining the service and quality standards of the Program.

22. **Emergency Authority.** Pursuant to the Governing Documents and in accordance with applicable law, the Board shall adopt an emergency response policy, which policy shall dictate the response protocol for the Association and/or Management Firm during emergency situations of varying magnitudes and shall provide authority for the granting of emergency powers, from time to time, by resolution of the Board. Subject to applicable law, the emergency response policy may include procedures for (i) naming additional assistant officers authorized to act during the period of the emergency, (ii) relocating the principal office of the Association, (iii) alternate notice requirements, and (iv) emergency voting and quorum requirements. For the purposes of this Article 22, emergency situations may include, without limitation, war, whether declared or not, revolution, riot, insurrection, strikes (other than of employees at the Program), invasion, armed conflict, hostile act of foreign enemy, acts of terrorism (foreign or domestic), sabotage, radiation or chemical contamination, ionizing radiation, acts of nature (including without limitation hurricane, tornado, flood, storm, tempest or earthquake), explosions, plague or other serious epidemics, or any other act or event that may or can impact the health and safety of the Owners and Occupants in the Units or their property and/or the overall welfare of the Program or the Resort.

23. **Indemnity.** The Management Firm shall not be liable to the Association or the Owners for any damage, loss, liability, cause of action, claim, suit, judgment, cost or expense incurred in connection with Management Firm's operation and maintenance and management of the Association or the Program, or the Management Firm's performance under this Agreement, unless caused by the Management Firm's gross negligence or willful misconduct. The Association and its Owners agree to indemnify and hold Management Firm harmless from all damage, loss, liability, cause of action, claim, suit, judgment, cost or expense incurred in connection with the Association or the Program from any cause whatsoever, including without limitation, Management Firm's operation and maintenance of the Program or the performance of



this Agreement, unless such is a result of Management Firm's gross negligence or willful misconduct.

24. **Limitation of Liability.** In the event of a default under this Agreement by either Party hereunder, in addition to any other remedy available pursuant to this Agreement, at law, or in equity, the non-defaulting Party may bring an action against the defaulting Party for damages and/or specific performance. The prevailing Party shall be entitled to the recovery of reasonable attorney fees and costs incurred as a result of such action. These remedies shall be cumulative, and the exercise of one or more remedy shall not be deemed to exclude or constitute a waiver of any other or additional remedies that may be available to the non-defaulting Party hereunder or at law or in equity. Notwithstanding the foregoing, in the event of any such action by a non-defaulting Party, the defaulting Party hereunder shall be liable only for the actual damages incurred by the non-defaulting Party, and under no circumstances shall either Party have any liability for the economic consequential damages, including lost profits or savings, and any indirect, special or incidental damages, whether or not either Party knew or should have known of their possibility. Further, in no event shall Management Firm's total liability hereunder exceed the total net revenues received by it under this Agreement for the one (1) year period preceding any claim of liability (or, if this Agreement has been in effect for less than one year, then such effective period), and such limitation on damages shall apply regardless of whether such damages or other relief are sought based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal or equitable theory.

25. **Compliance with Law.** The Parties shall at all times use commercially reasonable efforts to comply with applicable laws, statutes, ordinances and rules of appropriate governmental authorities.

26. **Subcontract.** The Association expressly understands and agrees that Management Firm may, in its sole and absolute discretion and without the consent of the Association, subcontract all or any portion of its duties and powers under this Management Agreement to other entities or persons, including without limitation any Affiliate of Management Firm. Upon request, the Management Firm shall, from time to time, provide the Association with a current list of subcontractors.

27. **Assignment.** With notice to, but without the prior consent of, the other Party, the Association may assign its right, title and interest herein to another property owners association responsible for the operation and management of the Program, and the Management Firm may assign its right, title and interest herein to another Management Firm, including any Affiliate. However, any assignment by either Party hereunder shall not be valid unless and until the assignee thereunder expressly assumes and agrees, in writing, to perform each and every covenant and term of this Agreement in accordance with the provisions of this Agreement.

28. **Default by Association.** If the Association breaches any of its representations contained within this Agreement, fails to promptly perform any of the duties or obligations required hereunder, or interferes with Management Firm in the performance of its duties and the exercise

of its powers hereunder, then the Management Firm may declare this Agreement in default after (i) providing written notice of default to the Board and (ii) the failure by the Association to cure such default within sixty (60) days after receipt of such notice, unless such default cannot be reasonably cured within such period (except defaults that can be cured by the payment of money only, which must be cured within such sixty (60) day notice period), in which case the Management Firm may only exercise its rights hereunder if the Association has not diligently and continuously pursued efforts to cure or remedy its default within such sixty (60) day period and cured the same within one hundred twenty (120) days from receipt of notice. Upon such default, the Management Firm shall have any and all remedies available at law or in equity, including the right to bring an action against the Association and its Owners for damages, specific performance or such other rights and remedies as it may have or any combination of the foregoing. Management Firm may also, at its option, cure such default of the Association and disburse to itself the amount of all costs and expenses incurred in connection therewith from the Association's funds (whether or not such disbursement would cause the Association to be over its budget) or, at the Management Firm's option, the Association shall reimburse the amount thereof upon demand. Additionally, in the event of a default, Management Firm may, at its option, declare this Agreement to be terminated with not less than thirty (30) days notice for transition (pursuant to Article 5). All of such rights and remedies of the Management Firm upon default shall be cumulative and without prejudice to any other rights or remedies provided herein, and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

29. **Default by Management Firm.** Except as provided in Article 30, if the Management Firm fails to materially perform any of the duties and obligations required hereunder, then the Association, through its Board, may declare this Agreement in default after (i) providing written notice of default to the Management Firm and (ii) the failure by the Management Firm to cure such default within sixty (60) days after receipt of such notice, unless such default cannot be reasonably cured within such period (except defaults that can be cured by the payment of money only, which must be cured within such sixty (60) day notice period), in which case the Association may only exercise its rights hereunder if the Management Firm has not diligently and continuously pursued efforts to cure or remedy its default within such sixty (60) day period and cured the same within one hundred twenty (120) days from receipt of notice. Upon such default, the Association shall have any and all remedies available at law or in equity, including the right to bring an action against the Management Firm for damages, specific performance or such other rights and remedies as it may have or any combination of the foregoing. Additionally, in the event of a default, the Association, through its Board, may, at its option, declare this Agreement to be terminated with not less than thirty (30) days notice for transition (pursuant to Article 5), provided however that any such termination of the Management Firm hereunder must have been approved by the affirmative majority vote of the total voting interests in the Association entitled to vote at a duly authorized meeting of the Association, or otherwise as may be required under the Governing Documents or applicable law. All of such rights and remedies of the Association upon default shall be cumulative and without prejudice to any other rights or remedies provided herein, and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

30. **Force Majeure.** In the event that the Management Firm shall be delayed, hindered or prevented from performance of any act required by this Agreement due to any event beyond the reasonable control of the Management Firm, the occurrence of which was not the result of the negligent act or omission of the Management Firm, including without limitation by reason of war, whether or not declared, revolution, riot, insurrection, strikes, labor troubles, inability to procure materials or services necessary for such performance, restrictive governmental laws or regulations, invasion, armed conflict, hostile act of foreign enemy, acts of terrorism (foreign or domestic), sabotage, radiation or chemical contamination, ionizing radiation, acts of nature (including without limitation hurricane, tornado, flood, storm, tempest or earthquake), explosions, plague or other serious epidemics, or any other reason beyond the reasonable control of the Management Firm (“Force Majeure”), then performance of such acts shall be excused for the period of the delay and the period of the performance of any such act shall be extended for the period equivalent to the period of such delay. Management Firm shall have no liability hereunder for any default of this Agreement caused by or resulting from its delay or failure to act due to any event of Force Majeure, as set forth in this Article 30, and the same shall not in any way constitute a default of Management Firm’s obligations under this Agreement.

31. **Non-Hire.** It is recognized by the Association that the employees of the Management Firm are key elements to its success as a competitive management company. Accordingly, the Association agrees that it shall not, at any time during the term of this Agreement and for a period of one (1) year after the expiration or termination of this Agreement, without first obtaining the Management Firm’s prior written consent, directly or indirectly, (i) hire or attempt to hire on a full-time, part-time or contractual basis the key employees of the Management Firm (having a title of assistant general manager or above), (ii) induce or influence the key employees of the Management Firm to terminate their employment with Management Firm, or (iii) permit any successor management firm to hire or attempt to hire the key employees or induce or influence the key employees to terminate their employment with Management Firm. Unless specifically provided by applicable law, in the event the Association or a successor management company hires a key employee of the Management Firm or otherwise violates this Article 31, the Association hereby agrees that it shall be required to pay to the Management Firm a sum equal to that individual’s total compensation (defined as salary plus the costs of benefits) for the preceding twelve (12) month period (except that if such individual was employed by the Management Firm for less than twelve (12) months prior to being hired by the Association or a successor management company, then the amount to be paid to Management Firm hereunder shall be extrapolated to be the sum that would have been due if employment had been for a full twelve (12) month period). The Parties agree that the provisions of this Article 31 are key components of this Agreement. In addition to the other remedies provided hereunder, any violation of this Article may give rise to a suit for relief either at law or in equity.

32. **Mediation.** Notwithstanding anything to the contrary hereunder, in the event of any dispute between the Parties concerning or in any way related to this Agreement, or any other dispute based in contract, tort, common law, equity, statute, regulation or otherwise, the Parties agree to use good faith efforts to resolve the matter via negotiations. If the negotiations are not

successful in resolving a dispute within thirty (30) days from notice of the dispute, the Parties hereby agree to promptly apply to a mediation organization of national standing to appoint an independent mediator with five (5) or more years of experience in the primary area of law as to which the dispute relates and the Parties agree to use good faith efforts to cooperate with such mediator in an effort to resolve the dispute in question. If after thirty (30) days from the commencement of mediation the dispute in question remains unresolved, either Party may seek remedy in the courts. Notwithstanding anything to the contrary provided herein, this provision may not be construed so as to prohibit either Party from filing a complaint with a court of competent jurisdiction and seeking preliminary or permanent injunctive relief, if such Party has a good faith belief that said injunctive relief is necessary to maintain the status quo. Immediately after the court rules on the request for injunctive relief, the Parties shall agree that the litigation be stayed pending the outcome of the aforementioned mediation.

33. **WAIVER OF JURY TRIAL.** THE PARTIES, INCLUDING ANY SUCCESSORS AND ASSIGNS, HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY OF ANY DISPUTES, CLAIMS OR CONTROVERSIES BETWEEN THEMSELVES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER AGREEMENT, INSTRUMENT OR TRANSACTION RELATING TO THIS AGREEMENT.

34. **Notice.** Any notice by the Association or the Management Firm to the other Party shall be valid and shall be deemed given, (a) if delivered personally, then upon delivery thereof, or (b) if mailed by certified mail (return receipt requested), then seven (7) business days after depositing within a valid postal receptacle (c) if by internationally recognized overnight courier, then one (1) business day after depositing with internationally recognized overnight courier for next day delivery. Unless otherwise indicated in writing, all notices required hereunder shall be addressed as follows:

*If to the Association:* Carriage Ridge Owners Association  
Attn: President  
90 Highland Drive  
Oro Medonte, Ontario  
Canada L0L 2L0

*and* Carriage Ridge Owners Association  
Attn: Secretary  
90 Highland Drive  
Oro Medonte, Ontario  
Canada L0L 2L0

*If to Management Firm:* Carriage Hills Hospitality Inc.  
Attn: Resort Management  
6277 Sea Harbor Drive  
Orlando, FL 32821

*With a copy to:* Carriage Hills Hospitality Inc.

Attn: Legal Services - RM  
6277 Sea Harbor Drive  
Orlando, FL 32821  
[wvolegal@wyn.com](mailto:wvolegal@wyn.com)

35. **Confidentiality.** Except as otherwise provided in this Agreement, the Parties agree to maintain in confidence and not to use, except for the purposes permitted in this Agreement any Confidential Information (as hereinafter defined) of the other Party, disclosed during discussions or otherwise acquired prior to or during the term of this Agreement. "Confidential Information" for the purposes of this Agreement shall include any non-public, proprietary financial, legal, marketing, network or other business information of the other Party or its affiliates, including but not limited to those relating to such Party's operations, products, sales and marketing techniques, plans and prospects, methods, techniques, processes, specifications, reports, records, data, apparatus, programs, research and business activities. The Parties agree that all Confidential Information, including proprietary ideas, plans and information, shall remain the property of the disclosing Party. Failure to mark such information as 'protected', 'confidential', 'proprietary' or the like will not be determinative of the protected, confidential or proprietary character of the disclosed information. In consideration of such disclosure, the receiving Party is herein obligated to maintain the confidentiality of all Confidential Information. The Parties' Confidential Information shall also include any proprietary and/or confidential information relating to their respective affiliates.

36. **No Press Releases.** The Association understands and agrees that no press release or other public disclosure mentioning Management Firm or the names of any of its parents, affiliates or business units, shall be issued without the prior written consent of Management Firm in each such instance.

37. **Waiver.** No term, covenant, representation, warranty or condition of this Agreement may be waived without the execution of a written instrument signed by both Parties. The failure of any Party, at any time, to require performance of any provision under this Agreement, or to exercise any remedy available to it hereunder or at law, shall in no manner affect the right of such Party to enforce or exercise the same at any later date. Furthermore, no waiver by any Party of any condition, term, covenant, representation, remedy or warranty contained in this Agreement or available at law, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of the same.

38. **Governing Law.** This Agreement shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario, without regard to the conflict of laws provisions thereof.

39. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or, if for any reason it is not deemed so

modified, it shall be prohibited or invalidated only to the extent of such prohibition or invalidity without the remainder thereof or any other provision of this Agreement being prohibited or invalidated.

40. **Construction.** The Parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor or against any Party, and any ambiguity shall not be construed against the drafting Party.

41. **Headings.** All headings in this Agreement have been included herein for reference purposes only and are not to be used in the interpretation of this Agreement.

42. **Survival.** The terms of Articles 18, 23 - 25 and 31 - 41 shall survive the expiration or termination of this Agreement (irrespective of the cause for the same) for the greater of two (2) years or the tolling of the applicable statute of limitations.

43. **Developer.** The Association hereby understands and acknowledges that, as of the date of execution of this Agreement, the Management Firm is also an affiliate of the Developer of the Program.

44. **Effective Date.** For all purposes, this Agreement and all actions relating to the management of the Plan and the administration of the Association from and after the Effective Date shall be deemed to be in effect from and after January 1, 2018. All actions of the Parties between the Effective Date and the actual date of execution of this Agreement shall hereby deemed ratified to be acts under this Agreement.

45. **Currency.** It is understood and agreed by the Parties that all financial obligations of the Parties pursuant to this Agreement shall be in Canadian Dollars.

46. **Counterparts & Execution.** This Agreement may be executed in any number of counterparts, each of which individually shall be considered to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed and delivered, in whole or in counterparts, by (i) mail or other physical delivery service or similar means, (ii) facsimile, (ii) email transmission of a file in “.pdf” or similar format, or (iii) except where prohibited by provincial, territorial or federal law, electronic means via cryptographic, XML-based or other properly authenticated digital or electronic signature. Upon delivery, each signature properly provided hereunder shall be deemed to have the same binding effect as if the original signature had been delivered to the other Party hereto.

47. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter contained herein, and it supersedes and replaces any and all prior agreements and understandings, whether written or oral, relating to the subject matter hereof, including specifically and without limitation the Former Agreement. This Agreement may not be modified or amended except by a written instrument signed by the Parties, and it shall inure to the benefit of and be binding upon the Parties hereto and their

respective successors and permitted assigns. In the event of any conflict between the terms of this Agreement and the terms provided in the Governing Documents, the terms and conditions of this Agreement shall govern and prevail.

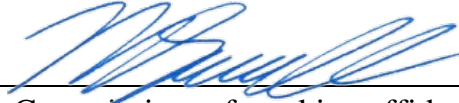
**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties hereto have executed this Agreement as of the day and year first set forth above.

<b>MANAGEMENT FIRM:</b> Carriage Hills Hospitality Inc.	<b>ASSOCIATION:</b> Carriage Ridge Owners Association
By: <u><i>Sheriff Massey</i></u> Printed _____ Name:	By: <u><i>N. Shepard</i></u> Printed _____ Name:
Title: <u><i>N P Ops/Control</i></u>	Title: <u><i>NANCI SHEPARD</i></u> <u><i>PRESIDENT, CROA.</i></u>



This is Exhibit "F" referred to in the  
Affidavit of Martin Ginsberman sworn before me  
this 30<sup>th</sup> day of April, 2020.



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A Commissioner for taking affidavits

RUN NUMBER : 107  
RUN DATE : 2020/04/16  
ID : 20200416095324.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 2457)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : CARRIAGE RIDGE OWNERS ASSOCIATION

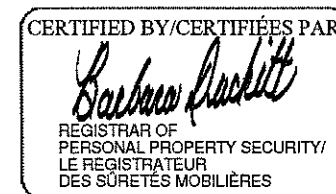
FILE CURRENCY : 15APR 2020

ENQUIRY NUMBER 20200416095324.36 CONTAINS 5 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THORNTON GROUT FINNIGAN LLP - ROXANA MANEA

3200-100 WELLINGTON STREET WEST  
TORONTO ON M5K 1K7



(crj5 06/2019)

CONTINUED... 2

Ontario 

RUN NUMBER : 107  
RUN DATE : 2020/04/16  
ID : 20200416095324.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 2458)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : CARRIAGE RIDGE OWNERS ASSOCIATION  
FILE CURRENCY : 15APR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
699820785

CAUTION FILING PAGE NO. TOTAL OF PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD  
01 001 3 20140915 1503 1902 9596 P PPSA 06

DEBTOR NAME BUSINESS NAME CARRIAGE RIDGE OWNERS ASSOCIATION  
DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
02  
03  
04 ADDRESS 90 HIGHLAND DRIVE SHANTY BAY ONTARIO CORPORATION NO. ON L0L 2L0

DEBTOR NAME BUSINESS NAME CARRIAGE HILLS VACATION OWNERS ASSOCIATION  
DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
05  
06  
07 ADDRESS 90 HIGHLAND DRIVE SHANTY BAY ONTARIO CORPORATION NO. ON L0L 2L0

SECURED PARTY / LIEN CLAIMANT ROYNAT INC.  
ADDRESS SUITE 1500, 4710 KINGSWAY ST. BURNABY BC V5H 4M2  
08  
09

COLLATERAL CLASSIFICATION  
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE AMOUNT INCLUDED DATE OF MATURITY OR NO FIXED MATURITY DATE  
10 X X

MOTOR VEHICLE YEAR MAKE MODEL V.I.N.  
11  
12

GENERAL COLLATERAL DESCRIPTION PORTABLE OFFICE(S), MOBILE OFFICE(S), OFFICE COMPLEX(S), COMPLEX(S), PORTABLE STRUCTURE(S), PORTABLE BUILDING(S) TOGETHER WITH ALL ATTACHMENTS ACCESSORIES ACCESSIONS REPLACEMENTS SUBSTITUTIONS  
13  
14  
15

REGISTERING AGENT AVS SYSTEMS INC.  
ADDRESS 201 - 1325 POLSON DR. VERNON BC V1T 8H2  
16  
17

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
REGISTRAR OF PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 107  
RUN DATE : 2020/04/16  
ID : 20200416095324.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 2459)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : CARRIAGE RIDGE OWNERS ASSOCIATION  
FILE CURRENCY : 15APR 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
699820785

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	002	3		20140915 1503 1902 9596		

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY / LIEN CLAIMANT

ADDRESS

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO. FIXED MATURITY DATE
----------------	-----------	-----------	----------------	------------------------	--------	---------------------	-------------------------

YEAR MAKE MODEL V.I.N.  
MOTOR VEHICLE

GENERAL COLLATERAL DESCRIPTION  
ADDITIONS AND IMPROVEMENTS THERETO AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY SALE AND OR DEALINGS WITH THE COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR OTHER PAYMENT THAT

REGISTERING AGENT

ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 107  
RUN DATE : 2020/04/16  
ID : 20200416095324.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 4  
( 2460)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : CARRIAGE RIDGE OWNERS ASSOCIATION  
FILE CURRENCY : 15APR 2020

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
699020785

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	003	3		20140915 1503 1902 9596		

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
-------------	---------------	------------------	---------	---------

BUSINESS NAME
---------------

ONTARIO CORPORATION NO.

ADDRESS
---------

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
-------------	---------------	------------------	---------	---------

BUSINESS NAME
---------------

ONTARIO CORPORATION NO.

ADDRESS
---------

SECURED PARTY / LIEN CLAIMANT
-------------------------------

ADDRESS
---------

COLLATERAL CLASSIFICATION				MOTOR VEHICLE	AMOUNT	DATE OF MATURITY	NO. FIXED
CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED			MATURITY DATE

MOTOR VEHICLE	YEAR	MAKE	MODEL	V.I.N.
---------------	------	------	-------	--------

GENERAL COLLATERAL DESCRIPTION	INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL
--------------------------------	---

REGISTERING AGENT	ADDRESS
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\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

5

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Luckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

Ontario 

RUN NUMBER : 107  
RUN DATE : 2020/04/16  
ID : 20200416095324.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

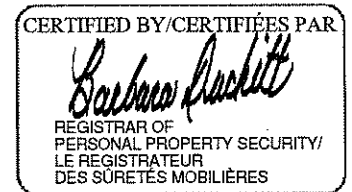
REPORT : PSSR060  
PAGE : 5  
( 2461)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : CARRIAGE RIDGE OWNERS ASSOCIATION  
FILE CURRENCY : 15APR 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

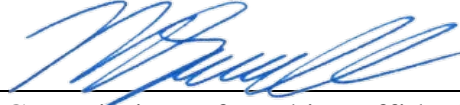
FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
699820785	20140915	1503	1902	9596

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj5 06/2019)

This is Exhibit "G" referred to in the  
Affidavit of Martin Ginsberman sworn before me  
this 30<sup>th</sup> day of April, 2020.



---

A Commissioner for taking affidavits

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF THE PROCEEDINGS OF  
CARRIAGE RIDGE OWNERS ASSOCIATION (the  
“Applicant”)**

**CONSENT**

BDO CANADA LIMITED hereby consents to act as Court-appointed Administrator in this proceeding should such an Order be granted by the Court.

Dated at Beamsville, Ontario, this 30<sup>th</sup> day of April, 2020.

**BDO CANADA LIMITED**

Per:   
Name: Brad Newton  
Title: Senior Vice-President



**AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS OF CARRIAGE  
RIDGE OWNERS ASSOCIATION**

---

Court File No. CV-20-00640266-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
**Proceeding commenced in Toronto**

---

**CONSENT**

---

**Thornton Groat Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams (LSO# 41877E)**  
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Tel: (416) 304-0060

**Mitchell W. Grossell (LSO # 699931)**  
Email: [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca)  
Tel.: (416) 304-7978

Lawyers for Applicant, Carriage Ridge  
Owners Association

**AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS OF CARRIAGE  
RIDGE OWNERS ASSOCIATION**

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
**Proceeding commenced in Toronto**

---

**AFFIDAVIT OF MARTIN GINSHERMAN  
(sworn April 30, 2020)**

---

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

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Tel.: (416) 304-7978

Lawyers for the Applicant, Carriage Ridge  
Owners Association

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) DAY, THE 7<sup>TH</sup>  
)  
MADAME JUSTICE CONWAY ) DAY OF MAY, 2020  
)

**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 RIDGE OWNERS  
ASSOCIATION (the “Applicant”)**

**ORDER  
(appointing Administrator)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing BDO Canada Limited (“BDO”) as administrator (the “Administrator”) without security, in respect of:

- (a) the Applicant and all the Applicant’s present and future assets, undertakings and properties (collectively, the “Property”), and
- (b) all the lands and premises on which the Applicant operates the timeshare resort known as Carriage Ridge Resort, legally described in Schedule “A” hereto, collectively owned by the members of the Applicant (the “Members”) as tenants-in-common, as recorded in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) (collectively, the “Lands”),

was heard this day via teleconference in, Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Martin Ginsberman, sworn April 30, 2020 (the “**Ginsberman Affidavit**”) and the Exhibits thereto, the pre-filing report of BDO and the appendices thereto, and the consent of BDO to act as Administrator, and on hearing the submissions of counsel for the Applicant and no one appearing for any other parties on the service list set out in the Notice of Application, although duly served as appears from the affidavit of service of Mitchell Grossell, sworn April 30, 2020,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and service is validated so that this Application is properly returnable today and further service thereof is hereby dispensed with.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, BDO is hereby appointed as Administrator, without security, in respect of:

- (a) the Applicant and the Property, including all proceeds thereof, and
- (b) the Lands, including all proceeds thereof.

(the Property and the Lands, including all proceeds thereof collectively, the “**Resort Assets**”).

3. **THIS COURT ORDERS** that the Administrator is not and shall not be deemed to be a “receiver” within the meaning of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and shall not be required to comply with the provisions of the BIA applicable to receivers including, without limiting the generality of the foregoing, any requirement to provide notice of its appointment or any statements or reports to any Persons (as defined below), including the Office of the Superintendent in Bankruptcy, in accordance with sections 245 and 246 of the BIA.

4. **THIS COURT ORDERS** that the Applicant, its members, officers, directors, agents and advisors shall advise the Administrator of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Administrator in the exercise of its powers and

discharge of its obligations and provide the Administrator with the assistance that is necessary to enable the Administrator to adequately carry out the Administrator's functions.

### **ADMINISTRATOR'S POWERS**

5. **THIS COURT ORDERS** that the Administrator is hereby empowered and authorized, but not obligated, to act at once in respect of the Resort Assets as provided in this Order and, without in any way limiting the generality of the foregoing, the Administrator is hereby expressly empowered and authorized to do any of the following where the Administrator considers it necessary or desirable, in consultation with the Applicant:

- (a) to review, research and consider potential options to market, redevelop or restructure any or all of the Resort Assets and/or the Applicant, and to advise the Applicant thereon but, not to implement same without further Order of this Court;
- (b) to advise the Applicant in its preparation of its cash flow statements;
- (c) to review and monitor the Applicant's cash receipts and disbursements;
- (d) to advise the Applicant in connection with possible options to meet any cash flow deficiencies;
- (e) to advise the Applicant in connection with the restructuring of the operations of the Applicant, including the restructuring of the ownership of the Resort Assets;
- (f) to report to this Court at such times and intervals as the Administrator may deem appropriate with respect to matters relating to the Resort Assets, the Applicant and its business and operations (the "**Business**"), and such other matters as may be relevant to the proceedings herein;
- (g) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Administrator's powers and duties, including without limitation those conferred by this Order;

- (h) to assist the Applicant, to the extent required by the Applicant, with disseminating information to the Members, creditors or other interested Persons;
- (i) to contact, communicate with and discuss the Applicant's business and affairs and the Resort Assets with applicable municipal, provincial, and federal governments and their boards, agencies, commissions, and similar bodies, regarding matters within the Applicant's powers pursuant to this Order;
- (j) to report to, and meet, communicate and discuss with such affected Persons as the Administrator deems appropriate, on all matters relating to the Applicant, the Resort Assets, the Business and the administration ordered herein, and to share information, documents and other material with such Persons, subject to such terms as to confidentiality as the Administrator or the Applicant deems advisable and provided that the Administrator shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations and to perform such other duties as are required by this Order or by this Court from time to time;

and in each case where the Administrator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons except the Applicant, where applicable pursuant to this Order.

6. **THIS COURT ORDERS** that the Administrator is authorized to register a copy of this Order against title to any of or all the Lands.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE ADMINISTRATOR**

7. **THIS COURT ORDERS** that (i) the Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting or having acted on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith

advise the Administrator of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Resort Assets to the Administrator if so requested by the Administrator.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Administrator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Business or the Resort Assets, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall at the request of the Administrator provide to the Administrator or permit the Administrator to make, retain and take away copies thereof and grant to the Administrator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Administrator due to privilege, including privilege attaching to solicitor-client communications, or to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Administrator for the purpose of allowing the Administrator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Administrator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Administrator. Further, for the purposes of this paragraph, all Persons shall provide the Administrator with all such assistance in gaining immediate access to the information in the Records as the Administrator may in its discretion require including providing the Administrator with instructions on the use of any computer or other system and providing the Administrator with any and all access codes, account names and account numbers that may be required to gain access to the information.



## **POSSESSION OF PROPERTY AND OPERATIONS**

10. **THIS COURT ORDERS** that subject to the terms of this Order and further Orders of this Court, the Applicant:

- (a) shall remain in possession and control of the Property and continue to manage the Resort Assets under the supervision of the Administrator and the Applicant's board of directors, subject to and pursuant to the terms of all applicable agreements in connection therewith;
- (b) shall continue to carry on the Business in a manner consistent with the preservation of the Business and the Resort Assets;
- (c) is authorized and empowered to continue to use funds in its Savings Account(s) (as that term is defined in the Ginsberman Affidavit) for the purposes set out therein or as may be reasonably necessary for the ongoing operations of the Resort Assets or the carrying out of the Business, and all uses of such funds by the Applicant after the date hereof are hereby approved by this Court such that no cause of action lies against the Applicant or any of its former or current directors or officers solely by reason of making such uses in contravention of any agreement, whether express or implied and whether or not such agreement predates the date of this Order; and
- (d) is authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel and such other persons (collectively, the "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled, but not required to pay, or cause to be paid on its behalf, all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) in the event that the Applicant employs any Persons, all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Resort Assets or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services, provided that the Applicant shall not make, or enter into any agreement in respect of, any capital expenditures exceeding \$100,000 in the aggregate after the date of this Order except with the written consent of the Administrator or pursuant to further Order of this Court; and
- (b) payment for goods or services actually supplied to the Applicant, whether prior or subsequent to the time of the granting of this Order.

12. **THIS COURT ORDERS** that the Applicant shall, in accordance with legal requirements, remit or pay, or cause to be remitted or paid on its behalf:

- (a) in the event that the Applicant employs any Persons, any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the time of the granting of this Order, or where such Sales Taxes were accrued or collected prior to the time of

the granting of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

### **RESTRUCTURING**

13. **THIS COURT ORDERS** that subject to the terms of this Order and further Orders of this Court, the Applicant shall have the right to:

- (a) meet, communicate and discuss with such affected Persons as the Applicant deems appropriate, on all matters relating to the Applicant, the Resort Assets, the Business and the administration ordered herein, provided that the Applicant or its counsel notifies the Administrator regarding any communication that the Applicant has with any affected Persons prior to issuing any communications; and
- (b) with the consent of the Administrator, dispose of redundant or non-material Property not exceeding \$500,000 in any one transaction or \$2 million in the aggregate.

### **NO PROCEEDINGS AGAINST THE ADMINISTRATOR**

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Administrator without leave of this Court pursuant to motion brought on at least 7 days’ notice.

### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

15. **THIS COURT ORDERS** that no Proceeding against or in respect of the Applicant or the Resort Assets shall be commenced or continued, and any and all Proceedings currently under way against or in respect of the Applicant or the Resort Assets are hereby stayed and suspended

pending further Order of this Court, except with the written consent of the Applicant and the Administrator, or with leave of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. **THIS COURT ORDERS** that all rights and remedies against the Applicant, the Administrator, or affecting the Business or the Resort Assets, are hereby stayed and suspended, except with the written consent of the Applicant and the Administrator, or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Administrator or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Administrator or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE APPLICANT**

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, without written consent of the Applicant and Administrator or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such

other practices as may be agreed upon by the supplier or service provider and the Applicant and the Administrator, or as may be ordered by this Court.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. **THIS COURT ORDERS** that no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until the Administrator is discharged.

### **EMPLOYEES**

20. **THIS COURT ORDERS** that all employees of the Applicant, if any, shall remain the employees of the Applicant until such time as the Applicant may terminate the employment of such employees, as applicable. The Administrator shall not be liable for any employee-related liabilities, including any successor employer liabilities.

### **LIMITATIONS ON THE ADMINISTRATOR'S LIABILITY**

21. **THIS COURT ORDERS** that the Administrator shall not, unless permitted by further Order of this Court and consented to by the Administrator, take possession of the Resort Assets and shall take no part whatsoever in the management or supervision of the management of the Business, save and except for the Administrator's duties and obligations within this Order, and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Resort Assets, or any part thereof.

22. **THIS COURT ORDERS** that nothing in this Order shall be construed as resulting in the Administrator being or being deemed to be an officer, director, responsible person or operator of the Applicant or the Resort Assets within the meaning of any statute, regulation, rule or law for any purpose whatsoever.

23. **THIS COURT ORDERS** that, pursuant to clauses 7(1)(a) and 7(2)(d) of the *Canada Personal Information Protection and Electronic Documents Act*, the Administrator may collect and use personal information of Members and other identifiable individuals, but only in a

manner which is in all material respects identical to the prior use of such information by the Applicant or otherwise to the extent desirable or required to fulfil the Administrator's duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that nothing herein shall require the Administrator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Resort Assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, or the *Occupational Health and Safety Act* (Ontario) and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Administrator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Administrator shall not, as a result of this Order or anything done in pursuance of the Administrator's duties and powers under this Order, be deemed to be in Possession of any of the Resort Assets within the meaning of any Environmental Legislation, unless it is actually in possession.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Administrator under this Order or as an officer of this Court, the Administrator shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **ADMINISTRATOR'S AND OTHERS' ACCOUNTS**

26. **THIS COURT ORDERS** that the Administrator, counsel to the Administrator and counsel to the Applicant shall be paid:

- (a) in respect of services relating to both the Applicant and Carriage Hills Owners Association in its administration, 31% of, and

- (b) in respect of services for the benefit of, or relating virtually entirely to, the Applicant alone, 100% of

their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings unless otherwise ordered by the Court. The Applicant is hereby authorized and directed to pay from time to time the interim accounts of the Administrator, counsel to the Administrator and counsel to the Applicant in accordance with the foregoing.

27. **THIS COURT ORDERS** that the Administrator, counsel to the Administrator and counsel to the Applicant shall be entitled to and are hereby granted a charge (the “**Administration Charge**”) on the Property, as security for such fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order in respect of these proceedings, and that the Administration Charge shall form a first charge on the Property in the maximum amount of \$150,000 in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

28. **THIS COURT ORDERS** that the Administrator and counsel to the Administrator shall pass their accounts from time to time, and for this purpose the accounts of the Administrator and counsel to the Administrator are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

29. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected prior or subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

30. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

31. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Administration Charge, unless the Applicant also obtains the prior written consent of the Administrator or further Order of this Court.

32. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (each, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any alleged breach of any Agreement caused by, or resulting from, the creation of the Administration Charge; and
- (c) the payments made by the Applicant pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.



## **CORPORATE MATTERS**

33. **THIS COURT ORDERS** that until further Order of this Court:

- (a) the Applicant is hereby relieved of any obligation to call and hold an annual or special meeting of Members, and if the term of a director of the Applicant expires before the next annual or special meeting that is held, such term is hereby extended until such annual or special meeting; and
- (b) any and all rights of Members to call and hold a special meeting of Members, to take any action by written ballot, to remove any director of the Applicant or to veto or direct any action of the Applicant, its board of directors in its capacity as manager, or any successors or assignees thereof, are hereby stayed and suspended.

## **SERVICE AND NOTICE**

34. **THIS COURT ORDERS** that the Applicant shall make commercially reasonable efforts to inform the Members of this Order and any upcoming motions in these proceedings by issuing a notice substantially in the form attached hereto as Schedule “B” (the “**Member Notice**”) to the Members by:

- (a) causing the Manager (as defined in the Ginsberman Affidavit) to send the Member Notice via electronic mail to all of those Members for which they have email addresses; and
- (b) posting the notice and any other subsequent notices with respect to these proceedings, on the Applicant’s website.

35. **THIS COURT ORDERS** that the Applicant, the Administrator and their respective counsel are at liberty to serve or distribute this Order, any Member Notice, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Members, the Applicant’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation,

and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

36. **THIS COURT ORDERS** that the sending and posting of the Member Notice in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient delivery of notice of this Order on all the Members who may be entitled to receive notice, and no other notice need be given or made and no other document or material need be sent to or served upon any Member in respect of this Order.

37. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Administrator in accordance with the Guide with the following URL: [www.bdo.ca/en-ca/extranets/carriage](http://www.bdo.ca/en-ca/extranets/carriage).

38. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Administrator are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the intended recipient, including the Applicant’s creditors or other interested parties, at their respective addresses as last shown in the Applicants’ records and, in the case of a Member, in accordance with paragraph 34, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

39. **THIS COURT ORDERS** that each of the Applicant and the Administrator may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

40. **THIS COURT ORDERS** that nothing in this Order shall prevent the Administrator from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy in respect of the Applicant, the Business or the Resort Assets.

41. **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 to give effect to this Order and to assist the Applicant, the Administrator 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 Applicant and to the Administrator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Administrator in any foreign proceeding, or to assist the Applicant and the Administrator and their respective agents in carrying out the terms of this Order.

42. **THIS COURT ORDERS** that the Applicant and the Administrator be at liberty and are 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, and that the Administrator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

43. **THIS COURT ORDERS** that the Applicant or the Administrator or any other interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Applicant and the Administrator and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

44. **THIS COURT ORDERS** that, unless impracticable or otherwise ordered by further Order of this Court, all motions in this administration may be heard together with motions in the

administration of Carriage Hills Vacation Owners Association (Court file no. CV-20-00640265-00CL) seeking substantially similar relief.

45. **THIS COURT ORDERS** that this Order and all its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF CARRIAGE RIDGE PROPERTY**

Parcel 1-27 Section 51-Oro-3, being Part of Lots 1 and 2 Concession 3, designated as Part 1 on Plan 51r-31409 Township of Oro-Medonte

County of Simcoe.

Land Titles Division of Simcoe (No. 51)

## **SCHEDULE “B”**

### **NOTICE TO MEMBERS OF CARRIAGE RIDGE RESORT AND CARRIAGE HILLS RESORT**

**PLEASE TAKE NOTICE** that on May 7, 2020, Carriage Ridge Owners Association and Carriage Hills Vacation Owners Association (collectively, the “**Applicants**”), commenced independent, but parallel, administration proceedings under the *Courts of Justice Act*, R.S.O. 1990 c. C. 43, as amended (the “**Administration Proceedings**”) and BDO Canada Limited was appointed as administrator of the Applicants (in such capacity, the “**Administrator**”) by Orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 7, 2020 (the “**Administration Orders**”)

**PLEASE TAKE FURTHER NOTICE** that the Applicants have brought a motion seeking [BRIEFLY DESCRIBE RELIEF SOUGHT] which is to be heard by the Court on [DATE].

Copies of the Motion Record for the upcoming proceeding, the Administration Orders and the other documents related to these Administration Proceedings will be posted on the Administrator’s website at: [www.bdo.ca/en-ca/extranets/carriage](http://www.bdo.ca/en-ca/extranets/carriage).

In the event that your contact information is out of date, we ask that you update your information on the Administrator’s website on the link noted above. If you have any other questions or concerns please feel free to contact the Administrator at either [BDOCarriageHills@bdo.ca](mailto:BDOCarriageHills@bdo.ca) and [BDOCarriageRidge@bdo.ca](mailto:BDOCarriageRidge@bdo.ca).

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 RIDGE VACATION OWNERS ASSOCIATION**

Court File No.: CV-20-00640266-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ADMINISTRATION ORDER**

**Thornton Grout Finnigan LLP**

Barristers and Solicitors  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

**Leanne M. Williams (LSO# 41877E)**

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Email: mgrossell@tgf.ca

Fax: 416-304-1313

Lawyers for the Applicant

# TAB 4



Court File No. ~~\_\_\_\_\_~~ CV-20-00640266-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~DAY, THE # 7<sup>TH</sup>  
 )  
MADAME JUSTICE ~~\_\_\_\_\_~~ CONWAY ) DAY OF ~~MONTH~~MAY, ~~20YR~~2020

~~PLAINTIFF~~<sup>1</sup>

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

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 RIDGE OWNERS  
ASSOCIATION (the "Applicant")

ORDER

(appointing ~~Receiver~~Administrator)

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant for an Order pursuant to ~~section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA") and~~ section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the ~~"CJA"~~) appointing [~~RECEIVER'S NAME~~] ~~as receiver [and manager] (in such capacities, the~~

<sup>1</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

<sup>2</sup> ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

~~"Receiver"~~ BDO Canada Limited ("BDO") as administrator (the "Administrator") without security, in respect of:

- (a) the Applicant and all of the Applicant's present and future assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor (collectively, the "Property"), and
- (b) all the lands and premises on which the Applicant operates the timeshare resort known as Carriage Ridge Resort, legally described in Schedule "A" hereto, collectively owned by the members of the Applicant (the "Members") as tenants-in-common, as recorded in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) (collectively, the "Lands"),

was heard this day ~~at 330 University Avenue~~ via teleconference in, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of [NAME] Martin Ginsherman, sworn [DATE] April 30, 2020 (the "Ginsherman Affidavit") and the Exhibits thereto, the pre-filing report of BDO and the appendices thereto, and the consent of BDO to act as Administrator, and on hearing the submissions of counsel for ~~[NAMES],~~ the Applicant and no one appearing for ~~[NAME] any other parties on the service list set out in the Notice of Application,~~ although duly served as appears from the affidavit of service of ~~[NAME] Mitchell Grossell, sworn [DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver~~ April 30, 2020,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~ Application and the ~~Motion~~ Application Record is hereby abridged and service is validated<sup>3</sup> so that this ~~motion~~ Application is properly returnable today and ~~hereby dispenses with~~ further service thereof is hereby dispensed with.

<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section ~~243(1) of the BIA and section~~ 101 of the CJA, ~~[RECEIVER'S NAME]~~BDO is hereby appointed ~~Receiver~~as Administrator, without security, ~~of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property")~~in respect of:

### **RECEIVER**

- (a) the Applicant and the Property, including all proceeds thereof, and
- (b) the Lands, including all proceeds thereof.

(the Property and the Lands, including all proceeds thereof collectively, the "Resort Assets").

3. **THIS COURT ORDERS** that the Administrator is not and shall not be deemed to be a "receiver" within the meaning of the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") and shall not be required to comply with the provisions of the BIA applicable to receivers including, without limiting the generality of the foregoing, any requirement to provide notice of its appointment or any statements or reports to any Persons (as defined below), including the Office of the Superintendent in Bankruptcy, in accordance with sections 245 and 246 of the BIA.

4. **THIS COURT ORDERS** that the Applicant, its members, officers, directors, agents and advisors shall advise the Administrator of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Administrator in the exercise of its powers and discharge of its obligations and provide the Administrator with the assistance that is necessary to enable the Administrator to adequately carry out the Administrator's functions.

### **ADMINISTRATOR'S POWERS**

5. ~~3-~~**THIS COURT ORDERS** that the ~~Receiver~~Administrator is hereby empowered and authorized, but not obligated, to act at once in respect of the ~~Property~~Resort Assets as provided in this Order and, without in any way limiting the generality of the foregoing, the ~~Receiver~~Administrator is hereby expressly empowered and authorized to do any of the following

where the ~~Receiver~~Administrator considers it necessary or desirable, in consultation with the Applicant:

- (a) to review, research and consider potential options to market, redevelop or restructure any or all of the Resort Assets and/or the Applicant, and to advise the Applicant thereon but, not to implement same without further Order of this Court;
- (b) to advise the Applicant in its preparation of its cash flow statements;
- ~~(c) (a) to take possession of review and exercise control over the Property and any and all proceeds, monitor the Applicant's cash receipts and disbursements arising out of or from the Property;~~
  - ~~(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;~~
  - ~~(c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~
- (d) to advise the Applicant in connection with possible options to meet any cash flow deficiencies;
- (e) to advise the Applicant in connection with the restructuring of the operations of the Applicant, including the restructuring of the ownership of the Resort Assets;
- (f) to report to this Court at such times and intervals as the Administrator may deem appropriate with respect to matters relating to the Resort Assets, the Applicant and its business and operations (the "Business"), and such other matters as may be relevant to the proceedings herein;

(g) ~~(d)~~ to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the ~~Receiver'~~Administrator's powers and duties, including without limitation those conferred by this Order;

~~(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;~~

~~(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~

~~(g) to settle, extend or compromise any indebtedness owing to the Debtor;~~

~~(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;~~

~~(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;~~

~~(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating~~

<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

~~such terms and conditions of sale as the Receiver in its discretion may deem appropriate;~~

~~(k) — to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,~~

(h) to assist the Applicant, to the extent required by the Applicant, with disseminating information to the Members, creditors or other interested Persons;

~~(i) without the approval of this Court in respect of any transaction not exceeding \$ \_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$ \_\_\_\_\_; and~~ to contact, communicate with and discuss the Applicant's business and affairs and the Resort Assets with applicable municipal, provincial, and federal governments and their boards, agencies, commissions, and similar bodies, regarding matters within the Applicant's powers pursuant to this Order;

~~(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~

~~and in each such case notice under subsection 63(4) of the Ontario Personal Property Security Act, [or section 31 of the Ontario Mortgages Act, as the case may be,]<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply.~~

~~(l) — to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;—~~

<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

- (j) ~~(m)~~ to report to, and meet with, communicate and discuss with such affected Persons ~~(as defined below)~~ as the ReceiverAdministrator deems appropriate, on all matters relating to the PropertyApplicant, the Resort Assets, the Business and the receivershipadministration ordered herein, and to share information, documents and other material with such Persons, subject to such terms as to confidentiality as the ReceiverAdministrator or the Applicant deems advisable; and provided that the Administrator shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph; and
- ~~(n) — to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;~~
- ~~(o) — to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;~~
- ~~(p) — to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;~~
- ~~(q) — to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and~~
- (k) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and to perform such other duties as are required by this Order or by this Court from time to time;

and in each case where the ReceiverAdministrator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons ~~(as defined below), including the Debtor, and without interference from any other Person~~except the Applicant, where applicable pursuant to this Order.

6. THIS COURT ORDERS that the Administrator is authorized to register a copy of this Order against title to any of or all the Lands.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVERADMINISTRATOR**

7. ~~4.~~ **THIS COURT ORDERS** that (i) the ~~Debtor~~Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and ~~shareholders~~members, and all other persons acting or having acted on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the ~~Receiver~~Administrator of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the PropertyResort Assets to the ~~Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request~~Administrator if so requested by the Administrator.

8. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the ~~Receiver~~Administrator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the businessBusiness or ~~affairs of the~~ DebtorResort Assets, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall at the request of the Administrator provide to the ~~Receiver~~Administrator or permit the ~~Receiver~~Administrator to make, retain and take away copies thereof and grant to the ~~Receiver~~Administrator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~58~~ or in paragraph ~~69~~ of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the ~~Receiver~~Administrator due to the privilege, including privilege attaching to solicitor-client ~~communication~~communications, or ~~due~~ to statutory provisions prohibiting such disclosure.

9. ~~6.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service



provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the ~~Receiver~~Administrator for the purpose of allowing the ~~Reeeiver~~Administrator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the ~~Reeeiver~~Administrator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the ~~Reeeiver~~Administrator. Further, for the purposes of this paragraph, all Persons shall provide the ~~Reeeiver~~Administrator with all such assistance in gaining immediate access to the information in the Records as the ~~Reeeiver~~Administrator may in its discretion require including providing the ~~Reeeiver~~Administrator with instructions on the use of any computer or other system and providing the ~~Reeeiver~~Administrator with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. — THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors~~

#### POSSESSION OF PROPERTY AND OPERATIONS

10. THIS COURT ORDERS that subject to the terms of this Order and further Orders of this Court, the Applicant:

- (a) shall remain in possession and control of the Property and continue to manage the Resort Assets under the supervision of the Administrator and the Applicant's board of directors, subject to and pursuant to the terms of all applicable agreements in connection therewith;

- (b) shall continue to carry on the Business in a manner consistent with the preservation of the Business and the Resort Assets;
- (c) is authorized and empowered to continue to use funds in its Savings Account(s) (as that term is defined in the Ginsberman Affidavit) for the purposes set out therein or as may be reasonably necessary for the ongoing operations of the Resort Assets or the carrying out of the Business, and all uses of such funds by the Applicant after the date hereof are hereby approved by this Court such that no cause of action lies against the Applicant or any of its former or current directors or officers solely by reason of making such uses in contravention of any agreement, whether express or implied and whether or not such agreement predates the date of this Order; and
- (d) is authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel and such other persons (collectively, the “Assistants”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled, but not required to pay, or cause to be paid on its behalf, all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) in the event that the Applicant employs any Persons, all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their **standard rates and charges**;
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Resort Assets or the Business including, without limitation, payments on

account of insurance (including directors and officers insurance), maintenance and security services, provided that the Applicant shall not make, or enter into any agreement in respect of, any capital expenditures exceeding \$100,000 in the aggregate after the date of this Order except with the written consent of the Administrator or pursuant to further Order of this Court; and

(b) payment for goods or services actually supplied to the Applicant, whether prior or subsequent to the time of the granting of this Order.

12. THIS COURT ORDERS that the Applicant shall, in accordance with legal requirements, remit or pay, or cause to be remitted or paid on its behalf:

(a) in the event that the Applicant employs any Persons, any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the time of the granting of this Order, or where such Sales Taxes were accrued or collected prior to the time of the granting of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

## RESTRUCTURING

13. THIS COURT ORDERS that subject to the terms of this Order and further Orders of this Court, the Applicant shall have the right to:

- (a) meet, communicate and discuss with such affected Persons as the Applicant deems appropriate, on all matters relating to the Applicant, the Resort Assets, the Business and the administration ordered herein, provided that the Applicant or its counsel notifies the Administrator regarding any communication that the Applicant has with any affected Persons prior to issuing any communications; and
- (b) with the consent of the Administrator, dispose of redundant or non-material Property not exceeding \$500,000 in any one transaction or \$2 million in the aggregate.

## **NO PROCEEDINGS AGAINST THE ~~RECEIVER~~ADMINISTRATOR**

14. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the ~~Receiver except with the written consent of the Receiver or with~~Administrator without leave of this Court, pursuant to motion brought on at least 7 days' notice.

## **NO PROCEEDINGS AGAINST THE ~~DEBTOR~~APPLICANT OR THE PROPERTY**

15. ~~9.~~ THIS COURT ORDERS that no Proceeding against or in respect of the ~~Debtor~~Applicant or the ~~Property~~Resort Assets shall be commenced or continued ~~except with the written consent of the Receiver or with leave of this Court,~~ and any and all Proceedings currently under way against or in respect of the ~~Debtor~~Applicant or the ~~Property~~Resort Assets are hereby stayed and suspended pending further Order of this Court, except with the written consent of the Applicant and the Administrator, or with leave of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

16. ~~10.~~ THIS COURT ORDERS that all rights and remedies against the ~~Debtor~~Applicant, the ~~Receiver~~Administrator, or affecting the ~~Property~~Business or the Resort Assets, are hereby stayed and suspended, except with the written consent of the ~~Receiver~~Applicant and the

Administrator, or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the ReceiverAdministrator or the DebtorApplicant to carry on any business which the DebtorApplicant is not lawfully entitled to carry on, (ii) exempt the ReceiverAdministrator or the DebtorApplicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVERAPPLICANT**

17. ~~11.~~ **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the DebtorApplicant, without written consent of the ReceiverApplicant and Administrator or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the DebtorApplicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the DebtorApplicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ReceiverApplicant, and that the ReceiverApplicant shall be entitled to the continued use of ~~the Debtor's~~its current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ReceiverApplicant in accordance with normal payment practices of the DebtorApplicant or such other practices as may be agreed upon by the supplier or service provider and the ReceiverApplicant and the Administrator, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

~~13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.~~

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until the Administrator is discharged.

### **EMPLOYEES**

20. ~~14.~~ THIS COURT ORDERS that all employees of the ~~Debtor~~Applicant, if any, shall remain the employees of the ~~Debtor~~Applicant until such time as the ~~Receiver, on the Debtor's behalf,~~Applicant may terminate the employment of such employees, as applicable. The ~~Receiver~~Administrator shall not be liable for any employee-related liabilities, including any successor employer liabilities ~~as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3).~~

### **LIMITATIONS ON THE ADMINISTRATOR'S LIABILITY**

21. THIS COURT ORDERS that ~~the~~ Administrator shall not, unless permitted by further Order of this Court and consented to by the Administrator, take possession of the Resort Assets

and shall take no part whatsoever in the management or supervision of the management of the Business, save and except for the Administrator's duties and obligations within this Order, and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the BIA Business or under the Wage Earner Protection Program Act Resort Assets, or any part thereof.

### **PIPEDA**

22. THIS COURT ORDERS that nothing in this Order shall be construed as resulting in the Administrator being or being deemed to be an officer, director, responsible person or operator of the Applicant or the Resort Assets within the meaning of any statute, regulation, rule or law for any purpose whatsoever.

23. ~~15.~~ THIS COURT ORDERS that, pursuant to ~~clause 7(3)~~clauses 7(1)(a) and 7(2)(d) of the Canada *Personal Information Protection and Electronic Documents Act*, the ~~Receiver shall disclose~~Administrator may collect and use personal information of Members and other identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, but only in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed~~Applicant or otherwise to the extent desirable or required to fulfil the Administrator's duties as are required by this Order or by this Court from time to time.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

24. ~~16.~~ THIS COURT ORDERS that nothing herein ~~contained~~ shall require the ~~Receiver~~Administrator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the ~~Property~~Resort Assets that might be

environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the ~~Ontario~~ *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, or the ~~Ontario~~ *Occupational Health and Safety Act* (Ontario) and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the ~~Receiver~~ Administrator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The ~~Receiver~~ Administrator shall not, as a result of this Order or anything done in pursuance of the ~~Receiver~~ Administrator's duties and powers under this Order, be deemed to be in Possession of any of the ~~Property~~ Resort Assets within the meaning of any Environmental Legislation, unless it is actually in possession.

#### ~~LIMITATION ON THE RECEIVER'S LIABILITY~~

25. ~~17.~~ **THIS COURT ORDERS** that ~~the Receiver~~, in addition to the rights and protections afforded to the Administrator under this Order or as an officer of this Court, the Administrator shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### ~~RECEIVER'S ADMINISTRATOR'S AND OTHERS' ACCOUNTS~~

26. ~~18.~~ **THIS COURT ORDERS** that the ~~Receiver~~ Administrator, counsel to the Administrator and counsel to the ~~Receiver~~ Applicant shall be paid :

- (a) in respect of services relating to both the Applicant and Carriage Hills Owners Association in its administration, 31% of, and
- (b) in respect of services for the benefit of, or relating virtually entirely to, the Applicant alone, 100% of



their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings unless otherwise ordered by the Court ~~on~~. The Applicant is hereby authorized and directed to pay from time to time the ~~passing of~~ interim accounts, ~~and that the Receiver~~ of the Administrator, counsel to the Administrator and counsel to the Applicant in accordance with the foregoing.

27. THIS COURT ORDERS that the Administrator, counsel to the Administrator and counsel to the ~~Receiver~~ Applicant shall be entitled to and are hereby granted a charge (the "~~Receiver's~~ Administration Charge") on the Property, as security for such fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order in respect of these proceedings, and that the ~~Receiver's~~ Administration Charge shall form a first charge on the Property in the maximum amount of \$150,000 in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, ~~but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~<sup>6</sup>

28. ~~19.~~ THIS COURT ORDERS that the ~~Receiver~~ Administrator and ~~its legal~~ counsel to the Administrator shall pass ~~its~~ their accounts from time to time, and for this purpose the accounts of the ~~Receiver~~ Administrator and ~~its legal~~ counsel to the Administrator are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~20.— THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.~~

### **FUNDING OF THE RECEIVERSHIP**

~~21.— THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed~~

<sup>6</sup>Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

~~§ \_\_\_\_\_ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon;~~

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

29. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected prior or subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

30. THIS COURT ORDERS that the Administration Charge shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, (collectively, "Encumbrances") in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

~~22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.~~

~~23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.~~

~~31. 24. THIS COURT ORDERS that the monies from time to time borrowed,~~

32. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any

Property that rank in priority to, or *pari passu* with, the Administration Charge, unless the Applicant also obtains the prior written consent of the Administrator or further Order of this Court.

33. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (each, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any alleged breach of any Agreement caused by, or resulting from, the creation of the Administration Charge; and
- (c) the payments made by the ReceiverApplicant pursuant to this Order~~or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.~~, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**CORPORATE MATTERS**

**34. THIS COURT ORDERS** that until further Order of this Court:

- (a) the Applicant is hereby relieved of any obligation to call and hold an annual or special meeting of Members, and if the term of a director of the Applicant expires before the next annual or special meeting that is held, such term is hereby extended until such annual or special meeting; and
- (b) any and all rights of Members to call and hold a special meeting of Members, to take any action by written ballot, to remove any director of the Applicant or to veto or direct any action of the Applicant, its board of directors in its capacity as manager, or any successors or assignees thereof, are hereby stayed and suspended.

**SERVICE AND NOTICE**

**35. THIS COURT ORDERS** that the Applicant shall make commercially reasonable efforts to inform the Members of this Order and any upcoming motions in these proceedings by issuing a notice substantially in the form attached hereto as Schedule “B” (the “**Member Notice**”) to the Members by:

- (a) causing the Manager (as defined in the Ginsherman Affidavit) to send the Member Notice via electronic mail to all of those Members for which they have email addresses; and
- (b) posting the notice and any other subsequent notices with respect to these proceedings, on the Applicant’s website.

**36. THIS COURT ORDERS** that the Applicant, the Administrator and their respective counsel are at liberty to serve or distribute this Order, any Member Notice, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Members, the Applicant’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and

notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

37. THIS COURT ORDERS that the sending and posting of the Member Notice in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient delivery of notice of this Order on all the Members who may be entitled to receive notice, and no other notice need be given or made and no other document or material need be sent to or served upon any Member in respect of this Order.

38. ~~25.~~ THIS COURT ORDERS that the E-Service ~~Protocool~~Guide of the Commercial List (the "~~Protocool~~Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocool~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~13 of the ~~Protocool~~Guide, service of documents in accordance with the ~~Protocool~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Administrator in accordance with the ~~Protocool~~Guide with the following URL: ~~<@>~~[www.bdo.ca/en-ca/extranets/carriage](http://www.bdo.ca/en-ca/extranets/carriage).

39. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the ~~Protocool~~Guide is not practicable, the ~~Receiver is~~Applicant and the Administrator are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Debtor~~intended recipient, including the Applicant's creditors or other interested parties, at their respective addresses as last shown ~~on~~in the Applicants' records ~~of~~and, in the ~~Debtor~~case of a Member, in accordance with paragraph 33, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day

following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

40. ~~27.~~ **THIS COURT ORDERS** that each of the ReceiverApplicant and the Administrator may from time to time apply to this Court for advice and directions in the discharge of ~~its~~their powers and duties hereunder.

41. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the ~~Receiver~~Administrator from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy in respect of the ~~Debtor~~Applicant, the Business or the Resort Assets.

42. ~~29.~~ **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 to give effect to this Order and to assist the ~~Receiver~~Applicant, the Administrator and ~~its~~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~~Applicant and to the Administrator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Administrator in any foreign proceeding, or to assist the ~~Receiver~~Applicant and ~~its~~the Administrator and their respective agents in carrying out the terms of this Order.

43. ~~30.~~ **THIS COURT ORDERS** that the ~~Receiver~~Applicant and the Administrator be at liberty and ~~is~~are 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, and that the ~~Receiver~~Administrator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~31. — THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by~~

~~the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.~~

44. ~~32.~~ **THIS COURT ORDERS** that the Applicant or the Administrator or any other interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the ~~Receiver~~ Applicant and the Administrator and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

45. **THIS COURT ORDERS** that, unless impracticable or otherwise ordered by further Order of this Court, all motions in this administration may be heard together with motions in the administration of Carriage Hills Vacation Owners Association (Court file no. CV-20-00640265-00CL) seeking substantially similar relief.

46. **THIS COURT ORDERS** that this Order and all its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF CARRIAGE RIDGE PROPERTY**

**~~RECEIVER CERTIFICATE~~**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

~~1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed~~

Parcel 1-27 Section 51-Oro-3, being Part of Lots 1 and 2 Concession 3, designated as Part 1 on Plan 51r-31409 Township ff Oro-Medonte

County of Simcoe.

Land Titles Division of Simcoe (No. 51)



SCHEDULE "B"

NOTICE TO MEMBERS OF  
CARRIAGE RIDGE RESORT AND CARRIAGE HILLS RESORT

PLEASE TAKE NOTICE that on May 7, 2020, Carriage Ridge Owners Association and Carriage Hills Vacation Owners Association (collectively, the "**Applicants**"), commenced independent, but parallel, administration proceedings under the *Courts of Justice Act, R.S.O. 1990 c. C. 43*, as amended (the "**Administration Proceedings**") and BDO Canada Limited was appointed as administrator of the Applicants (in such capacity, the "**Administrator**") by ~~Order~~Orders of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_ CL \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ May 7, 2020 (the "**Administration Orders**")

PLEASE TAKE FURTHER NOTICE that the Applicants have brought a motion seeking [BRIEFLY DESCRIBE RELIEF SOUGHT] which ~~the Receiver is authorized to borrow under and pursuant to the Order.~~

~~2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.~~

~~3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.~~

~~4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.~~

-3-

~~5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.~~

~~6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.~~

~~7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.~~

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity~~

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

be heard by the Court on [DATE].

Copies of the Motion Record for the upcoming proceeding, the Administration Orders and the other documents related to these Administration Proceedings will be posted on the Administrator's website at: [www.bdo.ca/en-ca/extranets/carriage](http://www.bdo.ca/en-ca/extranets/carriage).

In the event that your contact information is out of date, we ask that you update your information on the Administrator's website on the link noted above. If you have any other questions or concerns please feel free to contact the Administrator at either [BDOCarriageHills@bdo.ca](mailto:BDOCarriageHills@bdo.ca) and [BDOCarriageRidge@bdo.ca](mailto:BDOCarriageRidge@bdo.ca).

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 RIDGE VACATION OWNERS ASSOCIATION

Court File No.: CV-20-00640266-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ADMINISTRATION ORDER

Thornton Grout Finnigan LLP  
Barristers and Solicitors  
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Lawyers for the Applicant

Document comparison by Workshare 10.0 on Thursday, April 30, 2020 11:59:54 AM

Input:	
Document 1 ID	iManage://TGF-WSS01/Client/2852892/1
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Document 2 ID	iManage://TGF-WSS01/Client/2879214/3
Description	#2879214v3<Client> - Carriage Ridge Administration Order [Draft: April 29, 2020]
Rendering set	Standard

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Style change	
Format change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:
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	Count
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Moved to	9
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Format changed	0
Total changes	788

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1993, c.C.43,  
AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS OF **CARRIAGE  
RIDGE OWNERS ASSOCIATION**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceeding commenced in Toronto**

**APPLICATION RECORD**

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Owners Association