

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

THE HONOURABLE MADAM) FRIDAY, THE 11TH
)
JUSTICE CONWAY) DAY OF DECEMBER, 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 HILLS VACATION
OWNERS ASSOCIATION** (the “**Applicant**”)

AMENDED AND RESTATED APPOINTMENT ORDER

THIS MOTION made by the Applicant for an Order, *inter alia*, amending, expanding and confirming the powers of BDO Canada Limited (“**BDO**”) in respect of Carriage Hills Vacation Owners Association (“**Carriage Hills**”) and the Carriage Hills timeshare resort (the “**Carriage Hills Resort**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), was heard this day via Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant dated December 1, 2020 (the “**Motion Record**”), the Third Report of the Administrator dated December 1, 2020, and the appendices thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Administrator, counsel for Lori Smith, Karen Levins and Bruce Fleming, counsel for Wyndham Destinations, Christopher Diana on behalf of himself, Darren Chapelle on behalf of himself and Martin Ginsberman on behalf of himself, no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Derek Harland sworn December 3, 2020, filed.

SERVICE

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

EFFECTIVE TIME

2. **THIS COURT ORDERS** that this Order and all of its provisions shall be effective as of 12:01 a.m. Eastern Time on January 6, 2021.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, BDO is hereby appointed Receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Carriage Hills and the Carriage Hills Resort acquired for, or used in relation to the business carried on by Carriage Hills, including all proceeds thereof (the “**Property**”) and all the lands and premises on which Carriage Hills operates the Carriage Hills Resort, legally described in Schedule “A” hereto, collectively owned by the members of Carriage Hills (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**”) (the Property and the Lands, including all proceeds thereof collectively, the “**Resort Assets**”).

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Resort Assets and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Resort Assets and any and all proceeds, receipts and disbursements arising out of or from the Resort Assets;
- (b) to receive, preserve, and protect the Resort Assets, or any part or parts thereof, including, but not limited to, the changing of locks and security

codes, the relocating of the Resort Assets to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage (including without limitation, property, general liability and vehicular insurance) as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of Carriage Hills, including the power 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 Carriage Hills;
- (d) to engage or retain 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'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 Carriage Hills or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to Carriage Hills and to exercise all remedies of Carriage Hills in collecting such monies, including, without limitation, to enforce any security held by Carriage Hills;
- (g) to settle, extend or compromise any indebtedness owing to Carriage Hills;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Resort Assets, whether in the Receiver's name or in the name and on behalf of Carriage Hills, for any purpose pursuant to this Order;

- (i) to undertake environmental or workers' health and safety assessments of the Resort Assets;
- (j) 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 Carriage Hills, the Resort Assets or the Receiver, and to settle or compromise any such proceedings. 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;
- (k) to market any or all of the Resort Assets, including advertising and soliciting offers in respect of the Resort Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Resort Assets, or any part or parts thereof, outside of the ordinary course of business with the approval of this Court and in 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, shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Resort Assets or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Resort Assets;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Resort Assets and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Resort Assets against title to any of the Lands;

- (p) 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 Carriage Hills;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of Carriage Hills, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by Carriage Hills;
- (r) to exercise any shareholder, partnership, joint venture or other rights which Carriage Hills may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver 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 Carriage Hills, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) Carriage Hills, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting 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 of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Resort Assets to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver 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

affairs of Carriage Hills, 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 provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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 due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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 for the purpose of allowing the Receiver 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS AND DIRECTS** the Land Registrar for the Township of Oro to register a copy of this Order against title to the Lands upon request by the Receiver.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **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 leave of this Court.

NO PROCEEDINGS AGAINST CARRIAGE HILLS OR THE RESORT ASSETS

10. **THIS COURT ORDERS** that no Proceeding against or in respect of Carriage Hills, the 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 Carriage Hills or the Resort Assets are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against Carriage Hills, the Receiver, or affecting the Resort Assets, are hereby stayed and suspended except with the written consent of the Receiver 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 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and further provided that nothing in this paragraph shall: (i) empower the Receiver or Carriage Hills to carry on any business which Carriage Hills is not lawfully entitled to carry on, (ii) exempt the Receiver or Carriage Hills 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 RECEIVER

12. **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 Carriage Hills, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with Carriage Hills 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 Carriage Hills 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 Receiver, and that the Receiver shall be entitled to the continued use of Carriage Hills' 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 Receiver in accordance with normal payment practices of Carriage Hills or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **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 Resort Assets 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.

EMPLOYEES

15. **THIS COURT ORDERS** that the Receiver 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) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Resort Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Resort Assets (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 of the Resort Assets shall be entitled to continue to use the personal information provided to it, and related to the Resort Assets purchased, in a manner which is in all material respects identical to the prior use of such information by Carriage Hills, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver 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 ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver, counsel and special counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver, counsel and special counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Resort Assets, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Resort Assets 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.

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

21. **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 normal rates and charges of the Receiver or its counsel or special counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **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 \$2,000,000 (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 Resort Assets 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, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, 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.

23. **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.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “**B**” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver 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.

GENERAL

26. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of Carriage Hills.

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 and its 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, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver 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 any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver 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.

SCHEDULE "A"

DESCRIPTION OF LANDS

Parcel 1-16 Section 51-Oro-3

SUBJECT TO an easement over Part of Lots 2 and 3 Concession 4, Township of Oro, Part 5 Plan 51r-26764 as set out in Instrument Number 323091 in favour of Part of Lot 2 Concession 4, Township of Oro, designated as Parts 11, 12, 13 and 14 on Plan 51r-26764 being Parcel 1-17 Section 51-Oro-3, and, in favour of Part of Lot 2 Concession 4, Township of Oro, designated as Parts 1, 2, 3, 4, 15, 16 and 17 on Plan 51r-26764 being Parcel 1-18 Section 51-Oro-3.

TOGETHER WITH an easement over Part Lot 2 Concession 4, Township of Oro, being Part of Parcel 1-17 Section 51-Oro-3 being Part 11 Plan 51r-26764 as set out in Instrument Number 323092.

TOGETHER WITH an easement over Part of Lot 2 Concession 4, Township of Oro, being Part of Parcel 1-18 Section 51-Oro-3 being Parts 1 and 16 Plan 51r26764 as set out in Instrument Number 323093.

SCHEDULE "B"

FORM OF RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that BDO Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties Carriage Hills acquired for, or used in relation to the Carriage Hills Resort, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 10th day of May, 2020, as amended on December 11, 2020 (the "**Order**") made in an action having Court file number CV-20-00640265-00CL, 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 \$ _____ 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 Resort Assets, 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 Resort Assets 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.

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 Resort Assets 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__.

BDO Canada Limited, solely in its capacity
as Receiver of the Resort Assets, and not in its
personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND IN THE MATTER OF THE
ADMINISTRATION PROCEEDINGS OF **CARRIAGE HILLS VACATION OWNERS ASSOCIATION**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED AND RESTATED
APPOINTMENT ORDER

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