

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) FRIDAY, THE 30TH
)
JUSTICE CONWAY) DAY OF APRIL, 2021
)

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

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

SERVICE PROTOCOL ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as receiver (in such capacity, the “**Receiver**”) over all of the assets, properties and undertakings of Carriage Ridge Owners Association (the “**Applicant**”) and all the lands and premises on which the Applicant operated the Carriage Ridge Resort, appointed by Order of the Honourable Madam Justice Conway with effect as of January 6, 2021, for an Order (the “**Service Protocol Order**”), among other things, (i) approving a procedure for service in connection with the Receiver’s anticipated motion for approval of a sale of the Carriage Ridge Resort and (ii) approving the activities of the Receiver and the fees and disbursements of the Receiver and its counsel, was heard this day via Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the motion record of the Receiver dated April 16, 2021, the Third Report of the Receiver dated April 16, 2021 (the “**Third Report**”), including the Confidential Supplement, and on hearing the submissions of counsel for the Receiver, counsel for Wyndham Worldwide Corporation, counsel for Lori Smith and Karen Levins and counsel for David and Phyllis Lennox and the submissions of Christopher Diana, no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Christine Doyle sworn April 17, 2021,

SERVICE AND INTERPRETATION

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

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

- (a) **“Applicant”** has the meaning ascribed thereto in the preamble to this Service Protocol Order;
- (b) **“Approval and Vesting Order”** means the approval and vesting order to be sought by the Receiver in connection with the anticipated sale of the Resort Property, which will, among other things, vest title to the Resort Property in and to the proposed purchaser thereof, free and clear of (i) the interests of, among others, all Owners and (ii) other Non-permitted Encumbrances;
- (c) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (d) **“Carriage Hills”** means the Carriage Hills Vacation Owners Association;
- (e) **“Confidential Supplement”** means the Confidential Supplemental Report to the Third Report, dated April 16, 2021;
- (f) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (g) **“E-Service Protocol”** has the meaning ascribed thereto in paragraph 12 of this Service Protocol Order;
- (h) **“Hearing Date”** means the date, scheduled for May 27, 2021, on which the motion for the Approval and Vesting Order will be returnable;
- (i) **“Hills Receiver”** has the meaning ascribed thereto in paragraph 16 of this Service Protocol Order;

- (j) “**Hills Receivership Order**” has the meaning ascribed thereto in paragraph 16 of this Service Protocol Order;
- (k) “**Land Registry Office**” means the Land Registry Office for the Land Titles Division of Simcoe (No. 51);
- (l) “**Motion Record**” means the Receiver’s motion record for the Sale Approval Motion;
- (m) “**Non-permitted Encumbrances**” means:
 - (i) all interests recorded by instruments on title to the Resort Property in the Land Registry Office other than Permitted Encumbrances (as will be defined in the Sale Approval Motion); and
 - (ii) any unrecorded security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial, monetary or ownership claims in respect of the Resort Property;
- (n) “**Notice to Owners and Encumbrancers**” means the notice for publication and/or service by the Receiver in accordance with paragraphs 9 and 11 of this Service Protocol Order, in the form attached as **Schedule “A”** hereto;
- (o) “**Owners**” means members of the Applicant having an ownership interest in the Resort Property, solely as recorded in the Land Registry Office, without investigation on the part of the Receiver regarding entitlement;
- (p) “**Receiver**” has the meaning ascribed thereto in the preamble to this Service Protocol Order;
- (q) “**Receiver’s Website**” means the website maintained by the Receiver at the following URL: <https://www.bdo.ca/en-ca/extranets/carriage/>;

- (r) “**Resort Property**” means all the lands and premises on which the Applicant operated the Carriage Ridge Resort, as legally described in **Schedule “B”** to this Service Protocol Order;
- (s) “**Sale Approval Motion**” means the Receiver’s anticipated motion for the Approval and Vesting Order;
- (t) “**Service Date**” means the date on which the Notice of Motion is posted on the Receiver’s Website in accordance with paragraph 7 of this Service Protocol Order;
- (u) “**Service List**” means the service list maintained by the Receiver for these proceedings; and
- (v) “**Third Report**” has the meaning ascribed thereto in the preamble to this Service Protocol Order.

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

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

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

SERVICE PROTOCOL

6. **THIS COURT ORDERS** that the form and substance of the Notice to Owners and Encumbrancers is hereby approved. Notwithstanding the foregoing, the Receiver may, from time to time, make such minor changes to such form as the Receiver considers necessary or desirable.

7. **THIS COURT ORDERS** that the Receiver shall cause both the Motion Record and the Notice to Owners and Encumbrancers to be posted to the Receiver’s Website not less than fifteen

(15) days prior to the Hearing Date. The Receiver shall cause the Motion Record and the Notice to Owners and Encumbrancers to remain posted on the Receiver's Website until the Receiver is discharged by the Court.

8. **THIS COURT ORDERS** that the Motion Record shall be served on the Service List in accordance with the E-Service Protocol on the Service Date or as soon as reasonably practicable thereafter.

9. **THIS COURT ORDERS** that the Receiver shall, at least seventeen (17) days before the Hearing Date, send a copy of the Notice to Owners and Encumbrancers by ordinary mail to the last known address of each Owner and each party having a Non-permitted Encumbrance recorded on title to the Resort Property in the Land Registry Office. In addition the Receiver shall, at least seventeen (17) days before the Hearing Date, send a copy of the Notice to Owners and Encumbrancers by email to the last known email address of each Owner, if an email address is available.

10. **THIS COURT ORDERS** that the Receiver shall be entitled to use its unfettered and absolute discretion to determine whether the Notice to Owners and Encumbrancers should be sent by email or regular mail in accordance with this protocol based on the information in its possession and control.

11. **THIS COURT ORDERS** that the Receiver shall cause the Notice to Owners and Encumbrancers to be published in the national edition of *The Globe and Mail* at least seventeen (17) days before the Hearing Date.

12. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**E-Service Protocol**") is approved and adopted by reference herein and the service of documents made in accordance with the E-Service Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the E-Service Protocol, service of documents in accordance with the E-Service Protocol will be effective upon transmission.

13. **THIS COURT ORDERS** that service of the Motion Record and the Notice to Owners and Encumbrancers in accordance with paragraphs 7 to 12 of this Service Protocol Order shall be deemed to be full and effective service of notice in respect of the Sale Approval Motion on all Owners and other holders of Non-permitted Encumbrances, effective as of the date that is eight (8) days prior to the Hearing Date, and hereby dispenses with any further service in respect of the Sale Approval Motion.

14. **THIS COURT ORDERS** that this Service Protocol Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*.

SEALING

15. **THIS COURT ORDERS** that the Confidential Supplement shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and the sealed envelope shall not be opened until ordered by further Order of the Court.

LENDING POWER

16. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to lend to the receiver of Carriage Hills (the “**Hills Receiver**”) such monies from time to time as it may consider necessary or desirable for the purpose of funding the exercise of the powers and duties conferred upon the Hills Receiver by the Amended and Restated Appointment Order made December 11, 2020 in the Carriage Hills receivership proceedings (the “**Hills Receivership Order**”), including interim expenditures, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at a rate of interest of 10% per annum, in return for Receiver’s Certificates, as such term is defined in the Hills Receivership Order.

APPROVAL OF ACTIVITIES AND FEES

17. **THIS COURT ORDERS** that the Third Report, the Confidential Supplement and the activities of the Receiver described in each be and the same are hereby approved. Such approval

is without prejudice or limitation to any response that might be raised to the Sale Approval Motion.

18. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements for the period from January 6, 2021 to March 31, 2021 be, and the same is hereby approved.

19. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver and the Hills Receiver for the period from February 1, 2021 to March 31, 2021 in the amount of \$344,045.00 plus disbursements of \$7,809.84 and HST of \$45,741.13 for a total of \$397,595.97, as set out in the Affidavit of Matthew Marchand, sworn April 12, 2021 and attached as Appendix "K" to the Third Report, are hereby approved and the Receiver is authorized to pay the Applicant's 31% share of such fees and disbursements.

20. **THIS COURT ORDERS** that the professional fees and disbursements of Aird & Berlis LLP, counsel to the Receiver and to the Hills Receiver for the period from February 4, 2021 to March 31, 2021, in the amount of \$119,711.50 plus disbursements of \$750.74 and HST of \$15,660.10, for a total of \$136,122.34, as set out in the Affidavit of Sam Babe sworn April 15, 2021 and attached as Appendix "L" to the Third Report, are hereby approved and the Receiver is authorized to pay the Applicant's 31% share of such fees and disbursements.

21. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, special counsel to the Receiver and to the receiver of Carriage Ridge for the period from January 6, 2021 to March 31, 2021, in the amount of \$68,552.50 plus disbursements of \$719.19 and HST of \$8,951.25, for a total of \$78,222.94, as set out in the Affidavit of Leanne Williams sworn April 16, 2021 and attached as Appendix "M" to the Third Report, are hereby approved and the Receiver is authorized to pay the Applicant's 31% share of such fees and disbursements.

MISCELLANEOUS

22. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court to amend, vary or supplement this Service Protocol Order or for advice and directions in the discharge of their respective powers and duties hereunder.

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Service Protocol Order and to assist the Receiver and its agents in carrying out the terms of this Service Protocol 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 Service Protocol Order, or to assist the Receiver and its agents in carrying out the terms of this Service Protocol Order.

24. **THIS COURT ORDERS** that 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 Service Protocol Order and for assistance in carrying out the terms of this Service Protocol Order.



SCHEDULE "A"

FORM OF NOTICE TO OWNERS AND ENCUMBRANCERS

APPROVAL OF SALE OF CARRIAGE RIDGE RESORT

NOTICE TO OWNERS AND ENCUMBRANCERS

OWNERS AND CREDITORS OF CARRIAGE RIDGE OWNERS ASSOCIATION

Please read this notice carefully as your legal rights may be affected.

PURPOSE OF THIS NOTICE

BDO Canada Limited has been appointed as the receiver (the “**Receiver**”), of the assets, undertakings and properties of the Carriage Ridge Owners Association (the “**Association**”) and of property and assets of the Carriage Ridge Resort (the “**Resort Property**”) in an application commenced by the Association at the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) bearing Court File No. CV-20-00640266-00CL. The Resort Property includes the Lands, as such term is defined in the Amended and Restated Appointment Order made by the Honourable Madam Justice Conway on December 11, 2020.

In accordance with a Sale Process approved by an Order of the Honourable Justice Conway dated January 5, 2021, the Receiver, through its listing broker, Colliers Macaulay Nicolls Inc., has marketed the Resort Property and entered into an agreement of purchase and sale (the “**Purchase Agreement**”) with a purchaser (the “**Purchaser**”), subject to approval of the Court.

In accordance with the terms of the Purchase Agreement and as is customary in such Court-supervised sales by receivers, the Receiver will be seeking an Order from the Court (the “**Approval and Vesting Order**”) which will both: (a) approve of the Purchase Agreement and the sale transaction contemplated thereby (the “**Sale**”); and (b) vest title to the Resort Property in and to the Purchaser free and clear of the ownership interests of all owners of the Resort Property (“**Owners**” and, each, an “**Owner**”) and other non-permitted encumbrances. **Under the terms of the Approval and Vesting Order, you will, upon closing of the Sale, no longer be an Owner or continue to have a recorded interest in the Resort Property. The net proceeds from the Sale will stand in the place and stead of the Resort Property and your interest will attach to such net proceeds with the same priority as it had to the Resort Property prior to the Sale.**

The Receiver’s motion for the Approval and Vesting Order (the “**Sale Approval Motion**”) is scheduled to be heard before Justice Conway at 9:30 a.m. on May 27, 2021 (the “**Sale Approval Hearing**”). From approximately two weeks prior to the Sale Approval Motion, the Receiver’s motion record (the “**Motion Record**”) will be available for viewing or download on the Receiver’s website at: <https://www.bdo.ca/en-ca/extranets/carriage/>.

Interested parties will be able to view the Sale Approval Hearing live on YouTube through the following link:

<https://sites-airdberlis.vuturevx.com/143/3555/landing-pages/livestream-link.asp>

ADDITIONAL INFORMATION

Further information, including the Service Protocol Order made April 30, 2021 by which this Notice was approved and the Third Report of the Receiver filed with the Court in connection

therewith, is also available on the Receiver's website: <https://www.bdo.ca/en-ca/extranets/carriage/>.

JOINT INTEREST

If you are an Owner and you share your ownership interest in the Resort Property with one or more other Owners as joint owners, or if your ownership interest in the Resort Property is otherwise shared with one or more additional parties, you are required to forward this notice to such persons as soon as possible and to notify the Receiver of such other parties.

INTERPRETATION

This notice is a summary of the relief to be sought in the Sale Approval Motion including the terms of the proposed form of the Approval and Vesting Order. If there is a conflict between the provisions of this notice and the Motion Record or the form of Approval and Vesting Order included therein, the Motion Record and the form of Approval and Vesting Order included therein prevail.

Any party affected by the Sale Approval Motion should obtain such legal advice as they deem appropriate as soon as possible to address the relief sought in the Sale Approval Motion.

**THIS NOTICE WAS APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) BY
ORDER DATED APRIL 30, 2021**

SCHEDULE "B"
LEGAL DESCRIPTION OF RESORT 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. L

and Titles Division of Simcoe (No. 51)

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

AND IN THE MATTERS OF THE ADMINISTRATION PROCEEDINGS OF CARRIAGE RIDGE OWNERS ASSOCIATION

Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

SERVICE PROTOCOL ORDER

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