

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 HILLS VACATION
OWNERS ASSOCIATION (the “Applicant”)**

MOTION RECORD
(Returnable July 2, 2020)

June 22, 2020

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INDEX

TAB	DOCUMENT
1.	Notice of Motion returnable July 2, 2020
2.	Affidavit of Darren Chapelle sworn June 22, 2020
“A”	Affidavit of Darren Chapelle sworn April 30, 2020 (without exhibits)
3.	Draft Order

TAB 1

**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 HILLS VACATION OWNERS
ASSOCIATION** (the “**Applicant**”)

Applicant

NOTICE OF MOTION

Carriage Hills Vacation Owners Association (the “**Applicant**”) will make a motion to Madame Justice Conway on Thursday, July 2, 2020, at 10:00 a.m. (EST), or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Mitch Grossell at mgrossell@tgf.ca.

PROPOSED METHOD OF HEARING:

This Motion is to be heard orally by video conference.

THIS MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of this Motion Record:
 - (a) approving the form, content and method of delivery of the Member Survey and the Member Survey Deadline;
 - (b) confirming that delinquent Members shall not be permitted to vote with respect to the Member Survey;
 - (c) approving the Exit Fee;

- (d) approving the Delinquency Fee and the notice to be sent to delinquent Members;
- (e) confirming that the Members Survey is binding on Members voting to exit;
- (f) deeming those Members who choose not to vote in the Members Survey to have responded that they wish to stay in the Resort;
- (g) deferring the annual general meeting of the Applicant and the nomination and election process for directors of the Applicant for a period of six months;
- (h) approving the First Report of BDO Canada Limited dated June 22, 2020 (the “**First Report**”), in its capacity as administrator of the Applicant (the “**Administrator**”), and the activities of the Administrator as set out therein; and
- (i) approving the fees and disbursements of the Administrator and counsel to the Administrator.

2. Such other relief as necessary.

THE GROUNDS FOR THIS MOTION ARE:

A. *Capitalized Terms*

3. Capitalized terms not expressly defined herein have the meanings ascribed to them in the First Report.

B. *Overview*

4. The Applicant is a not-for-profit corporation vested with the operation, maintenance, alteration, improvement and protection of a timeshare resort located in Horseshoe Valley, Ontario, known as the Carriage Hills Resort (the “**Timeshare Resort**”).

5. The Applicant is comprised of members who are each owners as tenants-in-common (an “**Owner**”) of an undivided interest in the real property municipally known as 90 Highland Drive, Oro-Medonte, Ontario, on which the Timeshare Resort is operated.
6. 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**”.
7. Revenue is generated by the Applicant through the payment of annual dues to maintain and operate the Timeshare Resort. In the event that an Owner fails to pay its annual dues, the Applicant is required to increase the annual dues for all Owners to compensate for those delinquencies.
8. Currently, the only way for an Owner to terminate its ownership is to sell their Interval to a third party. Due to a decreasing market for timeshare intervals, many Owners have abandoned their Intervals and simply stopped paying their share of the operating costs, which increases the annual dues required to be paid by Owners that remain in good standing.
9. Due to the age of the Timeshare Resort, it will require significant capital expenditures in the near future.
10. Absent a practical restructuring solution, the spiral of decreasing revenue collection and increasing operating and capital expenditure costs will cause the Timeshare Resort to fail. Pursuant to the Order of Madame Justice Conway dated May 15, 2020 (the “**Appointment Order**”), the Administrator was appointed in respect of the assets of the Applicant and the real property owned by the Members on which the Timeshare Resort is situated.

11. The Timeshare Resort's neighbouring "sister" resort, known as "**Carriage Ridge**", obtained identical relief in a separate proceeding pursuant to an Order of Madame Justice Conway dated May 15, 2020. It is intended that motions in both proceedings be heard together unless it becomes impractical or inappropriate. It is expected that the companion proceedings will provide additional restructuring options.

C. *The Member Survey*

12. The Administrator, in consultation with the Consultative Committee, has been tasked with developing a process that allows Members to exit their relationship with the Timeshare Resort. Pursuant to the terms of the Appointment Order, the Administrator is required to plan and propose the content and procedure for delivery of a survey to determine which Members want to stay in the Timeshare Resort and which members want to exit.
13. The Administrator, in collaboration with the Consultative Committee, has developed the Member Survey. The results of the Member Survey will dictate whether a restructured resort will be viable and, if so, what real property should be sold. In the event that a restructured resort (on its own or consolidated with Carriage Ridge) is determined not to be viable based on the number of Members who want to exit, the entire resort will be sold.
14. In the event that Members choose to exit the Timeshare Resort, such a decision will be binding on such Members and they will be required to pay an exit fee applicable to the type of Interval owned. The exit fee is payable in exchange for the termination of the perpetual obligations to the Applicant.
15. The Administrator proposes that the Member Survey may be completed online. The Administrator proposes to retain a third party to deliver and tabulate the Member Survey

via email to those Members that the Administrator has a valid email address for or via regular mail if the Administrator does not have a valid email address. It is contemplated that Members will have until August 31, 2020 to complete the Members Survey.

D. Delinquent Members

16. Members having Delinquent Account with the Applicant will not be provided the opportunity to vote in the Member Survey unless they bring their account into good standing, consistent with the terms of the TSA.
17. It is proposed that the Administrator will provide a notice to all delinquent Members by way of email advising that they are required to pay their Delinquent Account in full prior to the Member Survey Deadline in order to be permitted to vote in the Member Survey. The notice will also advise that, in the event that their Delinquent Account is not brought current by September 30, 2020, they will be charged a Delinquency Fee of \$1,000 which recognizes the additional costs incurred by the Applicant in attempting to collect Delinquent Accounts and the additional professional fees that will be incurred to ultimately deal with delinquent Members' Intervals.

D. Corporate Governance

18. The Applicant requests that the obligation to call and hold an annual meeting of Owners and the expiration of the term of a director of the Applicant be deferred for a period of six months. The Applicant's annual general meeting is scheduled to be held on October 27, 2020, and certain of the Applicant's directors' terms are due to expire.
19. Given the timing of the Member Survey Deadline and the impending implementation of the Exit Option, such deferral is necessary because:

- (a) the fate of the Timeshare Resort is dependent on the conclusion of the Member Survey;
 - (b) costs are required to be incurred far in advance of the annual general meeting and it does not make sense to incur such costs if the Timeshare Resort does not continue;
 - (c) potential new members should not be asked to join the board of directors until the Exit Option is completed; and
 - (d) it is possible that there will be an amalgamation of the Timeshare Resort and Carriage Ridge.
20. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure* (Ontario); and
21. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Darren Chappelle sworn June 22, 2020;
- (b) the First Report of the Administrator dated June 22, filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

June 22, 2020

Thornton Grout Finnigan LLP

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Lawyers for Carriage Hills Vacation Owners
Association

TO: ATTACHED SERVICE LIST

**Schedule “A”
Conference Details to join Motion via YouTube and Zoom**

All parties wishing to attend the hearing but not make submissions may do so by using the following link:

<https://youtu.be/wPkmhrQ7kbs>

Please be advised that the preceding link will not allow you to be seen or heard by the Court. If you intend to make submissions to the Court, please contact Mitch Grossell at mgrossell@tgf.ca to be provided with a Zoom link.

Schedule “B”

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

**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 PROCEEDINGS OF
CARRIAGE HILLS VACATION OWNERS
ASSOCIATION (the “Applicant”)**

**SERVICE LIST
(as at May 22, 2020)**

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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

NOTICE OF MOTION

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Lawyers for the Applicant, Carriage Hills Vacation
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 HILLS VACATION OWNERS ASSOCIATION
(the “Applicant”)**

**AFFIDAVIT OF DARREN CHAPELLE
(sworn June 22, 2020)**

I, Darren Chapelle of the City of St. Catherines, in the Province of Ontario, **MAKE OATH AND SAY:**

1. This affidavit is in support of the Applicant’s motion for an Order which includes (i) the approval of the form and content of the Member Survey (as defined in the First Report of BDO Canada Limited dated June 22, 2020 (the “**First Report**”), in its capacity as administrator of the Applicant (the “**Administrator**”), and the proposed method of delivery of same, and (ii) the deferral of the annual meeting of Owners and the expiration of the term of the Applicant’s directors for six months.
2. I have been a director of the Applicant since October 2016 and its president since October 2018, and have been an Owner (as defined below) since 2015. I am also a member of the Consultative Committee formed in accordance with the Order of Madame Justice Conway dated May 15, 2020 (the “**Appointment Order**”). As such, I have personal knowledge of the matters deposed to in this affidavit.
3. A copy of my affidavit (without exhibits) dated April 30, 2020 sworn in support of the Appointment Order is attached as Exhibit “A”. Capitalized terms not otherwise defined herein are as defined in the First Report.

I. BACKGROUND

4. The Applicant is a not-for-profit corporation vested with the operation, maintenance, alteration, improvement and protection of a timeshare resort located in Horseshoe Valley, Ontario, known as the Carriage Hills Resort (“**Carriage Hills**” or the “**Timeshare Resort**”) run by a volunteer board of five directors who receive no remuneration.
5. 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 90 Highland Drive, Oro-Medonte, Ontario on which the Timeshare Resort is operated (the “**Real Property**”). 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.
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. 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.
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.

9. Absent a practical restructuring solution, this spiral of decreasing revenue collection coupled with increasing operational and capital expenditure costs, would have caused the Applicant and the Timeshare Resort to fail.
10. As a result, the Applicant sought professional assistance to avoid the financial collapse of the Timeshare Resort. Pursuant to the terms of the Appointment Order, the Administrator was appointed over the property, assets and undertaking of the Applicant and the Real Property owned by the Owners.
11. The Timeshare Resort's neighbouring "sister" resort, known as "**Carriage Ridge**", obtained identical relief in a separate proceeding pursuant to an Order of Madame Justice Conway dated May 15, 2020. It is intended that motions in both proceedings be heard together unless it becomes impractical or inappropriate which will allow both applicants to share the costs of substantially the same services. It is expected that such companion proceedings will yield additional restructuring options, benefitting both of the applicants' owners and other stakeholders.
12. In accordance with the terms of the Appointment Order, the initial focus of these proceedings was to:
 - (a) obtain the most recent available contact information for the Owners;
 - (b) create a procedure to ascertain the interests of the Owners whereby they would be able to indicate, among other things, if they wished to terminate or continue their relationship with the Timeshare Resort; and
 - (c) develop an exit strategy for those Owners wishing exit, subject to appropriate terms and conditions.
13. The above issues have been developed by the Administrator, in consultation with the Applicant and the Consultative Committee.

II. THE MEMBER SURVEY

14. I have reviewed the First Report and the contents of the Member Survey (as defined in the First Report). As a member of the Consultative Committee, I also participated in the formulation of the Member Survey. I agree with the recommendation of the Administrator that the Member Survey should be approved in its current form as it represents a balancing of the various interests of the Owners.
15. The Member Survey is proposed to be delivered and completed electronically by those Owners who have valid email addresses. In respect of those Owners who do not have valid email addresses, the Member Survey will be delivered and completed via regular mail. The Administrator proposes to use a third party provider to administer the Member Survey. Given the number of Owners and the potential costs involved for the Administrator to administer the Member Survey, I am of the opinion, that the proposed method to deliver the Member Survey outlined in the First Report is appropriate in the circumstances.
16. In particular, I agree that the Member Survey Deadline is appropriate in the circumstances having regard to the need for Owners to have time to respond to the Member Survey and the desire of those Owners wishing to exit before the payment of the 2021 resort charges is due. I also agree that the payment and amount of the Exit Fee and the Delinquent Fee are appropriate in the circumstances, noting that the allocation/disposition of any net proceeds of disposal of any excess property have not yet been finalized.
17. The First Report proposes to exclude Delinquent Members from participating or voting in the Member Survey unless they bring their account in good standing. The First Report also proposes that the Administrator will send a notice out to all Delinquent Owners advising those Owners of the Delinquent Fee and that they will not be allowed to participate in the Member Survey unless they bring their account in good standing. I agree with this recommendation and understand that it is consistent with the terms of the TSA, which suspends the voting rights of Members while delinquent.

III. CORPORATE GOVERNANCE

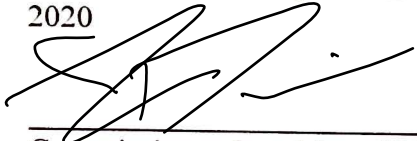
18. The Applicant is requesting that its obligation to call and hold an annual meeting of Owners and the expiration of the term of a director of the Applicant be deferred for six months. The Applicant's annual general meeting is scheduled to be held on October 27, 2020 and certain of the Applicant's directors' terms are due to expire at that time. Given the timing of the Member Survey Deadline and the impending implementation of the Exit Option, such deferral is necessary for the following reasons:

- (a) The fate of the Timeshare Resort is dependant on the conclusion of the Member Survey. Until that is determined, the Applicant will not know if the Timeshare Resort will continue and, if it will, what form it will take;
- (b) In order to prepare for the annual general meeting, costs are expended far in advance as materials need to be prepared and delivered to Owners at least thirty (30) days in advance of the meeting. It does not make sense to incur these costs if the Timeshare Resort is not continuing;
- (c) Potential new members should not be asked to join the board of directors until such time as the Exit Option is completed and a determination as to constitution of the Applicant is made; and
- (d) It is possible that there will be an amalgamation of the boards of directors of the Applicant and Carriage Ridge if the result of the Member Survey determines that the continuation of both resorts is not viable.

IV. CONCLUSION

19. This affidavit is sworn in support of the motion by the Applicant for an Order which includes (i) the approval of the Member Survey, and (ii) the deferral of the annual meeting of Owners and the expiration of the term of the Applicant's directors for six months, and for no other or improper purpose.

SWORN BEFORE ME by video conference at the City of Toronto, in the Province of Ontario, this 22nd day of June, 2020



Commissioner for taking affidavits

Adam Driedger
(LSO# 77296F)



Darren Chapelle

Exhibit "A"

**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 HILLS VACATION OWNERS ASSOCIATION
(the “Applicant”)**

**AFFIDAVIT OF DARREN CHAPELLE
(sworn April 30, 2020)**

I, Darren Chapelle of the City of St. Catherines, 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 2016 and its president since October 2018, and have been an Owner (as defined below) since 2015. 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 Hills Resort (“**Carriage Hills**” 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 five 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 90 Highland Drive, Oro-Medonte, Ontario and legally described in **Exhibit “A”** (the “**Carriage Hills 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 8,944 Owners who own 12,043 Intervals, which excludes the maintenance intervals. As a result, title to the Carriage Hills Property is divided into 12,043 tenancies in common owned by 8,944 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 Timeshare Resort requires two of its three phases to be refurbished and the estimated cost of refurbishment is thought to be approximately \$1 million per phase.
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 Hills Property which is determined to be excess to the continuing Timeshare Resort.
12. Although the Timeshare Resort's neighbouring "sister" resort, known as "**Carriage Ridge**", is a smaller operation, it and its members' association, the Carriage Ridge Owners Association ("**CROA**") are in a nearly identical situation and CROA 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 the Carriage Hills Property and in 2003 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 172 residential units in eight 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 6, 1996 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 the Timeshare Resort 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 1,225 Intervals which constitutes approximately 10% of the ownership of the Timeshare Resort.

III. CONTRACTUAL STRUCTURE

18. CHRC, the Manager and the Applicant entered into Time Sharing Agreements dated June 25, 1997, June 28, 1999, and June 30, 2000 (collectively, the "**TSA**"), which were

registered against title to the Carriage Hills 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. I am advised by my counsel, Thornton Grout Finnigan LLP ("TGF"), that each of the TSA agreements relate to a different phase of the Carriage Hills Property, which consist of three parcels that were developed in phases, but are otherwise virtually identical. Attached as **Exhibit "C"** is a copy of the June 25, 1997 TSA related to Phase 1 of the Carriage Hills Property.

19. At the time of purchase, prospective Owners are provided with copies of the relevant 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 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 9,000 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 Hills Property and not only contractual rights of use. Each Interval is either (i) an “**Every Year Interval**” which includes ownership of a 1/8,944 undivided interest as a tenant in common in the Carriage Hills Property, or (ii) an “**Every Other Year Interval**”, which consist of “Odd Year Intervals” and “Even Year Intervals” which both include a 1/17,544 undivided interest as a tenant in common in the Carriage Hills Property.
25. It is my understanding that currently, there are 8,944 Owners (including Wyndham) that own 12,043 Intervals, comprised of 5,501 Every Year Intervals and 6,542 Every Other Year Intervals. This means title to the Carriage Hills Property is currently divided into 12,043 tenancies in common owned by 8,944 tenants in common. Owners other than Wyndham own approximately 90% of the Carriage Hills Property.
26. It is also my understanding that there are 1,647 Owners, including CHRC, who also own an Interval at Carriage Ridge (collectively, the “**Common Owners**”). The Common Owners represent approximately 18.4% of the Applicant’s Owners. The Common Owners collectively own approximately 3,526 or 29.3% 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 Hills 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 Hills 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 Hills 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 April 28, 2007 (as amended and restated on October 31, 2016 and October 27, 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 \$368,424 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 CROA 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. 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.
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 \$15.5 million. Those arrears pertain to 2,368 Intervals, which is approximately 22% of all Intervals, and 1,981 Owners, which is approximately 22% of all Owners, excluding CHRC. The following chart illustrates the escalation in Owners' defaults on account of Charges since 2008:

Total amount that Owners failed to pay to Applicant on account of Charges														
Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
\$'000's	\$ 67	\$ 102	\$ 146	\$ 234	\$ 307	\$ 413	\$ 867	\$1,130	\$1,498	\$1,733	\$2,533	\$3,240	\$3,256	\$15,528

39. In order to deal with defaulting Owners, the Applicant, as at February 25, 2020, is pursuing collection actions against approximately 1,500 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 10%. 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 98% of the Applicant's assets as of February 29, 2020.
43. The Applicant's most significant liability is deferred revenue, amounting to approximately 93% of the Applicant's liabilities as of February 29, 2020. There are also accounts payable and accrued liabilities totalling \$1.1 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 \$120,000.

B. Increasing Capital Expenditures

46. The Applicant's capital expenditures have steadily increased since 2017, from \$0.6 million in that year to \$5.8 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 \$22 million will be required for the period 2020 to 2025, peaking at \$9 million in 2023. 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 \$858,000. This represented a decline of approximately \$3.1 million 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 \$5.8 million, or \$3.5 million greater than receipts collected in 2019 allocated to the Savings Account. Between 2017 – 2019, the Savings Account has declined from an end of year balance of approximately \$5.8 million in 2017 to an end of year balance of approximately \$1.6 million in 2019. 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. Further, the Applicant's Operating Account has started the year in a negative cash balance since at least 2016. This means that the Applicant must fund its annual operating expenditures using either cash allocated to the Savings Account or cash collected from Owners for the upcoming year. By way of example, if the Applicant only used the 2021 Basic Charge collections for fiscal 2021 operating expenses, it is anticipated that the Applicant's year-end Operating Account would be in a deficit of approximately \$2.8 million. Although the Applicant had a surplus of approximately \$437,000 in its Operating Account in 2019, this was due to increased Charges and a budget that forecasted higher utilities expenses than were actually incurred. The Applicant expects this surplus to reverse going forward as the increased Charges resulted in additional defaulting Owners.
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 November 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. On November 7, 2019, 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 March 30, 2020, the Applicant issued a public statement on its website advising that it would not be accepting any reservations through to April 30, 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 Hills 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 CROA:
 - (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 Hill 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 Hills 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 Hills 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 Hills Property, nor is the Carriage Hills 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 Hills Property or the Owners' interests therein.
71. The Administration Charge, which is limited to \$350,000 in respect of CHVOA, 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 CROA*

73. Although the Timeshare Resort's neighbouring "sister" resort, Carriage Ridge, is smaller, CROA and the Applicant now find themselves subject to the same pressures and challenges, and are interrelated in several important respects. This is acknowledged by Martin Ginsberman in his affidavit sworn April 30, 2020 in support of CROA'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 CROA will be split between the Applicant and CROA in a 69/31% proportion, which is the same proportion agreed to between the Applicant and CROA in respect of other joint expenses.
75. Since the potential restructuring options for each applicant will be greater if they collaborate, the Applicant and CROA 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 video conference
at the City of Toronto, in the Province of
Ontario, this 30th day of April, 2020



Commissioner for taking affidavits



Darren Chapelle

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

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

**AFFIDAVIT OF DARREN CHAPELLE
(sworn June 22, 2020)**

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Lawyers for Applicant, Carriage Hills
Vacation Owners Association

TAB 3

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

THE HONOURABLE MADAM) THURSDAY, THE 2ND
)
JUSTICE CONWAY) DAY OF JULY, 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”)**

ORDER

THIS MOTION made by the Applicant for an Order that, *inter alia*: (i) approving the form, content and method of delivery of the Member Survey and the Member Survey Deadline, (ii) confirming that delinquent Members shall not be permitted to vote with respect to the Member Survey, (iii) approving the Exit Fee; (iv) approving the Delinquency Fee; (v) approving the First Report of BDO Canada Limited dated June 22, 2020 (the “**First Report**”), in its capacity as administrator of the Applicant (the “**Administrator**”), and the activities of the Administrator as set out therein, and (vi) approving the fees and disbursements of the Administrator and counsel to the Administrator, was heard this day via Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant dated June 22, 2020 (the “**Motion Record**”), including the affidavit of Darren Chapelle, sworn June 22, 2020 (the “**Chapelle Affidavit**”) and the Exhibits thereto, the First Report and the appendices thereto, and on hearing the submissions of counsel for the Applicant and counsel for BDO, no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Mitch Grossell, sworn June 22, 2020, filed.

SERVICE AND DEFINED TERMS

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.
2. **THIS COURT ORDERS** that all capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the First Report.

APPROVAL OF THE MEMBER SURVEY AND NOTICING PROCEDURE

3. **THIS COURT ORDERS** that the Member Survey substantially in the form and content attached as Schedule "A" to this Order, including but not limited to the amount of the Exit Fee, is hereby approved and the Administrator is authorized and directed to have the Member Survey issued in accordance with the terms of this Order.
4. **THIS COURT ORDERS** that the Administrator be and is hereby authorized and directed to retain Votenet to manage the online Member Survey, including sending email notifications and reminders to the Members, provide phone and email support services to the Members and provide the certified voting results and statistical reporting to the Administrator at an estimated cost of U.S. \$7,714.00.
5. **THIS COURT ORDERS** that within ten (10) days of the date of this Order:

- (a) the Administrator shall cause Votenet to send a link to the Member Survey via email to every Member that has provided a working email address; and
- (b) the Administrator shall send a paper copy of the Member Survey by regular mail to every Member that has not provided a working email address

provided that, the Administrator shall have no obligation to send the Member Survey to any Member with a Delinquent Account. In the event that the Delinquent Account of such Member is rectified before the Member Survey Deadline, the Administrator shall cause the Member Survey to be delivered to the Member. For greater certainty, notwithstanding the foregoing, the date of the

Member Survey Deadline shall not be extended beyond August 31, 2020 without the written consent of the Administrator.

RESPONSES TO THE MEMBER SURVEY

6. **THIS COURT ORDERS** that responses to the Member Survey shall be received by the Administrator by no later than August 31, 2020 (“**Member Survey Deadline**”). The Administrator shall not be required to consider any Member Survey received after the Member Survey Deadline.

7. **THIS COURT ORDERS** that Members with Delinquent Accounts (a “**Delinquent Member**”) shall not be entitled to participate or vote in the Member Survey. In the event that a Delinquent Member responds to the Member Survey, the Administrator shall disregard and not take into consideration the response of any such Delinquent Member.

8. **THIS COURT AUTHORIZES AND APPROVES** the nature and amount of the Delinquency Fee as set out in the First Report.

9. **THIS COURT ORDERS AND DIRECTS** the Administrator to send by email, to those Delinquent Members who have provided a valid email address, a notice to the Delinquent Members substantially in the form and content attached as Schedule “**B**” notifying the Delinquent Owners of the Delinquency Fee and that the Delinquent Owners are not entitled to participate in the Member Survey unless they bring their account current.

10. **THIS COURT ORDERS** that, in the case of any Member responding to the Member Survey indicating that he or she wishes to exit the Association, such decision shall be binding on such Member and that Member shall not be permitted to change their decision to exit after the Member Survey Deadline.

11. **THIS COURT ORDERS** that any Members that do not respond to the Member Survey shall be deemed to have responded that the Member wishes to stay in the Resort.

NO LIABILITY OF THE ADMINISTRATOR

12. **THIS COURT ORDERS** that the Administrator shall incur no liability or obligation as a result of the terms of this Order or the carrying out by it of the provisions of this Order, save and

except for gross negligence or wilful misconduct on its part, and nothing in this Order shall derogate from the protections afforded to the Administrator pursuant to the Administration Order.

CORPORATE GOVERNANCE

13. **THIS COURT ORDERS AND DECLARES** that the annual general meeting of the Applicant (the “AGM”) and the nomination and election process for directors of the Applicant is hereby suspended and deferred for a period of six months. Until the AGM is held in accordance with this Order, all current directors of the Applicant shall remain as directors of the Applicant.

APPROVAL OF FEES AND ACTIVITIES OF THE ADMINISTRATOR

14. **THIS COURT ORDERS** that the First Report filed in these proceedings and the Administrator’s activities as set out therein are hereby approved.

15. **THIS COURT ORDERS** that the professional fees and disbursements of the Administrator for (i) the period ending June 15, 2020 in the amount of \$63,156.00 plus HST of \$ 8,210.28 for a total of \$71,366.28 as set out in the Affidavit of Brad Newton sworn June 22, 2020 and attached as Appendix “L” to the First Report, are hereby approved.

16. **THIS COURT ORDERS** that the professional fees and disbursements of Aird & Berlis, counsel to the Administrator, for (i) the period ending June 17, 2020 in the amount of \$62,060.25 plus HST of \$8,067.83 for a total of \$70,128.08 as set out in the Affidavit of Sam Babe sworn June 22, 2020 and attached as Appendix “M” to the First Report, are hereby approved and the Association is authorized to pay its proportionate share of such fees in accordance with the terms of the Administration Order.

GENERAL

17. **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.

18. **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.

19. **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.

SCHEDULE "A"
MEMBER SURVEY

CARRIAGE RIDGE AND CARRIAGE HILLS MEMBER SURVEY

PURPOSE OF SURVEY

The purpose of this survey is to determine which owners wish to immediately exit their resort intervals and which owners may wish to maintain at least one of their intervals in a “restructured resort”. The basic parameters of a “restructured resort” are found below. The Administrator needs to gauge the interest in exiting immediately versus remaining in a restructured resort in order to determine if a restructured resort is a viable option.

TIME TO COMPLETE SURVEY

This survey will available to be completed for 45 days only commencing July __ and ending August __, 2020.

EFFECT OF SURVEY

This survey will be binding on those voting to exit. If this survey were not binding on those wanting to exit now, the Administrator would be forced to conduct multiple surveys involving numerous restructuring options which would take many months and be very expensive. Most importantly, such a delay would mean that an exit for owners would not be available before the next annual payment is due. The Administrator has heard directly from many owners that they want to exit before the next payment is due and we are trying to accommodate that request. Therefore, if you do not choose to exit now, you will be invoiced for next year’s fees, which will need to be paid to be eligible to continue in this process.

The survey will not be binding on those voting to stay. Until the results of this survey are available, we are unable to determine what a restructured resort will look like or whether a restructured resort is possible as we will not know how many owners wish to remain. Once this is known and assuming a restructuring is possible, we will be able to prepare a projection of what a restructured resort will look like and what the ongoing maintenance fees are likely to be. Those owners who indicated that they wanted to stay will then have 45 days to decide if they wish to remain or exit based on those terms. The owners choosing to exit after the second survey will go through the same exit process and fee as those who exited earlier.

If you choose to exit: Choosing the exit option below does not mean you have actually exited the time share or given up your interval(s). You will receive further information on precisely how to exit and the implications of exiting after the survey is completed and a final exit plan is approved by the Court. An Exit Fee (as set out in the chart below) will have to be paid by all those wishing to exit at this time or if you exit as discussed in the “If you choose to stay” paragraph below. After all or any portion of the resort is sold, there may be a payment made to all exiting owners (whether they exit under this survey or after the next). However, the exact amount of that payment will not be known until a sale is completed.

Total Cancellation Fee per Interval (including HST)	Every Year Interval		Even/Odd Year Interval	
	Red	White	Red	White
Carriage Hills	\$ 2,300.33	\$ 2,417.74	\$ 1,150.16	\$ 1,208.87
Carriage Ridge	\$ 2,282.38	\$ 2,399.17	\$ 1,141.19	\$ 1,199.58

If you choose to stay: Choosing to stay in a restructured resort does not mean you will automatically be part of a restructured resort in the future. The Administrator is simply trying to gauge your desire to do so. You will be provided with further information on what a future restructured resort will look like, together with the annual cost, after the survey is completed and the exit plan for those wishing to exit is approved by the Court. Depending on the results of the survey, it may be that a restructured resort is not feasible if not enough owners wish to remain in a restructured resort. It is anticipated that, once the exact terms and conditions of a restructured resort are determined, those terms will be shared with owners who voted to stay and you will again be able to choose to stay or to exit based on those exact terms.

If you do not reply to the survey: If you do not reply to the survey the Administrator will have to assume that you are voting to STAY in the resort. The Administrator CANNOT assume owners want to break a legal contract.

Please note, we require you to vote separately for each interval you own and only one vote per interval will be permitted

Please enter the following information:

Name of the owner of the time share _____

Please choose one of the following two options:

- Carriage Hills Interval
- Carriage Ridge interval

Please choose one of the following three options:

- Every year Interval
- Odd year Interval
- Even year Interval

Please choose one of the following two options.

- Do you want to exit now (this would include declaring the resort “obsolete”)?
- Do you want to remain in a “restructured resort”?

Pursuant to the time share agreement, in order for the resort to be determined to be “obsolete”, 75% of all intervals must be voted in favour of obsolescence. If more than 75% of intervals are voted in favour of obsolescence, then the **entire** resort must be sold. If less than 75% of all intervals are voted in favour of exiting, then it is possible that a portion of the resort will be sold to accommodate a smaller future resort. The process for the sale and the distribution of the proceeds of that sale will be proposed by the Administrator and have to be approved by the Court.

A “**restructured resort**” requires that, at a minimum, the time share agreement be altered to eliminate the perpetual nature of the Owners’ obligations. In other words, a mechanism would need to be created to provide Owners with the option to opt-out of the resort in the future (on terms to be determined) in the event that they are unable to sell their intervals. A successful restructured resort would also not see any significant escalation in annual maintenance fees. What exactly a restructured resort will look like and what the maintenance fees will be is uncertain and cannot be determined until the results of this survey are known.

No decisions have been made on what will happen with the resorts at this time. The results of the survey will help to inform all owners, the boards of directors, the Administrator and the Court as to what the next steps should be.

DRAFT

SCHEDULE "B"
NOTICE TO DELINQUENT OWNERS

Proposed Email to Delinquent Members:

As you may know, BDO Canada Limited ("**BDO**") was appointed as Administrator in respect of CHVOA and CROA pursuant to orders of the Ontario Superior Court of Justice effective May 15, 2020 (the "**Appointment Orders**"). Copies of the court orders, together with all other Court materials, are available in pdf on the Administrator's website at <https://www.bdo.ca/en-ca/extranets/carriage/>.

Pursuant to the records of Carriage Ridge Owners Association ("**CROA**") and/or Carriage Hills Vacation Owners Association ("**CHVOA**"), you are a member of CROA and/or CHVOA ("**Member**") and have outstanding fees owing to CROA and/or CHVOA (a "**Delinquent Account**"). Pursuant to the Order of the Ontario Superior Court of Justice dated July 2, 2020, as a Member with a Delinquent Account, you will not be permitted to vote in the Court-ordered Member Survey. In addition, a delinquency fee of \$1,000 (the "**Delinquency Fee**") will be added to your account effective October 1, 2020.

However, if you pay your entire outstanding Delinquent Account before the Member Survey Deadline of August 31, 2020, you will be permitted to vote in the Member Survey. If you pay your outstanding account in full before September 30, 2020, you will not be assessed the Delinquency Fee.

Should you wish to pay your account, please contact Wyndham or Equiant to pay your fees.

DRAFT

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

ORDER

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Lawyers for the Applicant, Carriage Hills Vacation Owners
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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
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**MOTION RECORD
(RETURNABLE JULY 2, 2020)**

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