

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) TUESDAY, THE 13TH DAY
)
JUSTICE CONWAY) OF FEBRUARY, 2024

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**

FINAL DISTRIBUTION ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as receiver (in such capacity, the “**Receiver**”) over all of the assets, properties and undertakings of Carriage Hills Vacation Owners Association (the “**Applicant**”) and all the lands and premises on which the Applicant operated the Carriage Hills Resort, appointed by Order of the Court with effect as of January 6, 2021, for an Order approving among other things, a final distribution, was heard this day via Zoom judicial video conference.

ON READING the Motion Record of the Receiver dated February 2, 2024 (the “**Motion Record**”), the Ninth Report of the Receiver dated February 1, 2024 (the “**Ninth Report**”), the Report dated January 22, 2024 of Tim Duncan, in his capacity as claims officer appointed by the Receiver’s Collection Plan Order made February 16, 2021 (the “**Claims Officer**”) and on hearing the submissions of counsel for the Receiver, counsel for the Claims Officer, counsel for Wyndham Worldwide Corporation, Shell Finco LLC, Carriage Hills Resort Corporation and Carriage Hills Hospitality Inc. and the submissions of Christopher Diana, and no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Cristian Delfino sworn February 5, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the Motion Record be and is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the Ninth Report.

FINAL DISTRIBUTION

3. **THIS COURT ORDERS** that the Receiver's proposed Final Distributions in the manner set out in the Ninth Report be and are hereby authorized and approved, and the Receiver be and is hereby authorized and directed to make the proposed Final Distributions on behalf of the Applicant to Eligible Owners, which distributions shall be made in accordance with each Eligible Owner's proportionate interest as determined in the Claims Process.

4. **THIS COURT ORDERS** that the methodology of the Receiver in formulating the Final Distributions is hereby authorized and approved.

5. **THIS COURT ORDERS** that the methods of payment and deduction of the fees associated with same from the Final Distributions as set out in the Ninth Report are hereby authorized and approved.

6. **THIS COURT ORDERS** that the amount charged in respect of the payment method selected by the Eligible Owner shall be deducted from the amount of such Eligible Owner's Final Distribution.

7. **THIS COURT ORDERS** the Receiver to deduct any proportionate amounts owed by an Owner to the Mortgagee from their Final Distribution (the "**Mortgage Payment**"), after deducting the Withheld Amount (as defined below), if any. For greater certainty, the Mortgage Payment shall be deducted from the Distribution Pot regardless of whether such Owner is an

Eligible Owner who filed a Claim in the Claims Process. The Receiver shall pay the Mortgage Payments to the Mortgagee at the time of or before the completion of the Final Distribution.

8. **THIS COURT ORDERS** the Receiver to withhold any Final Distribution payment from an Eligible Owner in the event that there is a disputed Mortgage Payment until such time as the Receiver has written confirmation from the Eligible Owner and Mortgagee that the dispute has been settled. If such confirmation of dispute settlement is not received by August 1, 2024, the Receiver shall be authorized to obtain an Order regarding payment of the disputed Mortgage Payment into Court without need for further notice to the affected mortgage parties or for further hearing.

9. **THIS COURT ORDERS** the Receiver to off-set any amounts owed by an Eligible Owner, including, for greater certainty, any Eligible Owner who is a Non-Subject Member, in respect of their Delinquent Account(s) from their proportionate Final Distribution (the “**Delinquent Off-Set**”), after deducting the Withheld Amount and/or the Mortgage Payment, if any, and such Delinquent Off-Set shall be available for distribution to Eligible Owners.

10. **THIS COURT ORDERS** that, for greater certainty, the following amounts shall be deducted by the Receiver from any Eligible Owner’s proportionate Final Distribution as follows:

- (a) Firstly, the Withheld Amount, if any;
- (b) Secondly, the Mortgage Payments, if any; and
- (c) Thirdly, the Delinquent Off-Set, if any.

11. **THIS COURT ORDERS** that, upon making the Final Distribution, the Receiver shall be released and discharged from any and all obligations and claims in respect of the Final Distribution, save and except for those arising out of any gross negligence or wilful misconduct on the Receiver's part.

WITHHOLDING OBLIGATIONS

12. **THIS COURT ORDERS** the Receiver to rely on the declarations of residency made in the Claims Process by each Owner for the purpose of the distribution of funds to each Owner and

the withholding and remittance in accordance with section 116 of the *Income Tax Act* (Canada). Each Owner, who declared themselves a non-resident of Canada will be treated as a non-resident of Canada (a “**Non-Resident Owner**”) for the purposes of any applicable non-resident withholding tax on all payments hereunder.

13. **THIS COURT ORDERS** that the Receiver will deduct and withhold 40.462% (the “**Withholding Tax Rate**”) from any aggregate payments to any Non-Resident Owner, in accordance with section 116 of the *Income Tax Act* (Canada), in respect of only that portion of the distribution to a Non-Resident Owner that is allocable to funds arising from the sale of the resorts (the “**Withheld Amounts**”), which Withheld Amounts will, for greater certainty, be calculated at the Withholding Tax Rate taking into account any prior payment to the Non-Resident Owner and any previous Withheld Amount deducted therefrom. If the Receiver is unable to identify any specific provision in the *Income Tax Act* (Canada) that provides for withholding on distribution of funds other than from the sale of the resorts, the Receiver shall make no further withholdings or remittances.

14. **THIS COURT ORDERS** the Receiver to remit the Withheld Amounts to Canada Revenue Agency (“**CRA**”) together with details of the amounts withheld from each Non-Resident Owner and their contact particulars. The calculation of the Withholding Tax Rate is as set out in section 5.6 of the Report and is hereby approved. To the extent that amounts are so withheld or deducted and remitted to CRA, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Non-Resident Owner as the remainder of the payment in respect of which such withholding or deduction was made. No gross-up or additional amount will be paid on any payment hereunder to the extent the Receiver deducts or withholds amounts pursuant to this Order. Notwithstanding any withholding or deduction, each Eligible Owner receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).

WIND-UP RESERVES

15. **THIS COURT ORDERS** the Receiver to maintain sufficient reserves set out in section 6.2 of the Ninth Report (the “**Wind-up Reserves**”) to satisfy:

- (a) Mortgage Amendment requests which remain unresolved by the respective parties;
- (b) the Receiver’s estimated accrued and unpaid obligations as of the date of this Ninth Report (the “**Accrued Obligations**”);
- (c) the estimated professional fees and disbursements of the Receiver and Liquidator, including those of its counsel;
- (d) the estimated accrued and unpaid professional fees and disbursements of the Claims Officer; and
- (e) the estimated remaining administrative and operational costs required to complete these receivership and dissolution proceedings,

(items (c) through (e), collectively, the “**Remaining Costs**” and together with the Accrued Obligations, the “**Wind-up Costs**”) and authorizes and directs the Receiver to pay the Wind-up Costs from the Wind-up Reserves, without further approval of this Court.

UNDISTRIBUTED FUNDS

16. **THIS COURT ORDERS** that any Unutilized Reserves and Unclaimed Distributions that remain in the circumstances set out in section 6.4.3 of the Ninth Report be classified by the Receiver as Undistributed Funds.

17. **THIS COURT ORDERS** the Receiver to deal with Undistributed Funds in the manners set out in section 6.4.4 of the Ninth Report.

GENERAL

18. **THIS COURT ORDERS** that the Receiver may, in its discretion, generally or in individual circumstances, waive, in writing, the time limits imposed on any Creditor under this Order if the Receiver deems it advisable to do so (without prejudice to the requirement that all other Creditors comply with this Order) and, in so doing, may extend any related time period applicable to the Receiver by the same period of time.

19. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, the Receiver may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or replace this Order.

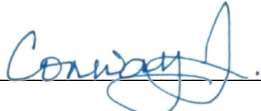
20. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

EFFECT, RECOGNITION AND ASSISTANCE OF OTHER COURTS

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Receiver 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.

22. **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.

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



IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C43, AS AMENDED

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

Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

FINAL DISTRIBUTION ORDER

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