

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 any terms not otherwise defined herein shall have the meanings ascribed to them in the Claims Process Order made in these proceedings on December 17 2021 (the “**Claims Process Order**”).
3. **THIS COURT ORDERS** that, in addition to terms defined elsewhere herein, the following terms shall have the following meanings:
 - (a) “**Appeal**” means an appeal of a Claims Decision by Claimant;
 - (b) “**Appeal Period**” means the period that concludes on the fifteenth calendar day following the issuance of a Claims Decision in respect of a Claim by the Owner Claims Officer;
 - (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) “**Claimant**” means any Person asserting a Claim pursuant to the Claims Process Order, and includes the transferee or assignee of a Claim, transferred and recognized as a Claimant in accordance with the Claims Process Order, or a trustee, executor or other Person acting on behalf of or through such Person;
 - (e) “**Claims Decision**” means the Owner Claims Officer’s written decision following his determination of each Disputed Claim, issued by the Owner Claims Officer to the Receiver and the applicable Claimant in accordance with paragraph 22 of this Order;
 - (f) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
 - (g) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended;

- (h) **“Disputed Claim”** means a Claim in respect of which a completed Notice of Dispute has been submitted to the Claims Agent or the Receiver by the Notice of Dispute Deadline;
- (i) **“Notice of Appeal”** means a notice of an Appeal that has been served within the Appeal Period pursuant to Paragraph 23 of this Order;
- (j) **“Notice of Dispute Deadline”** means the deadline for delivery of a Dispute Notice by a Claimant set out in paragraph 41 of the Claims Process Order;
- (k) **“Owner Claims Dispute and Appeal Procedure”** means the procedure set out in this Owner Claims Dispute and Appeal Procedure Order; and
- (l) **“Owner Claims Officer”** means the individual appointed to act as a claims officer for the purpose of adjudicating disputes in respect of Notices of Revisions and Disallowance issued by the Receiver in the Owner Claims Process, as set out in paragraph 8 of this Order.

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.

LATE CLAIMS

6. **THIS COURT ORDERS AND AUTHORIZES** the Receiver to accept Claims received on or before the date of this Order as if they were filed by the Claims Bar Date. The Receiver shall no longer, itself, have the discretion to further extend the Claims Bar Date either generally or in individual cases.

RESIDENCY

7. **THIS COURT ORDERS** that any Claimant who has not made a declaration of residency for tax purposes as required by the Claims Process Order shall be treated, for distribution and withholding tax purposes, as a tax resident of a jurisdiction other than Canada.

CLAIMS OFFICER'S APPOINTMENT

8. **THIS COURT ORDERS** that the Honourable Laurence Pattillo shall be and is hereby appointed as the Owner Claims Officer, with the rights, duties, responsibilities and obligations prescribed by this Owner Dispute and Appeal Procedure Order. The Owner Claims Officer's duties shall commence upon his receipt of the first Owner Dispute Package from the Receiver, pursuant to paragraph 16 of this Order.

OWNER CLAIMS OFFICER'S ROLE

9. **THIS COURT ORDERS** that the Owner Claims Officer, in addition to its prescribed rights, duties, responsibilities and obligations under this Owner Dispute and Appeal Procedure Order, shall assist the Receiver and Claimants in the determination of the Claims, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Owner Dispute and Appeal Procedure Order or incidental thereto.

10. **THIS COURT ORDERS** that the Owner Claims Officer shall track and allocate its fees and disbursements on a Disputed-Claim-by-Disputed-Claim basis to facilitated the potential cost awards contemplated by paragraph 21 of this Order.

11. **THIS COURT ORDERS** that in carrying out his mandate, the Owner Claims Officer may, among other things:

- (a) make all necessary inquiries, take accounts, and assess costs;
- (b) adopt processes which, in his discretion, he considers appropriate to facilitate the adjudication of the Claims, having regard for the principles set out in Rule 2 of the *Rules of Civil Procedure*, and with a view to proceeding in the simplest, least expensive and most expeditious fashion;

- (c) consult the Receiver, the Claimants, and any other persons the Owner Claims Officer considers appropriate;
- (d) report to the Court as prescribed herein, in stages if necessary or appropriate; and
- (e) apply to this Court for advice and directions as, in his discretion, the Owner Claims Officer deems necessary.

12. **THIS COURT ORDERS** that the Owner Claims Officer is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Owner Dispute and Appeal Procedure Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

13. **THIS COURT ORDERS** that the Owner Claims Officer, once appointed, is hereby authorized (i) to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where they are satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Owner Dispute and Appeal Procedure Order as to completion and execution of such forms, and (ii) to request any further documentation or other evidence from the Receiver, the Claimant and/or third parties that may reasonably be required in order to determine the validity of a Claim, including any defences thereto.

14. **THIS COURT ORDERS** that (i) in carrying out the terms of this Owner Dispute and Appeal Procedure Order, the Owner Claims Officer shall have all of the protections given him by this Owner Dispute and Appeal Procedure Order, and as an officer of this Court, including the stay of proceedings in his favour, (ii) the Owner Claims Officer shall incur no liability or obligation as a result of the carrying out of the provisions of this Owner Dispute and Appeal Procedure Order, except to the extent that the Owner Claims Officer has acted with gross negligence or willful misconduct, (iii) the Owner Claims Officer shall be entitled to rely on the books and records of the Applicant and the Claimants, and any information provided by the Receiver and the Claimants, all without independent investigation, and (iv) the Owner Claims Officer shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any party, except to the

extent that the Owner Claims Officer has acted with gross negligence or willful misconduct. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *CJA*.

15. **THIS COURT ORDERS** that the Receiver shall pay from the Applicant's estate the reasonable professional fees and disbursements of the Owner Claims Officer on presentation and acceptance of invoices from time to time.

ADJUDICATION OF DISPUTED CLAIMS

16. **THIS COURT ORDERS** that, following the Notice of Dispute Deadline, the Receiver may, at its discretion, file with the Owner Claims Officer a Dispute Package in respect of any Disputed Claim(s) that it intends to pursue. Each Dispute Package shall include:

- (a) the applicable Disputed Claim;
- (b) the applicable Notice of Revision or Disallowance;
- (c) the applicable Dispute Notice, together with any supporting documentation filed by the Claimant; and
- (d) any ancillary documentation.

17. **THIS COURT ORDERS** that the Receiver shall be entitled to abandon any Disputed Claim, at its discretion. There shall be no costs as a consequence of such abandonment, provided that the Disputed Claim has not yet been referred to the Owner Claims Officer.

18. **THIS COURT ORDERS** that the Receiver shall provide notice to the applicable Claimant as to whether a Disputed Claim has been referred to the Owner Claims Officer or abandoned, within seven (7) days of the Disputed Claim being so referred or abandoned.

19. **THIS COURT ORDERS** that, subject to further order of the Court, the Owner Claims Officer shall determine the validity and amount of each Disputed Claim referred to the Owner Claims Officer. In doing so, the Owner Claims Officer shall be empowered to determine the

process by which further evidence may be brought before him, if necessary, as well as any other procedural matters which may arise in respect of the determination of any Disputed Claim.

20. **THIS COURT ORDERS** that the Owner Claims Officer shall be entitled to decide the Disputed Claims on the basis of the written record contained within the applicable Dispute Package, in his discretion.

21. **THIS COURT ORDERS** that the Owner Claims Officer shall be empowered to make an award of costs against the Claimant, having regard for the factors set out in Rule 57.01 of the *Rules of Civil Procedure*, as part of his determination of the Disputed Claims. To the extent a Claims Decision affirms a Notice of Revision or Disallowance, the cost award shall, at minimum, reflect the fees and disbursements incurred by the Owner Claims Officer in determining the validity and amount of a Disputed Claim on a solicitor and client basis.

22. **THIS COURT ORDERS** that, following his determination of each Disputed Claim, the Owner Claims Officer shall prepare a Claims Decision, in writing, and provide a copy of same to the Receiver and the applicable Claimant.

RIGHT OF APPEAL

23. **THIS COURT ORDERS** that each of the Receiver and the Claimant shall be entitled to appeal the applicable Claims Decision to the Court by serving upon the other, within the Appeal Period, a notice of Appeal returnable on a date to be fixed by this Court.

24. **THIS COURT ORDERS** that if a notice of Appeal is not served within such period, then the applicable Claims Decision shall be deemed to be final and binding and there shall be no further right of appeal, review or recourse to the Court from the Claims Decision.

THIS COURT ORDERS that, for clarity, the Receiver shall have the power to settle or abandon any Appeals brought pursuant to this Order.

APPEALS MOTION

25. **THIS COURT ORDERS** that the Receiver shall schedule with the Court office, and bring, a motion (the “**Appeals Motion**”) for the adjudication of all Appeals in respect of which it

has received or served a Notice of Appeal excluding any Appeal in respect of a Claim that is settled between the Receiver and the applicable Claimant(s) subsequent to service of the Notice of Appeal. The Appeals Motion shall be an omnibus motion for the adjudication of all Appeals, but each Appeal shall be heard by the Court separately in accordance with the terms of this Owner Claims Dispute and Appeals Procedure Order.

26. **THIS COURT ORDERS** that the hearing of each Appeal will:

- (a) be conducted by Zoom judicial videoconference, with a Court reporter;
- (b) be a maximum of 30 minutes in length, which time will be allocated among the parties by the Court at the hearing; and
- (c) proceed as a true appeal based on the record before the Owner Claims Officer, and not as hearings *de novo*.

27. **THIS COURT ORDERS** that the Owner Claims Officer will not have any role in the Appeal process.

28. **THIS COURT ORDERS** that the Receiver shall:

- (a) assign a specific 30-minute time slot to each Appeal on a day scheduled with the Court office for the Appeals Motion, grouping Appeals, where applicable, by any common issues they raise;
- (b) include in its motion record for the Appeals Motion a master schedule setting out the time slot assigned to each Appeal (the “**Master Appeal Schedule**”);
- (c) serve the motion record for the Appeals Motion upon each Claimant bringing, or responding to, an Appeal;
- (d) as soon as practicable after the Appeals Motion Zoom videoconference coordinates are made available, provide to each appellant or respondent Claimant a calendar invitation for that Claimant’s assigned Appeals Motion hearing time,

containing the applicable coordinates for the Appeals Motion Zoom videoconference; and

- (e) for each Appeal, create, serve upon the applicable Claimants and file on Caselines an Appeal index (each, an “**Appeal Index**”) which will contain:
 - (i) the appellant Claimant’s or Claimants’ name(s);
 - (ii) the Appeal’s assigned date and time per the Master Appeal Schedule;
 - (iii) the breakdown of the Disputed Claim and details of any cost award made by the Owner Claims Officer; and
 - (iv) hyperlinks to the applicable Claims Decision and to each document forming part of the record before the Owner Claims Officer, all of which documents shall be electronically hosted by the Receiver or its counsel until the expiry of any applicable appeal period in respect of the determination by the Court on the Appeal,

but will not contain any summary of or commentary on the Appeal or the issues raised therein.

29. **THIS COURT ORDERS** that a Claimant who has served a Notice of Appeal on the Receiver or who has received service of a Notice of Appeal from the Receiver shall not be required to take any other steps in respect of the Appeal or the Appeals Motion other than to appear for the hearing of the Appeal on the date and at the time assigned in the Master Appeal Schedule. Claimants should join the Zoom hearing 30 minutes prior to their scheduled Appeal time, and will be let into the hearing by the Court registrar at the appropriate time.

30. **THIS COURT ORDERS** that the hearing of each Appeal shall commence by counsel to the Receiver identifying the Appeal and directing the Court to the applicable Appeal Index on Caselines.

31. **THIS COURT ORDERS** that the Court shall retain its discretion to make a cost award against the unsuccessful party in respect of an Appeal.

32. **THIS COURT ORDERS** that Claimants who do not appear for the scheduled hearing of an Appeal to which they are a party shall be deemed to have abandoned the Appeal as appellant or abandoned opposition to the Appeal as respondent, as the case may be, and the applicable Claims Decision shall be deemed to be final and binding and there shall be no further right of appeal, review or recourse to the Court from the Claims Decision.

COSTS

33. **THIS COURT ORDERS AND DECLARES** that the Receiver has the authority to exercise the Applicant's right to any costs awarded by the Owner Claims Officer or by the Court against a Claimant by, among other methods, payment of the costs amount in whole or in part from any distribution from the Applicant's estate to which the Claimant is entitled.

SERVICE AND NOTICE

34. **THIS COURT ORDERS** that any service or notice by ordinary mail, courier, personal delivery or electronic or digital transmission shall be deemed to have been received: (i) if sent by ordinary mail, on the third (3rd) Business Day after mailing within Ontario, the fifth (5th) Business Day after mailing within Canada (other than within Ontario), and the tenth (10th) Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

35. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in the administration of the Owner Claims Dispute and Appeal Procedure, the service of documents made in accordance with the 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 Protocol, service of documents in accordance with the Protocol will be effective upon transmission.

36. **THIS COURT ORDERS** that any notice or communication to be given to the Receiver in connection with the Owner Claims Dispute and Appeal Procedure shall be in writing and will be sufficiently given only if delivered by email, or if it cannot be given by email by prepaid registered mail, courier or personal delivery, addressed to:

BDO Canada Limited
20 Wellington Street East, Suite 500
Toronto, ON M5E 1C5

Attention: Carriage Hills Collections

Email: BD0CarriageHills@bdo.ca

Any such notice or communication shall be deemed to be received upon actual receipt thereof during normal business hours on a Business Day or if delivered outside of normal business hours, the next Business Day.

GENERAL

37. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court to amend, vary or supplement this Owner Claims Dispute and Appeal Procedure Order or for advice and directions in the discharge of their respective powers and duties hereunder.

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Conway".

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 HILLS VACATIONS OWNERS ASSOCIATION

Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

**OWNER CLAIMS DISPUTE AND APPEAL
PROCEDURE ORDER**

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*Lawyers for BDO Canada Limited in its capacity as the
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