

Court File No. CV-20-00640265-00CL  
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ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE  
ACT, R.S.O 1990, C. C. 43, AS AMENDED

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

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

(together, the "Applicants")

SECOND REPORT OF THE ADMINISTRATOR  
BDO CANADA LIMITED

SEPTEMBER 30, 2020

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## 1.0 INTRODUCTION AND PURPOSE OF REPORT

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### 1.1 Introduction

- 1.1.1 The Carriage Hills Resort (the "Hills Resort") and the Carriage Ridge Resort (the "Ridge Resort" and collectively with the Hills Resort, the "Resorts") are time-share resorts located in Horseshoe Valley, Township Oro (now part of Barrie), Ontario. The Hills Resort consists of 172 residential resort units (each a "Unit") in eight residential buildings, while the Ridge Resort consists of 78 Units in three residential buildings. Both the Hills Resort and Ridge Resort have various common recreational facilities including, but not limited to, an indoor and outdoor pool, a gym and a management building. The Hills Resort was built in three phases on approximately twenty acres of real property and the Ridge Resort was built in one phase on approximately eight acres of real property (the buildings and real property of the Resorts are collectively referred to as the "Property").
- 1.1.2 The Resorts are governed pursuant to a time-share agreement (the "TSA"). Pursuant to the TSA, purchasers of the time-share intervals (the "Members") also purchased a proportionate ownership interest as tenants-in-common in the land on which the Resorts are situated.
- 1.1.3 The Carriage Hills Vacation Owners Association (the "Hills Association") was established as a not-for-profit entity and incorporated by letters patent on August 6, 1996, as a corporation without share capital under the Corporations Act (Ontario) to operate the Hills Resort.
- 1.1.4 The Carriage Ridge Owners Association (the "Ridge Association" and together with the Hills Association, the "Associations") was established as a not-for-profit entity and incorporated by letters patent on August 7, 2003, as a corporation without share capital under the Corporations Act (Ontario) to operate the Ridge Resort.
- 1.1.5 Each Member purchased at least one timeshare interval (an "Interval") in one of the Resorts and many Members purchased more than one Interval at one of, or both, Resorts. There are six types of Intervals, as summarized in the chart below:

	Hills Resort		Ridge Resort	
	Red Interval	White Interval	Red Interval	White Interval
Every Year Interval	4,703	798	2,288	303
Odd Year Interval	2,521	750	988	399
Even Year Interval	2,521	750	988	399
	9,745	2,298	4,264	1,101

Below is a description of the different interval types that each of the Resorts has (collectively the "Interval Types").

Every Year Interval - Those with the right to use a Unit for one week every year.

Odd Year Interval - Those with the right to use a Unit for one week every other year on the odd years.

Even Year Interval - Those with the right to use a Unit for one week every other year on the even years.

Red Interval - More popular interval which coincides with the weeks spanning mid-December through March and mid-May through mid-November.

White Interval - Less popular interval which coincides with the weeks spanning April to mid-May and mid-November to mid-December.

- 1.1.6 The Associations have a total of approximately 11,400 individual Members who own a total of 17,408 Intervals. The Associations also have 1,647 Members that own Intervals at both Resorts. Wyndham also owns a combined total of 1,581 Intervals in the Resorts.
- 1.1.7 Pursuant to the TSA, a Member remains contractually bound for liabilities and obligations associated with their Intervals indefinitely unless the Member sells their interest in an Interval to another person in accordance with the terms of the TSA. Pursuant to the terms of the TSA, Members are liable to pay annual fees ("Charges") in perpetuity. Over the last number of years, a growing number of Members have not paid their Charges (the "Delinquent Members").
- 1.1.8 The large increase in unpaid Charges by Delinquent Members ("Delinquent Accounts") in conjunction with an increase in required capital expenditures due to the age of the Resorts has led to a significant and steep deterioration in the Association's financial position. Increasing Delinquent Accounts and increasing capital expenditures have necessitated increases in Charges year over year to the non-Delinquent Members, which in turn resulted in more Delinquent Accounts.
- 1.1.9 Accordingly, each of the Associations sought and obtained an Order on May 15, 2020 appointing BDO Canada Limited ("BDO") as Administrator of each of the Associations, copies of which are attached as Appendices "A" and "B" (the "Appointment Orders").
- 1.1.10 On June 22, 2020, the Administrator filed its first report to the Court (the "First Report"), which dealt primarily with the form, content, eligibility to participate and method of delivery of a survey of the Members (the "Member Survey"). The purpose of the Member Survey was to determine which Members wanted to stay

and which Members wanted to exit the Resorts. The First Report was filed in support of the relief sought by the Applicants which included the approval of the Exit Fee and Delinquency Fee (as defined therein) proposed by the Administrator. The relief was approved by Orders of Madame Justice Conway dated July 2, 2020 (the “**July 2020 Orders**”), copies of which are attached as **Appendices “C”** and **“D”**.

**1.1.11** The July 2020 Orders approved the form, content and timing of the Member Survey and required that the Member Survey be sent by the Administrator via email or regular mail to every Member in good standing. The July 2020 Orders specified that the Member Survey deadline could not be extended beyond 11:59 p.m. on August 31, 2020 (the “**Member Survey Deadline**”) without the written consent of the Administrator and that responses to the Member Survey were to be received by the Administrator by no later than the Member Survey Deadline. The Member Survey was administered by Votenet operating as eBallot (“**eBallot**”) between 12:01 a.m. on July 17, 2020 and 11:59 p.m. on August 31, 2020 (the “**Survey Period**”).

**1.1.12** As outlined in the First Report, the real property abstracts for the Resorts are the only ones in the Province of Ontario not transferred into the electronic Teraview system. Consequently, the title documents are voluminous and remain only in paper format. Certified copies of the real property records have been obtained from the registry office by counsel for the Associations and are currently under review to ensure that all of the sales transactions and related transfers have been properly recorded and any discrepancies identified.

**1.1.13** On June 29, 2020, the Administrator filed a supplement to the First Report, which clarified specific elements of the requested relief set out in the First Report and responded to certain inquiries from Members since the filing of the First Report.

**1.1.14** Please note that all monetary amounts are in Canadian Dollars unless otherwise stated.

## **1.2 Purpose of this Report**

**1.2.1** This report is the second report to the Court of the Administrator (the “**Second Report**”) and is filed in respect of the motion brought by each of the Associations for an order:

- Approving this Second Report and the activities of the Administrator described herein;
- Approving the fees and disbursements of the Administrator and its counsel as described in this Second Report;
- Authorizing the closure of the Resorts, effective January 6, 2021 or such other date as mutually agreed upon by the Administrator and the board of directors of the Associations;
- Authorizing the Administrator to direct the Associations to engage consultants, appraisers, agents, experts, brokers and such other persons

from time to time and on whatever basis, including on a temporary basis, to assist the Administrator in developing a marketing and sales process in respect of the Resorts; and

- Authorizing and directing the Administrator to investigate the availability and terms of possible third-party funding in the event that same is required to fund the ongoing costs of maintaining the Resorts prior to their sale.

## 2.0 MEMBER SURVEY RESULTS

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### 2.1 Survey Process and Administrator's Communications

- 2.1.1 Immediately upon the granting of the July 2020 Orders, the Administrator engaged eBallot to administer the online Member Survey at a cost of USD \$7,714.00. The Administrator worked with eBallot to design and test the Member Survey prior to its launch on July 17, 2020.
- 2.1.2 In order to ensure the integrity of the Member Survey, eBallot generated a unique user ID and password for each Member. Each user ID was linked to the Interval(s) owned by that Member. Upon the commencement of the Member Survey, eBallot emailed each Member for which the Administrator had an email address, enclosing the Members' unique login credentials and instructions for completing the Member Survey together with a link to immediately access the Member Survey.
- 2.1.3 Upon logging into the survey, a Member would see a ballot for each type of Interval they owned. For example, if they had a red even week and a red odd week they would see two ballots and if a Member owned two of the same Interval Type, they would see one ballot, but would be able to cast two votes (one for each of the same Interval Type). Once a Member cast their vote, the survey prompted the Member to confirm their vote. Once confirmed, the Member Survey prevented Members from changing their vote and would only be able to view a voting "receipt" that confirmed their vote.
- 2.1.4 Upon selecting a particular ballot, the Member would be directed to the voting screen which displayed voting instructions and a link to view a document setting out the details of the Member Survey and its potential consequences in order to assist Members in their selection. Attached as Appendix "E" is a copy of the document that Members could view prior to voting.
- 2.1.5 The Administrator engaged Allegra Toronto ("Allegra") to copy and send the Member Survey, the Members' unique login credentials and the internet link by regular mail to the Members that the Administrator did not have an email address for. The Member Surveys were sent via regular mail on July 20, 2020 to 843 Members at a cost of \$3,272.99. A sample of the letter that Members received is attached as Appendix "F".
- 2.1.6 Throughout the Survey Period, eBallot provided phone and email support services to those Members experiencing technical difficulties with accessing and completing the Member Survey.
- 2.1.7 To assist Members with completing the Member Survey and to answer Member questions more efficiently, the Administrator prepared the following Member FAQs and communications that were emailed to Members:
  - The FAQ dated July 17, 2020, a copy of which is attached as Appendix "G", released in conjunction with the Member Survey, was sent to the Members via email on July 20, 2020 and was uploaded to the Administrator's website and the Associations' websites,

- confirmed the commencement of the Member Survey,
  - provided contact information for eBallots for any Members experiencing technical difficulties with the Member Survey, and
  - provided further information including in respect of (a) the Exit Fee and the implications of choosing to exit, (b) delinquent accounts, and (c) the operations of the Resorts.
- The step-by-step Member Survey Instructions FAQ provided detailed instructions in respect of each screen of the electronic Member Survey and outlined how to complete the Member Survey. This FAQ was emailed to the Members on July 21, 2020 and uploaded to the Administrator's website. Attached as Appendix "H" is a copy of the Member Survey Instructions FAQ.
- Before and throughout the Survey Period, the Administrator received numerous inquiries from Members regarding how their vote would affect the status of their accumulated points in the Shell Vacations Club ("SVC") and RCI (collectively the "Membership Points") both of which are membership points services owned by Wyndham. The Associations are not parties to the agreements between the Members and SVC/RCI. As a result, these agreements were not impacted by the Appointment Orders. The Administrator obtained input from Wyndham in the preparation of a FAQ (the "Points FAQ") to address the impact of voting on the Membership Points. Attached as Appendix "I" is a copy of the Points FAQ, which was emailed to the Members on July 22, 2020 and uploaded to the Administrator's website.
- After the release of the Points FAQ, the Administrator received many follow up questions with respect to the Membership Points. The Administrator worked with Wyndham again to address these additional inquiries and issued an updated Points FAQ via email to the Members on August 12, 2020. The updated Points FAQ was also uploaded to the Administrator's website. Attached as Appendix "J" is a copy of the updated Points FAQ.
- Notwithstanding the step-by-step instructions provided, the Administrator received several inquiries relating to the number of ballots received by each Member and the weighting allocated to odd and even Intervals. As a result, the Administrator issued an additional email blast to the Members on August 13, 2020 to clarify the number of ballots Members received, the potential number of votes per ballot and the weighting of votes for odd and even Intervals. A copy of the voting clarification email blast is attached as Appendix "K".
- The Administrator sent an email to the Members on August 24, 2020 to remind Members of the upcoming deadline to complete the Member Survey by August 31, 2020 at 11:59 p.m. Attached as Appendix "L" is a copy of the August 24 email blast.

- On September 1, 2020, the Administrator issued a final email blast to the Members advising that the survey was closed and that the Administrator would no longer be responding to any further inquiries or requests relating to the Member Survey. The email also outlined the Administrator's immediate next steps and timing with respect to determining the viability of the Resorts, releasing the results of the Member Survey and invoicing of the Exit Fee. Attached as Appendix "M" is a copy of the September 1 email blast which was also uploaded to the Administrator's website.

## 2.2 Member Responses

- 2.2.1 In order to aid Members with any questions they may have had with respect to the proceedings, the Member Survey or the implications of exiting or remaining in the Resorts, the Administrator created two email accounts, [BDOCarriageHills@bdo.ca](mailto:BDOCarriageHills@bdo.ca) and [BDOCarriageRidge@bdo.ca](mailto:BDOCarriageRidge@bdo.ca) (collectively the "BDO Resort Email Accounts"). Despite the Administrator's requests that Members use these emails exclusively to contact the Administrator to ensure their emails were reviewed, Members continued to directly email and call various BDO employees from across the country, regardless of their connection with these proceedings.
- 2.2.2 In addition to the BDO Resort Email Accounts, Members were also provided with contact details for eBallot to address any technical issues relating to the Member Survey.
- 2.2.3 The Administrator had a team record, track and respond to the various emails received from Members during the Survey Period. The emails were recorded in a summary fashion and grouped into separate categories including the following:
- Delinquent - included queries from Delinquent Members, which principally related to the fact that they did not receive the Member Survey and how to pay their outstanding accounts;
  - Missing Intervals - included queries from Members who believed the ballots they received did not correspond to the number and type of Intervals they believed they owned;
  - Didn't Receive the Member Survey - included queries from Members who claimed not to have received the Member Survey through either the initial email or regular mail; and,
  - Miscellaneous - included queries from Members regarding the proceedings, Exit Fees, maintenance fees and other general questions and complaints.

The Administrator received and recorded approximately 2,000 emails during the Survey Period, excluding duplicate emails. We note that in hundreds of instances Members would commonly email both of the BDO Resort Email Accounts with their queries or complaints which doubled the time it took the Administrator to review the emails received. In many instances, Members would also send those same emails directly to BDO staff Members and would directly call various BDO offices. For example, one Member sent the same email to each of the BDO Resort Email Accounts every 30 minutes for approximately six straight hours. Accordingly, the

actual number of emails received by the Administrator during the Survey Period is considerably greater than the 2,000 noted above.

- 2.2.4 The Administrator's team responded as quickly and completely as possible in the circumstances to all 2,174 emails and telephone calls received. Most responses were sent by the Administrator within 2 business days of receipt. The response rate depended on the complexity of the questions, the length of the email (some emails were pages long), and the relevance of the questions to the Member Survey (many inquiries were more in the nature of speculation on future steps and potential issues after the Member Survey was completed that may not have been relevant depending on the outcome of the Member Survey and viability of the Resorts). The Administrator concentrated on responding to those Members who claimed not to have received the Member Survey or alleged having issues with the number of votes or ballots they received. Notwithstanding that many of the questions from Members were answered in the FAQs or email blasts, the Administrator continued to receive the same inquiries from Members, which resulted in a largely unnecessary and expensive process on the part of the Administrator to sort through and respond to these thousands of inquiries.
- 2.2.5 Despite the enormous effort expended on this project by the Administrator's staff, many emails received by the Administrator and numerous posts on Facebook were insulting and abusive towards the Administrator and, in some instances, the Court and Madam Justice Conway. Attached as Appendix "N" is a small sampling of such emails and posts. The commentary in these emails was unnecessary, inappropriate and served no purpose other than to upset the Administrator's staff who are committed to assist the Members in extricating themselves from the contractual obligations they committed to in the past. Despite the foregoing, the Administrator continued its mandate for the benefit of the Members and conducted itself in a professional manner at all times.
- 2.2.6 A consistent complaint received by the Administrator by certain Members was the lack of fairness in the process resulting from the fact that it was unlikely that every Member would be provided with the Member Survey by the Administrator due to incomplete contact information. Pursuant to the July 2020 Orders, the Administrator compiled contact information received from Equiant (the entity that invoiced Members their Charges), Wyndham, the Resorts' websites, and the contact survey on the Administrator's case website.
- 2.2.7 Unfortunately, several Members commenced their own Member survey on Facebook without informing the Administrator. As a result, the Administrator received various emails from Members stating that they believed that they had already completed the Member Survey on Facebook. This caused confusion for some Members, which was disruptive to the process and increased the overall costs of the Administrator.
- 2.2.8 As set out in detail below, approximately 65% of non-delinquent / non-Wyndham voters completed the Member Survey for the Hills Resort and 61% for the Ridge Resort. The Administrator understands that this is approximately twice the number of Members who participated in the obsolescence vote at the last annual general meeting of the Hills Association. As a result, the Administrator believes

that the results of the Member Survey are representative of the Members' opinions on exiting the Associations.

## 2.3 Delinquent Accounts

- 2.3.1 According to the information the Administrator received from Wyndham, prior to the release of the Member Survey on July 17, 2020, the Resorts had a total of 3,002 Delinquent Members, with outstanding accounts totaling approximately \$25 million. The Administrator notes that the information received from Wyndham appears to have been outdated. However, the Administrator worked closely with Canadian ICR Ltd. ("CICR"), the Associations' collection agent, throughout the Survey Period to verify Delinquent Member accounts and communicate with Delinquent Members and non-delinquent Members.
- 2.3.2 Pursuant to the July 2020 Orders, the Administrator sent the notice approved by the Court notifying the Delinquent Members of the Delinquency Fee and that they were ineligible to participate in the Member Survey unless their account was brought current prior to August 31, 2020 (the "Delinquent Notice"). The email was sent on July 16, 2020 to 2,241 of the 3,002 Delinquent Members. Attached as Appendix "O" is a copy of the email communication to Delinquent Members. The Delinquent Notice was also posted on the Administrator's website.
- 2.3.3 For those Delinquent Members that the Administrator did not have an email address for, the Administrator engaged Allegra to send the Delinquent Notice by regular mail. The Delinquent Notice was mailed on July 14, 2020 to 618 Delinquent Members at cost of \$1,729.61. A copy of the mailed Delinquent Notice is attached as Appendix "P".
- 2.3.4 According to CICR, between July 15, 2020 and August 31, 2020, 196 Delinquent Members of the Hills Resort and 82 Delinquent Members of the Ridge Resort, brought their accounts current. This resulted in collections of approximately \$500,000 and \$216,000 respectively. Those Delinquent Members who brought their accounts current during the Survey Period were provided with unique login information for the Member Survey and were given the ability to vote in the Member Survey.
- 2.3.5 Collection of Delinquent Member accounts has continued after the Survey Period resulting in approximately \$260,000 in additional collections from 96 Delinquent Members in total for the Resorts up to September 28, 2020. The Administrator has been advised by the Associations that they are continuing to pursue delinquent accounts.

## 2.4 Survey Results

- 2.4.1 eBallot provided the Administrator with the raw voting results of the Member Survey for each Resort and Interval Type on September 1, 2020. In order to assist the Administrator in analyzing and verifying the information, eBallot also provided the Administrator with access to various reports on the Member Survey results in order to better analyze and confirm the validity of the voting data.

2.4.2 The Administrator analyzed the voting data to find any potential discrepancies or errors. The Administrator identified approximately 69 discrepancies, which were all investigated and resolved.

2.4.3 The eBallot voting reports only provided the results for those Members who had actually voted. Pursuant to the July 2020 Orders, Delinquent Members were to be counted as Members voting to exit and those Members (other than Delinquent Members) that did not respond to the Member Survey, were to be counted as voting to stay. The Administrator obtained a new listing of Delinquent Members from CICR as of September 1, 2020 to verify which Members were still delinquent at the end of the Survey Period. The Administrator also verified which Members had not voted. The tables below provide a breakdown per Interval Type of the voting results.

2.4.4 The table below shows the Hills Resort voting results based on the total number of votes:

Carriage Hills Member Survey Results - Total Number of Votes							
Interval Type	Voted to Exit	Delinquent Exit	Total Exit	Voted to Remain	Did Not Vote	Total Remain	Grand Totals
White Odd Year	281	77	358	58	246	304	662
Red Odd Year	1,046	200	1,246	237	758	995	2,241
White Even Year	285	96	381	55	233	288	669
Red Even Year	1,046	287	1,333	269	706	975	2,308
White Every Year	285	127	412	55	197	252	664
Red Every Year	2,083	520	2,603	483	1,188	1,671	4,274
	5,026	1,307	6,333	1,157	3,328	4,485	10,818
Wyndham	1,225	-	1,225	-	-	-	1,225
Total	6,251	1,307	7,558	1,157	3,328	4,485	12,043
Percentage Breakdown	51.9%	10.9%	62.8%	9.6%	27.6%	37.2%	100.0%

2.4.5 The Administrator has also calculated the voting results based on weighted votes, where odd and even year Intervals are weighted at 50% of whole year Intervals. The chart summarizing these results is included in Appendix "Q". There was no significant difference between the weighted results and the results based on the total number of votes.

2.4.6 The Hills Resort voting results are summarized as follows:

- Approximately 52% of all Intervals voted to exit;
- Approximately 11% of all Intervals were still delinquent by the end of the Survey Period;
- Less than 10% of all Intervals voted to stay in the Hills Resort; and,
- Approximately 27% of Members entitled to vote did not vote in the Member Survey and, pursuant to the July 2020 Orders, were to be included in the vote to remain.

2.4.7 The table below summarizes the Ridge Resort voting results based on the total number of votes:

Carriage Ridge Member Survey - Total Number of Votes							
Interval Type	Voted to Exit	Delinquent Exit	Total Exit	Voted to Remain	Did Not Vote	Total Remain	Grand Totals
White Odd Year	135	35	170	29	156	185	355
Red Odd Year	412	85	497	116	358	474	971
White Even Year	145	47	192	36	129	165	357
Red Even Year	374	110	484	122	311	433	917
White Every Year	98	25	123	28	84	112	235
Red Every Year	871	257	1,128	339	704	1,043	2,171
	2,035	559	2,594	670	1,742	2,412	5,006
Wyndham	355	-	355	-	-	-	355
Total	2,390	559	2,949	670	1,742	2,412	5,361
Percentage Breakdown	44.6%	10.4%	55.0%	12.5%	32.5%	45.0%	100.0%

2.4.8 The Administrator has also calculated the voting results based on weighted votes, where odd and even year Intervals are weighted at 50% of whole year Intervals. The chart summarizing these results is included in Appendix "R". There was no significant difference between the weighted results and the results based on the total number of votes.

2.4.9 The Ridge Resort voting results are summarized as follows:

- Approximately 45% of all Intervals voted to exit;
- Approximately 10% of all Intervals were still delinquent by the end of the Survey Period;
- Less than 13% of all Intervals voted to stay in the Ridge Resort; and,
- Approximately 32% of Members entitled to vote did not vote in the Member Survey and, pursuant to the July 2020 Orders, were to be included in the vote to remain.

## 3.0 RESORTS' VIABILITY

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### 3.1 Hills Resort

- 3.1.1 The Hills Resort was built in three phases consisting of separate groupings of buildings. Accordingly, the real property is broken into three parcels, one for each phase. Thus, it may be possible to sell the Hills Resort in three pieces, if necessary. For example, two phases could be sold and the remaining one kept for the Members to continue the Hills Resort. Accordingly, the Hills Resort may be viable if at least one third of the Hills Resort was completely full on a weighted Interval basis. However, viability depends on other factors which are discussed in detail below.
- 3.1.2 The results of the Member Survey show that an aggregate of at least 63.5% of Members wish to exit the Hills Resort immediately, including Wyndham, or are delinquent and only 9.6% actually voted to stay. The Administrator does not know the intent of the 26.9% of Members who did not vote. It may be that those who did not vote were unaware of the process or that they were undecided and wanted to wait to see the results of the Member Survey. However, it was clear from the communications from Members during the Survey Period that there is a significant number of Members who voted to stay or did not vote who were doing so only to protect their accumulated Membership Points and intended to vote to exit if there was a second survey. In addition, the Administrator has continued to receive communications from Members after the Member Survey Deadline indicating that they wish to exit. It is reasonable to assume that a significant portion of these Members would vote to exit if there was a second survey.
- 3.1.3 Accordingly, the Administrator expects that the results of a second survey would very likely show that at least 3.5% of the Members who voted to stay or did not vote in the Member Survey would vote to exit in a second survey. This would result in less than one third of Members remaining in a restructured Hills Resort. The Administrator further expects that a second survey could result in at least an additional 11.5% of Members voting to exit resulting in a total of 75% of all Members voting to exit. Such a result would trigger the obsolescence provisions of the TSA requiring a sale of the entire Hills Resort.
- 3.1.4 Another factor considered by the Administrator in determining viability is the impact on voting if future Charges payable by the remaining Members increased. Members share the cost of maintaining the central amenities of the Hills Resort, which include the indoor swimming pool, fitness centre, games room, sauna, etc. and the outdoor amenities such as the playground, BBQ area, etc. With only one third of the Membership remaining, the cost to maintain these common amenities would increase on a per Member basis.
- 3.1.5 Based on the following factors:
- the 63% vote to exit;
  - only a 10% vote to stay;

- the probability of an increase in the number of exiting voters if a second survey were conducted, which may result in the obsolescence provision of the TSA being triggered; and,
- the increase in costs per Member to maintain the central amenities given the smaller Member population

the Administrator is of the opinion that the Hills Resort could not be viably restructured on its own.

### 3.2 Ridge Resort

3.2.1 The Ridge Resort was built in one phase and consists of a group of four buildings, including three buildings with the living units and one building for central amenities such as a swimming pool, check in, fitness centre, etc. Accordingly, the Ridge Resort is much more difficult to sever and sell only certain buildings. However, there is the possibility of selling one or two of the residential buildings and maintaining the third for Members, subject to receiving approvals for severances.

3.2.2 In considering the viability of the Ridge Resort, one significant consideration is the cost of maintaining the central amenities with a smaller Member population and the impact on annual Charges. With less than one half of the Membership remaining, the cost to maintain these common amenities would increase on a per Member basis.

3.2.3 The results of the Member Survey show that approximately 55% of Members want to exit immediately, including Wyndham, or are delinquent and that only 13% voted to stay. The remaining 32% did not vote but, again, it is unclear the reason for the failure to participate in the Member Survey. Based on the information received by the Administrator, a portion of the non-voting Members may not have been aware of the Member Survey. In addition, the Administrator received communications from numerous Members during the Survey Period advising that they only voted to stay or did not vote in order to protect their accumulated Membership Points and intended to vote to exit if there was a second survey. As with the Hills Resort, the Administrator expects there would be a significant number of Members voting to exit if there was a second survey.

3.2.4 There are many factors to consider in determining the viability of the Ridge Resort including:

- the 55% vote to exit;
- only a 13% vote to stay;
- the likelihood of an increase in the number of exiting voters in a second survey;
- the difficulty in severing one or two buildings of the Ridge Resort to sell; and,

- the increase in costs per Member to maintain the central amenities building given the smaller Membership.

Consequently, it is the Administrator’s opinion that the Ridge Resort is not viable on its own.

### 3.3 Combining the Hills and Ridge Resorts

3.3.1 It may be possible to combine the Members of the Hills and Ridge Resorts who wish to stay into the smaller Ridge Resort. The Ridge Resort consists of a total of 5,361 intervals (2,590 every year; 1,385 odd year and 1,386 even year Intervals). The total number of Intervals voting to stay or that did not vote in both Resorts’ Members Surveys are as follows:

Interval Type	Voted to Remain	Did Not Vote	Totals	Carriage Ridge Total Available Intervals	Number of Excess Remaining Intervals	Percentage of Excess Intervals
White Odd Year	87	402	489	399	90	22.6%
Red Odd Year	353	1,116	1,469	988	481	48.7%
White Even Year	91	362	453	399	54	13.5%
Red Even Year	391	1,017	1,408	988	420	42.5%
White Every Year	83	281	364	303	61	20.1%
Red Every Year	822	1,892	2,714	2,288	426	18.6%
<b>Totals</b>	<b>1,827</b>	<b>5,070</b>	<b>6,897</b>	<b>5,365</b>	<b>1,532</b>	<b>28.6%</b>

3.3.2 As noted in the chart above, only a total of 1,827 Intervals voted to remain and 5,070 did not vote. Of those who voted to stay, the Administrator is aware that many only did so in order to maintain their Membership Points and intended to exit in a subsequent survey. However, even assuming that all Members who voted to stay would actually choose to stay in a restructured resort, that number only represents 34% of the total available Ridge Resort Intervals. It is unclear what the Members of the non-voting 5,070 Intervals would do in a second survey and whether those Members of the Hills Resort who voted to stay would be amenable to move to the Ridge Resort. In the Administrator’s opinion, the Ridge Resort would need to be at approximately 90% capacity or 4,800 Intervals to be viable and maintain maintenance fees near their current levels. In order to have at least 4,800 Intervals, approximately 70% of all non-exiting Intervals would have to vote to stay in a second survey. Based on the results of the first survey, it is the Administrator’s opinion that this is not attainable.

3.3.3 Another possibility is to combine the remaining Members into one third of the Hills Resort. However, as discussed in Section 3.1, the same expected increase in Charges would be incurred since the Hills Resort central amenities would still have to be funded by a smaller number of Members. In addition, there may be a significant number of the remaining Ridge Resort Members who would not want to transfer to the Hills Resort.

3.3.4 There are also various logistical issues with combining the remaining Members of the Resorts into one resort, including:

- Some Members would have to accept changing their Interval Type (i.e. from a whole year to an even or odd year; an odd to an even; a red week to a white week; etc.) in order to balance all of the Intervals in a restructured resort. As can be seen from the chart in paragraph 3.3.1 the number of excess Intervals is much higher for the red odd and even years;
- An adjustment may be required to account for the potential difference in value between the Ridge and Hills Resorts. For example, the Ridge Resort may have attained a greater sale value on a per Member basis than the Hills Resort resulting in an inequity to owners who voted to exit;
- New time share agreements would have to be negotiated which would have to provide for a mechanism to allow Members to exit in the future;
- Because Members of the Resorts own a fraction of its real property, a mechanism to transfer their ownerships would need to be developed. The tax implications of such a mechanism would have to be explored and taken into account;
- A structure would need to be determined to allow for the severance of the future Resort to facilitate future exiting Members; and,
- The management of the future Resort would need to be renegotiated with Wyndham or another service provider.

#### 3.3.5 Based on the following factors:

- the low number of Intervals that voted to stay (only 1,827 as compared to a total number of Intervals available at the Ridge Resort of 5,365);
- the expected increase in Charges if only one-third of the Hills Resort is maintained and the potential need for increased Charges in a combined Ridge Resort;
- a successful restructuring requires a large proportion of non-voted Intervals to vote to stay in a second survey;
- the costs and time required to run a second survey;
- the costs and time required to develop a restructuring plan; and,
- all of the logistical issues noted above,

the Administrator does not recommend the restructuring of the Resorts into the Ridge Resort or one-third of the Hills Resort. It is the Administrator's opinion that the restructuring will ultimately be unsuccessful and costly and combining the Resorts will ultimately not be successful.

### 3.4 Conclusion

3.4.1 Based on all of the above, the Administrator's opinion is that none of the Hills Resort, the Ridge Resort or a combination thereof are viable and that both Resorts should be sold in their entirety. The Administrator discussed its recommendation to shut down and sell each of the Resorts with the Board of Directors of each Association. In separate duly constituted board meetings, the Board of Directors of both Associations unanimously approved the Administrator's recommendations.

3.4.2 After discussions with each of the Boards of Directors, it was determined that it was appropriate to cease operation of the Resorts at the end of the 2020 operating year, being January 6, 2021. This decision was based on the following factors:

- All non-delinquent Members have paid their maintenance fees for the entire 2020 operating year and delaying the shut down until the end of the 2020 operating year would allow Members to use the Resorts during this period;
- As exiting Members were not to be charged 2021 maintenance fees, if the Resorts were to remain operational in 2021, the Resorts' operations would incur a significant loss and funding shortfall as the 2021 maintenance fees for remaining Members would be insufficient to fund operations;
- Waiting to cease operations at the end of the 2020 operating year would allow for working notice to be given to the employees who work at the Resorts and to suppliers with contracts for the supply of services to the Resorts;
- Operations may be impacted as time progresses by employees leaving the Resorts for new jobs since they know the Resorts are being closed;
- Waiting to cease operations would allow the Administrator time to explore the various issues resulting from shutting down operations, including determining who had prepaid for the 2021 operating year and what would need to happen with their deposits;
- Fulfilling the 2020 year would allow Members the chance to use their accumulated Membership Points; and,
- Mitigation of the potential for liability of continued operations.

## 4.0 PROPOSED NEXT STEPS AND ISSUES

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### 4.1 Proposed Next Steps for the Administrator

4.1.1 In order to prepare for the shut down and sale of the Resorts, the Administrator proposes the following:

- No further surveys will be conducted;
- The Administrator to be given the authority to contact potential listing agents to obtain listing offers for the sale of the Resorts;
- The Administrator will work with resort management to:
  - prepare a cash flow forecast for the remainder of the 2020 resort year;
  - prepare a cash flow forecast on a shutdown basis for 2021; and,
  - gather information on potential creditor claims including termination and severance of CHHI employees (the resort hospitality, management and maintenance staff).
- Based on the above information, the Administrator will determine the funding in excess of current bank account balances required during a sales process, if any;
- Obtain updated appraisals of each Resort (the previous appraisals obtained by the Boards of Directors were prior to the COVID crisis and therefore require updating for current conditions, particularly in the Hotel sector); and,
- Continue the legal review of the ownership real property abstracts and determine what, if any, action is required prior to a sale.

### 4.2 Potential Sources to Fund the Resorts' Holding Costs

4.2.1 If the Resorts are shut down in 2021 there will be no maintenance fee revenues and no Exit Fee revenues. However, there will be holding costs and costs to maintain the Resorts until they can be sold. Such costs include, but are not limited to, property taxes, reduced utilities, security, snow clearing and landscaping, maintenance and professional fees. It is impossible to determine how long it will take to sell each Resort as each is a unique property and the COVID-19 pandemic increases the uncertainty. Each Association currently has cash balances but that funding will diminish as operations continue through to January 6, 2021. Accordingly, additional funding may be required to pay the holding costs during the marketing and sale of the Resorts.

4.2.2 The Administrator is aware of two sources of available funding: 1) borrowing against the value of the real property; and, 2) charging all Members a revised Exit

Fee. Recognizing the potential financial issues faced by the Members, the Administrator recommends exploring the option of financing the real property. If the Administrator cannot find any parties willing to lend against the real property, then the Administrator will report such results to the Court and would then have to recommend an Exit Fee be paid by all Members to ensure there is no funding shortfall during the sales process.

4.2.3 Accordingly, the Administrator recommends that the Court expand the powers of the Administrator to provide the authority to canvass potential lenders and receive lending proposals that would ensure the funding of the holdings costs during a sales process.

#### 4.3 Repairs to the Hills Resort

4.3.1 In about mid-September 2020, there was an incident at the Hills Resort of a Member breaking a stair and falling through it. Hills Resort management requested and obtained an engineering review of the various wooden staircases at the Hills Resort. The engineering report determined that the wooden staircases were in poor condition and should be replaced. Attached, as Appendix "S", is a copy of the engineering report. A quote was obtained to complete the replacement work at a total cost of approximately \$120,000. Paragraph 14(c) of the Appointment Orders requires that any capital expenditures greater than \$100,000 require the written approval of the Administrator. Given the results of the engineering report, the impact on the safety of the Members and the fact that Members are currently using the Hills Resort, the Administrator provided its written consent to the replacement of the wooden staircases. Even though the Administrator recommends the shut down and sale of the Hills Resort, the proposed shut down date is not until January 6, 2021 and the Hills Resort needs to be safe for Members until it is closed.

## 5.0 PROFESSIONAL FEES

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- 5.1 The fees and disbursements of the Administrator and its counsel for the period June 16, 2020 to September 15, 2020 for the Administrator and for the period ending September 15, 2020 for Aird & Berlis LLP are detailed in the affidavits of Brad Newton, sworn September 25, 2020 and Sam Babe, sworn September 30, 2020, attached as Appendices "U" and "V", respectively
- 5.2 The Administrator's fees for the period from June 16, 2020 to September 15, 2020 encompass 861.6 hours at an average hourly rate of \$317.40, for a total of \$273,476.00, prior to applicable taxes. BDO is requesting that the Court approve its total fees and disbursements, inclusive of applicable taxes, in the amount of \$309,027.89.
- 5.3 The fees of Aird & Berlis LLP for the period ending September 15, 2020 encompass 86.7 hours at an average hourly rate of \$655.88 and disbursements of \$160.25 for a total of \$57,025.25 prior to applicable taxes. The Administrator is requesting that the Court approve its counsel's total fees and disbursements, inclusive of taxes, in the amount of \$64,438.54.
- 5.4 The Administrator has reviewed its fees with the Applicants who have no objection to the approval of the fees and expenses noted herein. The Administrator has reviewed the fees of Aird and Berlis LLP and is of the opinion that they are reasonable in the circumstances.

## 6.0 RECOMMENDATIONS

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6.1 The Administrator requests that the Court grant an order:

- Approving this Second Report and the activities of the Administrator described herein;
- Approving the fees and disbursements of the Administrator and its counsel as described in this Second Report;
- Authorizing the closure of the Resorts, effective January 6, 2020 or such other date as mutually agreed upon by the Administrator and the board of directors of the Associations;
- Authorizing the Administrator to direct the Associations to engage consultants, appraisers, agents, experts, brokers and such other persons from time to time and on whatever basis, including on a temporary basis, to assist the Administrator in developing a marketing and sales process in respect of the Resorts; and,
- Authorizing and directing the Administrator to investigate the availability and terms of possible third-party funding in the event that same is required to fund the ongoing costs of maintaining the Resorts prior to their sale.

All of which is respectfully submitted this 30<sup>th</sup> day of September, 2020.

BDO CANADA LIMITED  
ADMINISTRATOR OF  
CARRIAGE HILLS VACATION OWNERS ASSOCIATION &  
CARRIAGE RIDGE OWNERS ASSOCIATION  
and without personal or corporate liability



Per: Brad Newton, CA, CPA, CBV, CIRP, LIT  
Senior Vice-President