

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")

SUPPLEMENT TO THE FIRST REPORT OF THE ADMINISTRATOR  
BDO CANADA LIMITED

June 29, 2020

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Appendix A - Frequently Asked Questions memo dated June 25, 2020

## 1.0 INTRODUCTION AND PURPOSE OF REPORT

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- 1.1 This report is a Supplement to the First Report of the Administrator (the “Supplemental Report”) of Carriage Hills and Carriage Ridge. All capitalized terms used herein that are not otherwise defined in this Supplemental Report have the meanings ascribed to them in the First Report.
- 1.2 The First Report was filed on June 22, 2020. On June 26, 2020, responding motion records and facts for each of Carriage Hills and Carriage Ridge were filed by counsel on behalf of certain Members (the “Responding Materials”). The Responding Materials also included an alternate survey to replace the Member Survey proposed by the Administrator (the “Alternate Survey”). Based on the Responding Materials and emails received by the Administrator from Members, it was apparent that certain elements of the requested relief set out in the First Report required clarification. This Supplemental Report is filed to clarify those elements and to respond to certain inquiries from Members that the Administrator has received since the filing of the First Report. In order to reduce costs, the Administrator has consolidated commentary for both Resorts into this one Supplemental Report.
- 1.3 Pursuant to the Appointment Order, the Administrator was ordered to “plan and propose a procedure to ascertain the interests of the Members going forward with respect to the Resort”, subject to Court approval. That is exactly what it has done with the assistance of the Consultative Committee. The Applicants are now seeking the Court’s approval of that procedure.

## 2.0 FREQUENTLY ASKED QUESTIONS JUNE 25, 2020

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- 2.1 After the First Report was posted on the Administrators' case website, the Administrator received questions from Members concerning certain aspects of the First Report. Based on those emails, the Administrator, the Administrator's counsel and counsel for the Associations prepared another frequently asked questions document (the "June 25 FAQ"). Attached hereto as Appendix "A" is a copy of the June 25 FAQ.
- 2.2 The June 25 FAQ was posted to the Administrator's case website and on the Carriage Hills and Carriage Ridge websites on June 26, 2020. The Administrator will email the June 25 FAQ to all Members for which the Administrator has a working email address. The Administrator expects that the email will be sent to approximately 11,300 Members on June 29, 2020.

## 3.0 CLARIFICATION OF MEMBER SURVEY

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### 3.1 Obsolescence Provision Versus Viability

- 3.1.1 The Responding Materials emphasize the obsolescence provision in the TSA and include an obsolescence question in their Alternative Survey. The Administrator's position is that the obsolescence provision in the TSA is not relevant in the determination of whether there should be a sale of the Resorts in their entirety. Instead, the future viability of the Resorts is the driving factor as to whether or not the Resorts, in part or in whole, should be sold. The Administrator would not consider the Resorts viable if at least 75% of all Intervals (the threshold for obsolescence in the TSA) voted to exit. It is possible that, even if a number of Intervals totalling less than 75% vote to exit from the Resorts, it would not be viable and the Administrator would recommend that the Resorts be sold in their entirety.
- 3.1.2 The Administrator has been consistent since its appointment that if the Resorts are not viable, they will need to be sold. The Resorts' future viability can only be determined with certainty after the total number of all Members exiting is known with certainty.
- 3.1.3 The Administrator's proposed Member Survey attached as Appendix "F" to the First Report asks: "Do you want to exit now (this would include declaring the resort "obsolete")". Therefore, anyone voting to exit is also voting for obsolescence. There is no need to differentiate between the two questions. This issue was discussed at length in the Consultative Committee meetings and it was agreed by the Consultative Committee that a separate obsolescence question was redundant and potentially confusing to Members. If enough members voted to exit, the Resort(s) would not be viable and would be sold.

### 3.2 Impact of Non-Binding Exit

- 3.2.1 The Administrator has received numerous requests from Members to provide them with the ability to terminate their obligations under the TSA before the 2021 Basic Charge is invoiced in October 2020. Taking into consideration the timeline set out in the First Report to conduct a survey of approximately 13,000 Members, there is only one opportunity to obtain binding confirmation from Members that they want to exit before the 2021 Basic Charges are invoiced. The Administrator's proposed Member Survey provides Members with the opportunity to terminate their obligations under the TSA if they are not interested in a restructured resort on any terms. This exit would be without liability for 2021 or any future maintenance fee obligations.
- 3.2.2 If the Member Survey is non-binding, a vote for exit does not allow the exiting Members' obligations under the TSA to be terminated prior to the 2021 billing cycle. In such a scenario, all Members, regardless of whether they desired to exit or stay in a restructured resort, would be invoiced and expected to pay the Basic Charges until an arrangement is in place to permit obligations under the TSA to be terminated. The Administrator does not believe that this is what a majority of exiting Members want.

- 3.2.3 A non-binding survey will not provide the Administrator with the certainty required to determine if the Resorts are viable and whether a restructuring plan should be developed. The Administrator must prepare a cash flow forecast for the restructured Resort(s) and must have reasonable certainty regarding the revenue that can be expected from ongoing Members. If further non-binding surveys are required, the Administrator is concerned that significant time and professional fees will be expended until a binding survey is ultimately undertaken.
- 3.2.4 The Administrator has proposed the Member Survey and related process for Members because it is more cost efficient to identify Members that wish to exit immediately (regardless of what a restructured resort may look like) and allow them to terminate their obligations under the TSA as soon as possible. This will decrease the cost of future communications and surveys as a result of a reduced number of Members that must respond and the related analysis of the results. The Administrator also believes the number of emails received from Members will likely decline resulting in reduced fees.
- 3.2.5 As set out in the First Report, the Administrator proposes that all exiting Members pay an Exit Fee, either now or in the future. Accordingly, there is no benefit to waiting to exit unless you are truly interested in a restructured resort as you will be paying the same fee to exit in the future.

### 3.3 Voting by Delinquent Members

- 3.3.1 In the First Report, the Administrator proposes that Delinquent Members are precluded from voting pursuant to the terms of the TSA. Various Members have expressed concern that if Delinquent Members do not vote, they are defaulted to a "stay" vote in the Member Survey. This is incorrect.
- 3.3.2 Instead, the Administrator stated in the First Report that it was considering the best way to take possession of the Intervals of Delinquent Members (and the underlying real property interest) in order to sell it at the same time as the exiting Members' real property. Accordingly, it is contemplated that the Delinquent Members will have no further rights to their Intervals and will not be entitled to the proceeds from the sale of any real property unless they bring their account into good standing with the Associations.
- 3.3.3 In other words, the Delinquent Members' Intervals will not be taken into account when determining whether the Resort(s) are viable. They will be forced to "exit", charged the Exit Fee and the additional Delinquent Fee in addition to their already outstanding account. The Delinquent Members caused the financial crisis at the Resorts and should not be put in a better position than non-delinquent Members who wish to exit.

## 4.0 CLARIFICATION OF EXIT OPTION

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### 4.1 Purpose of the Exit Fee

4.1.1 As demonstrated through the Exit Fee calculation in Appendix "J" of the First Report, the purpose of the Exit Fee is to support the Resort(s) current finances by:

i) covering historical costs (the operating losses and restructuring costs already incurred); and,

ii) covering the costs that are expected to be incurred to the completion of the restructuring and/or the sale of the property (the holding costs for 1.5 years and the estimated ongoing restructuring costs).

The amounts that are not included in the calculation of the Exit Fee are the annual charges for future capital improvements that are included in the annual Basic Charge. Accordingly, the Administrator's intention is to include a proxy for the allocation of fixed expenses such as: insurance, property taxes, grounds maintenance, annual maintenance, etc. in addition to the Members' share of the operating losses and restructuring costs. We note that the Exit Fee is approximately \$900 more than the full annual maintenance fee for 2020 that all Members were required to pay.

4.1.2 Even if the Resort(s) are considered not to be viable after the results of the Member Survey are known such that the Resort(s) are sold in their entirety, there would be significant costs associated with maintaining and liquidating the Resorts. However, the Associations do not have any assets to borrow against as the real property is owned by the Members. Accordingly, the Associations require the Members to finance operating losses, the costs of the restructuring and the sale process until the underlying real property of the exiting Members and Delinquent Members is sold. This is the ultimate purpose of the Exit Fee.

### 4.2 Treatment of Real Property Sale Proceeds

4.2.1 Once the number of exiting Members is known with certainty, the Administrator can determine if all or a portion of the real property should be marketed and sold. The Administrator can then develop a sales process for the applicable real property, which will need to be approved by the Court. The Administrator anticipates that the exiting Members will receive some portion of the Exit Fee back from the net proceeds of a future sale of the real property. This would include a pro rata portion of the proceeds from the sale of the exiting Members' and the Delinquent Members' underlying real property.

4.2.2 However, it is unclear at this time what that refunded amount will be, if any. The market for this unique property is untried and unclear and the impact on value of the current COVID-19 crisis makes the situation more difficult to predict. Accordingly, the Administrator cannot estimate the amount that could be available to exiting Members and it would be inadvisable to try to estimate any such proceeds at this time.



### 4.3 Exit Process

4.3.1 As noted in the First Report, the Exit Fee is only part of the exit process. The other parts of the exit process include, but are not limited to:

- documentation required to transfer a Member's Interval and underlying real property deed to a Landco entity;
- a form of mutual release of obligations (excluding the Member's right to their portion of the real property net sale proceeds, if any);
- a requirement for the exiting Member to inform the Administrator of any changes in contact information so that the Administrator can keep them informed of the results of the sale of the real property; and,
- proof of ownership of the Interval and real property deed.

The entire process and specific documentation is being considered and determined. Given the Court's timing and the desire to have the Exit Process completed before the 2021 Basic Charge is due, the entire Exit Process could not be determined before the hearing date. Regardless of the undetermined details, the Administrator can advise that there will be no additional fees payable by exiting Members to the Associations apart from the Exit Fee. There may be income tax implications to Members that the Administrator is not specifically aware of and Members will have to pay their own personal costs (such as personal legal fees if they choose to involve their counsel) that they may incur in this process. It is also unclear if Members with club points (discussed below) may incur a fee to maintain their club points or if the Clubs (defined below) will require additional documentation on a Members' exit.

## 5.0 RCI AND SVC POINTS

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- 5.1 The Administrator understands that certain Members have purchased memberships in the Shell Vacations Club ("SVC") and RCI (collectively the "Clubs"). It is our understanding that the Clubs essentially convert a Members' Interval into a certain number of Club points that can be used to purchase time at Club member resorts (i.e. a resort in Hawaii or other location). At this time, it is unclear to the Administrator how many Members have memberships and unused points in the Clubs. However, the Administrator has received numerous inquiries asking what would happen to these club points if the Member exited or the Resort(s) were sold.
- 5.2 As a result of these enquires, the Administrator and counsel for the Associations have recently requested copies of the Club agreements in order to determine if these issues were considered within the agreements and the effect of same. The agreements had not been provided by the date of this Supplemental Report. The Administrator and counsel will continue to investigate this issue and inform the Members once an answer has been determined.

## 6.0 SURVEYS BY MEMBERS

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- 6.1 Numerous Members have brought to the Administrator's attention that there are various Member prepared surveys that have either been posted on Facebook or emailed directly to Members using a Member emailing list apparently obtained from Wyndham. As noted in the First Report, the Administrator also intends to send the Member Survey via direct email to Members where possible.
- 6.2 As noted in previous submissions to the Court, many of the Members are elderly and not necessarily tech-savvy. The emails to the Administrator demonstrate that the Member prepared surveys have confused certain of the recipients of these surveys and that those recipients believe that they have missed the Administrator's Member Survey. The Administrator, the Applicants and counsel to the Applicants have replied to numerous emails and telephone calls trying to assure these Members that the Administrator's Member Survey has not yet been sent and that they have not missed their opportunity to vote on exiting or staying.
- 6.3 The above issues have caused increased and unnecessary professional fees. In addition, the Administrator is concerned that these other surveys will confuse Members and cause survey fatigue prior to the important Member Survey being sent.

All of which is respectfully submitted this 29<sup>th</sup> day of June, 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

# APPENDIX "A"

**Frequently Asked Questions (FAQ)**  
**Carriage Hills Owners Association &**  
**Carriage Ridge Owners Association**  
**June 25, 2020**

BDO Canada Limited (“BDO”) was appointed as Administrator over Carriage Hills Vacation Owners Association and Carriage Ridge Owners Association pursuant to Court orders granted May 15, 2020.

A further Court hearing has been scheduled on **July 2, 2020 at 1:00 p.m.** We understand that many Members have questions with respect to the upcoming hearing and the proposed survey of the Members. To assist Members, below is a list of Frequently Asked Questions designed to be responsive to questions or concerns raised about the upcoming hearing and the Member Survey for both Carriage Ridge and Carriage Hills.

**1. Will I be able to attend the Court hearing?**

Yes, you will be able to listen to the Court hearing live on Youtube using the following link <https://youtu.be/wPkmhrQ7kbs>. Should you wish to make submissions to the Court, please contact Thornton Grout Finnigan at [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca) to be provided with a Zoom link.

**2. Has the BDO Member survey been sent, did I miss it?**

No, the survey has not been sent to the Members. The Associations have requested that the Court approve the Member Survey before it is sent to Members. If the Member survey is approved by the Court, the Administrator intends to engage a third party provider (“eBallots”) to set up the survey platform. We understand that the Associations have used eBallots before to conduct surveys and voting in the past. eBallots will send an email to all Members who have provided a working email address to the Administrator. If you have not already done so, please provide a valid email address to the Administrator by completing the questionnaire at <https://www.bdo.ca/en-ca/extranets/carriage/>.

**3. Will Members without email addresses receive the survey?**

Yes. If the Administrator does not have a working email address for a Member, the Administrator will send a copy of the survey via regular mail to their last known mailing address and the Member can either login to complete the survey online or complete the paper survey and send it to the address provided via regular mail. Only those who have not provided a working email address to the Administrator will receive a ballot by mail. This will help to reduce the cost of the survey.

**4. How long will I have to respond to the survey?**

All Members, regardless of whether they complete the survey online or via regular mail, will be required to respond to the survey by August 31, 2020. In the event that your response is not received by August 31, 2020, your response will not be considered by the Administrator.

**5. Why doesn't the survey outline the full restructuring plan?**

In order to create a final restructuring plan, the Administrator must know with certainty how many Members wish to remain. That requires the Administrator to understand how many Members wish to immediately exit regardless of what a restructured resort may look like. If enough Members decide to exit, a viable restructuring will not be possible and it is unnecessary to create a restructuring plan.

**6. What will happen if I vote to stay?**

Once the Member survey is completed on August 31, the Administrator can prepare a draft restructuring plan for the resort(s). Members voting to stay will have the opportunity to review the draft restructuring plan and make a final decision whether you want to continue your membership or exit the resort(s). If you decide to exit after reviewing the draft restructuring plan, you will be required to pay the exit fee in the same manner as those voting to exit immediately are required to pay.

**7. Will the restructuring plan presented after the Member survey be the final restructuring plan?**

No. A final restructuring plan cannot be developed until the number of Members staying is definitively known. That means the restructuring plan presented to staying Members will be a draft that cannot be finalized until after the second exit opportunity has expired.

**8. What will happen if I vote to leave?**

If you vote to exit on the survey, you will **not** be permitted to change your mind once the restructuring plan is developed. Your decision will be binding. You will be presented with the full exit plan once it is developed, which will include the payment of the exit fee outlined in the survey. The exit plan will require documentation with respect to ending your legal relationship with the resort(s). These documents and procedures must be developed once the Administrator understands how many Members wish to exit and must fully consider the legal and tax implications of the exit plan to the Associations and the Members.

**9. When does the exit fee have to be paid?**

At this time, it is not certain exactly when the exit fee will be required to be paid. However, the exit fee will not become payable until after a final restructuring plan, if any, has been developed. At a minimum, the exit fee will not become payable until after the second vote described in question 6 takes place.

For example, the first survey period ends on August 31, 2020. Once the responses have been tabulated, the Administrator will require a period of time to prepare a draft restructuring plan. If such restructuring plan is presented to the Members voting to stay on September 30, 2020, those Members would have until November 14, 2020, to decide whether they wish to exit at that time. At some point after that date, the exit fee will be assessed.

The Administrator will provide further information on timing as it becomes available.

**10. What is the Delinquency Fee?**

The Delinquency Fee is an estimate of the additional cost, on a per Delinquent Member basis, that will be incurred to develop the process to deal with the Delinquent Members' intervals and deeds and the collection of Delinquent Members' outstanding accounts. A Delinquent Member can avoid the Delinquency Fee by paying their outstanding account in its entirety by no later than September 30, 2020.

**11. Will I receive an invoice for and have to pay the 2021 maintenance fees?**

One primary reason the Administrator is proposing a binding survey now is to ensure that those who vote to **exit** in this survey **WILL NOT** be invoiced for the 2021 maintenance fees.

If you choose to **stay** under the Member survey you **WILL** be assessed and invoiced for the 2021 maintenance fees. In the event that you decide to **exit** after the draft restructuring plan is presented, any 2021 maintenance fees will either be useable for 2021 attendance at the resort or may be credited toward the exit fee. This will depend on whether a restructuring is possible and how quickly the real property sale process takes to get underway.

**12. Can delinquent Members vote?**

No. Delinquent Members who do not pay their outstanding fees to bring their account current, will not be permitted to vote. This is consistent with the rules under the Time Share Agreement. The Administrator will deal with delinquent accounts in due course.

**13. What will happen with delinquent owners' intervals/deeds?**

The Administrator, its counsel and counsel to the Associations are exploring alternatives to efficiently deal with selling the underlying real property of Delinquent Members along with the real property of any Members that decide to exit the resort(s).

**14. What will happen if I don't complete the survey?**

If you do not complete the survey it will be assumed you wish to **STAY** in the resort(s). In other words, if you do not vote, the *status quo* remains. If you wish to change the *status quo*, you must proactively indicate that you wish to **EXIT** the resort(s). As noted above, if you vote to stay in the survey, you will still be given an opportunity to exit once the draft restructuring plan is developed and presented.

For example, if you did not receive the survey for any number of reasons, but you wanted to continue to maintain your membership, that ongoing relationship is assumed. None of the implications of voting to **EXIT** will occur and you will not be forced to give up your relationship with the resort(s), surrender your deed or be assessed the exit fee. Alternatively, if you did not respond but wanted to **EXIT**, you would have another opportunity to **EXIT** after the Administrator presents the draft restructuring plan.

**15. Wyndham owns a large number of Intervals. Will they be allowed to vote?**

Yes. As an owner of Intervals, Wyndham has the right and will also be allowed to vote in the Member survey.

**16. I own more than one Interval. How many votes do I get?**

Each Interval will be entitled to vote. A full year interval is entitled to a full vote and an odd or even year interval is entitled to a half vote.

**17. I own more than one Interval. Do I have to vote them all in the same way?**

No. Each Interval will be entitled to vote and each Interval can be voted differently. Members who own more than one interval can choose to relinquish some of their Intervals and retain the others.

**18. What if 75% of total votes are to exit?**

Then the “obsolescence” provisions of the Time Share Agreement would be triggered. If this happens, the Administrator would work with the Associations to create a process to sell the resort(s). The sale process would be subject to the Court’s approval. Once the resort(s) have been sold, the Administrator would propose a process to distribute any net proceeds from the sale of the resort(s) to the Court for its approval.

**19. What happens if so many Members vote to leave that a restructured resort isn’t viable?**

It is possible that, even if less than 75% of votes are for exiting, a restructured resort would not have enough remaining Members to be viable. In this case, the entire resort would be sold in the same manner as described above in question 18.

**20. Why does the vote need to be binding on those voting to exit now?**

If the vote were not binding on those voting to exit now, the following things would occur:

- The Administrator would not know who is actually exiting prior to the invoicing of the 2021 maintenance fees and therefore **EVERYONE** would be invoiced and would be required to pay the 2021 maintenance fees;
- The Administrator would not have any underlying basis for determining a restructured resort because all Members could change their minds;
- If a Member wants to immediately leave under any circumstances, then a restructuring plan is not of any interest to them. Those Members should not have to wait for a restructuring plan to be created, and in the interim, pay the 2021 maintenance fees in addition to the exit fee;



- The Administrator would have to model numerous restructuring options not knowing who is truly exiting and who is staying. This would be a massive project and lead to increased fees and costs to Members, with little benefit to those Members that wish to exit today; and
- Multiple surveys of Members would be required at great expense and such surveys would be complicated due to the presentation of numerous restructuring options and potential paths forward.

If the results of this survey reveal that a viable restructuring is not possible, the resort(s) (and ultimately the Members) will not be forced to incur the costs associated with additional surveys and the professional fees to review all possible restructuring scenarios.

**21. Would the exit fee have to be paid if the resorts are sold in their entirety?**

No. If the results of the survey and the future exit by “Stay” owners show that a viable restructuring is not possible, then the resorts will be wound down and sold and the exit fee will not be necessary.

**22. Will I receive any money back from the sale of property?**

It is unclear whether any money will be returned to exiting Members. There is a possibility that a distribution to exiting Members will be made after the sale of all or a part of the real property is completed. As this time, we do not know what property will be available for sale or what the sale of that property will net after completed. Unfortunately, it is impossible to predict what effect the COVID-19 pandemic will have on the property market. There are also other factors that will affect the net proceeds such as: land transfer taxes, income taxes, commissions, advertising, holding costs, etc.

**23. How long will it take to sell all or any portion of the property?**

It is difficult to determine how long it will take to sell the real property given the market uncertainty and the uncertainty as to what is being sold (all or a portion of the property). The Administrator is estimating a 12 to 18 month period to sufficiently market the real property, receive offers, negotiate a final sale agreement, obtain Court approval of the sale and close the sale. It is possible that it may take longer.

**24. Who does the Administrator report to?**

As a Court officer, the Administrator reports to and takes its direction from the Court. Any Court reports prepared by the Administrator will be publicly available once they are filed with the Court and will be uploaded on the Administrator’s website. However, the Administrator does consider commentary from the Members (both through the emails to the dedicated email inboxes set up for each of Carriage Hills and Carriage Ridge and the consultative committee) into consideration when preparing recommendations to the Court.

**25. I have provided feedback to the Administrator. Why has the Administrator not responded?**

The Administrator will not respond to all feedback received from Members. To do so would disrupt the Administrator's focus on restructuring the resort(s) and is not cost-effective. The Administrator has detailed its recommendations and the reasons behind its recommendations in the Administrator's reports and tried to respond to common commentary through communications like this FAQ. The Administrator understands that certain Members will have differing views depending on their own circumstances.

**The Resort Operations**

**26. How does the Court proceeding affect the operations of the Resort?**

The Court process does not affect the current operations of the Resort. At this time, the *status quo* will be maintained and it will be business as usual (subject to the issues surrounding COVID-19). Accordingly, Wyndham will continue to manage the operations of the Resort during this process. If any significant changes need to be made to the operation of the Resort in the future, they will have to be approved by the Court on notice to the Members and Wyndham.

**27. Will I still be able to use the Resort during the restructuring?**

Yes. If you are an Owner that is not in default, use of the Resort will continue as normal, subject to issues arising from the COVID-19 pandemic. Any updates with respect to operations will be provided directly by the Resort manager.

**28. Will both resorts have to restructure in the same manner?**

No. The resorts were filed in separate proceedings to ensure that they do not necessarily have to restructure in the same manner or at all. There may be circumstances where one or both resorts are sold in whole or in part or the resorts may amalgamate to form one resort. This will all be determined once the results of the survey are obtained.

**29. I have other question and concerns for the Administrator, who should I contact?**

We recommend that you first review the information on the Administrator's website: [www.bdo.ca/en-ca/extranets/carriage](http://www.bdo.ca/en-ca/extranets/carriage). In the event that you still have questions, they may be directed to: [BDOCarriageHills@bdo.ca](mailto:BDOCarriageHills@bdo.ca).