

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

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

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

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

(together, the “Applicants”)

**JOINT FACTUM OF THE APPLICANTS
(Motion returnable May 7, 2020)**

May 5, 2020

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Association

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PART I - OVERVIEW

1. Carriage Hills Vacation Owners Association (the “**CHVOA Applicant**”) and Carriage Ridge Owners Association (the “**CROA Applicant**” and together with the CHVOA Applicant, the “**Applicants**”) are corporations without share capital vested with the operation, maintenance, alteration, improvement and protection of two independent timeshare resorts located in Horseshoe Valley, Ontario, known respectively as the Carriage Hills Resort and the Carriage Ridge Resort (each, a “**Resort**” and together, the “**Resorts**”).
2. This factum is in support of separate applications by each Applicant for substantively identical orders (the “**Administration Orders**”):
 - (a) appointing BDO Canada Limited (“**BDO**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), as administrator,

without security, of the Applicants, all of the property, assets and undertakings of the Applicants (collectively, the “**Property**”) and all of the lands and premises (the “**Resort Assets**”) on which the Applicants operate the Resorts that are collectively owned by the respective owners of real property upon which the Resorts are situated (the “**Owners**”) as tenants in common (in such capacity, the “**Administrator**”);

- (b) empowering the Administrator to, among other things, review potential options to restructure the Applicants and the Resorts, advise the Applicants in the preparation of its cash flow statements, monitor the Applicants’ receipts and disbursements, report to the Court and assist the Applicants with the dissemination of information to the Owners;
- (c) providing that the Applicants shall remain in possession and control of the Property and the Resort Assets, including authorization for the Applicants to continue to incur and pay disbursements in the ordinary course from the Property;
- (d) granting a stay of proceedings in favour of the Applicants, the Resort, the Administrator and the directors and officers of the Applicants, including prohibiting any person providing goods or services to the Applicants from discontinuing the provision of such goods or services to the Applicants by commencement of these proceedings;
- (e) granting an aggregate administration charge in favour of the Administrator, counsel to the Administrator and counsel to the Applicants up to the maximum amount of \$500,000 in respect of both proceedings (\$350,000 in respect of the CHVOA Applicant and \$150,000 in respect of the CROA Applicant), as security for the fees and disbursements incurred in respect of these proceedings; and

- (f) authorizing a noticing procedure that is tailored to these proceedings and provides the best opportunity for notice of these proceedings to be provided to interested Owners.
3. The relief sought in the Administration Orders is necessary as a result of the financial duress experienced by the Resorts which, if permitted to continue, would jeopardize the viability of the Resorts for the future benefit of their Owners.
 4. The Resorts are suffering from a spiral of decreasing revenue collection coupled with increasing operational and capital expenditure costs, which will lead to its eventual failure absent a restructuring. The root causes of the current problems also need to be addressed, to prevent a future recurrence.
 5. The appointment of the Administrator will allow the Applicants to develop a restructuring plan, in consultation with the Administrator and the Owners. The Administrator anticipates that such a plan will provide for an opt-out mechanism for Owners who wish to terminate their future obligations, streamline a process to enforce the Applicants' contractual rights against defaulting Owners and provide for the going concern operation of the Resorts or a portion thereof if the requisite number of members desire that it be maintained.
 6. Many of the issues affecting the Resorts and the Owners are the result of contractual limitations and the appointment of the Administrator will provide the foundation for a transparent and flexible restructuring process, under the supervision of the Court, for the benefit of the Owners.

7. For the reasons provided herein, the Applicants respectfully submit that granting the relief sought in the Administration Orders is in the best interests of the Applicants and the Owners and is just and convenient in the circumstances.

PART II - FACTS

8. All capitalized terms not expressly defined herein are otherwise defined in the Affidavit of Darren Chapelle sworn April 30, 2020 (the “**Chapelle Affidavit**”) and the Affidavit of Martin Ginsberman sworn April 30, 2020 (the “**Ginsberman Affidavit**”).
9. The facts relied upon are more particularly set out in the Chapelle Affidavit and the Ginsberman Affidavit.

Background and the Pressing Need for Relief

10. The Applicants are corporations without share capital incorporated pursuant to the *Corporations Act* (Ontario), R.S.O. c. C. 38. The Applicants are not-for-profit entities that are each overseen by a volunteer board of directors that receive no remuneration for their services.¹
11. Instead of shareholders, the Applicants are comprised of members. Each member is an owner as a tenant in common of an undivided interest in the respective Resort Assets on which the Resorts are operated.²

¹ Affidavit of Darren Chapelle sworn April 30, 2020 [*Chapelle Affidavit*] at para. 3; Affidavit of Martin Ginsberman sworn April 30, 2020 [*Ginsberman Affidavit*] at para. 3.

² *Chappelle Affidavit* at para. 4; *Ginsberman Affidavit* at para. 4.

12. The Carriage Hills Resort is comprised of 172 residential units in eight buildings and the Carriage Ridge Resort is comprised of 78 residential units in three buildings.³ The Resorts are situated in Horseshoe Valley, Ontario, and are located on land adjacent to each other.⁴
13. Each Owner has a right to use their respective Resort for a certain period of time, depending on the interest that such Owner purchased, known as “**Intervals**”.⁵ An Owner may own more than one Interval. Based on the most up-to-date information, the CHVOA Applicant is comprised of 8,944 Owners who own 12,043 Intervals⁶ and the CROA Applicant is comprised of 4,127 Owners who own 5,365 Intervals.⁷ Approximately 1,647 Owners own Intervals at both of the Applicants.⁸
14. Adding to the complexity of the situation is the fact that the Resorts’ parcel registers are the only ones in Ontario that could not be imported into the Teraview electronic system due to the exceedingly high number of owners and fractional interests. This means that the original parcel registers collectively consist of tens of thousands of physical pages held in the Barrie, Ontario registry office.⁹
15. The Applicants’ main source of revenue is generated by the annual dues that are payable by the Owners to the Applicants pursuant to the contractual relationship governing the Owners and their respective Applicants.¹⁰ Owners do not have any termination rights

³ *Chapelle Affidavit* at para. 14; *Ginsherman Affidavit* at para. 14.

⁴ *Chapelle Affidavit* at para. 13; *Ginsherman Affidavit* at para. 13.

⁵ *Chapelle Affidavit* at para. 4; *Ginsherman Affidavit* at para. 4.

⁶ *Chapelle Affidavit* at para. 5.

⁷ *Ginsherman Affidavit* at para. 5.

⁸ *Chapelle Affidavit* at para. 26; *Ginsherman Affidavit* at para. 26.

⁹ *Chapelle Affidavit* at para. 27; *Ginsherman Affidavit* at para. 27.

¹⁰ *Chapelle Affidavit* at para. 6; *Ginsherman Affidavit* at para. 6.

(contractual or otherwise) and Intervals are owned in perpetuity. The only way for an Owner to terminate its ownership of an Interval is through a sale to a third party.¹¹ In the event of the death of an Owner, the ownership of the Interval and the obligations to the Applicants continue with the estate of the Owner.

16. As not-for-profit corporations, the annual dues are calculated in order to break-even in respect of the annual costs required to operate the Resorts, plus the establishment of an appropriate reserve amount for future capital improvements.¹²
17. In the event that any Owners fail to pay their annual dues, the Applicants are required to increase the annual dues payable by all Owners of the Applicants to compensate for the lost revenue arising from the delinquencies.¹³ In other words, the Owners in good standing are required to bear the costs of the defaulting Owners.
18. Due to a dramatically decreasing market for Intervals, many Owners have abandoned their Intervals and stopped paying their respective annual dues.¹⁴ This causes the Applicants to further increase the annual dues, causing even more Owners to default on their payments.¹⁵
19. Further, due to precautionary measures taken as a result of the COVID-19 pandemic, Owners are presently not allowed to use their Intervals. It is unclear how long the Owners' use will be suspended.¹⁶ It is anticipated that this may cause financial hardship to some Owners and will likely cause certain Owners to default on their payments to the Applicants.

¹¹ *Chapelle Affidavit* at para. 7; *Ginsherman Affidavit* at para. 7.

¹² *Chapelle Affidavit* at para. 6; *Ginsherman Affidavit* at para. 6.

¹³ *Ibid.*

¹⁴ *Chapelle Affidavit* at para. 7; *Ginsherman Affidavit* at para. 7.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

20. Due to the age of the Resorts, they require significant capital improvements in the next few years that must be funded by the Owners.¹⁷ These capital improvements are expected to cause additional Owners to default on their obligations to the Applicants, which will again increase the costs to the Owners in good standing.
21. Certain Owners have become increasingly vocal and have called on the Applicants to rectify the current untenable situation to either allow them to terminate their future obligations or, for those who wish to remain, to preserve the Resorts before they are no longer viable.¹⁸
22. The Applicants jointly require the appointment of the Administrator to determine the appropriate manner in which to restructure the Resorts, under the supervision of this Court, before it is too late and their options for a restructuring are gone.

Contractual Framework

23. The main document setting out the rights, responsibilities and obligations of the Applicants, the Resorts' manager and the Owners are the Time Sharing Agreements (the "TSAs").¹⁹ The terms of the TSAs do not provide the Applicants with the ability to restructure and only provide for a mechanism to declare that their respective Resort "has reached an undesirable state of disrepair or is obsolete" by a vote of at least 75% of all Intervals at a special meeting of the Owners. The Owners of the Carriage Hills Resort recently held such a vote which did not pass. Even if such a declaration was possible, the TSAs do not provide for a process by which the Resorts could be wound up.

¹⁷ *Chapelle Affidavit* at para. 8; *Ginsherman Affidavit* at para. 8.

¹⁸ *Chapelle Affidavit* at paras. 53-54; *Ginsherman Affidavit* at paras. 53-54.

¹⁹ *Chapelle Affidavit* at para. 18; *Ginsherman Affidavit* at para. 18.

Key Stakeholders

24. The stakeholders are the Owners. The Applicants have no employees and only one secured creditor who funded specific equipment. The property is managed by Carriage Hills Hospitality Inc., a subsidiary of Wyndham.²⁰ Another Wyndham subsidiary, Carriage Hills Resort Corporation, is a substantial holder of Intervals at both Resorts.²¹

Deteriorating Financial Position

25. The Owners' financial responsibility to the Resorts is proportional to the number of Intervals owned through the payment of certain Charges. As a result of increasing delinquencies, the CHVOA Applicant is owed approximately \$15.5 million in unpaid Charges, interest and penalties.²² The CROA Applicant is owed approximately \$9.6 million in unpaid Charges, interest and penalties.²³ Overall, there are approximately 3,173 Owners currently in default of their respective obligations to the Applicants.

26. In order to offset these rising default rates, the amount of the annual Charges have steadily increased and are projected to continue to do so unless action is taken. The significant increase to the Charges is both a cause of the Applicants' revenue issues (as Owners cease paying increasing charges) and an effect of the Applicants' revenue issues (as higher delinquency rates require higher annual Basic Charges to pay for ongoing operations).²⁴

27. Due to the increasing defaults in payment by certain Owners, the Applicants have been forced to fund their annual operating expenditures using either cash allocated to future

²⁰ *Chapelle Affidavit* at para. 16; *Ginsherman Affidavit* at para. 16.

²¹ *Chapelle Affidavit* at paras. 16-17; *Ginsherman Affidavit* at paras. 16-17.

²² *Chapelle Affidavit* at para. 38.

²³ *Ginsherman Affidavit* at para. 38.

²⁴ *Chapelle Affidavit* at para. 41; *Ginsherman Affidavit* at para. 41.

capital improvements or cash collected from Owners on account of annual Charges for the next calendar year.²⁵

28. This untenable situation is fast approaching a point where the Resorts will no longer be able to continue operating and are at risk of failing.²⁶

Objectives of the Restructuring

29. The relief sought in the proposed Administration Orders is intended to lay the foundation for a transparent and flexible process, under the supervision of the Court, to determine the appropriate path forward for the benefit of their Owners. The Administration Order would permit the Applicants, with the assistance of the Administrator and the Owners, to begin the formulation of a restructuring plan.

30. As part of its restructuring strategy, the Applicants anticipate that they will, among other things:

- (a) develop an opt-out mechanism allowing Owners to immediately terminate their Interval ownership and future obligations to the Applicants;
- (b) implement a streamlined process to enforce the Applicants' contractual rights against defaulting Owners;
- (c) downsize the Resorts to a smaller number of units and facilities appropriate for the number of Owners that wish to continue their ownership of Intervals, provided that such number is sufficient to make the restructured Resorts viable and sustainable going forward;

²⁵ *Chapelle Affidavit* at para. 51; *Ginsherman Affidavit* at para. 51.

²⁶ *Chapelle Affidavit* at para. 41; *Ginsherman Affidavit* at para. 41.

- (d) sell any surplus Lands not required for the downsized Resorts pursuant to a Court-approved and supervised process; and
- (e) distribute the proceeds of any such sales as lawful and appropriate in the circumstances.

Parallel Proceedings

- 31. Although the Resorts are separately run, they share certain common facilities and expenses and have the same pressures from their Owners and challenges to a restructuring.²⁷
- 32. Since the potential restructuring options for each Applicant will be greater if they collaborate, the Applicants are seeking virtually identical initial orders contemplating joint hearings in the two applications.

PART III - ISSUES TO BE DETERMINED

- 33. The issues to be determined on this Motion are the following:
 - (a) Should this Court grant the Administration Orders? ***Yes. The appointment of the Administrator is a necessary first step to develop a restructuring plan for the benefit of the Owners. Such administration is just and convenient and this Court has the inherent jurisdiction and the statutory discretion under s. 101 of the CJA to do so.***
 - (b) Should this Court grant the requested stay of proceedings? ***Yes. The stay of proceedings is necessary to provide stability while the restructuring plan is developed and to ensure a continued supply of services to the Applicants.***

²⁷ *Chapelle Affidavit* at paras. 73-75; *Ginsherman Affidavit* at paras. 73-75.

- (c) Should this Court approve the Administration Charge? *Yes. The Administration Charge is required for the professionals to remain involved throughout the restructuring and the quantum is appropriate in the circumstances given the expected involvement of the professionals.*
- (d) Should this Court approve the proposed noticing procedure? *Yes. The proposed noticing procedure is tailored to notify as many Owners as possible in the circumstances using electronic messaging, the Applicants' websites and BDO's case website.*

PART IV - LAW & ANALYSIS

i. This Court should grant the Administration Order

A. Applicable Law

34. Section 101(1) of the CJA provides that a receiver (or in this case, administrator) may be appointed where it is just and convenient to do so.²⁸
35. The courts have identified the following non-exhaustive list that may be considered when determining whether the appointment of a receiver is just and convenient:
- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a party to establish irreparable harm if a receiver is not appointed;
 - (b) the nature of the property;
 - (c) the preservation and protection of the property, pending judicial resolution;

²⁸ [Courts of Justice Act, R.S.O. 1990, c. C.43, as amended, s. 101\(1\)](#). The term “administrator” is used rather than “receiver” because “administrator” more accurately reflects the proposed powers of BDO and the fact that the Applicants remain in possession and control of the Property. The two terms are used interchangeably in this Part IV.

- (d) the balance of convenience to the parties;
- (e) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (f) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (g) the effect of the order on the parties;
- (h) the conduct of the parties;
- (i) the length in time that a receiver may be in place;
- (j) the cost to the parties;
- (k) the likelihood of maximizing return to the parties; and
- (l) the goal of facilitating the duties of the receiver.²⁹

36. In determining whether it is just and convenient to appoint a receiver under the CJA, the Court must have regard to all of the circumstances of the case, including the nature of the property and the rights and interests of all parties in relation to the property.³⁰

37. The appointment of a receiver under section 101 of the CJA does not require evidence of insolvency.³¹

38. Certain of the provisions requested as part of the relief sought are regularly found within the context of the *Companies' Creditors Arrangement Act* (the "CCAA"). In this context, a Court may grant an initial order that provides for, among other things, a stay of

²⁹ [Romspen Investment Corp. v. Hargate Properties Inc.](#), 2011 ABQB 759 at para. 20.

³⁰ [Bank of Montreal v. Carnival National Leasing Ltd.](#), 2011 ONSC 1007 at para. 24.

³¹ [Graceway Canada Co., Re](#), 2011 ONSC 6292 at para. 3.

proceedings if the Court is satisfied that circumstances exist that make the order appropriate and the applicant has acted, and is acting, in good faith and with due diligence.³² In *Century Services*, the Supreme Court of Canada explained that “appropriate circumstances” is assessed when the order sought will further efforts to achieve the remedial purpose of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company.³³

39. Similar relief is granted in the context of a proposal proceeding under the *Bankruptcy and Insolvency Act* when an insolvent person demonstrates that it is acting in good faith and with due diligence, the insolvent person would likely be able to make a viable proposal and there is no material prejudice to creditors if the relief is granted.³⁴

B. *Facts and Analysis*

40. The Applicants face serious financial hardship on the horizon unless steps are taken now to remedy the underlying issues and implement a restructuring plan that will provide the best opportunity for the Resorts to remain operational for the benefit of the Owners. If the Applicants do not take steps to restructure prior to becoming insolvent, the window of opportunity to successfully restructure may close forever.
41. Due to high historical default rates and the continued risk of further defaults, the Applicants are at serious risk that they will not be able to balance their annual operating budget, much less have the cash available for the required capital improvements over the next five years.

³² [Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended](#), s. 11.02(3).

³³ [Century Services Inc. v. Canada \(Attorney General\)](#), 2010 SCC 60 at para. 59.

³⁴ [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended](#), s. 50.4(9).

42. The Applicants are currently in a self-perpetuating cycle where the significant year-over-year increase to the Owners' annual dues is both a cause of the Applicants' revenue issues (as Owners cease paying increasing charges) and an effect of the Applicants' revenue issues (as higher delinquency rates require higher annual Basic Charges to pay for ongoing operations).
43. As a result of the contractual limitations of the agreements governing the Applicants and the Owners, this cycle cannot be broken under the *status quo*.
44. The Applicants seek the proposed Administration Order and the appointment of BDO as the proposed administrator to facilitate and assist the Applicants with the development of a restructuring plan to ensure sustainable and viable Resorts moving forward.
45. This Court has the inherent jurisdiction under section 101 of the *Courts of Justice Act* to grant the relief sought by the Applicants. It is just and convenient for this Court to grant the Administration Order for the following reasons:
 - (a) the Applicants will suffer irreparable harm if the Administration Order is not granted. The Applicants' assets are deteriorating and the window to plan, develop and implement a successful restructuring of the Applicants and the Resorts is closing as they anticipate rising costs and increasing defaults;
 - (b) the Applicants will remain in possession of their assets and continue to manage its affairs, subject to and pursuant to the terms of all applicable agreements, with certain exceptions relating to capital expenditures;
 - (c) no creditor or stakeholder of the Applicants will be prejudiced by the Administration Order;

- (d) the Administration Order will begin the process whereby certain critical restructuring steps will be formulated with the Court's supervision;
 - (e) there is a reasonable possibility that a restructuring under the Administration Order will be successful;
 - (f) without the process initiated by the Administration Order, the Resorts have no way to restructure and it is likely they will eventually fail;
 - (g) there is essentially only one stakeholder group and this Court-supervised process is intended to address the concerns raised by those stakeholders; and
 - (h) the balance of convenience favours that BDO be appointed as the Administrator of the Applicants.
46. Due to the delicate balancing of the Owners' interests, the Applicants decided that seeking the appointment of the Administrator in a limited capacity as administrator, rather than receiver with such customary powers found in the Model Receivership Order, is the appropriate first step to begin the restructuring of the Resorts.
47. Although the Applicants likely do not currently meet the tests for insolvency under the CCAA and the BIA, foundational principles related to the remedial nature of Canadian insolvency statutes may be analogized to this scenario. Without the assistance of the Court, the Applicants do not have a legal mechanism to give effect to the restructuring that is required. For that reason, this Court should exercise its inherent jurisdiction under the *Courts of Justice Act* to allow the Applicants to restructure today in order to afford the Applicants' the best chance to successfully restructure.

48. For all of the foregoing reasons, the Applicants respectfully submit that it is just and convenient for BDO to be appointed as the Administrator of the Applicants and respectfully request that this Court grant the Administration Order.

ii. This Court should grant the requested stay of proceedings

A. *Applicable Law*

49. Section 101(2) of the CJA provides that any order made under subsection (1) may include such terms as are considered just. Section 106 of the CJA provides that the Court may stay any proceeding in the court on such terms as are considered just.³⁵

B. *Facts and Analysis*

50. The restructuring of the Resorts will necessarily be carried out in stages and will take time to implement. In order to provide the necessary breathing room to effect such a restructuring, it is just and appropriate, under these circumstances, to order the stay of proceedings as set forth in the Administration Order.

51. The stay of proceedings is customary in the Model Receivership Order in use by the Commercial List. The proposed Administration Order is based on the Model Receivership Order, which is customary in Court-appointed receivership applications relying on section 101 of the CJA and contains substantially similar stay of proceeding provisions.

³⁵ [Courts of Justice Act, R.S.O. 1990, c. C.43, as amended, ss. 101\(2\) and 106.](#)

iii. This Court should approve the Administration Charge

A. Applicable Law

52. Administration charges are routinely granted in receivership orders made under the CJA.³⁶

53. The courts have considered the following factors when determining whether to grant an administration charge under the CJA:

- (a) the size and complexity of the business being restructured;
- (b) whether there is unwarranted duplication of roles;
- (c) whether the quantum of the proposed charge appears to be fair and reasonable; and
- (d) the position of the secured creditors likely to be affected by the charge.³⁷

B. Facts and Analysis

54. The Applicants request that this Court grant a super-priority administration charge on the Property (as defined in the proposed form of the Administration Order) of the Applicants in favour of the Applicants' counsel, the proposed administrator, and the proposed administrator's independent legal counsel in the combined amount of \$500,000³⁸ (the "**Administration Charge**").

55. The Administration Order is just, necessary and appropriate in the circumstances given that:

- (a) the proposed restructuring will require the extensive involvement of the professional advisors who are the beneficiaries of the Administration Charge;

³⁶ [Emmanuel Village Residence Inc. v. 1250 Weber Street East, 2016 ONSC 5661 \[Commercial List\] at para. 5 \[Emmanuel Village\]; JP Morgan Chase Bank N.A. v. UTTC United Tri-Tech Corp., 2006 CarswellOnt 4619 \(S.C.\) at para. 18.](#)

³⁷ *Ibid*, [Emmanuel Village at para. 36.](#)

³⁸ The combined amount of \$500,000 is apportioned \$350,000 in respect of the CHVOA Applicant and \$150,000 in respect of the CROA Applicant.

- (b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicants;
- (c) the business and legal issues arising from the Applicants, the Resorts, the Owners and the design and implementation of a restructuring plan are highly complex and will require significant time and effort;
- (d) the parallel proceedings being carried out by the same professional advisors will assist in the minimization of costs and ensure there is no unwarranted duplication of roles;
- (e) the Administration Charge is limited to a security interest on the Property of the Applicants, being primarily comprised of the cash in the Applicants' accounts, and not on the Lands or the Owners' interests therein;
- (f) the Applicants have only one secured creditor and it will not be prejudiced by the granting of the Administration Charge;
- (g) the Applicants do not have any employees and therefore no source deduction or other employee liabilities that may be prejudiced by the Administration Charge; and
- (h) the proposed quantum is reasonable and appropriate.

iv. This Court should grant the proposed noticing procedure

56. The Applicants request that this Court grant the proposed noticing procedure provided for in the Administration Order. The Owners are typically notified via electronic mail and via postings on the Applicants' websites. This procedure is intended to notify as many Owners as possible in the unique circumstances of the Applicants. Given the current COVID-19 pandemic, advertisements in newspapers are not likely to be effective. As a result, the

Applicants and the proposed administrator intend to continue to notify Owners using electronic messaging, social media, the Applicants' websites and BDO's case website.

57. This relief is just, necessary and appropriate in the circumstances given the number of Owners of the Applicants. This tailored notice procedure provides the best opportunity to provide notice to as many interested Owners as possible.

PART V - RELIEF REQUESTED

58. For all of the foregoing reasons, the Applicants request that this Court grant the Administration Order substantially in the form attached at Tab 3 of the CHVOA Application Record and Tab 3 of the CROA Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of May, 2020

THORNTON GROUT FINNIGAN LLP

May 5, 2020

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SCHEDULE “A” – LIST OF AUTHORITIES

Cases Cited

1. [*Romspen Investment Corp. v. Hargate Properties Inc.*, 2011 ABQB 759.](#)
2. [*Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007.](#)
3. [*Graceway Canada Co., Re*, 2011 ONSC 6292.](#)
4. [*Century Services Inc. v. Canada \(Attorney General\)*, 2010 SCC 60.](#)
5. [*Re 8440522 Canada Inc.*, 2013 ONSC 2509.](#)
6. [*45133541 Canada Inc.*, 2009 QCCS 6444.](#)
7. [*Emmanuel Village Residence Inc. v. 1250 Weber Street East*, 2016 ONSC 5661 \[Commercial List\].](#)
8. [*JP Morgan Chase Bank N.A. v. UTTC United Tri-Tech Corp.*, 2006 CarswellOnt 4619 \(S.C.\) at para. 18.](#)

SCHEDULE “B” – RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3, as amended

Extension of time for filing proposal

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Companies’ Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Courts of Justice Act, R.S.O. 1990 c. C.43, as amended

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

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 THE ADMINISTRATION PROCEEDINGS OF **CARRIAGE HILLS VACATION OWNERS ASSOCIATION AND CARRIAGE RIDGE OWNERS ASSOCIATION**

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

Court File No.: CV-20-00640266-00CL

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

Proceedings commenced at Toronto

**JOINT FACTUM OF THE APPLICANTS
(Application returnable May 7, 2020)**

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