

Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

**BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL
INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT
TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA
PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE
BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN
AND GREGORY IP**

Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT**

Defendants

Court File No. CV-22-00674717-00CL

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

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, , LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

**MOTION RECORD
(returnable May 23, 2023)**

May 11, 2023

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Tab 1

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Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
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**ONTARIO
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**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

**NOTICE OF MOTION
(returnable May 23, 2023)**

Zeifman Partners Inc., in its capacity as the court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC (collectively, the “**Debtors**”), appointed pursuant to the Amended Order of this Honourable Court, dated February 11, 2022 (the “**Receivership Order**”), will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on May 23, 2023, at 10:00 a.m., or as soon after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location

330 University Ave, Toronto, Ontario, via Zoom (the details of which will be provided by the Court at a later date).

THE MOTION IS FOR:

1. An Order substantially in the form attached as **TAB 3** to the Motion Record of the Receiver dated May 11, 2023 (the “**Motion Record**”), for the following relief:
 - (a) if necessary, abridging the time for service of the Motion Record and validating service thereof;
 - (b) approving the Second Report to the Court of the Receiver, dated May 10, 2023 (the “**Second Report**”), and the activities and conduct of the Receiver described therein;
 - (c) approving the Receiver’s interim statement of receipts and disbursements, as of May 9, 2023 (the “**R&D**”);
 - (d) approving the fees and disbursements of the Receiver and its counsel for the period from September 1, 2022, to April 30, 2023;
 - (e) approving the Sale Process (as defined in the Second Report) in respect of the Real Properties (defined below) and authorizing the Receiver to take such steps as it deems necessary or advisable to carry out and perform its obligations under the Sale Process, including engaging CBRE Group, Inc. to list the Real Properties for sale;

- (f) directing that the Receiver and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver;
- (g) authorizing the Receiver, *nunc pro tunc*, to redact the Confidential Appendices from the Second Report and sealing the Confidential Appendices until the closing of sale transactions in respect of the Real Properties or further order of the Court; and
- (h) such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

Background

2. The Debtors' Property is primarily comprised of five real properties in Florida (collectively, the "**Real Properties**"):
 - (a) 401 Beach Drive, Destin, Florida;
 - (b) 5578 County Road, 466A, Wildwood, Florida ("**Trailwinds/Wildwood**");
 - (c) 10653 Marsha Drive, New Port Richey, Florida;
 - (d) 20161 Summerlin Road, Fort Myers, Florida; and
 - (e) 934 Roberson Road, Ocoee, Florida ("**Ocoee**").
3. The parties to this proceeding include various creditors who loaned funds on an unsecured basis to the Debtors for the purposes of developing senior care facilities (the "**Projects**") on each of the Real Properties.

4. The Receiver was appointed pursuant to the Receivership Order, on the consent of the parties.
5. At the time of the Receiver's appointment, the Projects were in various stages of pre-development and construction had not commenced.
6. On May 9, 2022, pursuant to the Order Granting Foreign Representative's Motion for Order Granting Recognition of Foreign Main Proceeding pursuant to §§ 1517 and 1520 of the Bankruptcy Code and Related Relief, issued by the U.S. Bankruptcy Court for the Middle District of Florida (the "**U.S. Court**"), the Canadian receivership proceedings were recognized in the United States.

Project Agreements

7. Pursuant to the Orders of the Honourable Justice Kimmel, dated September 20, 2022 (the "**September 20 Orders**"), the Receiver entered into development services agreements (the "**Development Agreements**") in respect of each of the Projects with N21 Group, LLC ("**N21**").
8. The work undertaken by N21 pursuant to the Development Agreements is broken into two phases – Phase 1 is the work required to bring the Projects to "shovel-ready" condition and prepare the Projects to be marketed to potential financiers, and Phase 2 is the construction of the Projects and turnover to a designated operator.
9. Upon its engagement, N21 commenced the Phase 1 work in respect of the Projects, with the exception of Trailwinds/Wildwood. The Phase 1 work was completed over several months and included the following:
 - (a) updated marketing studies;
 - (b) receipt of operator information;
 - (c) updated architectural and engineering plans (with the exception of Ocoee);

- (d) plans filed with the relevant jurisdiction and discussions are currently taking place with the relevant governmental bodies to obtain approvals in respect of project development; and
- (e) general contractor proposals for construction of facilities were requested.

Investment Solicitation Process

- 10. Pursuant to the September 20 Orders, the Receiver engaged N21 and Twisted Rock to undertake an investment solicitation process in respect of the Projects upon completion of the Phase 1 work.
- 11. Letters of intent received pre-receivership and reviewed by the Receiver contemplated a partial payout of existing creditor loans (ie. “**old equity**”) and a residual interest for old equity should the Projects be built and leased out thereby providing for stability of cash flow and potential refinancing and/or sale.
- 12. Financial modelling and the offering memorandum were completed on or about February 20, 2023 and the investment solicitation process commenced immediately thereafter. A data site was constructed to provide information for due diligence purposes.
- 13. Four initial term sheets were received and one additional expression of interest was recently received. None of the term sheets provided a partial return of monies to old equity as well as sufficient funding to develop the Projects. A number of factors, including a significant increase in construction costs of 30% on average and a substantial increase in the cost of financing, impacted the viability of the Projects and were not present in 2021 when the previous investment solicitation process took place.
- 14. The Receiver is not prepared to recommend pursuing any of the investment/financing proposals received.

Sale Process

15. In light of the conditions of the Receiver's financing with Hillmount Capital Inc. ("**Hillmount**"), the Receiver is now obligated to engage a realtor to undertake a listing process to sell the Real Properties in their current condition.
16. Pursuant to paragraph 5(m) of the Receivership Order, the Receiver is authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
17. The Receiver reached out to various real estate brokerages and requested proposals to market and sell the Real Properties.
18. The Receiver recommends it be authorized to engage CBRE, an international real estate brokerage with expertise in selling Florida commercial real estate, to market the Real Properties.
19. The proposed Sale Process was developed in consultation with CBRE and is described in the Second Report. It is a 6 month sale process, during which the Real Properties will be broadly exposed to the market, with a bid deadline 30-45 days following the marketing launch. The timeline includes adequate time for purchasers to conduct the requisite due diligence. The Receiver will retain the authority to extend or abridge deadlines and timelines if desirable, in consultation with CBRE and Hillmount.
20. The Receiver will return before this Honourable Court and the U.S. Court to seek approval of the sale of the Real Properties.

Trailwinds/Wildwood Property

21. The Receiver is receipt of an offer in respect of the Trailwinds/Wildwood Property. The Receiver intends to negotiate the terms of sale with the offeror and, if such negotiations do not result in a definitive purchase agreement on terms the Receiver is prepared to recommend to the Court, the Trailwinds/Wildwood Property will be marketed for sale along with the other Properties.

Approval of R&D and Fees

22. The R&D is appended to the Second Report.
23. The Receiver has provided services and incurred disbursements during the period of September 1, 2022, to April 30, 2023, which are described in the Second Report and Fee Affidavit of Allan Rutman, affirmed May 9, 2023.
24. The Receiver has incurred legal fees of its legal counsel, Dentons Canada LLP, in respect of these proceedings during the period of September 1, 2022, to April 30, 2023, as more particularly set out in the Second Report and the Fee Affidavit of Sara-Ann Wilson, sworn May 9, 2023.
25. The Receiver requests that this Court approve its accounts for the period of September 1, 2022 to April 30, 2023, in the amount of \$269,402.89, inclusive of disbursements and HST, and approve the accounts of its legal counsel for the period of September 1, 2022, to April 30, 2023, in the amount of \$130,753.28 inclusive of disbursements and HST (collectively, the “**Professional Fees**”).
26. The Receiver submits that the Professional Fees are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

Sealing

27. The Confidential Appendices to the Second Report contain commercially sensitive information, including estimated sale values for each of the Real Properties. If this information is publicly disclosed it could materially negatively impact the marketing of the Projects for sale, the values ascribed to the Projects by prospective bidders, and the ability of the Receiver to maximize value for the Real Properties.
28. The sealing of the Confidential Appendices is the least restrictive means to maintain the confidentiality of this commercially sensitive, confidential information.

29. The Receiver requests an order that the Confidential Appendices be sealed until the closing of a sale transaction in respect of the Real Properties or further order of this Honourable Court.

Other Grounds

30. Rules 1.04, 2.03, 3.02, 16.08 and 37 of the *Rules of Civil Procedure* (Ontario).
31. Section 243 of the *Bankruptcy and Insolvency Act* (Canada).
32. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

33. The Second Report;
34. The Affidavit of Allan Rutman, affirmed May 9, 2023;
35. The Affidavit of Sara-Ann Wilson, sworn May 9, 2023; and
36. Such further and other material as counsel may advise and this Honourable Court may permit.

May 11, 2023

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capacity as Court-appointed Receiver*

TO: SERVICE LIST

BERKID INVESTMENTS LIMITED
Plaintiff

and

Court File No. CV-21-00668821-00CL
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Defendants

LEGACY LIFESTYLES DESTIN LP, et al.
Applicants

and

Court File No. CV-22-00674717-00CL
LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(returnable May 23, 2023)

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appointed Receiver*

Tab 2

Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

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as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

SECOND REPORT OF THE RECEIVER
May 10, 2023

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APPENDICES

- A Amended Order of Justice Conway dated February 11, 2022
- B Endorsement of Justice Conway dated February 11, 2022
- C Corporate structure charts prepared by the Debtors
- D Chart of jurisdictions of the various entities prepared by the Debtors
- E First Report of the Inspector, dated September 8, 2022
- F Term Sheet, dated May 9, 2022
- G U.S. Order granting provisional relief, dated April 14, 2022
- H U.S. Recognition Order, dated May 9, 2022
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- K Amendment to Term Sheet between Hillmount and the Receiver
- L Orders, dated September 20, 2022, and Endorsement, dated September 30, 2022
- M Receiver's First Report to the Court, dated September 9, 2022 (without appendices)
- N Receiver's Supplemental Report to the First Report, dated September 16, 2022 (without appendices)
- O Receiver's Second Supplemental Report to the First Report, dated September 19, 2022 (without appendices)
- P N21 Development Agreements
- Q Receiver's R&D, as of May 9, 2023
- R Affidavit of Allan Rutman, affirmed May 9, 2023
- S Affidavit of Sara-Ann Wilson, sworn May 9, 2023

CONFIDENTIAL APPENDICES

- 1 Summary of Realtor Opinions of Value and Marketing Strategy
- 2 CBRE Proposal, dated April 21, 2023

INTRODUCTION

1. On the consent of the parties, pursuant to the Amended Order of the Honourable Justice Conway, dated February 11, 2022 (the “**Receivership Order**”), Zeifman Partners Inc., was appointed as receiver (the “**Receiver**”) over the assets, properties and undertakings (the “**Property**”) of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC (collectively, the “**Debtors**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**. A copy of Her Honour’s Endorsement is attached hereto as **Appendix “B”**.
2. The Property is primarily comprised of the following five real properties in Florida (collectively, the “**Real Properties**” and each a “**Real Property**”):
 - (a) 401 Beach Drive, Destin, Florida (“**Destin**”);
 - (b) 5578 County Road, 466A, Wildwood, Florida (“**Trailwinds/Wildwood**”);
 - (c) 10653 Marsha Drive, New Port Richey, Florida (“**Longleaf**”);
 - (d) 20161 Summerlin Road, Fort Myers, Florida (“**Summerlin**”); and
 - (e) 934 Roberson Road, Ocoee, Florida (“**Ocoee**”).
3. Corporate structure charts prepared by the Debtors are attached hereto as **Appendix “C”**. The jurisdictions of the various entities are set out in the chart prepared by the Debtors attached hereto as **Appendix “D”**. The limited partnerships are Manitoba entities and the general partners are Ontario entities. The LLCs are incorporated in Delaware. The Real Properties are separately owned by each of the LLCs.

PURPOSE OF THE REPORT

4. The purpose of this Second Report of the Receiver (the “**Second Report**”) is to report to the Court on the Receiver’s activities since the date of its appointment and request the following relief:
- (a) if necessary, abridging the time for service of the Motion Record and validating service thereof;
 - (b) approving the Second Report and the activities and conduct of the Receiver described therein;
 - (c) approving the Receiver’s interim statement of receipts and disbursements, as of May 9, 2023 (the “**R&D**”);
 - (d) approving the fees and disbursements of the Receiver and its counsel for the period from September 1, 2022, to April 30, 2023;
 - (e) approving the Sale Process (defined below) in respect of the Real Properties and authorizing the Receiver to take such steps as it deems necessary or advisable to carry out and perform its obligations under the Sale Process, including engaging CBRE Group, Inc. (“**CBRE**”) to list the Real Properties for sale;
 - (f) directing that the Receiver and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver; and
 - (g) authorizing the Receiver, *nunc pro tunc*, to redact the Confidential Appendices from the Second Report and sealing the Confidential Appendices until the closing of sale transactions in respect of the Real Properties (defined below) or further order of the Court.

TERMS OF REFERENCE

5. In preparing this Second Report, the Receiver has been provided with, and has relied upon unaudited, draft and/or internal financial information, the Debtors' books and records, discussions with employees, principals and representatives of the Debtors and information from third-party sources (collectively, the "**Information**"). Except as described in this Second Report:
 - (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) the Receiver has prepared this Second Report in connection with the discharge of the Receiver's duties and responsibilities pursuant to the Receivership Order and under statute and in support of the relief described herein. Parties using the Second Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.
6. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

BACKGROUND

7. The parties to this proceeding include various creditors (the "**Investors**") who loaned funds to the Debtors for the purposes of developing senior care facilities (the "**Projects**") on each of the Real Properties.
8. At the time of the Receiver's appointment the Projects were in various stages of pre-development and the subject of litigation amongst the parties. No construction activities had commenced.

9. Based on its review of the Debtors' books and records, the Receiver understands that approximately US\$33.7 million (plus interest) is owed by the Debtors to the Investors on an unsecured basis. The Investors loaned funds to the Manitoba limited partnerships, who in turn loaned funds on a secured basis to the project limited partnerships and the Delaware LLCs (the title holders to the Real Properties).
10. Pursuant to the Receivership Order, the Receiver engaged Cohen Hamilton Steger & Co. Inc. as inspector (the "**Inspector**") to investigate the affairs, business and financial dealings of the Debtors and their affiliates, any entities controlled by the Debtors and any other entities that control the Real Properties.
11. The Inspector issued its First Report, dated September 8, 2022, a copy of which is attached hereto as **Appendix "E"**.
12. Upon its appointment, the Receiver arranged for financing to fund the costs and expenses of the within receivership proceedings. Pursuant to the Term Sheet, dated May 9, 2022, between Hillmount Capital Inc. ("**Hillmount**") and the Receiver (the "**Term Sheet**"), Hillmount committed to provided the necessary funding to the Receiver, subject to certain conditions including the registration of first-ranking mortgages against the Real Properties and the provision of title insurance. A copy of the Term Sheet is attached hereto as **Appendix "F"**.
13. After its appointment the Receiver was advised by the Florida taxing authorities that significant realty arrears were owing in respect of the Real Properties and tax sales in respect of certain of the Real Properties could be commenced imminently. Furthermore, the title insurer in respect of the Receiver's financing required the issuance of a formal recognition order. Accordingly, the Receiver, in its capacity as Foreign Representation of the Debtors, brought an urgent motion before the U.S. Bankruptcy Court for the Middle District of Florida (the "**U.S. Court**") for recognition of the Receivership Order under Chapter 15 of the United States Bankruptcy Code (the "**Bankruptcy Code**").
14. The preliminary hearing was held on an expedited basis on April 13, 2022, before the U.S. Court. The U.S. Court granted provisional relief and set May 9, 2022, as the date for the

final hearing. A copy of the Order granting provisional relief, dated April 14, 2022, is attached hereto as **Appendix “G”**.

15. On May 9, 2022, pursuant to the Order Granting Foreign Representative’s Motion for Order Granting Recognition of Foreign Main Proceeding pursuant to §§ 1517 and 1520 of the Bankruptcy Code and Related Relief issued by the U.S. Court (the “**Recognition Order**”), the Canadian receivership proceedings were recognized in the United States. A copy of the Recognition Order is attached hereto as **Appendix “H”**.

RECEIVER’S ACTIVITIES

16. The activities of the Receiver since the Receiver’s First Report, include:
 - (a) instructing local counsel with respect to amending the mortgage loan documentation in favour of the Receiver’s lender, Hillmount, to increase the charges on the Real Properties;
 - (b) engaging N21 Group, LLC (“**N21**”) to undertake the Phase 1 work in respect of the Projects (described in more detail below);
 - (c) instructing N21 and reviewing updating marketing studies, engineering reports and other project related documentation;
 - (d) engaging N21 and Twisted Rock LLC (“**Twisted Rock**”) to undertake an investment solicitation process in respect of the Projects;
 - (e) corresponding with Hillmount with respect to the status of the Phase 1 work and investment proposals;
 - (f) reviewing letters of intent and proposals submitted by prospective lenders/investors;
 - (g) responding to inquiries from Investors;
 - (h) requesting proposals for marketing the Real Properties from realtors;

- (i) answering calls and corresponding with realtors and analysing proposals in respect of marketing the Real Properties for sale;
- (j) setting up a data room for realtors and others;
- (k) attending to the execution of non-disclosure agreements;
- (l) drafting and sending out the Receiver's Third Report to Creditors, dated February 7, 2023, and Fourth Report to Creditors, dated April 3, 2023, which are attached hereto as **Appendices "I" and "J"** (without schedules);
- (m) analyzing various cash flow projections and funding models in respect of funding rates and potential internal rates of return expected by new equity investors;
- (n) reviewing and discussing with N21 cash flow projections prepared on a property by property basis which also included discussions around underlying assumptions regarding construction and development costs as well as expected facilities operating revenue and cost to reach stabilization;
- (o) receiving calls from interested parties;
- (p) discussing with governmental authorities questions relating to status of properties, permits requiring renewal; and
- (q) drafting this Second Report.

PROJECT AGREEMENTS AND PHASE 1 WORK

17. Pursuant to the Receivership Order, the Receiver was authorized to, among other things:

- (a) request proposals with respect to refinancing, investments or joint ventures in respect of the Projects and negotiate such terms and conditions thereof that the Receiver in its discretion may deem appropriate; and

- (b) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order.
18. At the time of the Receiver's appointment, as stated by the Honourable Justice Conway in her endorsement, dated February 11, 2022, it was "hoped and expected that the Receiver will be able to refinance the properties rather than sell them over the next six months resulting in enhanced value to investors."
19. Before the receivership the Debtors engaged N21 and the related firm, Lawson Group Architects, to provide various services in respect of the Projects including preparing architectural drawings, developing projections in respect of feasibility, development costs, and senior care operations once completed, and creating marketing materials. N21 and its principal, Donald Lawson ("**Lawson**"), have significant experience in the development and construction of senior living facilities and Florida real estate.
20. In addition, the Debtors engaged both N21 and Twisted Rock to market the Projects to investors/financiers. That financing was never completed as a result of the litigation in respect of the Debtors and their inability to meet pre-conditions to funding. Upon its appointment, the Receiver entered into discussions with both parties with respect to the potential development and refinancing of the Projects.
21. Lawson advised the Receiver that a considerable amount of work was required to prepare the Projects to be marketed to potential financiers and secure construction financing. The scope of work was significantly more than the Receiver originally understood, i.e., refreshing term sheets with prospective investors/financiers and expending limited funds to satisfy the preconditions to funding. Instead, funds must be expended to advance the Projects to a "shovel ready" condition in order to show commitment to the Projects, gain credibility with financiers and be marketed to lenders/investors. At this stage, the Projects are far more attractive to investors/lenders as there is significantly reduced uncertainty with respect to the Projects' ultimate construction.

22. The cost of this additional work were significantly higher than anticipated and exceeded the budgeted sums that formed the basis of the Receiver's initial loan request of CA \$3.6 million (US \$2.75 million).
23. Hillmount agreed to provide additional required funding, up to the maximum principal amount of US\$4,231,845; provided, however it was not prepared to advance any further funds against the Trailwinds/Wildwood Project. The terms of the increased loan are set out in the Amendment to Term Sheet between Hillmount and the Receiver dated September, 2022 (the "**Amendment to Term Sheet**"), attached hereto as **Appendix "K"**.
24. Pursuant to the Orders of the Honourable Justice Kimmel, dated September 20, 2022 (the "**September 20 Orders**"), this Honourable Court, among other things:
 - (a) approved the Amendment to Term Sheet;
 - (b) approved an increase in the Receiver's borrowing capacity to US \$4,231,845; and
 - (c) authorized the Receiver to enter into development services agreements (the "**Development Agreements**") with N21, engagement agreement with N21, and financial broker services agreement with Twisted Rock LLC ("**Twisted Rock**").
25. Copies of the September 20 Orders and Her Honour's Endorsement, dated September 30, 2022, are attached hereto as **Appendix "L"**.
26. Copies of the Receiver's First Report to the Court, dated September 9, 2022 (the "**First Report**"), Supplemental Report to the First Report, dated September 16, 2022, and Second Supplemental Report to the First Report, dated September 19, 2022, each without appendices, filed in respect of the Receiver's motion returnable September 20, 2022, are attached hereto as **Appendices "M" to "O"**.
27. Pursuant to the September 20 Orders, the Receiver entered into the Development Agreements in respect of each of the Projects with N21. Copies of the Development Agreements are attached hereto as **Appendix "P"**.

28. The work undertaken by N21 pursuant to the Development Agreements is broken into two phases – Phase 1 is the work required to prepare the Projects to be marketed to potential financiers and Phase 2 is the construction of the Projects and turnover to a designated operator.
29. Phase 1 involves bringing the Projects to a “shovel ready” condition, including engaging an architect to update architectural plans to comply with revised Florida building code requirements, engaging building and civil/site engineers to update engineering reports, updating market feasibility studies and paying governmental fees. It also entailed the identification of a general contractor to construct the projects and an operator to manage the facility when built, and updating cash flow projections based on updated construction costs, operator input on facility revenue and expense modelling. Phase 1 work is highlighted in Exhibit “A” of the Development Services Agreements.
30. The commencement of Phase 2 work, and the ultimate construction of the Projects, is conditional upon the receipt of a debt/equity funding proposal satisfactory to the Receiver in its sole discretion and the closing of such financing.
31. As each Project was at a different stage of development as of the date of the Receivership Order, the work required, and timeline for completion of Phase 1 work was different for each Project and ranged between 60-120 days, with the exception of Trailwinds/Wildwood which was significantly longer at 150-180 days due to the lack of prior development work. The Trailwinds/Wildwood Project, which was the last Project acquired pre-receivership, requires a substantial amount of Phase 1 work. This is reflected in the longer timeline and the higher cost of the Phase 1 work. As noted above, Hillmount was not prepared to advance additional funds against the Trailwinds/Wildwood Project at this time and, accordingly, no Phase 1 work was undertaken in respect of that Project.
32. The terms of the Development Agreements and Term Sheet, as amended, provide that the Projects are to be site plan approved and building permit ready within 150 days from execution of the Development Agreements and the provision of funding to N21. The deadline for this milestone was April 7, 2023.

33. Upon its engagement, N21 commenced the Phase 1 work in respect of the Projects, with the exception of Trailwinds/Wildwood. The Phase 1 work was completed over several months and included the following:
- (a) updated marketing studies;
 - (b) receipt of operator information;
 - (c) updated architectural and engineering plans (with the exception of Ocoee, as described in more detail below);
 - (d) plans filed with the relevant jurisdiction and discussions are currently taking place with the relevant governmental bodies to obtain approvals in respect of project development; and
 - (e) general contractor proposals for construction of facilities were requested.
34. With respect to the Ocoee Project, the original architecture and engineering work was done by a third party firm, Bessolo Design Group Inc. (“**Bessolo**”). After substantial delay in responding to N21, Bessolo quoted a fee of US\$166,000, plus 15% admin charge and hourly charges for various services not included in the fixed fee. Bessolo advised that they required a three to five month timeline to complete the work. The quoted amount was materially higher than the budgeted amount for these services and the timeline would substantially delay the completion of the Phase 1 work on the Ocoee Project.
35. In the circumstances, and in consultation with N21, the Receiver determined it would not be practical to expend the funds needed to complete the Ocoee Phase 1 work. Ocoee was packaged in its present condition with the other three shovel ready Projects and marketed to lenders/investors.

INVESTMENT SOLICITATION PROCESS

36. The Amendment to Term Sheet requires receipt of letters of intent for project financing in respect of the Projects within five months from Court approval of the Amendment. The five month deadline expired on February 20, 2023, however certain information required

for the lenders/investors solicitation package and projected cashflows remained outstanding at that time.

37. At the Receiver's request, Hillmount agreed to extend the deadline for receipt of letters of intent for project financing to March 31, 2023.
38. Pursuant to the September 20 Orders, the Receiver was authorized to engage N21 and Twisted Rock to undertake an investment solicitation process in respect of the Projects. In this respect, the Receiver entered into the engagement agreement with N21, dated September 12, 2022, and the financial broker services agreement with Twisted Rock. Copies of these agreements were attached to the First Report as Confidential Appendices "1" and "2" and sealed pursuant to the September 20 Orders.
39. Prior to the receivership proceedings the Debtors engaged N21 and Twisted Rock to market the Projects to potential financiers. Letters of intent received pre-receivership and reviewed by the Receiver contemplated a partial payout of existing creditor loans (ie. "**old equity**") and a residual interest for old equity should the Projects be built and leased out thereby providing for stability of cash flow and potential refinancing and/or sale. The Receiver understands, based on its discussions with Greg Marchant and Lawson, that term sheets originally submitted in respect of the Projects for project financing provided a return to Investors of approximately 85% of principal paid on closing with a remaining carried interest in the Projects.
40. Financial modelling and the offering memorandum were completed on or about February 20, 2023 and the investment solicitation process commenced immediately thereafter. A data site was constructed to provide information for due diligence purposes.
41. A significant number of presentations to interested parties took place, both by zoom conference, telephone and physical attendance. In addition, the information was made available at the National Investment Centre for Senior Housing and Care's annual conference held in San Diego at the beginning of March. Thirty family offices, financial firms and intermediaries were contacted and eleven expressed interest.

42. Four initial term sheets were received. None of the term sheets provided a partial return of monies to old equity as well as sufficient funding to develop the Projects. The Receiver recently received a fifth expression of interest, however minimal due diligence has been undertaken at this point and the nature of the debt/equity financing is unclear with no certainty that it would contemplate a payout of old equity. The Receiver is not prepared to recommend pursuing any of the investment/financing proposals received. Although certain parties continue to do due diligence, the Receiver is not aware of any additional imminent letter(s) of intent.
43. In the Receiver's view, after consultation with N21, there are a number of factors that impacted the viability of the Projects which were not present in 2021 when the previous investment solicitation process took place. These include:
- (a) a significant increase in construction costs of approximately 30% on average;
 - (b) reduction in percentage of total cost lenders are willing to finance as a result of tightened credit conditions and lesser availability; and
 - (c) a substantial increase in the cost of financing and expected return by preferred equity investors.
44. The combination of these factors required significantly more new preferred equity investment to fund deficiencies in cash flow and provide for capitalized interest cost. Additionally, the within receivership proceedings caused some concern for the investment community.

SALE PROCESS

45. In light of the conditions of the Receiver's financing, as set out in the Term Sheet and the Amendment to Term Sheet, the Receiver is now obligated to engage a realtor to sell the Real Properties in their current condition. In the view of the Receiver, the development work undertaken by N21 is expected to add value to the sites including the shovel ready condition of three of the five Projects.

46. Pursuant to paragraph 5 of the Receivership Order, the Receiver is authorized to, among other things:
- (a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
47. Upon its appointment, the Receiver obtained appraisals from CBRE in respect of the Real Properties. Copies of the appraisals, dated March 1-9, 2022 (the “**Appraisals**”), were attached to the First Report as Confidential Appendices “4” to “8” and sealed pursuant to the September 20 Orders.
48. The Receiver reached out to various real estate brokerages and requested proposals in respect of the marketing and sale of the Real Properties. Three brokerages submitted proposals to the Receiver, with varying formality. A summary of the proposals and the realtor’s estimated land values prepared by the Receiver is attached hereto as **Confidential Appendix “1”**.
49. The Receiver reviewed the proposals and, after discussions, recommends it be authorized to engage CBRE to market the Real Properties for sale. A copy of the CBRE proposal, dated April 21, 2023 (the “**CBRE Proposal**”) which sets out valuations, a proposed marketing plan for the Real Properties and sale commission, is attached hereto as **Confidential Appendix “2”**.
50. The CBRE Proposal was determined by the Receiver to be the superior proposal for the following reasons:
- (a) the CBRE Proposal seeks to maximize value and provides for higher expected sale prices than other proposals;
 - (b) the 6 month listing term is a reasonable time period for the marketing and sale of assets of this nature;
 - (c) CBRE is familiar with the Projects as they previously provided estimated sale values in order to support the Receiver’s request for additional funding;

- (d) all marketing costs will be borne by CBRE;
- (e) the commission fee is typical for commercial real property in Florida;
- (f) the modified tender process, which does not require a list price for the Real Properties is expected to maximize value;
- (g) the team includes CBRE's top advisors in the sale of development land and local Florida representatives with significant experience selling Florida commercial real estate;
- (h) CBRE is an internationally recognized brokerage with a global platform to ensure maximum exposure; and
- (i) Hillmount supports the hiring of CBRE.

51. The Receiver seeks approval of the below sale process (the “**Sale Process**”) in respect of the Real Properties:

Sale Process			
Phase		Timeline ¹	Description
1	Underwriting and Pre-Marketing	Weeks 1 -2	Engage CBRE. Preparation of marketing materials and data room by CBRE.
2	Marketing Process	Weeks 3-8	National marketing campaign undertaken by CBRE. Teaser distributed to broad buyers list. Calling campaign and meetings and presentations with purchasers. Real Properties marketed on “as is, where is” basis.
3	Offers and Negotiations	Weeks 9-10	Bids due 30-45 days from marketing launch (“ Bid Deadline ”). Bids accepted for all Real Properties <i>en bloc</i> or separately.

			<p>All bids must be submitted in form of agreement of purchase and sale (“APS”) and accompanied by evidence of financing and/or financial ability to close.</p> <p>Negotiations with bidders and short-listed prospective bidders invited to make best and final offers.</p>
4	Execution and Transaction Management	Week 11	<p>Selection of winning bidder(s).²</p> <p>Finalize and execute APS.</p> <p>Receipt of deposit(s) in amount(s) determined by Receiver.</p> <p>APS subject to approval by Canadian Court and U.S. Court.³</p>
5	Purchaser Due Diligence	Weeks 12-23	Obtain any further due diligence required.
6	Approval by Canadian Court and U.S. Court and close transaction	Weeks 24-26	Subject to court availability.
<p>Notes to Sale Process:</p> <p>1. The Receiver reserves the right, in consultation with CBRE and Hillmount, to extend or abridge any of the Sale Process timelines and waive strict compliance with any timelines, deadlines or formal requirements with respect to any one or more of the Real Properties.</p> <p>2. The Receiver reserves the right to reject any and all offers for the Real Properties and is under no obligation to accept any offer.</p> <p>3. The acceptance of any offer by the Receiver is strictly subject to approval of the APS and the sale transaction contemplated therein by the Canadian Court and the U.S. Court.</p>			

52. The Receiver recommends approval of the Sale Process for the following reasons:

- (a) it was developed in consultation with CBRE and will broadly canvas the market in an effort to obtain the highest and best price for the Real Properties;

- (b) in order to maximize value, the Real Properties will not be marketed with a set list price as prospective purchasers will likely put varying values on the project development work completed to date;
- (c) it contemplates an approximately 10 week process from the date of Court approval to the Bid Deadline and this timeline should provide sufficient time for prospective purchasers to conduct due diligence prior to submitting an offer;
- (d) the Real Properties will be marketed and sold on an “as is, where is” basis and offers will be considered for the Real Properties *en bloc* or separately;
- (e) due to the nature of the assets for sale, the timeline contemplates purchasers requiring additional due diligence post-execution of an APS;
- (f) the Receiver will seek approval of any definitive APS and the transaction contemplated therein by the Canadian Court and also the U.S. Court; and
- (g) prospective purchasers will have access to the data site information including updated architectural and engineering plans as well as status reports of discussions with municipalities.

TRAILWINDS/WILDWOOD

53. The Receiver is receipt of an offer in respect of the Trailwinds/Wildwood Property. The Receiver intends to negotiate the terms of sale with the offeror and, if such negotiations do not result in a definitive purchase agreement on terms the Receiver is prepared to recommend to the Court, the Trailwinds/Wildwood Property will be marketed for sale along with the other Real Properties.

RECEIPTS & DISBURSEMENTS

54. Attached hereto as **Appendix “Q”** is a copy of the Receiver’s R&D, as of May 9, 2023.

PROFESSIONAL FEES

55. The Receiver seeks approval of its fees and disbursements and those of its legal counsel, Dentons Canada LLP (“**Dentons**”).
56. The Receiver and Dentons have maintained separate accounts for each of the five Real Properties.

Receiver’s Fees

57. Below is a summary of the Receiver’s fees and disbursements for the period from September 1, 2022, to April 30, 2023:

Property	Fees	Disbursements	HST	Total
Longleaf Property	\$47,453.75	\$174.69	\$6,191.70	\$53,820.14
Summerlin Property	\$47,155.00	\$174.68	\$6,152.86	\$53,482.54
Destin Property	\$47,266.25	\$174.69	\$6,167.32	\$53,608.26
Ocoee Property	\$48,423.75	\$174.66	\$6,317.79	\$54,916.20
Trailwinds/Wildwood Property	\$47,237.50	\$174.67	\$6,163.58	\$53,575.75
Total:	\$237,536.25	\$873.39	\$30,993.25	\$269,402.89

58. The fees and disbursements of the Receiver are more particularly described in the Affidavit of Allan Rutman, affirmed May 9, 2023, attached hereto as **Appendix “R”**.

Dentons’ Fees

59. Dentons has acted as counsel to the Receiver since its appointment. Below is a summary of Dentons’ fees and disbursements for the period from September 1, 2022, to April 30, 2023:

Property	Fees	Disbursements	HST	Total
Longleaf Property	\$21,923.00	\$734.70	\$2,937.19	\$25,594.89

Summerlin Property	\$21,923.00	\$734.70	\$2,937.19	\$25,594.89
Destin Property	\$21,923.00	\$734.70	\$2,937.19	\$25,594.89
Ocoee Property	\$21,923.00	\$734.70	\$2,937.19	\$25,594.89
Trailwinds/Wildwood Property	\$24,310.50	\$ 806.33	\$3,256.89	\$28,373.72
Total:	\$112,002.50	\$3,745.13	\$15,005.65	\$130,753.28

60. The fees and disbursements of Dentons are more particularly described in the Affidavit of Sara-Ann Wilson, sworn May 9, 2023, attached hereto as **Appendix “S”**.

61. In the Receiver’s view the professional fees are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

SEALING

62. The Confidential Appendices to this Second Report contain commercially sensitive information, including estimated sale values for each of the Real Properties. If this information is publicly disclosed, it could negatively affect the Receiver’s ability to market the Real Properties and obtain the highest and best price. Accordingly, the Receiver requests an order that the Confidential Appendices be sealed until the closing of a sale transaction in respect of the Real Properties or further order of this Honourable Court.

RECOMMENDATIONS OF THE RECEIVER

63. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief as set out in its Notice of Motion, dated May 11, 2023.

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All of the foregoing is respectfully submitted this 10th day of May, 2023.

ZEIFMAN PARTNERS INC., in its capacity as Receiver and Manager of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC, and not in its personal or corporate capacity

Per:

Name: 
Allan Rutman

Title: President

Appendix “A”
to the Second Report of the Receiver

Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

FRIDAY, THE 11TH

JUSTICE CONWAY

)

DAY OF FEBRUARY, 2022

)

BETWEEN:

BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN AND GREGORY IP

Plaintiffs

- and -

HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT

Defendants



Court File No. CV-22-00674717-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
 LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
 LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and –

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
 TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
 LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, , LEGACY LIFESTYLES
 LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

AMENDED ORDER
(appointing Receiver)

THIS MOTION made by the Plaintiffs in Court File No. CV-21-00668821-00CL (the “**Action**”) and **THIS APPLICATION** made by the Applicants in Court File No. CV-22-00674717-00CL (the “**Application**”) for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) and section 243(1) of the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3 (“**BIA**”) appointing Zeifman Partners Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC (collectively, the “**Debtors**”)

acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Mark Ber affirmed on July 21, 2021 and the Exhibits thereto, the affidavit of Joel Ross affirmed on July 20, 2021 and the Exhibits thereto, the affidavit of Greg Marchant sworn December 20, 2021 and the Exhibits thereto and the affidavit of Allan Rutman affirmed December 14, 2021 and the Exhibits thereto and on hearing the submissions of counsel for Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Ocoee LP and Legacy Lifestyles Ocoee GP Inc. (collectively, the “**Partnerships**”), the investors listed in Schedule “C” hereto (collectively, the “**Intervening Investors**”), the Plaintiffs, Gregory Marchant and Morgan Marchant and on reading the consent of the Receiver to act as the Receiver and on being advised by counsel that Cohen Hamilton Steger & Co. Inc. consents to act as the Inspector (defined below) and that each of the Intervening Investors, the Plaintiffs and the Partnerships consent to the relief herein,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion in Court File Number CV-21-00668821-00CL and the Notice of Application and Application in Court File Number CV-22-00674717-00CL is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

INVESTORS

2. **THIS COURT ORDERS** that, on consent of the parties and the Intervening Investors, the Intervening Investors be and are hereby granted intervenor status with respect to the within proceedings and with respect to the Motion and Application herein.

3. **THIS COURT ORDERS AND DECLARES** that, on consent of the parties and the Intervening Investors, any claims of investors (the “**Investors**”) who invested in the Partnerships as against the Debtors and in any way related to the Partnerships are, as of the date of this Order, not extinguished by the expiration of a limitations period or otherwise.

APPOINTMENT

4. **THIS COURT ORDERS** that pursuant to section 101 of the CJA and section 243(1) of the BIA, Zeifman Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, the real properties described in Schedule “A” hereto (collectively, the “**Real Properties**” and each a “**Real Property**”) and all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

5. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to engage Cohen Hamilton Steger & Co. Inc. as inspector (the “**Inspector**”) to investigate the affairs, business and financial dealings of the Debtors and their affiliates, any entities controlled by the Debtors and any other entities that control the Real Properties on such terms, including with respect to the payment of the Inspector’s fees and those of its counsel, as the Receiver may agree to in its discretion;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (h) to settle, extend or compromise any indebtedness owing to the Debtors;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to commission appraisals in respect of the Real Properties;
- (l) to request proposals with respect to refinancing, investments or joint ventures in respect of the Property or any part or parts thereof and negotiate such terms and conditions of refinancing, investments or joint ventures that the Receiver in its discretion may deem appropriate;

- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000.00 CAD, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00 CAD; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

INSPECTOR'S POWERS

6. **THIS COURT ORDERS AND DIRECTS** the Inspector to (a) investigate the affairs, business and financial dealings of the Debtors and their affiliates, any entities controlled by the Debtors and any other entities that control the Real Properties, (b) provide regular updates to the Receiver on the status of the investigation, (c) prepare a report with respect to the findings of its investigation, and (d) deliver its report to the Receiver and file its report with this Court.

7. **THIS COURT ORDERS AND AUTHORIZES** the Inspector to, (a) conduct hearings, administer oaths and examine any director, officer, employee or agent of the Debtors upon oath, and, if necessary in the opinion of the Inspector, seek an order of this Court prescribing rules for the conduct of the hearing, and (b) engage consultants, agents, experts and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Inspector's powers and duties, including without limitation those conferred by this Order.

8. **THIS COURT ORDERS** Gregory Marchant, and any other person directed to attend an examination by the Inspector, to attend such hearing or examination and give evidence upon oath.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER AND INSPECTOR

9. **THIS COURT ORDERS AND DIRECTS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, including Gregory Marchant, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having

notice of this Order including any financial institution (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

10. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver and the Inspector of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, bank statements and cancelled cheques, and any other papers, records and information of any kind related to the business or affairs of the Debtors, including all "due diligence" materials related to the Property, including consulting reports and drawings (such as engineering, environment soils, traffic studies, archaeological reports, marketing reports) and architectural drawings, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver and the Inspector or permit the Receiver and the Inspector to make, retain and take away copies thereof and grant to the Receiver and the Inspector unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver or the Inspector due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

11. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver and the Inspector for the purpose of allowing the Receiver and the Inspector to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver or the Inspector in their discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver and the Inspector. Further, for the purposes of this paragraph, all Persons shall provide the Receiver and the Inspector with all such assistance in gaining immediate access to the

information in the Records as the Receiver or the Inspector may in their discretion require including providing the Receiver or the Inspector with instructions on the use of any computer or other system and providing the Receiver or the Inspector with any and all access codes, account names and account numbers that may be required to gain access to the information.

12. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER OR INSPECTOR

13. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or Inspector except with the written consent of the Receiver or the Inspector, as the case maybe, or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

14. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, the Inspector, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided

that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

16. **THIS COURT ORDERS** that the action bearing Court File No. CV-21-00668821-00CL shall be stayed pending further order of this Court.

NO INTERFERENCE WITH THE RECEIVER

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

19. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any

source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

20. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

21. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Receiver or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

22. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder or similar legislation in the state of Florida (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON LIABILITY OF RECEIVER AND INSPECTOR

23. **THIS COURT ORDERS** that neither the Receiver nor the Inspector shall incur liability or obligation as a result of their appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or the Receiver in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or afforded the Receiver and the Inspector by any other applicable legislation.

ACCOUNTS OF RECEIVER AND INSPECTOR

24. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements (including, subject to paragraph 27 of this Order, the fees

and disbursements of the Inspector and its counsel), both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA or similar legislation.

25. **THIS COURT ORDERS** that the Receiver and its legal counsel and the Inspector and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel and the Inspector and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

27. **THIS COURT ORDERS** that the fees and disbursements of the Inspector and its counsel shall be paid in the first instance by the Plaintiffs in Commercial List File Number CV-21-00668821-00CL without prejudice to any party's position in respect of whether or not the fees and disbursements incurred by the Inspector are to be paid from the Debtors' estate.

28. **THIS COURT ORDERS** that the Plaintiffs and any Investor that pays any accounts of either the Receiver or the Inspector shall be entitled to seek an order of the Court providing for reimbursement of such payments out the Debtors' estate with such priority and at such time as this Court may determine.

FUNDING OF THE RECEIVERSHIP

29. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,600,000.00 CAD in the aggregate (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or

periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The Property of the Debtor(s) set out in the Receiver's Certificate (defined below), including the Real Property identified in Schedule "1" thereto, shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA or such similar legislation.

30. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

31. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

32. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

33. **THIS COURT ORDERS** that the Receiver is hereby authorized to execute on behalf of the Debtors any documents or instruments that may be necessary or desirable to register this Order on title to the Property and give effect to the Receiver's Charge and Receiver's Borrowings Charge and the priority of such charges, including the subordination of any existing security, charges or mortgages registered on title to the Property. If for any reason such authority is not recognized in the State of Florida the Debtors are hereby directed to execute any such documents to give effect to the priorities provided hereunder to the extent requested by counsel to the Receiver.

SERVICE AND NOTICE

34. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <<https://www.zeifmans.ca/current-insolvency-files/legacy-lifestyle/>>.

35. **THIS COURT ORDERS AND DIRECTS** Gregory Marchant to provide a complete list of all of the Investors and their contact information including email addresses to the Receiver.

36. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver or the Inspector is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

38. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

39. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and the Inspector and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and the Inspector, as officers of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver or the Inspector and their agents in carrying out the terms of this Order. For greater certainty, the Receiver is hereby appointed as foreign representative of the Debtors in order to commence an application pursuant to Chapter 15 of the United States Bankruptcy Code should such application be required.

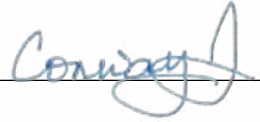
40. **THIS COURT ORDERS** that the Receiver or the Inspector be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver and the Inspector are authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. **THIS COURT ORDERS** that the Plaintiffs shall have their costs of this motion, up to and including entry and service of this Order, in the sum of CA\$100,000.00 and the Intervening Investors shall have their costs of this motion, up to and including entry and service of this Order, in the sum of CA\$50,000.00 on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine, provided that neither costs award referenced herein shall have priority over the other.

42. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

43. **THIS COURT ORDERS** that a copy of this Order be filed in Court File No. CV-21-00668821-00CL and Court File No. CV-22-00674717-00CL and that these matters shall be consolidated and proceed under Court File No. CV-22-00674717-00CL. All future materials filed

shall use the style of cause set out in this Order and include the following file numbers: Court File No. CV-22-00674717-00CL and CV-21-00668821-00CL.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

SCHEDULE "A"

DESCRIPTION OF THE REAL PROPERTIES

Destin Property

Commencing at the Northwest corner of Sea Hills Third Addition as Recorded in Plat Book 5, Page 104 of the Public Records of Okaloosa County, Florida; Thence north 01 degrees, 00 Minutes 51 Seconds East A Distance of 432.05 feet to a point, said Point being the point of beginning; thence continue north 01 degrees 00 minutes 51 seconds east a distance of 364.01 feet to a point; thence North 88° 08 minutes 45 seconds east a distance of 1074.81 feet to a point on the western right away of Beach Drive; thence South 10 degrees 14 minutes 19 seconds west along said Western right of way a distance of 20.77 feet to a point; thence South 03 degrees 56 minutes 40 seconds east along said western rate of way a distance of 199.31 feet to a point; thence departing said Western right of way south 86 degrees 33 minutes 59 seconds west a distance of 542.58 feet to a point; thence South 01 degrees 42 minutes 23 seconds east a distance of 158.38 feet to a point; thence North 88 degrees 59 minutes 09 seconds west a distance of 573.88 feet to a point, said point being the point of beginning.

Trailwinds Property

In the County of Sumter, State of Florida:

Parcel R1-1, TRAILWINDS VILLAGE, as per plat thereof recorded in Plat Book 16, Pages 21, 21-A through 21-I, of the Public Records of SUMTER County, Florida; LESS AND EXCEPT THE FOLLOWING: Begin at the Southeast corner of Parcel RI-1; run thence N.00°27'18"E. along the East line of Parcel RI-1, a distance of 135.20 feet, thence departing East line run S.89°59'36"W. a distance of 416.06 feet; thence S.00°00'06"E. a distance of 131.76 feet to a point on the South line of Parcel RI-1, thence along said South line run S.89°32'10"E. a distance of 415.00 feet to the point of beginning.

TOGETHER With Utility Easements and Access Areas Easements set forth in the Declaration of Covenants, Conditions and Restrictions recorded in Book 3205, Page 698 and as Amended and Restated in Book 3258, Page 326 of the Public Records of SUMTER County, Florida and Signage Easement as set forth in Section 2.10 of said Amended and Restated Declaration of Covenants, Conditions and Restrictions.

Summerlin Property

Lots 2 and 3, Sanibel Promenade, according to the map or plat thereof, as recorded in Plat Book 79, Pages 11 and 12, Public Records Lee County, Florida.

Ocoee Property

A PORTION OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTRY, FLORIDA; THENCE RUN NORTH 89°35'56" EAST, ALONG THE SOUTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 1321.84 FEET, TO THE SOUTHEAST CORNER OF SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 5; THENCE RUN NORTH 00°09'18" WEST, ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 30.00 FEET, TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ROBERSON ROAD; THENCE RUN SOUTH 89°35'56" WEST, ALONG THE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 640.00 FEET, TO THE POINT OF BEGINNING; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE, RUN NORTH 00°09'28" WEST, A DISTANCE OF 200.02 FEET; THENCE RUN SOUTH 89°59'28" EAST, A DISTANCE OF 368.32 FEET; THENCE RUN NORTH 09°36'00", A DISTANCE OF 15.36 FEET; THENCE RUN NORTH 00°37'13" EAST, A DISTANCE OF 727.61 FEET; THENCE RUN SOUTH 89°35'56" WEST, A DISTANCE OF 398.15 FEET; THENCE RUN SOUTH 00°09'18" EAST, A DISTANCE 1155.00 FEET, TO A POINT ON THE AFORESAID NORTH RIGHT-OF-WAY LINE; THENCE RUN NORTH 89° 35'56" EAST, ALONG THE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 20.00 FEET, TO THE POINT OF BEGINNING. CONTAINING 6.76 ACRES MORE OR LESS.

Longleaf Property

Tract 39, LONGLEAF NEIGHBORHOOD THREE, according to the plat through thereof as recorded in Plat Book 56, pages 127 through 150, inclusive, of the public records of Pasco County, Florida.

SCHEDULE “B”
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Zeifman Partners Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties of, *inter alios*, [DEBTOR'S NAME] (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the Real Property (defined in the Order) described in Schedule “1” hereto and all proceeds thereof (the “[**DEBTOR’S** **Property**”), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ____ day of _____, 20__ (the “**Order**”) made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, a charge upon the whole of the [DEBTOR’S] Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the [DEBTOR’S] Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the [DEBTOR'S] Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

Zeifman Partners Inc., solely in its capacity
as Receiver of the [DEBTOR'S] Property, and
not in its personal or corporate capacity

Per: _____

Name:

Title:

SCHEDULE “1”**REAL PROPERTY**

[Insert description of Real Property]

SCHEDULE “C”**INTERVENING INVESTORS**

2581506 Ontario Limited
2335996 Ontario Inc.
Angellotti, Ron
Daveni Investments Ltd.
Della-Maestra, Thomas Roy
Della-Maestra, Julia
Della-Maestra, Terry
Della-Maestra, Angela
Janmohamed, Nadir
Lindsay, Joan
Wall, George
MLC Financial Ltd.
Remco Holdings Inc.
Spectrum Jewellery Mfg Inc.
SRnED Limited
Stephen Kwok Professional Corporation
Suedan, Katherine Denise
Volpe, Peter G.
2480449 Ontario Inc.
Reinrichmar Holding Limited
McDonald, Don
Suchak, Mitesh
Suchak, Avni
White, Robert
Thomson, Dave
Macleod, Carylyn
Patel, Sunil
Tangri, Sabrena
Kassam, Faiza
Hallco Holdings Inc.
Woodruff, Richard
1424604 Ontario Ltd.
Marty Shankman Agency Ltd.
Yale Realty Inc.
2143700 Ontario Inc.
Christiansen Investments Inc.
Hampson Equities Inc.
Charvet, Shelle Rose
Smart Financial Consulting Corp.
19322434 Ontario Limited
9677658 Canada Inc.
John Francis Footprints Ltd.

Claremont Holdings Corporation
Mid Properties Inc.
New Gemini Inc.
2244512 Ontario Inc.
Michael Kessel
1387615 Ontario Limited

Along with any other person who Michael Katzman notifies the Receiver (via email) should be added as an Intervening Investor.

BERKID INVESTMENTS LIMITED
Plaintiff

and

Court File No. CV-21-00668821-00CL
HUNTER MILBORNE et al.
Defendants

LEGACY LIFESTYLES DESTIN LP, et al.
Applicants

and

Court File No. CV-22-00674717-00CL
LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Respondents

--	--

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED ORDER

GREG ROBERTS PC
Lawyers
202-8920 Woodbine Avenue
Markham, ON L3R 9W9

Greg Roberts (LSO No. 29644N)
Tel: 1 (866) 824-8757
greg.roberts@roblaw.ca

Lawyer for the Plaintiffs

Appendix “B”
to the Second Report of the Receiver

COUNSEL SLIP

COURT FILE CV-21-00668821-00CL; CV-20-

NO.: 00640893-0000

DATE: 11-FEB-2022

NO. ON LIST 2 and 3

TITLE OF
PROCEEDING

Berkid Investments Limited et al. v. Milborne et al.

COUNSEL FOR:

PLAINTIFF(S)

☒ G. Roberts

PHONE

☐ APPLICANT(S)

FAX

☐ PETITIONER(S)EMAIL Greg.roberts@roblaw.caCOUNSEL FOR:

DEFENDANT(S)

☒ A. Zweig; P. Millar; A. Habas

PHONE

OTHER PARTIES

M. Katzman, for Intervening Investors

☒ K. Kraft; A. Rutman, for proposed Receiver Zeifman
Partners Inc.

FAX

L. Silver; F. Cohen, for proposed Inspector Cohen
Hamilton Steger & Co. Inc.EMAIL arnold@azweiglaw.com;
phillip@millarslaw.com;
ahabas@bgchlaw.com;
mkatzman@katzmanlitigation.com;
Kenneth.kraft@dentons.com;
aar@zeifmans.ca;
lsilver@cassels.com;
fcohen@cohenhamiltonsteger.comJUDICIAL NOTES:Conway J. Endorsement

There are two proceedings before me – one is an action by Mr. Roberts' clients (various investors) and the other is an application by Mr. Zweig's clients (Gregory Marchant et al). Both concern the proposed development of five properties in the U.S. by Mr. Marchant. There are numerous issues in this litigation but at this point, counsel have agreed on an interim resolution on essentially the following terms:

- Zeifman Partners Inc. will be appointed as the Receiver of the properties. It is hoped and expected that the Receiver will be able to refinance the properties rather than sell them over the next six months, resulting in enhanced value to investors. The form of order contemplates the Receiver taking those steps.
- The Receiver will retain an inspector (Cohen Hamilton Steger & Co Inc.) to examine how the investors' funds have been spent. Mr. Roberts' clients will be funding the investigation in the first instance subject to their right to claim reimbursement at a later date.
- Mr. Roberts' clients' action is stayed pending further court order. While Ms. Habas and Mr. Millar (for two of the defendants in that action) are not opposing the stay, they have advised the court that it is without prejudice to their moving for a lift stay to enable them to bring summary judgment motions to dismiss the action against their clients.
- Mr. Katzman represents various other investors (who are not represented by Mr. Roberts). It is agreed that those investors will intervene in these proceedings. Schedule C of the draft order has now been amended to include additional investors who Mr. Katzman notifies the Receiver should be added as an "Intervening Investor". The updated draft order is to be uploaded to CaseLines.
- All materials will be filed under the CV-22-00674717-00CL file but will use the two style of causes (Court File No. CV-21-00668821-00CL and Court File No. CV-22-00674717-00CL). Mr. Kraft will be working on streamlining the files in CaseLines.

Counsel walked me through the receivership order today. I am satisfied with its terms and have signed it (I amended paragraph 43, last line, to correct the court file number – 22-00674717-00CL).

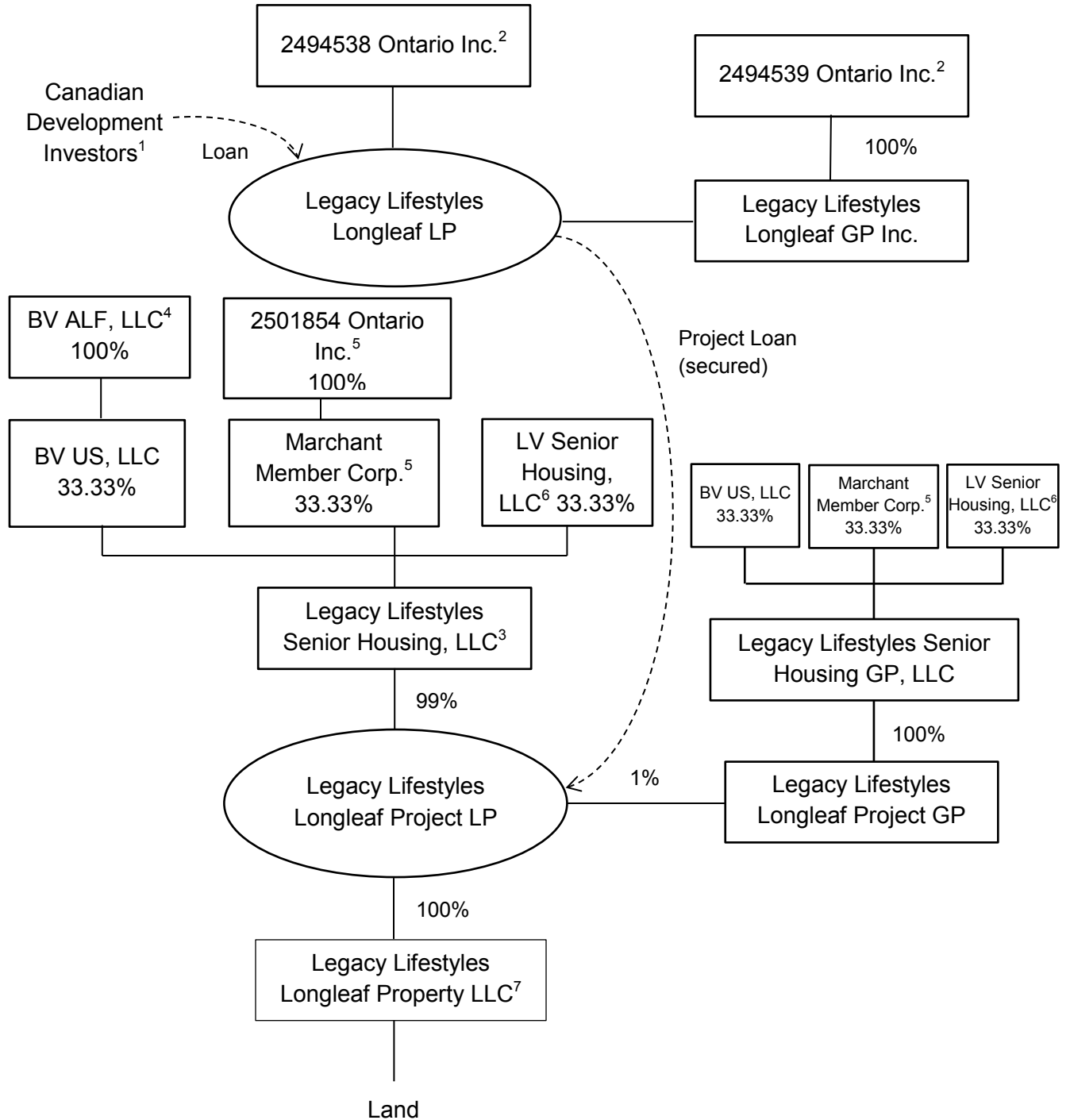
Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

At the appropriate time, counsel may book a scheduling appointment before me, through the Commercial List office, to schedule next steps.

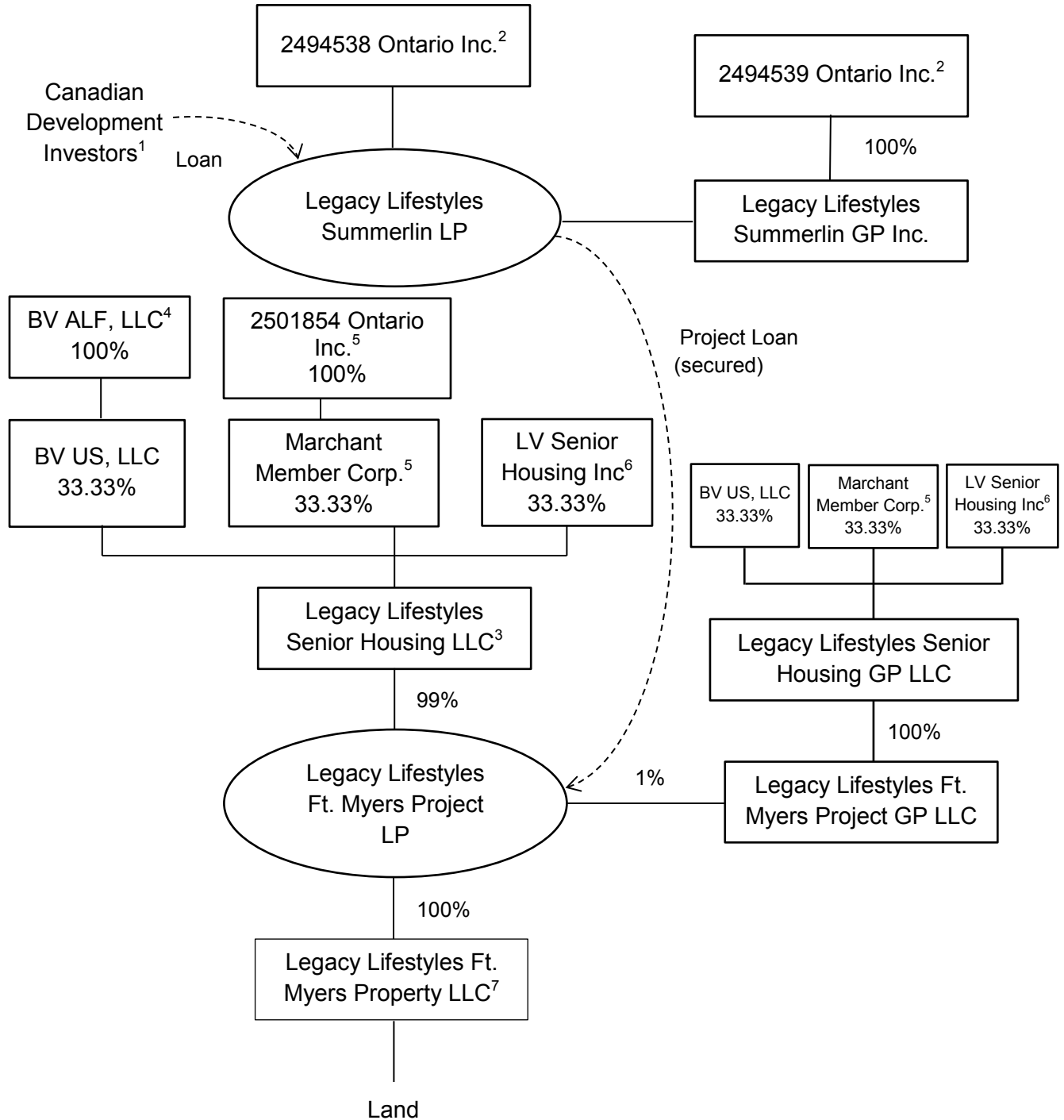


Appendix “C”
to the Second Report of the Receiver

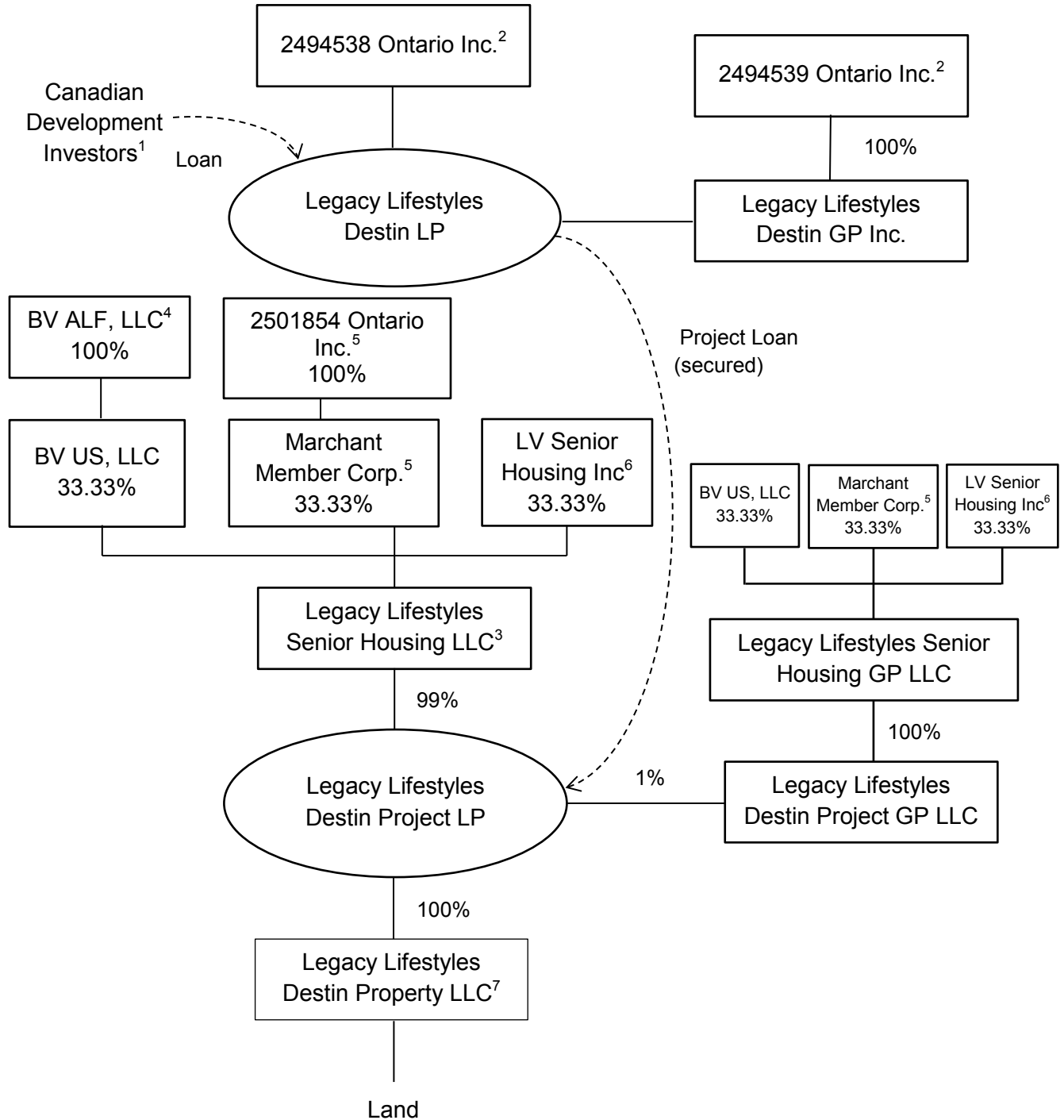
**Project Longleaf
Structure – Phase 1
(Revised June 3, 2016)**



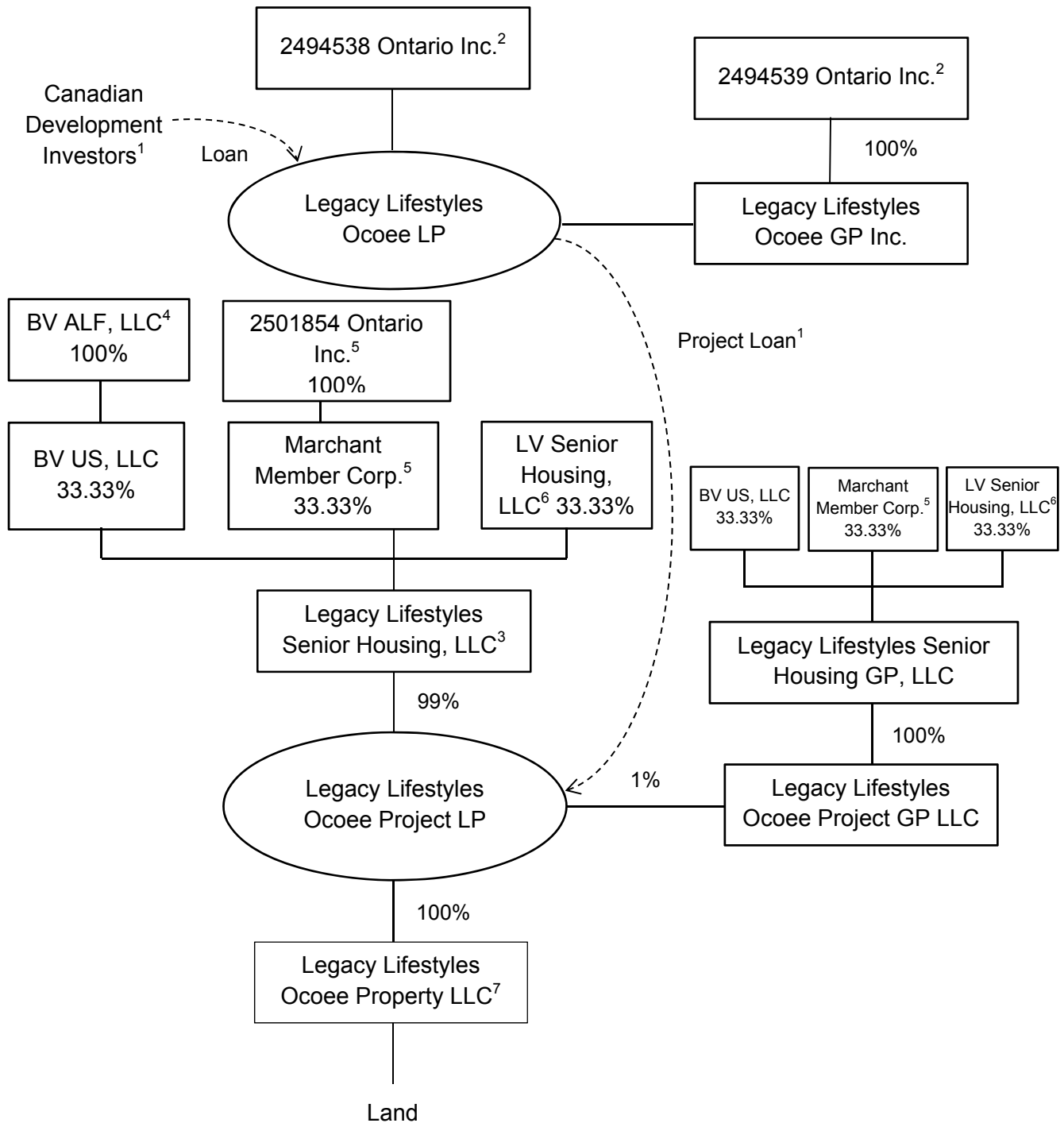
**Project Summerlin
Structure – Phase 1**



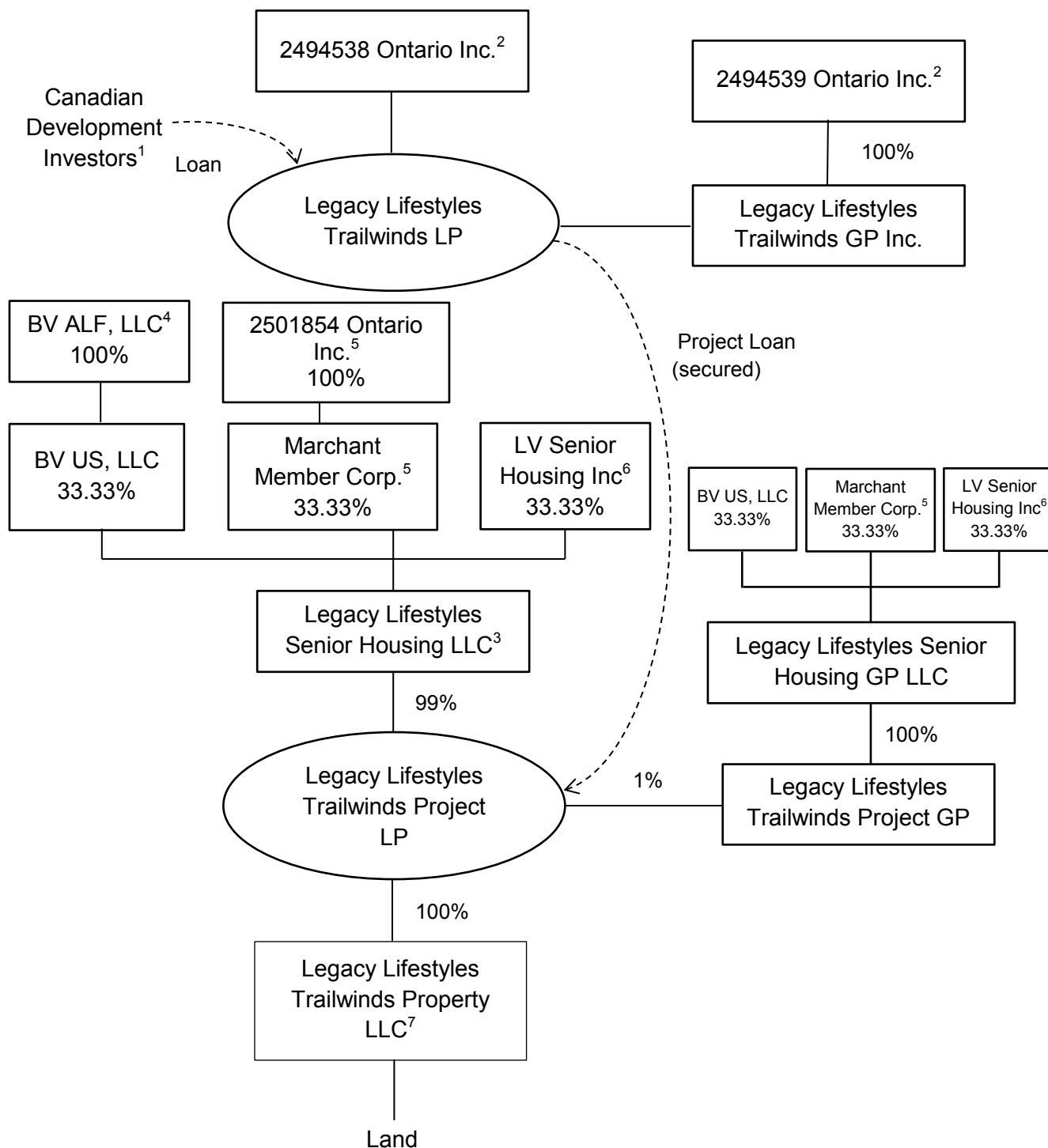
**Project Destin
Structure – Phase 1
(April 7, 2016)**



Ocoee Florida Project
Proposed Structure – Phase 1
(Revised June 3, 2016)



**Project Trailwinds
Structure – Phase 1
(March 15, 2017)**



Appendix “D”
to the Second Report of the Receiver



Appendix “E”
to the Second Report of the Receiver

BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN AND GREGORY IP

Plaintiffs

- and -

HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT

Defendants

LEGACY LIFESTYLE DESTIN LP, LEGACY LIFESTYLE TRAILWINDS LP LEGACY LIFESTYLE SUMMERLIN LP, LEGACY LIFESTYLE OCOCE LP and LEGACY LIFESTYLE LONGLEAF LP

Plaintiffs

- and -

LEGACY LIFESTYLE DESTIN PROPERTY LLC, LEGACY LIFESTYLE TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLE SUMMERLIN PROPERTY LLC, LEGACY LIFESTYLE OCOCE PROPERTY LLC and LEGACY LIFESTYLE LONGLEAF PROPERTY LLC

Defendants

First Report of the Inspector

September 8, 2022

BERKID INVESTMENTS LIMITED ET AL V. HUNTER MILBORNE ET AL AND LEGACY LIFESTYLE DESTIN LP ET AL V. LEGACY LIFESTYLE DESITN PROPERTY LLC ET AL

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**BERKID INVESTMENTS LIMITED ET AL V. HUNTER
MILBORNE ET AL AND LEGACY LIFESTYLE DESTIN LP ET AL
V. LEGACY LIFESTYLE DESITN PROPERTY LLC ET AL**

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September 8, 2022

CONFIDENTIAL

Allan Rutman
Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario M6A 1Y7

Dear Mr. Rutman:

RE: FIRST REPORT OF THE INSPECTOR – LEGACY PROJECTS

1.0 INTRODUCTION

1.1 Overview of Assignment

1. Cohen Hamilton Steger & Co. Inc. (“CHS”) was engaged pursuant to the Amended Order of Justice Conway, dated February 11, 2022, to “*investigate the affairs, business and financial dealings of the Debtors and their affiliates, any entities controlled by the Debtors and any other entities that control the Real Properties on such terms.*”¹ We understand that this report may be used by the Court in this matter.
2. This is an interim report regarding the status of our investigation and our preliminary findings to date. This report is subject to the scope of review, restrictions, qualifications, and assumptions noted below. Further information and/or responses received after the date of this report may cause our findings below to change; we note that we are currently awaiting additional information from Mr. Marchant (refer to our outstanding list of questions in Appendix C).

1.2 Statement of Independence and Qualifications

3. Cohen Hamilton Steger & Co. Inc. is an independent consulting firm specializing in business valuation, financial litigation and related matters. The individuals who prepared this report are independent of all parties in these matters and their affiliates.

¹ Source: Amended Order of Justice Conway, dated February 11, 2022, paragraph 5(e). The term “Debtors” is defined in Section 3.0 below. “Real Properties” are as defined in the Order of Justice Conway.

Page 2

Mr. Allan Rutman

September 8, 2022

4. We have no stake, directly or indirectly, in the outcome of this action. The terms of our engagement in this matter provide for the payment of our fees based solely on time expended, plus disbursements incurred. This report has been prepared in accordance with the Expert Report Practice Standards of the Canadian Institute of Chartered Business Valuators. It has been prepared independently and objectively, and our fees are not contingent on the outcome of this matter in any way.
5. Farley J. Cohen, MBA, FCPA, FCA, CIRP, FCBV, ASA, CFF, FCI Arb, prepared this report with assistance from other professionals under his direction and supervision.

1.3 Restrictions

6. This report has been prepared for the above-noted purpose and is not intended for general circulation or publication. It is not to be reproduced or used for any purpose other than that outlined above, without our prior written permission in each specific instance. We do not assume any responsibility or liability for losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.
7. This report has been prepared based on the information that has been produced to date and which has been made available to us. We reserve the right, but will be under no obligation, to review and/or revise any and all assumptions and/or calculations included in or referred to in this report and to update this report in light of further information that becomes known to us after the date of this report.
8. The analyses and conclusions contained in this report must be considered as a whole. Selecting portions of the analyses and factors considered herein could lead to a misleading view of the conclusions set out in this report.

1.4 Currency

9. Unless otherwise stated, all currency amounts are expressed in US dollars.



2.0 SCOPE OF REVIEW

10. In preparing this report, we have reviewed and relied upon the following information:
 - a) Amended Order of Justice Conway, dated February 11, 2022.
 - b) Amended Statement of Claim, dated June 10, 2020.
 - c) Affidavit of Gregory Marchant, dated December 20, 2021.
 - d) Transcript from the Cross-Examination of Gregory Marchant, dated February 1, 2022.
 - e) Interview attended by Gregory Marchant on April 6, 2022.
 - f) Memo from Phillip Millar and Gregory Marchant to Cohen Hamilton Steger, dated June 7, 2022 – Response Document – Requested undertakings from interview with Gregory Marchant, dated April 6, 2022 and associated documentation.
 - g) Documents related to the Legacy Projects provided by Gregory Marchant.
 - h) Company status per Sunbiz.org, Division of Corporations, an official State of Florida Website.
11. We have also had discussions with Allan Rutman.

3.0 BACKGROUND

12. The following sets out our understanding of the relevant background facts in this matter.

3.1 Investment Structure

13. In 2016, Gregory Marchant, one of the Defendants, organized investment opportunities for the development of five retirement residence projects in the State of Florida. The stated objective for each of these projects was to purchase a property development site and obtain financing to then build a retirement residence.²

² Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 2.



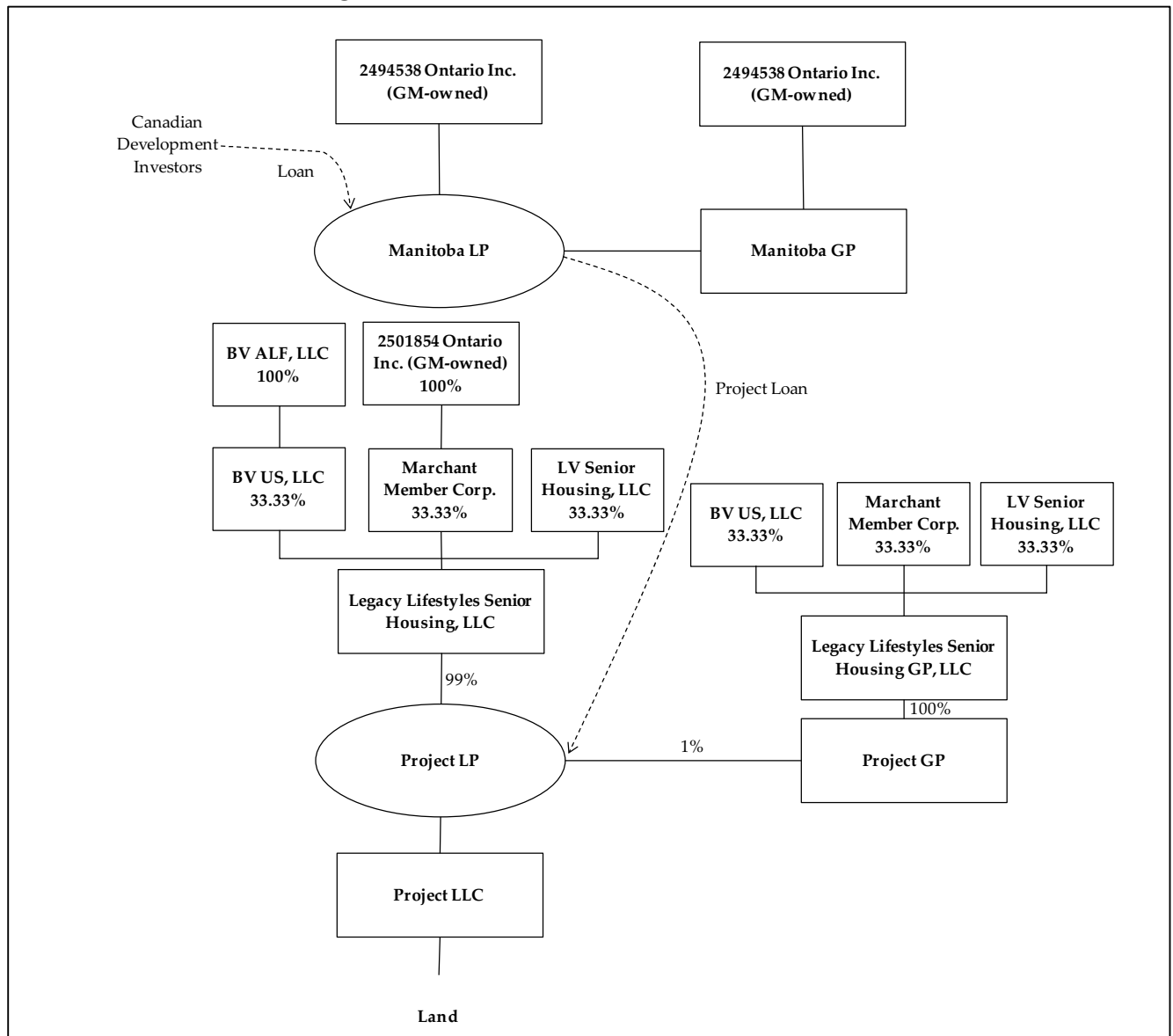
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Mr. Allan Rutman
September 8, 2022

14. The five projects and locations are as follows (collectively referred to herein as the “Legacy Projects”):³
 - a) Ocoee – Ocoee, Florida;
 - b) Longleaf – New Port Richey, Florida;
 - c) Destin – Destin, Florida;
 - d) Summerlin – Fort Myers, Florida; and,
 - e) Trailwinds – Wildwood, Florida.
15. The Phase 1 financing structure was consistent for each of the Legacy Projects and is set out in generic form below.

³ Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 3.



Table 1: Phase 1 Financing Structure



Source: Dentons LLP Phase 1 Closing Books for all Projects.



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Mr. Allan Rutman

September 8, 2022

16. As shown above, the initial funding for each Legacy Project was to come in the form of loans from Canadian Development Investors (the “Creditors”) issued through a private placement (the “Private Placement”). These were to pay interest at 30% per annum. For loans in Ocoee and Longleaf, the maturity date was recorded as *“30 days following the date on which the Payor receives aggregate net proceeds sufficient (as determined by the Payor in its sole discretion) to build and lease the Property pursuant to one or more offerings after the date hereof, including offering(s) of mutual trust units in Canada.”*⁴ In contrast, the loans for Creditors in Destin, Summerlin, and Trailwinds had a maturity date that was 24 months from the date of the Promissory Note.⁵
17. The stated purpose of these loans under the Private Placement was to purchase the development property and fund pre-construction activities.⁶ Mr. Marchant has stated that the repayment of the loans to the Creditors would have come from Phase 2 financing, be it development, construction, or other debt financing.⁷
18. The Private Placements were undertaken by a separate Manitoba Limited Partnership (the “Manitoba LP”) for each project, which then subsequently loaned the money to a Delaware Limited Partnership (the “Project LP”⁸) (e.g., Legacy Lifestyles Ocoee Project LP). The Project LPs were owned equally by the following parties, or corporations related thereto:⁹
 - a) Gregory Marchant (through 2501854 Ontario Inc. and Marchant Member Corp.);
 - b) BV ALF, LLC (through BV US, LLC) (“Barclay”), which is owned by David S. Coia (66.7%) and Daniel Vietto (33.3%); and,
 - c) LV Senior Housing LLC (“LVSH”), whose CEO is David Edwards.

⁴ See, for example, Dentons Phase 1 Closing Book for Legacy Lifestyle Project Ocoee Phase 1, Tab 9 (1018073 BC Ltd. Promissory Note), Section 10.

⁵ See, for example, Dentons Phase 1 Closing Book for Legacy Lifestyle Project Destin Phase 1, Tab 11 (1392530 Ontario Inc. Promissory Note), Section 10.

⁶ See, for example, Dentons Phase 1 Closing Book for Legacy Lifestyle Project Destin Phase 1, Tab 11 (1392530 Ontario Inc. Promissory Note), Section 5.

⁷ Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 34.

⁸ Each Project LP owned a Project LLC through which the actual development was to take place (e.g., see Limited Liability Company Agreement of Legacy Lifestyles Destin Property LLC, contained in the Dentons Legacy Lifestyles Project Destin Phase 1 Closing Book).

⁹ Source: Dentons LLP Phase 1 Closing Books for all Projects and Legacy Lifestyles Trailwinds Investor Presentation, dated April 14, 2017, page 13.



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Mr. Allan Rutman

September 8, 2022

3.2 Parties

3.2.1 Debtors and Related Entities

19. The Debtors, as defined in the Amended Order of Justice Conway, dated February 11, 2022, are defined as:
 - a) **The Manitoba LPs** – Legacy Lifestyles Destin LP, Legacy Lifestyles Summerlin LP, Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Ocoee LP, and Legacy Lifestyles Longleaf LP;
 - b) **The Manitoba GPs** – Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee GP Inc., and Legacy Lifestyles Longleaf GP Inc.; and,
 - c) **The Project LLCs (owned by the Project LPs)** – Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC, and Legacy Lifestyles Longleaf Property LLC.
20. As noted above, the Manitoba LPs borrowed money from the Creditors at interest rates of 30% per annum. The Manitoba GPs acted as general partners to the Manitoba LPs. Both the Manitoba LPs and Manitoba GPs were indirectly owned by Mr. Marchant.
21. The Project LLCs are Delaware corporations that held the development properties on behalf of, and are wholly-owned by, the Project LPs.¹⁰

3.2.2 Creditors

22. The Creditors are those entities which loaned money to the Manitoba LPs in 2016 and 2017. A full list of the Creditors can be found at Appendix A.
23. The amount of money loaned by the Creditors totaled approximately \$34 million.

3.2.3 Gregory Marchant and MM Realty Partners International

24. Gregory Marchant is an individual residing in Callander, Ontario.¹¹ As noted above, he is the indirect owner of the Manitoba LPs and Manitoba GPs. Additionally, Mr. Marchant holds a 1/3 interest in each of the Project LPs and Project General Partners (“Project GPs”).

¹⁰ The Project GPs (e.g., Legacy Lifestyles Ocoee Project GP LLC) are the general partners of the Project LPs.

¹¹ Source: Amended Statement of Claim, dated June 10, 2020, para. 4.



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Mr. Allan Rutman

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25. As described below, Mr. Marchant received Advisory Fees, Investment Management Fees, and Investment Structuring Fees from each of the Legacy Projects. Mr. Marchant also received Development Management Fees from the Trailwinds Legacy Project.
26. Mr. Marchant carried on business as MM Realty Partners International or MM Realty Partners International Inc., a real estate development business.¹²

3.2.4 *Hunter Milborne*

27. Hunter Milborne, one of the Defendants, is an individual residing in Toronto, Ontario.¹³
28. The Plaintiffs have alleged that Hunter Milborne was involved in the development of the Legacy Projects; however, according to Mr. Marchant, he was not.¹⁴

3.2.5 *Morgan Marchant*

29. Morgan Marchant, one of the Defendants, is Gregory Marchant's daughter. Ms. Marchant is a registered representative who was employed by Waverley Corporate Financial Services Ltd. ("Waverley").¹⁵
30. Ms. Marchant was also employed as Vice President and Director of MM Realty and as an Executive Officer of the Manitoba GPs.¹⁶
31. Some of the payments of the aforementioned fees charged by Mr. Marchant to the Legacy Projects were directed to Ms. Marchant.¹⁷

3.2.6 *Waverley Corporate Financial Services Ltd. ("Waverley")*

32. Waverley, one of the Defendants, is a registered exempt market dealer, incorporated under the laws of Ontario.¹⁸

¹² Source: Transcript from the Cross-Examination of Gregory Marchant, dated February 1, 2022, Questions 53 to 60.

¹³ Source: Amended Statement of Claim, dated June 10, 2020, para. 5.

¹⁴ Source: Amended Statement of Claim, dated June 10, 2020, para. 6 and Transcript from the Cross-Examination of Gregory Marchant, dated February 1, 2022, Questions 53 to 60.

¹⁵ Source: Amended Statement of Claim, dated June 10, 2020, para. 17.

¹⁶ Source: Amended Statement of Claim, dated June 10, 2020, para. 123.

¹⁷ Source: Bank Activity Summaries for each Legacy Project.

¹⁸ Source: Amended Statement of Claim, dated June 10, 2020, para. 7.



33. Waverley entered into Agency Agreements with all of the Manitoba LPs in order to act as a placement agent to sell Promissory Notes pursuant to the Private Placement for each Legacy Project. Waverley was compensated based on a percentage of the total value of the Promissory Notes it sold under the Private Placement.¹⁹

3.2.7 BV Alf, LLC (“Barclay”)

34. Barclay, one of the Defendants, is a real estate developer based in Tampa Bay, Florida and was a 1/3 owner in the Project LPs and Project GPs.²⁰
35. A Barclay entity (BV ALF Development Services LLC)²¹ entered into Development and Construction Management Services Agreements with each of the Project LLCs. Under these agreements, Barclay served as *“an exclusive independent contractor to supervise, furnish, and perform the functions and services necessary for the development and construction of the [Properties]...”*.²²
36. Barclay was compensated with a Development Fee equal to 5% of each Project Budget and a Construction Management Fee equal to 4% of the Project Budget.²³ Each of these fees were payable monthly, independent of project progress.²⁴
37. In the Phase 1 pre-construction budgets (defined below), Barclay was allocated approximately \$1 million for each Legacy Project.
38. Barclay pulled out of the Legacy projects entirely in or around 2019.²⁵ We understand that the specific Barclay entity that owned 1/3 of the Project LPs (i.e., BV US, LLC) is currently inactive.²⁶

¹⁹ Source: Agency Agreements between Manitoba LPs and Waverley Corporate Financial Services Ltd.

²⁰ Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 16. BV Alf, LLC is an active company per sunbiz.org.

²¹ BV ALF Development Services, LLC is an active company per sunbiz.org.

²² Source: Development and Construction Management Services Agreements.

²³ The Project Budgets are summarized in Appendix B.

²⁴ Source: Development and Construction Management Services Agreements, Sections 4.2 and 4.3.

²⁵ Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 26.

²⁶ Source: sunbiz.org.



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3.2.8 LV Senior Housing, LLC (“LVSH”)

- 39. LVSH, one of the Defendants, based in Fort Myers, Florida, was a 1/3 owner of the Project LPs and Project GPs, which was to act as the Legacy Project’s operator.²⁷
- 40. Over the course of the development LVSH charged fees to the Legacy Projects, primarily for sales and marketing services.
- 41. LVSH pulled out of the Legacy projects entirely in or around 2019 and we understand is currently inactive.²⁸

4.0 INTERIM WORK TO DATE

- 42. Based on discussions with Mr. Marchant, we understand that each project had a pre-construction, or “Phase 1”, budget that was made available to all creditors of the Legacy Projects in an online data room. These budgets estimated the costs required to complete the pre-development work on each Project (i.e., to get the projects “shovel-ready”), at which point the projects would be refinanced and the Phase 1 Creditors would be repaid.²⁹
- 43. Our review to date has focused on comparing the budgeted cash flows for each Project to their actual spending (i.e., a “budget-to-actual comparison”). Mr. Marchant prepared a budget-to-actual comparison for the Ocoee project, which is summarized at a high level below:

²⁷ Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 16.

²⁸ Source: Affidavit of Gregory Marchant, dated December 20, 2021, para. 26 and sunbiz.org.

²⁹ Mr. Marchant has also indicated that the Phase 1 creditors may have continued as investors in Phase 2 in some capacity.



Table 2: Ocoee Budget-to-Actual Comparison

	Ocoee Use of Funds		
	Budget	Actual	Difference
	\$	\$	\$
Land	3,040,600	3,049,209	8,609
Permits	162,347	314,065	151,718
Professional Fees	442,744	584,495	141,751
Administrative	591,000	906,557	315,557
Development and Other Fees	2,649,500	3,620,849	971,349
Total Cost	6,886,191	8,475,175	1,588,984

Source: Schedule 1.

44. Based on Mr. Marchant's categorization in his Ocoee budget-to-actual comparison, we prepared similar analyses for the other four Legacy Projects (refer to Schedules 2 to 5). A summary of total budgeted costs to actual costs is shown below:

Table 3: Total Budget vs. Actual Costs

	Total Costs		
	Budget	Actual	Difference
	\$	\$	\$
Ocoee	6,886,191	8,475,175	1,588,984
Longleaf	4,500,000	4,907,324	407,324
Destin	6,450,000	6,796,786	346,786
Summerlin	5,850,000	5,730,339	(119,661)
Trailwinds	10,100,000	8,881,381	(1,218,619)
Total	33,786,191	34,791,005	1,004,814

Source: Schedules 1 to 5.

45. On an overall basis, we found that the Legacy Projects were not able to achieve their Phase 1 pre-development goals within the budgeted funds. Some of our specific findings are detailed in the sections below.³⁰

³⁰ The issues highlighted below are those associated with the largest amount of overspending or underspending compared to budget. This is not meant to be an exhaustive list of our findings to date.



4.1 Inter-Project Lending

46. In order to identify inter-project movement of funds, we compared the budgeted sources of funding for each project (i.e., the loans advanced by the Creditors) to the actual sources of funding for each of the Legacy Projects.
47. Based on this analysis, we determined that a portion of the borrowed funds from certain Legacy Projects were used to fund other projects by:
 - a) Directly advancing the funds to other Legacy Projects; and/or
 - b) Paying expenses on behalf of other Legacy Projects; and/or,
 - c) Paying the balance owing to Barclay for expenses incurred on behalf of other projects.³¹
48. The amounts due to/due from one Legacy Project to another were recorded in each project's general ledger. As at the date of the most recent general ledger,³² Trailwinds had advanced approximately \$1.46 million to other projects, almost all of which (i.e., \$1.43 million) had directly or indirectly been used at Ocoee.³³ As a result, Ocoee has spent more than it borrowed from the Creditors, and Trailwinds has spent less than it originally borrowed.
49. As noted above, whereas the Project LPs all had common ownership (i.e., Mr. Marchant, Barclay, and LVSH), the Creditors advanced funds to the Manitoba LPs for specific Legacy Projects (refer to Appendix A).

³¹ As the project development and construction manager, Barclay paid certain expenses on behalf of the Legacy Projects and kept a running tally in the Legacy Project's general ledger for amounts owing to Barclay. In certain instances, one Legacy Project would pay another project's balance owing to Barclay.

³² Contained in document titled "Legacy trial balance and activity (2017 on)".

³³ The amounts owing to/from Destin, Summerlin, and Longleaf were fairly small (i.e., ranging from \$70,000 to \$180,000). These projects were generally used as intermediaries for the funds transferred from Trailwinds to Ocoee.



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50. Mr. Marchant indicated that the reason that money from one project was used to pay expenses of another was because *“there was a confluence of events that quickly changed the entire business plan for each project from a small stand-alone project to one of 5 projects being operated and financed as one.”*³⁴

4.2 Development and Other Fees Paid

4.2.1 Payments to Three Project Owners

Gregory Marchant

51. Mr. Marchant received the following fees from each project:
- a) Advisory Fee – a fixed fee for services related to the sourcing of capital for each project;³⁵
 - b) Investment Structuring Fee – a fixed fee for the *“structure of the investment program in Canada and the United States as stipulated at the time of this contract execution”*;³⁶
 - c) Investment Management Fee – an annual fee of \$100,000 per Project for providing management assistance and related services to the Legacy Project’s general partner (e.g., coordinating the preparation of financial statements, tax returns, etc.);³⁷ and,
 - d) Development Management Fee – Barclay shared part of its budgeted Development and Construction Management Fee (discussed below) with Mr. Marchant on the Trailwinds Project.

³⁴ Memo from Phillip Millar and Gregory Marchant to Cohen Hamilton Steger, dated June 7, 2022, Preamble. For example, Mr. Marchant indicated that certain expenses incurred by earlier projects directly benefited later projects and there were certain suppliers that provided services to all applicable projects and did not want to be paid with multiple cheques (i.e., one project paid the expense on behalf of all projects and this was recorded in a due to/due from account).

³⁵ See, for example, Advisory Service Agreement between Legacy Lifestyles Ocoee L.P. and Greg Marchant, dated January 1, 2016, in which Mr. Marchant would earn a fee of \$159,984. This fixed fee varies by project.

³⁶ See, for example, Investment Structuring Management Agreement between Legacy Lifestyles Ocoee L.P., Legacy Lifestyles Ocoee GP, and Greg Marchant, dated January 1, 2016, in which Mr. Marchant would earn a fee of \$400,000. This fixed fee varies by Legacy Project.

³⁷ See, for example, Management Agreement between Legacy Lifestyles Ocoee L.P., Legacy Lifestyles Ocoee GP, and Greg Marchant, dated January 1, 2016.



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52. Mr. Marchant provided us with the following chart, which indicates that the budgeted fees for Mr. Marchant were either fully paid or continue to have a balance owing:

Table 4: Greg Marchant Budgeted and Actual Fees

Project	February 11, 2022				Total Fees (\$)	Total Fees, as a % of Funds Raised
	Advisory	Investment Structuring	Investment Management	Development Management		
Ocoee, FL						
Budget	159,984	400,000	490,000	-	1,049,984	
Third Party	-	(165,802)	-	-	(165,802)	
Net Budget	159,984	234,198	490,000	-	884,182	
Greg Marchant	(159,846)	(207,490)	(231,430)	-	(598,766)	8.7%
Budget Remaining	138	26,708	258,570	-	285,416	
Longleaf, FL						
Budget	90,000	200,000	503,014	-	793,014	
Third Party	-	(185,483)	-	-	(185,483)	
Net Budget	90,000	14,517	503,014	-	607,531	
Greg Marchant	(90,004)	(4,903)	(339,861)	-	(434,768)	9.7%
Budget Remaining	(4)	9,614	163,153	-	172,763	
Destin, FL						
Budget	128,952	450,000	486,849	-	1,065,801	
Third Party	-	(111,868)	-	-	(111,868)	
Net Budget	128,952	338,132	486,849	-	953,933	
Greg Marchant	(128,952)	(302,349)	(284,304)	-	(715,605)	11.1%
Budget Remaining	-	35,783	202,545	-	238,328	
Ft. Myers, FL ("Summerlin")						
Budget	115,300	450,000	453,425	-	1,018,725	
Third Party	-	(137,768)	-	-	(137,768)	
Net Budget	115,300	312,232	453,425	-	880,957	
Greg Marchant	(114,300)	(276,856)	(245,586)	-	(636,742)	11.0%
Budget Remaining	1,000	35,377	207,839	-	244,215	
Wildwood, FL ("Trailwinds")						
Budget	277,420	441,500	395,342	125,000	1,239,262	
Third Party	-	(217,524)	-	-	(217,524)	
Net Budget	277,420	223,976	395,342	125,000	1,021,738	
Greg Marchant	(277,420)	(219,589)	(286,388)	(125,000)	(908,397)	9.0%
Budget Remaining	-	4,387	108,954	-	113,341	
Total Budget Remaining/Owing	1,134	111,868	941,061	-	1,054,063	

Source: Memo from Phillip Millar and Gregory Marchant to Cohen Hamilton Steger, dated June 7, 2022, Response to Question 7(i)(a).

