



This is Affidavit #1 of Alice Jarvis  
in this proceeding and was made on  
June 11, 2025.

No. S-244252  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK,  
and AMERICAN HOME ASSURANCE COMPANY

PETITIONERS

AND

SCREO I METROTOWN INC., and SCREO I METROTOWN L.P.

RESPONDENTS

AFFIDAVIT #1 OF ALICE JARVIS

I, Alice Jarvis, Paralegal, of 1200 – 200 Burrard Street, Vancouver, British Columbia, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am a Paralegal at Borden Ladner Gervais LLP (“BLG”), solicitors for Timbercreek Mortgage Servicing Inc. (“**Timbercreek**”), a secured creditor of SCREO I Metrotown Inc. and SCREO I Metrotown L.P., and as such have personal knowledge of the facts and matters herein deposed to, except where stated to be based on information and belief, in which case I believe them to be true.
2. I am advised by Jack Maslen, lawyer at BLG, and verily believe that, on June 3, 2025, Mr. Maslen caused to be served, via email, a true copy of Timbercreek’s Notice of Application for Distribution filed on June 2, 2025, to the Service List (as described therein). Attached and marked as **Exhibit “A”** to this Affidavit is a true copy of the email correspondence from Mr. Maslen dated June 3, 2025.

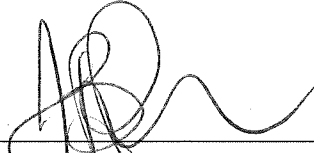
SWORN BEFORE ME in the City of Vancouver,  
in the Province of British Columbia, this 11<sup>th</sup> day  
of June, 2025.

A Commissioner for taking Affidavits for British  
Columbia

**JENNIFER PEPPER**  
*Barrister & Solicitor*  
**BORDEN LADNER GERVAIS LLP**  
1200 Waterfront Centre, 200 Burrard Street  
P.O. Box 48600, Vancouver, Canada V7X 1T2  
604-640-4106

  
ALICE JARVIS

This is **Exhibit "A"** referred to in **Affidavit #1** of  
Alice Jarvis made before me  
on June 11, 2025

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke.

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A Commissioner for taking Affidavits  
for British Columbia

**Jarvis, Alice**

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**From:** Maslen, Jack  
**Sent:** June 3, 2025 12:03 PM  
**To:** Federico, Cassandra; Pepper, Jennifer; Denton, Chelsea; Schultz, Jordan; Arenas, Avic; Sidhu, Nav; pinky.law@alvarezandmarsal.com; atillman@alvarezandmarsal.com; marianna.lee@alvarezandmarsal.com; preardon@nst.ca; kstrong@nst.ca; lwilliams@mccarthy.ca; abowron@mccarthy.ca; tjeffries@farris.com; aryo.shalviri@blakes.com; mdhaliwal@lawsonlundell.com; gd@gdlaw.ca; Lee J. Marriner; Madsen, David T.  
**Subject:** The United State Life Insurance Company in the City of New York et al v. Screo I Metrotown Inc. et al; SCBC Action No. S244252; Vancouver Registry  
**Attachments:** 2025-06-03 - Letter to Service List - Notice of Application(202295143.2).pdf; FILED Notice of Application.pdf

To the Service List,

Please see attached our correspondence of today.

Regards,

**Jack Maslen**

**Partner**

T 403.232.9790 | [JMaslen@blg.com](mailto:JMaslen@blg.com)

Centennial Place, East Tower, 1900, 520 – 3rd Ave. SW, Calgary, AB, Canada T2P 0R3

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Borden Ladner Gervais LLP

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June 3, 2025

**DELIVERED VIA EMAIL TO THE SERVICE LIST**

Dear Sirs/Mesdames:

**RE:** *The United States Life Insurance Company in the City of New York et al. v. and SCREO I Metrotown Inc. and SCREO I Metrotown L.P.* SCBC No. S-244252

**Notice of Application for Distribution to Timbercreek Returnable June 16, 2025  
(the "Application")**

We are counsel for Timbercreek Mortgage Servicing Inc., a secured creditor of SCREO I Metrotown Inc. and SCREO I Metrotown L.P.

Further to the above-referenced matter, please find enclosed for service upon you, a copy of our client's Application returnable June 16, 2025. Our client's supporting affidavit was previously provided in our correspondence of May 7, 2025.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

**BORDEN LADNER GERVAIS LLP**



**Jack R. Maslen**  
Enclosure

cc: Client  
David T. Madsen, K.C., Borden Ladner Gervais LLP

NO. S-244252  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK, and  
AMERICAN HOME ASSURANCE COMPANY

PETITIONERS

AND:

SCREO I METROTOWN INC., and SCREO I METROTOWN L.P.

RESPONDENTS

**SERVICE LIST**

(As at November 19, 2024)

Receiver's website: <https://www.alvarezandmarsal.com/screometrotown>

<b>COUNSEL:</b>	<b>PARTY(IES):</b>
Dentons Canada LLP 20 <sup>th</sup> Floor – 250 Howe Street Vancouver, BC V6C 3R8  Phone No. 604.687.4460  Attention:       Jordan Schultz Cassandra Federico  Email: <a href="mailto:jordan.schultz@dentons.com">jordan.schultz@dentons.com</a> <a href="mailto:cassandra.federico@dentons.com">cassandra.federico@dentons.com</a> <a href="mailto:avic.arenas@dentons.com">avic.arenas@dentons.com</a> <a href="mailto:chelsea.denton@dentons.com">chelsea.denton@dentons.com</a> <a href="mailto:nav.sidhu@dentons.com">nav.sidhu@dentons.com</a>	<i>Counsel for the court-appointed Receiver, Alvarez &amp; Marsal Canada Inc.</i>
Alvarez & Marsal Canada Inc. Licensed Insolvency Trustee Cathedral Place Building 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2  Phone No. 604.639.0845  Attention:       Pinky Law Anthony Tillman  Email: <a href="mailto:pinky.law@alvarezandmarsal.com">pinky.law@alvarezandmarsal.com</a> <a href="mailto:atillman@alvarezandmarsal.com">atillman@alvarezandmarsal.com</a> <a href="mailto:marianna.lee@alvarezandmarsal.com">marianna.lee@alvarezandmarsal.com</a>	<i>Court-Appointed Receiver</i>

COUNSEL:	PARTY(IES):
<p>Nathanson, Schachter &amp; Thompson LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Phone No.</p> <p>Attention: Peter J. Reardon Kayla K. Strong</p> <p>Email: <a href="mailto:preardon@nst.ca">preardon@nst.ca</a> <a href="mailto:kstrong@nst.ca">kstrong@nst.ca</a></p>	<p><i>Counsel for the Petitioners, The United States Life Insurance Company In The City Of New York and American Home Assurance Company</i></p>
<p>Blake, Cassels &amp; Graydon LLP 199 Bay Street Suite 4000 Commerce Court West Toronto, ON M5L 1A9</p> <p>Phone No. 416.863.2400</p> <p>Attention: Aryo Shalviri</p> <p>Email: <a href="mailto:aryo.shalviri@blakes.com">aryo.shalviri@blakes.com</a></p>	<p><i>Co-Counsel for the Petitioners, The United States Life Insurance Company In The City Of New York and American Home Assurance Company</i></p>
<p>McCarthy Tetrault LLP 2400- 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Phone No. 604.643.7154</p> <p>Attention: Lance Williams Ashley Bowron</p> <p>Email: <a href="mailto:lwilliams@mccarthy.ca">lwilliams@mccarthy.ca</a> <a href="mailto:abowron@mccarthy.ca">abowron@mccarthy.ca</a></p>	<p><i>Counsel for SCREO I Metrotown Inc. and SCREO I Metro town L.P.</i></p>
<p>Borden Ladner Gervais LLP 1200 Waterfront Centre, 200 Burrard Street P.O. Box 48600 Vancouver, BC, V7X 1T2</p> <p>Phone No. 604.640.4106</p> <p>Attention: Jennifer Pepper David Madsen Jack Maslen</p> <p>Email: <a href="mailto:JPepper@blg.com">JPepper@blg.com</a> <a href="mailto:DMadsen@blg.com">DMadsen@blg.com</a> <a href="mailto:JMAslen@blg.com">JMAslen@blg.com</a></p>	<p><i>Counsel for Timbercreek Mortgage Servicing Inc.</i></p>

COUNSEL:	PARTY(IES):
Farris LLP 700 W Georgia St #2500 Vancouver, BC V7Y 1B3  Phone No. 604.661.2174  Attention:     Tevia Jeffries  Email: <a href="mailto:tjeffries@farris.com">tjeffries@farris.com</a>	<i>Counsel for City of Burnaby</i>
Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2  Phone No. 604.631.6742  Attention : Mandeep Dhaliwal  Email : <a href="mailto:mdhaliwal@lawsonlundell.com">mdhaliwal@lawsonlundell.com</a>	<i>Counsel for Westmount West Services Inc.</i>
Gehlen Dabbs Cash LLP 1201-1030 W Georgia Street Vancouver, BC V6E 2Y3  Phone No. 604.642.6422  Attention Geoffrey H. Dabbs  Email : <a href="mailto:gd@gdlaw.ca">gd@gdlaw.ca</a>	<i>Counsel for Metro Vancouver Water Services</i>

#### EMAIL SERVICE:

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No. S-244252  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK,  
and AMERICAN HOME ASSURANCE COMPANY

PETITIONERS

AND

SCREO I METROTOWN INC., and SCREO I METROTOWN L.P.

RESPONDENTS

NOTICE OF APPLICATION

**Name of Applicant:** Timbercreek Mortgage Servicing Inc. (“**Timbercreek**”).

**On Notice To:** The Service List, a copy of which is attached as **Schedule “A”** hereto.

**TAKE NOTICE** that an application will be made by Timbercreek to the Honourable Justice Brongers at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on June 16, 2025 at 10:00 am for the Orders set out in Part 1 below (the “**Application**”).

Timbercreek estimates that the application will take not more than one (1) day.

This matter is not within the jurisdiction of an associate judge.

**PART 1: ORDERS SOUGHT**

1. An Order substantially in the form attached as **Schedule “B”** hereto.
2. Such further and other orders, declarations, and directions as counsel may request and this Honourable Court may deem to be just in the circumstances.

**PART 2: FACTUAL BASIS**

**Overview**

3. SCREO I Metrotown Inc. and SCREO I Metrotown L.P. (collectively, “**Metrotown**”) are special purpose vehicles.
4. Metrotown’s business comprised the ownership and development of two office towers in Burnaby, British Columbia (the “**Capital Point Towers**”). The legal address for the Capital Point Towers is PID: 031-357-881, Lot 1 District Lot 153 Group 1 New Westminster District Plan EPP107270 and the municipal addresses for the Capital Point Towers are: (i) Capital Tower 1: 4300-4330 Kingsway, Burnaby, B.C.; and (ii) Capital Tower 3: 5945 Kathleen Avenue, Burnaby, B.C.



5. Before the within receivership proceedings, on July 11, 2023, Metrotown granted Timbercreek a security interest in, and promised to transfer and set over, future net sale proceeds from the Capital Point Towers, pursuant to two Assignments of Proceeds (collectively, the “**Assignments of Proceeds**”). The Assignments of Proceeds were provided as collateral security for repayment obligations, totaling \$17,000,000, due to Timbercreek from affiliates of Metrotown.

6. These receivership proceedings commenced in July 2024. Pursuant to an Order of this Court granted on November 7, 2024 (the “**Approval and Vesting Order**”), Alvarez & Marsal Canada Inc. in its capacity as receiver of Metrotown (the “**Receiver**”) was authorized to sell the Capital Point Towers. The sale closed in late November 2024 and proceeds from the sale were applied by the Receiver to repay in full (i) the petitioners for these proceedings, the United States Life Insurance Company in the City of New York and American Home Assurance Company (collectively, the “**Petitioners**”), who held first-ranking mortgage security over the Capital Point Towers, and (ii) the Receiver’s borrowings. After paying these priority claims, there remains net proceeds from the sale of approximately \$11,400,000 (the “**Net Sale Proceeds**”).

7. On March 5, 2025, the Receiver filed an application for advice and direction (the “**Advice and Direction Application**”) regarding whether Timbercreek should be paid the Net Sale Proceeds in the receivership proceedings, whether Metrotown should be assigned into bankruptcy and/or whether Timbercreek would be a “secured creditor” within the meaning of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 (the “**BIA**”) which applies in a bankruptcy.

8. Greater Vancouver Water District (“**GVWD**”), an alleged unsecured creditor of Metrotown, filed an Application Response to the Advice and Direction Application on April 17, 2025 (the “**GVWD Response**”).

9. In the Advice and Direction Application and the GVWD Response, the Receiver and GVWD both admitted the validity and enforceability of Timbercreek’s security interest in the Net Sale Proceeds, in accordance with the *Personal Property Security Act*, RSBC 1996, c 359 (the “**PPSA**”). Further, it is common ground that Timbercreek is now Metrotown’s only remaining secured creditor.

10. On May 12, 2025, the Honourable Justice Brongers adjourned the Advice and Direction Application to permit the parties to file supplemental or alternative applications, which would be heard on June 16, 2025. As a result, Timbercreek has filed the within Application.

11. Simply stated, Timbercreek is entitled to the Net Sale Proceeds as a matter of receivership law. This follows directly from Timbercreek’s first-priority security interest created and perfected in accordance with the *PPSA*. Further, the only process before this Court is the receivership of Metrotown, and there is a

court-ordered stay of proceedings in place which (all else being equal) bars and precludes the commencement of any other process in respect of Metrotown. Timbercreek reasonably relied on the process presently underway, and fairness demands that the current process be brought to its completion by a distribution to Timbercreek.

12. Likewise, while court-appointed receivers owe fiduciary duties, and must act honestly and good faith *vis-à-vis* all stakeholders, that does not mean all economic interests have the same weight or that the rights of fulcrum secured creditors may be sacrificed in favour of the general body of unsecured creditors. The correct and established practice is for the Receiver to distribute the Net Sale Proceeds to Timbercreek, in accordance with the *PPSA*, irrespective of the impact that may have on unsecured creditors.

### **Factual Background**

13. Metrotown is affiliated with Slate Canadian Real Estate Opportunity Fund I LP (“**Slate CREO Fund**”). Specifically, Slate CREO Fund is the indirect shareholder of Metrotown. Slate CREO Fund is also an indirect shareholder of SCREO I 700 2ND Inc. and 58508 Alberta Ltd. (collectively, “**SCREO 700/585**”) and SCREO I Gill Inc. (“**SCREO Gill**”). Consequently, Slate CREO Fund, Metrotown, SCREO 700/585 and SCREO Gill are all affiliates.

First Report of the Receiver dated October 30, 2024 [First Report] at paras 3.1-3.3.  
Affidavit #1 of Scott Rowland made on May 7, 2025 [Rowland Affidavit] at paras 6 and 9.

14. Pursuant to a Loan Agreement dated November 27, 2018, as amended by certain loan amending agreements (collectively, the “**SCREO 700/585 Loan Agreement**”), Timbercreek, as lender, advanced to SCREO 700/585, as borrowers, certain loans (the “**SCREO 700/585 Loans**”).

Second Report of the Receiver dated March 5, 2025 [Second Report] at para 4.2 and Appendix “B”.  
Rowland Affidavit at para 13.

15. Additionally, pursuant to a Loan Agreement dated November 9, 2018, as amended by certain loan amending agreements (collectively, the “**SCREO Gill Loan Agreement**” and, together with the SCREO 700/585 Loan Agreement, the “**Timbercreek Loan Agreements**”), Timbercreek, as lender, advanced to SCREO Gill, as borrower, certain loans (the “**SCREO Gill Loans**” and, together with the SCREO 700/585 Loans, the “**Timbercreek Loans**”).

Second Report at para 4.2 and Appendix “A”.  
Rowland Affidavit at para 14.

16. Slate CREO Fund is also a limited guarantor and party to each of the Timbercreek Loan Agreements. The Timbercreek Loans are secured by real estate owned by SCREO 700/585 and SCREO Gill in Calgary, Alberta.

Second Report at para 4.2 and Appendices “A” and “B”, preamble.  
Rowland Affidavit at para 16.

17. On or about December 1, 2022, Timbercreek, SCREO 700/585 and Slate CREO Fund agreed to a Loan Amending Agreement (the “**SCREO 700/585 December Renewal**”). Further, on or about December 1, 2022, Timbercreek, SCREO Gill and Slate CREO Fund agreed to a Loan Amending Agreement (the “**SCREO Gill December Renewal**”, collectively, the “**December Renewals**”).

Second Report at Appendices “C” and “D”.  
Rowland Affidavit at paras 17-18.

18. The purpose of the December Renewals was to provide SCREO 700/585 and SCREO Gill extensions of the maturity dates for the Timbercreek Loans, from December 1, 2022 to September 1, 2024.

Second Report at Appendix “C” paras 3.1(b) and 6.1(e)(iii) and Appendix “D” paras 3.1(b) and 5.1(f)(iii).

19. As consideration to Timbercreek for the extensions under the December Renewals, SCREO 700/585 and SCREO Gill each agreed to make certain partial principal repayments of the Timbercreek Loans. Those payments would be due, in part, when Metrotown, the affiliate of SCREO 700/585 and SCREO Gill, sold the Capital Point Towers.

Second Report at Appendix “C” para 5.1 and Appendix “D” para 4.1.  
Rowland Affidavit at para 20.

20. A yet further condition of the December Renewals was for Metrotown to deliver to Timbercreek the Assignments of Proceeds for the Capital Point Towers, which Metrotown did on or about July 11, 2023. Among other things, Section 3 of both Assignments of Proceeds state that Metrotown “hereby absolutely pledges, mortgages, charges, assigns, transfers and sets over unto the Assignee [Timbercreek via its agent, nominee and bare trustee, Computershare Trust Company of Canada] all right, title and interest it has or may hereafter have in net sale proceeds (as defined in the December Renewal) ... as partial principal repayment of the [Timbercreek] Loan”.

Second Report at paras 4.6 and 4.8.  
Second Report at Appendix “C” para 6.1(e)(iii) and Appendix “D”, para 5.1(f)(iii).  
Second Report at Appendix “E” para 3 (for both Assignments of Proceeds).  
Rowland Affidavit at para 21 and 22.

21. The quantum of Timbercreek’s security interest in the “net sale proceeds” for the Capital Point Towers, under the Assignments of Proceeds, is determined by reference to the December Renewals. The December Renewals define Timbercreek’s entitlement as equaling:

- (a) the “greater of \$15,000,000 ... or 25% of the net sales proceeds” under the SCREO 700/585 Assignment of Proceeds; and
- (b) the “greater of \$2,000,000 ... or 10% of the net sales proceeds” under the SCREO Gill Assignment of Proceeds.

Second Report at paras 4.6 and 4.8.  
 Second Report at Appendix “C” para 5.1(b), Appendix “D” para 4.1(b),  
 and Appendix “E” para 3 (for both Assignments of Proceeds).

22. Accordingly, by virtue of the Assignments of Proceeds, Timbercreek has an aggregate secured claim in the Net Sale Proceeds of up to \$17,000,000. Timbercreek’s security interests pursuant to the Assignments of Proceeds were registered and perfected against Metrotown in the British Columbia Personal Property Security Registry (“PPR”) on or about September 1, 2023, as Base Registration No. 765423P. Computershare Trust Company of Canada, as agent, nominee and bare trustee for Timbercreek, is named in the registration.

Rowland Affidavit at para 25.  
 Affidavit #2 of Cheslea Denton made on March 5, 2025 [Second Denton Affidavit] at Exhibits “A”, “B” and “C”.

23. On or about November 7, 2024, the Receiver was granted the Approval and Vesting Order, which approved the sale of the Capital Point Towers to the City of Burnaby. The sale was completed in late November 2024, and the Receiver repaid the indebtedness owed to the Petitioners in full as well as the Receiver’s borrowings. According to the Receiver, there remains the Net Sale Proceeds of approximately \$11,400,000, which are being held in trust by the Receiver.

Order Made After Application (Approval and Vesting Order) entered on November 7, 2024 at paras 13 and 15-16.  
 Second Report at paras 1.4 and 1.5.

24. Timbercreek has not received the partial principal repayments contemplated by the December Renewals and Assignments of Proceeds triggered upon the sale of the Capital Point Towers, and its entitlement to same remains due, owing and enforceable against Metrotown.

Rowland Affidavit at para 28.

25. Further, PPR searches for Metrotown and a land title registry search for the Capital Point Towers (the latter being conducted prior to the Receiver’s sale of the Capital Point Towers) demonstrate that Timbercreek is the only secured creditor of Metrotown, given that the Petitioners have been repaid in full.

Second Denton Affidavit at Exhibits “A”, “B” and “C”.  
 Affidavit #1 of Cheslea Denton made on October 25, 2024 at Exhibit “A”.

### **PART 3: LEGAL BASIS**

#### **Legal Principles**

26. In Canada, receivers may be appointed by the Court under provincial laws and/or Section 243 of the *BIA*. Further, it is trite law that receiverships and bankruptcies are distinct processes. For example, Canadian courts have held that Section 243 of the *BIA* “is not part of the bankruptcy regime” and that a *BIA* receivership is “clearly independent of the bankruptcy remedy”.

*Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended, s 243 [*BIA*].

*Railside Developments Ltd. (Re)*, 2010 NSSC 13 [*Railside*] at paras 65-66.

27. Importantly, the *BIA* does not prescribe a distribution scheme for receiverships. When Parliament most recently overhauled the provisions in the *BIA* governing receiverships (in 2009), including by bringing into force the current Section 243 of the *BIA*, it did not include a scheme of distribution for receiverships.

*BIA*, s 243.

K. Meyer, G. Bowden & K. Khalfan, “The Development of Section 243 of the *Bankruptcy and Insolvency Act: Expanded Powers of a Court-Appointed Receiver*” (2024) Vol. 13-9 *Insolvency Institute of Canada (Articles)* [Meyer].  
*Railside* at paras 62 and 71.

28. Instead, distributions in receiverships are to be “determined according to ordinary non-insolvency law principles”. In other words, receivership distributions are determined by the priorities set out by applicable provincial laws, such as B.C.’s personal property security legislation or real property legislation. Specifically, the bankruptcy scheme of distribution “does not apply on a receivership” and is limited only to “proceeds realized from the property of a bankrupt”.

R. Wood, *Bankruptcy & Insolvency Law*, 2<sup>nd</sup> ed (Irwin Law, 2015) [Wood] at p 516.  
*Railside* at para 71.  
*BIA*, s 136.

29. The fact that provincial laws determine receivership distributions naturally follows from Parliament’s decision not to prescribe a receivership scheme of distribution under the *BIA*, and by Section 72(1) of the *BIA*, which requires Canadian Courts to apply applicable provincial property laws unless there is a clear conflict with the *BIA*. Section 72(1) of the *BIA* states:

#### **Application of other substantive law**

72(1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act. ... [underlining and bold added]

*BIA*, s 72(1).  
*Railside* at para 86.

30. The effect of Section 72(1) of the *BIA* is to preserve provincial law priorities for receivership distributions, and Section 72(1) has been described as the “primary mechanism for controlling the relationship between civil law ... and ... *Bankruptcy and Insolvency Act* receiverships”. Similarly, the Supreme Court of Canada has held that the provisions of the *BIA* concerning receiverships “cannot be said

to create a ‘complete code’” and that “Nothing in the text of the provision or the *BIA* more generally suggests that s. 243 is meant to be a comprehensive remedy, exclusive of provincial law”.

*Railside* at paras 86 and 89.  
*Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.*, 2015 SCC 53 at paras 48-49 and 67-68.  
 Meyer at p 13.

31. Simply put, Canadian law is clear: provincial law priorities apply to distributions in receiverships as a matter of principle.

### **Timbercreek is Entitled to Receive the Net Sale Proceeds**

32. As introduced above, the Receiver and GVWD have acknowledged in the Advice and Direction Application and the GVWD Response, respectively, that Timbercreek has a valid, enforceable and perfected security interest in the Net Sale Proceeds pursuant to the *PPSA*.

Notice of Application for Advice and Direction filed on March 5, 2025 [Advice and Direction Application] at para 41.  
 Application Response filed on April 17, 2025 at paras 17 and 21.

33. In particular, (i) Timbercreek holds signed security agreements from Metrotown, (ii) value was given by Timbercreek for the security interests, namely the loan extensions in favour of SCREO 700/585 and SCREO Gill under the December Renewals, (iii) the security interests have attached to the Net Sale Proceeds, and (iv) the security interests have been perfected through registration with the PPR.

Advice and Direction Application at paras 33-41.  
 Second Denton Affidavit at Exhibits “A”, “B” and “C”.

34. As Timbercreek has a valid, enforceable and perfected security interest in the Net Sale Proceeds, and since Timbercreek is the first-ranking (and now only) secured creditor in respect of the Net Sale Proceeds, it is entitled to a distribution of all of the sale proceeds held by the Receiver (less any fees and disbursements owed to the Receiver or its counsel, which are protected by the Receiver’s Charge under the Receivership Order). This is the straightforward application of applicable receivership law principles, and the *PPSA*, in accordance with the authorities outlined above.

35. Moreover, Timbercreek has participated in, and has not opposed steps in the within receivership proceedings, on the reasonable expectation that the *existing process* would be brought to its completion and its valid and enforceable security interest under the *PPSA* would be given effect. As the Supreme Court of Canada has held, fairness “permeates Canadian insolvency law and practice”. Departing from the existing process at this stage, and denying Timbercreek the distribution to which it is lawfully entitled, would not be fair or equitable. Fairness demands that Timbercreek be entitled to reasonably rely on its security interest and the normal receivership practice.

9354-9186 *Québec Inc v Callidus Capital Corp*, 2020 SCC 10 at para 75.

36. Unlike Timbercreek, GVWD could have, but did not at any time, seek any of its own security from Metrotown. GVWD is a sophisticated public body, with considerable resources, and it is fair, equitable and consistent with governing law, for GVWD to bear the loss from its own failure to secure its position.

37. There is also no basis to depart from the normal mode of distribution in this receivership, which entitles Timbercreek to the Net Sale Proceeds, as this Court has previously ordered a stay of proceedings barring the commencement of any different or other process in respect of Metrotown. While the Court retains the discretion to lift the receivership stay of proceedings, lifting the stay is exceptional relief and “not routine” and the party seeking to lift the stay “bears the burden of convincing the Court that that relief is appropriate”. Further, the putative harm suffered by the party seeking to lift the stay must be “different qualitatively from that suffered by other creditors”.

Order Made After Application (Receivership Order) entered on July 8, 2024 at para 8.  
*Alberta Energy Regulator v Lexin Resources Ltd*, 2019 ABQB 23 at paras 13-16.  
*Industrial Alliance Insurance et al v Wedgemount Power Limited Partnership*, 2018 BCSC 723 at paras 17-18.

38. The apparent prejudice suffered by GWVD, if any, is no different from any other creditor who did not secure its position. It is a prejudice of its own making. There is no basis for this Court to deviate from what receivership law otherwise requires to prefer the interests of GVWD or any other unsecured creditors.

39. Finally, while it is trite law that court-appointed receivers owe duties to all stakeholders, that “is not to say ...[the] court-appointed receiver should ignore the priority of interests of creditors in the realization process” or that the interests of all creditors are to be given the same weight. Rather, a court-appointed receiver’s “primary duty” is to “dispose of the assets and pay the proceeds to the secured creditor”.

McElcheran, Kevin P, *Commercial Insolvency in Canada*, 4<sup>th</sup> ed (Toronto: LexisNexis, 2019), at para 4.105.  
 Wood at p 516.

40. Canadian Courts similarly hold that where there is a shortfall of the assets of a receivership debtor, such that the fulcrum “secured creditors will not be paid in full”, it is correct for a court-appointed receiver to refrain from conducting any formal claims process for unsecured creditors, since there is nothing to allocate. In such circumstances, a claims process for unsecured creditors is unnecessary and unduly costly.

*Alignvest Private Debt Ltd v Naber Specialty Grains Ltd*, 2016 SKQB 152, at paras 15 and 20.

41. In this instant matter, the Receiver’s primary duty is to distribute the Net Sale Proceeds to Timbercreek in satisfaction of its undisputed first-priority secured claim under the *PPSA*. The Receiver, and this Court, can and respectfully should direct a distribution to Timbercreek, irrespective of the impact on subordinate creditors.

42. For all of the foregoing reasons, together with such other submissions as counsel may advance and the Court may permit at the hearing of the Application, Timbercreek respectfully seeks distribution of the Net Sale Proceeds from the Receiver.

**PART 4: MATERIAL TO BE RELIED ON**

- 43. Affidavit #1 of Chelsea Denton made on October 25, 2024.
- 44. Affidavit #2 of Chelsea Denton made on March 5, 2025.
- 45. Affidavit #1 of Robert Kates made on April 16, 2025.
- 46. Affidavit #1 of Scott Rowland made on May 7, 2025.
- 47. The First Report of the Receiver dated October 30, 2024.
- 48. The Second Report of the Receiver dated March 5, 2025.
- 49. The Order Made After Application (Receivership Order) entered on July 8, 2024.
- 50. The Order Made After Application (Approval and Vesting Order) entered on November 7, 2024.
- 51. The Receiver's Notice of Application (Advice and Direction) filed on March 5, 2025.
- 52. GVWD's Application Response to the Advice and Direction Application filed on April 17, 2025.
- 53. The pleadings and proceedings had and taken herein.
- 54. Such other materials or documents as this Honourable Court may permit.


**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;



- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: June 2, 2025

  
 Signature of Jack R. Maslen

☐ applicant ☒ lawyer for Applicant, Timbercreek  
 Mortgage Servicing Inc.

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of  
 this notice of application

☐ with the following variations and additional terms:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date: \_\_\_\_\_

Signature of ☐ Judge ☐ Associate Judge

**APPENDIX****THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

**SCHEDULE "A"**

**Parties Served**

*[See attached Service List.]*

NO. S-244252  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK, and  
AMERICAN HOME ASSURANCE COMPANY

PETITIONERS

AND:

SCREO I METROTOWN INC., and SCREO I METROTOWN L.P.

RESPONDENTS

**SERVICE LIST**

(As at November 19, 2024)

Receiver's website: <https://www.alvarezandmarsal.com/screometrotown>

<b>COUNSEL:</b>	<b>PARTY(IES):</b>
Dentons Canada LLP 20 <sup>th</sup> Floor – 250 Howe Street Vancouver, BC V6C 3R8  Phone No. 604.687.4460  Attention: Jordan Schultz Cassandra Federico  Email: <a href="mailto:jordan.schultz@dentons.com">jordan.schultz@dentons.com</a> <a href="mailto:cassandra.federico@dentons.com">cassandra.federico@dentons.com</a> <a href="mailto:avic.arenas@dentons.com">avic.arenas@dentons.com</a> <a href="mailto:chelsea.denton@dentons.com">chelsea.denton@dentons.com</a> <a href="mailto:nav.sidhu@dentons.com">nav.sidhu@dentons.com</a>	<i>Counsel for the court-appointed Receiver,  Alvarez &amp; Marsal Canada Inc.</i>
Alvarez & Marsal Canada Inc. Licensed Insolvency Trustee Cathedral Place Building 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2  Phone No. 604.639.0845  Attention: Pinky Law Anthony Tillman  Email: <a href="mailto:pinky.law@alvarezandmarsal.com">pinky.law@alvarezandmarsal.com</a> <a href="mailto:atillman@alvarezandmarsal.com">atillman@alvarezandmarsal.com</a> <a href="mailto:marianna.lee@alvarezandmarsal.com">marianna.lee@alvarezandmarsal.com</a>	<i>Court-Appointed Receiver</i>

COUNSEL:	PARTY(IES):
<p>Nathanson, Schachter &amp; Thompson LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Phone No.</p> <p>Attention: Peter J. Reardon Kayla K. Strong</p> <p>Email: <a href="mailto:preardon@nst.ca">preardon@nst.ca</a> <a href="mailto:kstrong@nst.ca">kstrong@nst.ca</a></p>	<p><i>Counsel for the Petitioners, The United States Life Insurance Company In The City Of New York and American Home Assurance Company</i></p>
<p>Blake, Cassels &amp; Graydon LLP 199 Bay Street Suite 4000 Commerce Court West Toronto, ON M5L 1A9</p> <p>Phone No. 416.863.2400</p> <p>Attention: Aryo Shalviri</p> <p>Email: <a href="mailto:aryo.shalviri@blakes.com">aryo.shalviri@blakes.com</a></p>	<p><i>Co-Counsel for the Petitioners, The United States Life Insurance Company In The City Of New York and American Home Assurance Company</i></p>
<p>McCarthy Tetrault LLP 2400- 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Phone No. 604.643.7154</p> <p>Attention: Lance Williams Ashley Bowron</p> <p>Email: <a href="mailto:lwilliams@mccarthy.ca">lwilliams@mccarthy.ca</a> <a href="mailto:abowron@mccarthy.ca">abowron@mccarthy.ca</a></p>	<p><i>Counsel for SCREO I Metrotown Inc. and SCREO I Metro town L.P.</i></p>
<p>Borden Ladner Gervais LLP 1200 Waterfront Centre, 200 Burrard Street P.O. Box 48600 Vancouver, BC, V7X 1T2</p> <p>Phone No. 604.640.4106</p> <p>Attention: Jennifer Pepper David Madsen Jack Maslen</p> <p>Email: <a href="mailto:JPepper@blg.com">JPepper@blg.com</a> <a href="mailto:DMadsen@blg.com">DMadsen@blg.com</a> <a href="mailto:JMAslen@blg.com">JMAslen@blg.com</a></p>	<p><i>Counsel for Timbercreek Mortgage Servicing Inc.</i></p>

COUNSEL:	PARTY(IES):
Farris LLP 700 W Georgia St #2500 Vancouver, BC V7Y 1B3 Phone No. 604.661.2174 Attention: Tevia Jeffries Email: <a href="mailto:tjeffries@farris.com">tjeffries@farris.com</a>	<i>Counsel for City of Burnaby</i>
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Gehlen Dabbs Cash LLP 1201-1030 W Georgia Street Vancouver, BC V6E 2Y3 Phone No. 604.642.6422 Attention Geoffrey H. Dabbs Email : <a href="mailto:gd@gdlaw.ca">gd@gdlaw.ca</a>	<i>Counsel for Metro Vancouver Water Services</i>

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**SCHEDULE "B"****Form of Order**

*[See attached.]*

No. S-244252  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK,  
and AMERICAN HOME ASSURANCE COMPANY**

PETITIONERS

AND

**SCREO I METROTOWN INC., and SCREO I METROTOWN L.P.**

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE

)

June 16, 2025

JUSTICE BRONGERS

)

)

**ON THE APPLICATION** of Timbercreek Mortgage Servicing Inc. ("**Timbercreek**"), coming on for hearing at Vancouver, British Columbia on June 16, 2025, **AND ON HEARING** from counsel for Timbercreek and those other counsel listed in **Schedule "A"** attached hereto (if any); **AND UPON** reading the pleadings had and filed herein, including the Affidavit #1 of Scott Rowland filed on May 7, 2025;

**THE COURT ORDERS AND DECLARES THAT:**

1. Unless otherwise indicated, capitalized terms have the meanings given to them in Timbercreek's Notice of Application dated June 2, 2025 (the "**Application**").
2. The time for service of the Application, together with all supporting materials, is hereby declared to be good and sufficient and no other person is required to have been served with such documents, and this hearing is properly returnable before this Court today and any further service thereof is hereby dispensed with.
3. Alvarez & Marsal Canada Inc. in its capacity as receiver (the "**Receiver**") of SCREO I Metrotown Inc. and SCREO I Metrotown L.P. (the "**Debtors**"), is hereby authorized and directed to distribute all of the net sale proceeds it is currently holding from the sale of the Capital Point Towers to



Timbercreek, as partial satisfaction of Timbercreek's secured claim against the Debtors, less a holdback amount of \$100,000 (the "**Holdback**").

4. The Receiver is hereby authorized and directed to use the Holdback to satisfy the Receiver's remaining costs, professional fees, and the fees and disbursements of its legal counsel, which have been already incurred (and are unpaid) or may be incurred up to the Receiver's final discharge. If, following the Receiver's final discharge, a portion of the Holdback remains in the Receiver's trust account, then such residual amount shall be distributed to Timbercreek without further Order of this Court.
5. Service of this Order shall be deemed good and sufficient by serving this Order, via email, on the electronic service list maintained by the Receiver for this matter, and any other service is hereby dispensed with.

**THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:**

\_\_\_\_\_  
Signature of Jack R. Maslen

☐ party ☒ lawyer for Timbercreek Mortgage Servicing Inc.

\_\_\_\_\_  
Signature of Jordan Schultz

☐ party ☒ lawyer for Alvarez & Marsal Canada Inc.

\_\_\_\_\_  
Signature of Lee Marriner

☐ party ☒ lawyer for Greater Vancouver Water District

\_\_\_\_\_  
Registrar

## SCHEDULE "A"

## List of Counsel Appearing

COUNSEL	PARTY REPRESENTED
Jack R. Maslen Jennifer Pepper	Timbercreek Mortgage Servicing Inc.
Jordan Schultz Cassandra Federico	Alvarez & Marsal Canada Inc., as court-appointed Receiver
Lee Marriner	Greater Vancouver Water District