



S-244 252

No.

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

PETITION TO THE COURT

ON NOTICE TO:

SCREO I METROTOWN INC.
Suite 200 – 121 King Street West
Toronto, Ontario, M5H 3T9

SCREO I METROTOWN L.P.
Suite 200 – 121 King Street West
Toronto, Ontario, M5H 3T9

This proceeding is brought for the relief set out in Part 1 below by THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK and AMERICAN HOME ASSURANCE COMPANY.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response To Petition

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the Petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioners is: c/o Nathanson, Schachter & Thompson LLP 750 – 900 Howe Street Vancouver, B.C. V6Z 2M4
	E-mail address for service of the Petitioners: <u>preardon@nst.ca</u> ; and <u>kstrong@nst.ca</u>
(3)	The name and office address of the Petitioners' lawyer is: Nathanson, Schachter & Thompson LLP 750-900 Howe Street Vancouver, BC, V6Z 2M4 Attention: Peter J. Reardon and Kayla K. Strong

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. An order substantially in the form attached as Schedule "A" (the "**Receivership Order**"):
 - (a) shortening, if necessary, the period for notice pursuant to Rule 22-4 of the *Supreme Court Civil Rules*, BC Reg 168/2009, as amended (the "**Rules of Court**");
 - (b) appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver and manager (the "**Receiver**") without security, of the real property described at paragraph 18 below (the "**Real Property**") and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the Real Property or which is necessary for the use and operation of the Real Property (the "**Properties**") of (i) SCREO I Metrotown Inc. (the "**Legal Owner**"), and (ii) SCREO I Metrotown L.P. (the "**Beneficial Owner**", and together with the Legal Owner, the "**Respondents**"), including the beneficial ownership interest in and to the Properties, whether held directly or indirectly by the Beneficial Owner for itself or

for others, pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**") and s. 39 of the *Law and Equity Act*, RSBC 1996, c. 253, as amended (the "**LEA**"), s. 66 of the *Personal Property Security Act*, RSBC 1996, c. 359, as amended (the "**PPSA**"), and Rule 10-2 of the Rules of Court;

- (c) awarding costs of this Petition to the Petitioners on a solicitor and own client basis; and
- (d) such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

Overview

1. This is an application for a receivership order by the senior secured creditors in respect of the Properties – vacant office towers located in Burnaby. It comes after the following key developments over the past more than two years: (a) several extensions of the loan maturity date; (b) the Respondents abandoning their redevelopment plans in favour of a sales process in May 2023; (c) the Petitioners agreeing to forbear exercise of their rights and remedies for several months; (d) nearly one year of the Respondents trying, without success, to close a transaction for the sale of the Properties; and (e) the Respondents having agreed to terms of a consent receivership order substantially in the form of the Receivership Order sought in this proceeding. The Petitioners have entirely lost faith in the ability of the Respondents to achieve a sale and seek to have a receiver appointed to run the sale process.

2. The Respondents are special purpose vehicles that were formed to acquire, own and develop the Real Property which, as further described below, consists of two vacant office towers located in Burnaby, British Columbia. The Respondents have no other business activity, do not generate any cash flow and their only material asset is the Real Property.¹

3. The Petitioners are related New York State corporations and part of the Corebridge group of companies. The Petitioners are in the business of, among other things, making commercial

¹ Affidavit of Jacob Baron, sworn on June 20, 2024 at para. 3 ("**Baron Affidavit**").

real estate loans. Collectively, the Petitioners are the senior secured creditors of the Respondents with security on the Properties.²

4. On March 12, 2019, the Legal Owner entered into a loan agreement ("**Loan Agreement**") with availability in the aggregate principal amount of \$88,308,000 (the "**Loan**") for the acquisition of the Real Property and for the (then) proposed residential and commercial development of the Real Property.³

5. As set out in greater detail below, the Loan was originally supposed to be repaid in April of 2022. Following numerous extensions and other accommodations from the Lenders, it went into default in August of 2023 and matured over nine months ago without being repaid.

6. For over ten months, Respondents have pursued the sale of the Real Property. These efforts have failed and the Loan has still not been repaid, notwithstanding the Demand Letters and Section 244 Notices (with such demands and notices further described below).⁴

7. As at June 10, 2024, the total amount of principal outstanding under the Loan Agreement is \$49,562,830.73 (together with all accrued costs, fees, expenses, any accrued and outstanding interest, and other amounts payable pursuant to the Loan Agreement, the "**Indebtedness**").⁵ The Petitioners applied the balance of the Interest Reserve (as defined below at para. 42(iv)(C)) to reduce the principal portion of the Indebtedness by \$600,000 to a total outstanding principal balance of \$48,962,830.73 as at June 20, 2024.

8. To secure the Indebtedness, the Legal Owner granted each of the Petitioners, among other things, a charge in respect of the Properties legally owned by it pursuant to a mortgage registered against the Properties on March 12, 2019 (the "**Mortgage**"). The Beneficial Owner guaranteed the Loan and granted security interests for the payment and performance of the obligations of the Legal Owner under the Loan Agreement.⁶

² Baron Affidavit at paras. 4, 23.

³ Baron Affidavit at paras. 5.

⁴ Baron Affidavit at paras. 7, 9.

⁵ Baron Affidavit at para. 6.

⁶ Baron Affidavit at paras. 5, 39.

9. The Loan had an original maturity date of April 1, 2022. As the original maturity date approached, the Respondents advised the Petitioners that they were not able to repay the Loan. Since that time, the Petitioners have repeatedly accommodated the Respondents by providing them with extensions of the maturity date from April 1, 2022 to September 1, 2023 and thereafter, by forbearing the exercise of the Petitioners' rights and remedies until June 8, 2024, in an effort to work cooperatively with the Respondents and provide them with time to repay the Loan, either by way of a refinancing or sale of the Real Property.

10. As a condition to the most recent extension of the maturity date to September 1, 2023, the Respondents were required to devise a sale or realization process that was satisfactory to the Petitioners by February 1, 2023. Despite being required to devise such sale or realization process, the Respondents did not do so until the end of July 2023.⁷

11. On August 1, 2023, the Respondents' failed to make the regularly scheduled monthly payment of interest under the Loan Agreement (the "**August Interest Payment**"). As a result, the Respondents defaulted under the Loan Agreement as of August 4, 2023, following expiry of the relevant cure period in connection with such non-payment.⁸

12. The Respondents retained RBC Capital Markets Real Estate Group and Cushman & Wakefield ULC on July 28, 2023 to launch a sale process for the Real Property. On or around February 2024, the individuals with primary responsibility for marketing the Real Property left Cushman & Wakefield ULC to join Jones Lang LaSalle (collectively, the "**Sale Advisors**"). Since their appointment, the Sale Advisors have extensively marketed the opportunity to acquire the Real Property to approximately 150 organizations and approximately 300 individuals.⁹

13. On or about October 20, 2023, the Respondents advised the Petitioners that they had received a non-binding letter of intent from an interested party (the "**Proposed Purchaser**") to acquire the Real Property, with closing anticipated to take place during the second quarter of 2024 (the transaction contemplated thereby, being the "**Proposed Transaction**"). Following extensive negotiations with the Respondents with a view to identifying a consensual path forward, the Petitioners agreed to provide the Respondents with a final accommodation and, on November

⁷ Baron Affidavit at para. 7.

⁸ Baron Affidavit at para. 8.

⁹ Baron Affidavit at para. 10-11.

13, 2023, entered into a Forbearance Agreement (as defined and described below) so as to provide the Respondents with the opportunity to pursue the Proposed Transaction.¹⁰

14. On December 7, 2023, the Beneficial Owner and the Proposed Purchaser entered into a binding purchase agreement (the “**Purchase Agreement**”), setting out the terms of the Proposed Transaction. The Purchase Agreement provided for (i) certain Diligence Conditions (as defined below) in favour of the Proposed Purchaser, which had to be satisfied or waived by no later than June 7, 2024, and (ii) closing on or before the end of July 2024 (provided that the Diligence Conditions were satisfied or waived).¹¹

15. The Proposed Purchaser did not waive the Diligence Conditions and, instead, requested an extension of the Diligence Conditions deadline to the third quarter of 2025. The Purchase Agreement between the Beneficial Owner and the Proposed Purchaser has been terminated. The failure of the Diligence Conditions to be satisfied or waived and the termination of the Purchase Agreement have given rise to “Termination Events” under the Forbearance Agreement.¹²

16. Over two years have passed since the Loan’s original maturity date and the Respondents have still not repaid the Indebtedness.¹³

17. The Petitioners have lost confidence in the Respondents’ ability to conduct a sale process and repay the Loan within a reasonable timeline. As the senior secured creditors of the Respondents, the Petitioners seek the appointment of the Receiver to realize upon the Real Property. As further set out below, in conjunction with entering into the Forbearance Agreement, the Respondents consented to an Order for the appointment of a receiver that is substantially in the form of the Receivership Order sought in this application (the “**Consent to Receivership Order**”).¹⁴

¹⁰ Baron Affidavit at paras. 12.

¹¹ Baron Affidavit at para. 13.

¹² Baron Affidavit at para. 14.

¹³ Baron Affidavit at para. 15.

¹⁴ Baron Affidavit at para. 16.

The Real Property and the Respondents' legal structure

18. As referenced above, the Real Property consists of two vacant office towers located in Burnaby, British Columbia. The real property that was municipally known as 4430 Kingsway Avenue, Burnaby, British Columbia is referred to by the Respondents as "**Tower 1**", and real property that was municipally known as 5945 Kathleen Avenue, Burnaby, British Columbia is referred to by the Respondents as "**Tower 3**". The parcel identifiers for Tower 1 and Tower 3 have since been consolidated and the current legal description for the Real Property is PID 031-357-881, Lot 1 District Lot 153 Group 1 New Westminster District Plan EPP107270.¹⁵

19. At the time the Loan was advanced, the Respondents intended on converting the two office towers into strata office and residential use with the intent for re-sale (the "**Redevelopment Project**") or to renovate the Real Property for the purposes of retaining them as commercial rental property.¹⁶ Over 62 months have elapsed since the Loan was advanced. During this time, the Respondents did not commence any construction to convert or renovate the Real Property. They ultimately abandoned the Redevelopment Project in May 2023.¹⁷

20. The Legal Owner holds legal title to the Properties as a bare nominee for the Beneficial Owner.¹⁸

Loan and Security Documents

21. On March 12, 2019, the Legal Owner was approved for the Loan, which was evidenced by, among other things, three promissory notes made by the Legal Owner in favour of the co-lenders (collectively, the "**Promissory Notes**").¹⁹

22. To secure the Indebtedness, the Legal Owner granted the Mortgage and a series of assignments in respect of the Properties to each of the Petitioners, including, but not limited to,

¹⁵ Baron Affidavit at paras. 17-18.

¹⁶ Baron Affidavit at paras. 19, 35.

¹⁷ Baron Affidavit at para. 29.

¹⁸ Baron Affidavit at para. 26.

¹⁹ Baron Affidavit at para. 32.

(i) the assignment of all leases and rents, (ii) the assignment of strata sales agreements, and (iii) the assignment of intellectual property (collectively, the “**Assignments**”).²⁰

23. In addition, the Respondents entered into a general security agreement with the Petitioners dated March 12, 2019 (the “**GSA**”). Under the GSA, each Respondent granted a security interest in all of its present and future property, both real and personal, in connection with the Properties.²¹

24. To further secure the Indebtedness and in addition to the GSA, the Beneficial Owner has, among other things, (i) agreed to be bound by the Loan and Security Documents (as defined below) and obligations thereunder, (ii) granted each of the Petitioners a security interest in and to all of its right, title and interest in and to the Properties, and all proceeds thereof, and (iii) postponed and subordinated all debts and liabilities of the applicable Legal Owner to it in favour of the Indebtedness owing to the Petitioners, pursuant to a direction to nominee and acknowledgement, dated March 12, 2019 (the “**Nominee Acknowledgement**”).²²

25. The Nominee Acknowledgement, Mortgage, Assignments, GSA, Promissory Notes and other loan and security documents, including those outlined below, entered into with the Respondents in connection with the Loan constitute the “**Loan and Security Documents**”.²³

26. Each of the Petitioners have also registered BC PPSA financing statements against each of the Respondents, along with corresponding Personal Property Security Act financing statements in Ontario.²⁴

Extensive accommodations by the Petitioners

27. The Loan had an original maturity date of April 1, 2022. Just prior to the original maturity date, the Respondents informed the Petitioners that they would not be able to repay the

²⁰ Baron Affidavit at para. 39.

²¹ Baron Affidavit at para. 40.

²² Baron Affidavit at paras. 34, 41.

²³ Baron Affidavit at para. 41.

²⁴ Baron Affidavit at para. 42.

outstanding principal coming due, which at that time was approximately \$63 million. The Petitioners agreed to provide the Respondents with a one-month extension.²⁵

28. Prior to the initial extended maturity date of May 1, 2022, the Respondents again informed the Petitioners that they would not be able to repay the outstanding principal coming due. The Petitioners again accommodated the Respondents by further extending the maturity date to September 1, 2022.²⁶

29. On August 1, 2022, the Respondents failed to pay interest when due and advised the Petitioners that they would again not be able to repay the outstanding principal coming due on September 1, 2022, notwithstanding the fact that they had just received two extensions to permit them to do so.²⁷

30. Once again, the Petitioners accommodated the Respondents and on August 31, 2022, the Petitioners and Respondents entered into a waiver agreement (the “**Waiver Agreement**”). The Respondents again failed to repay the Loan when the Waiver Agreement expired on September 30, 2022 and requested a further extension of the maturity date from the Petitioners. On October 7, 2022, the Petitioners sent the Respondents a reservation of rights letter and noted the Respondents in default for failing to repay the Indebtedness on September 30, 2022.²⁸

31. As part of considering the request for a further extension beyond September 30, 2022, the Petitioners received a business plan from the Respondents with two scenarios (the “**2022 Business Plan**”). In both scenarios, the Respondents indicated a plan to market one of the towers by the end of 2022, and to close on the sale of such tower by the second quarter of 2023. The Petitioners again agreed to accommodate the Respondents, in reliance upon, among other things, the 2022 Business Plan.²⁹

32. On October 31, 2022, the Petitioners and Respondents entered into an agreement that again extended the maturity date of the Loan, this time for a full year from September 1, 2022 until September 1, 2023 (the “**October Amending Agreement**”), so as to provide the

²⁵ Baron Affidavit at paras. 43-44.

²⁶ Baron Affidavit at para. 45.

²⁷ Baron Affidavit at para. 46.

²⁸ Baron Affidavit at para. 47-48.

²⁹ Baron Affidavit at para. 49.

Respondents with ample time to conduct a robust sale process in respect of the Real Property and repay the Loan in full. This October Amending Agreement was subject to the following conditions:³⁰

- (i) Paydown requirement: the Respondents were required to make a paydown towards outstanding principal on the Loan in the amount \$15,452,000. This requirement was satisfied;
- (ii) Realization Process: the Legal Owner was required to provide the Petitioners with a proposed sale, refinancing or investment solicitation process in respect of the Real Property that was in form and substance satisfactory to the Petitioners by February 1, 2023. The Respondents failed to satisfy this condition; and
- (iii) Monthly interest payments: The Respondents were required to continue to make applicable monthly interest payments and other payments due under the Loan Agreement. The Respondents defaulted on this condition by failing to make the August Interest Payment.

Additional Defaults

33. On July 28, 2023, just two business days before payment was due, the Respondents advised the Petitioners that they would not make the August Interest Payment.³¹

34. On August 2, 2023, the Petitioners delivered a notice of non-payment and default to the Respondents that noted, among other things, a failure by the Respondents to make the August Interest Payment on or before August 3, 2023 would result in an event of default under the Loan Agreement.³²

35. Despite the repeated accommodations by the Petitioners and their willingness to work cooperatively with the Respondents, on or around August 2, 2023 the Respondents dictated to

³⁰ Baron Affidavit at para. 50.

³¹ Baron Affidavit at para. 51.

³² Baron Affidavit at para. 52.

the Petitioners that they could no longer make any interest payments going forward and would repay outstanding interest if and when the Real Property is sold.³³

36. On or around August 2, 2023, the Petitioners were informed for the first time that the Respondents had engaged the Sale Advisors on July 28, 2023 and were requested to provide a further extension of the maturity date. That is, the Respondents finally engaged the Sale Advisors to market the Real Property only five weeks before the Loan was set to mature.³⁴

37. The Petitioners requested increased transparency and access to information on the sale process in respect of the Real Property. As the senior secured creditors, the Petitioners requested authorization to communicate with each of the Sale Advisors for regular status updates in connection with then anticipated sales process timelines and market participation, and to discuss other information or documents related to the sale process. The Respondents initially failed to make satisfactory arrangements to facilitate the flow of such information.³⁵

38. On August 30, 2023, the Petitioners delivered (i) a demand letter to the Legal Owner, noting the event of default under the Loan Agreement as a result of the failure by the Legal Owner to repay the August Interest Payment, declaring the entirety of the Indebtedness to be due and payable and demanding payment of same, (ii) a demand letter to the guarantors (including the Beneficial Owner), demanding payment of certain amounts owing by them under their guarantees (collectively, with the demand letter to the Legal Owner, the “**Demand Letters**”); and (iii) notices to each of the Respondents under section 244 of the BIA (collectively, the “**Section 244 Notices**”).³⁶

39. The notice period in the Section 244 Notices has expired.³⁷

³³ Baron Affidavit at para. 54.

³⁴ Baron Affidavit at para. 56.

³⁵ Baron Affidavit at para. 57.

³⁶ Baron Affidavit at para. 58.

³⁷ Baron Affidavit at para. 59.

The Proposed Transaction and further accommodations

40. Following delivery of the Demand Letters and Section 244 Notices, the Petitioners continued to explore a consensual path forward which would provide the Respondents with ample opportunity to conduct their sale process.³⁸

41. On October 20, 2023, the Respondents advised the Petitioners that they had received interest from the Proposed Purchaser to acquire the Real Property, with closing anticipated to take place during the second quarter of 2024 and requested a forbearance from the Petitioners in order to pursue the Proposed Transaction. On November 3, 2023, the Respondents and the Proposed Purchaser entered into a non-binding letter of intent.³⁹

42. Following extensive negotiations, the Petitioners entered into a forbearance agreement with the Respondent on November 13, 2023 (the “**Forbearance Agreement**”) so as to facilitate the Respondents’ pursuit of the Proposed Transaction. The Forbearance Agreement provides for the following, each of which were critical requirements to the Petitioners’ forbearance:⁴⁰

- (i) Forbearance Period: The earlier of the occurrence of any “Termination Event” and July 31, 2024;
- (ii) “Termination Events”, including:
 - A. Any Proposed Transaction Milestone not being met;
 - B. The Proposed Purchaser declining to waive the Diligence Conditions or otherwise not proceeding with the Proposed Transaction. This “Termination Event” has occurred;
 - C. The termination of the Purchase Agreement. This “Termination Event” has occurred.
- (iii) Proposed Transaction Milestones:
 - A. Execution of the Purchase Agreement by no later than December 24, 2023. This milestone was satisfied;
 - B. The satisfaction or waiver of the Diligence Conditions (as defined below) by no later than 195 calendar days following the execution

³⁸ Baron Affidavit at paras. 60-61.

³⁹ Baron Affidavit at paras. 62-63.

⁴⁰ Baron Affidavit at paras. 64-65.

of the Purchase Agreement. This milestone cannot be satisfied as the Diligence Conditions were not satisfied or waived;

- C. Closing of the Proposed Transaction by no later than July 31, 2024. This milestone cannot be satisfied as the Diligence Conditions were not satisfied or waived and the Purchase Agreement has been terminated;

(iv) Interest:

- A. Payment of fifty percent of the outstanding interest as at the date thereof, being \$779,725.38. This requirement has been satisfied;
- B. Commencing on December 1, 2023, monthly payments of fifty percent of the interest on the Indebtedness, calculated on the same basis as the Loan and Security Documents as if the Indebtedness had not been accelerated. This requirement has been satisfied to date;
- C. Remittance of \$600,000 to be held by the Petitioners as an "Interest Reserve". This requirement has been satisfied;

- (v) Forbearance Fee: A forbearance fee in the amount of \$1,000,000 which was immediately earned by the Petitioners on execution of the Forbearance Agreement and added to the outstanding principal amount of the Indebtedness;

- (vi) Engagement of Alvarez & Marsal Canada ULC as Financial Advisor: The acknowledgment and confirmation of the engagement of Alvarez & Marsal Canada ULC as financial advisor to the Petitioners. This requirements was satisfied.

- (vii) Consent to Receivership: The delivery of the Consent to Receivership Order. This requirement has been satisfied.

43. On December 7, 2023 (following execution of the Forbearance Agreement), the Beneficial Owner and the Proposed Purchaser entered into the Purchase Agreement. The Purchase Agreement provided for certain due diligence conditions in favour of the Proposed Purchaser (the "**Diligence Conditions**"). Pursuant to the Purchase Agreement, the Proposed Purchaser had up to 90 days following execution of the Purchase Agreement to declare that the Diligence Conditions had been satisfied or otherwise waived, provided however that the Proposed Purchaser could elect to extend such period twice by up to 45 days each time.⁴¹

⁴¹ Baron Affidavit at paras. 66-67.

44. The Proposed Purchaser elected to extend such period twice for a total diligence period of 180 days and on or around June 4, 2024, notified the Respondents it would not be waiving the Diligence Conditions and requested an extension of the Diligence Conditions deadline to the third quarter of 2025—nearly two years since entering into the Purchase Agreement.⁴²

45. Following this development, on June 8, 2024, the Petitioners delivered a Notice of Termination of Forbearance (“**Notice of Termination**”) to the Respondents, advising them of the termination of the forbearance.⁴³

Need for Court-appointed Receiver

46. Appointment of a Receiver is necessary and justified. Over twenty-six months have elapsed since the original maturity date of the Loan, there have been numerous defaults under the Loan Agreement and the Indebtedness was accelerated over nine months ago and remains outstanding. The Respondents abandoned the Redevelopment Project approximately 14 months ago, and received extensive accommodations from the Petitioners while they sought to pursue a lengthy sale process, which has failed.⁴⁴

47. A different approach is required.

48. The Petitioners, as the senior secured creditors, no longer have faith in the Respondents’ ability to pursue a sale of the Real Property and are not prepared to stand by any further. Interest on the Loan continues to accrue and the principal remains outstanding, without any reasonable sense of when the Loan will be repaid.⁴⁵

49. As described above, the Respondents have consented to an Order that is substantially in the form of the Receivership Order sought in this application.⁴⁶ A blackline between the Consent to Receivership Order and the Receivership Order sought in this application is attached hereto as **Schedule “B”**.

⁴² Baron Affidavit at para. 68.

⁴³ Baron Affidavit at para. 69.

⁴⁴ Baron Affidavit at para. 70.

⁴⁵ Baron Affidavit at para. 71.

⁴⁶ Baron Affidavit at para. 75.

Other material creditors

50. As at June 7, 2024, municipal property taxes in the amount of \$817,479.73 have been assessed against the Real Property by the City of Burnaby, are owing and will fall into arrears if not paid by July 3, 2024.⁴⁷

51. The Respondents are not aware of material creditors other than the City of Burnaby. As described above, the Respondents did not commence construction on the Real Property, abandoned the Redevelopment Project in May 2023, and do not have any other business activities.⁴⁸

52. Computershare Trust Company of Canada ("**Computershare**") has made *Personal Property Security Act* registrations in British Columbia against each of the Respondents. The Petitioners were not advised of these registrations and are not aware of the basis thereof or what obligations, if any, they purportedly relate to. However, such registrations are prohibited by the terms of the Loan and Security Documents and amount to further defaults under the Loan. Computershare has not made any real property registrations against the Real Property.⁴⁹

A&M as the proposed Receiver and financing during the receivership

53. A&M is a licensed trustee with extensive experience in Canadian insolvency proceedings, including receiverships in British Columbia that principally involve real estate assets.⁵⁰

54. If appointed, the Receiver will be empowered pursuant to the terms of the proposed Receivership Order to borrow funds from the Petitioners in accordance with a term sheet for the purposes of, among other things, funding necessary expenditures required to safeguard the Real Property, and the professional costs and disbursements of the receivership (including paying the Receiver's fees and the fees of its counsel).⁵¹

⁴⁷ Baron Affidavit at para. 76.

⁴⁸ Baron Affidavit at para. 77.

⁴⁹ Baron Affidavit at para. 81.

⁵⁰ Baron Affidavit at para. 74.

⁵¹ Baron Affidavit at para. 82.

55. A&M has consented to act as Receiver if appointed by this Court.⁵²

Part 3: LEGAL BASIS

This Court has jurisdiction to grant the Receivership Order

56. The Petitioners bring this application for appointment of a receiver pursuant to section 243 of the *BIA*, section 39 of the *LEA*, section 66 of the *PPSA*, and Rule 10-2 of the Supreme Court Civil Rules (the “**Rules of Court**”). These provisions read:

(a) Section 243 of the *BIA*:

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or

(c) take any other action that the court considers advisable.

(b) Section 39(1) of the *LEA*:

39(1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

(c) Section 66(1) of the *PPSA*:

(1) On application by an interested person, a court may do one or more of the following:

(a) appoint any person a receiver who is not disqualified under section 64(2);

...

(c) give directions on any matter relating to the duties of a receiver;

(d) Rule 10-2(1) of the Rules of Court:

⁵² Baron Affidavit at para 74.

(1) The court may appoint a receiver in any proceeding either unconditionally or on terms, whether or not the appointment of a receiver was included in the relief claimed by the applicant.

The applicable test: Just or Convenient

57. The test for the appointment of a receiver requires this Court to consider whether doing so would be “just or convenient” in the circumstances.

Ward Western Holdings Corp. v. Brosseuk, 2022 BCCA 32 at para. 49.

58. This Court has regularly endorsed the following list of non-exhaustive factors found in *Bennett on Receiverships*, 2nd ed. (Toronto: Carswell, 1999), at p. 130 and applied in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527, and many other authorities, as appropriate considerations in determining whether it is “just or convenient” in the circumstances to appoint a receiver:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor’s assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.

Vancouver Coastal Health Authority v Seymour Health Centre Inc., 2023
BCSC 1158 [**Seymour**] at paras. 51-52

59. These factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.

Pandion Mine Finance Fund LP v Otso Gold Corp., 2022 BCSC 136
[**Pandion**] at para. 54

Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership, 2024
BCSC 47 at paras. 73-75 [**Bank of Montreal**]

60. As explained below, the fact that the Petitioners have an express right to appoint a receiver in the present circumstances under the Loan and Security Documents, including the Mortgage and through the Forbearance Agreement and Consent to Receivership Order, should be given considerable weight in the circumstances.

Seymour at paras. 76-80

A. Appointing the Receiver is just and convenient in the circumstances

61. It is both just and convenient for this Court to appoint the Receiver in the present circumstances for the following reasons:

- (a) There is no dispute that the Respondents are in default of the Loan and Security Documents. These defaults include, but are not limited to, the following:
 - (i) failing to comply with the covenants for the realization process under section 5.1 of the October Amending Agreement;

- (ii) failing to continue to make the required monthly interest payments due under the Loan Agreement, starting with the missed August Interest Payment; and
 - (iii) failing to keep the Properties free and clear of all security interests, charges, liens and other encumbrances or interests except permitted encumbrances and except those approved in writing by the Petitioners prior to their creation or assumption (GSA, section 3(f)).
- (b) There is also no dispute that the Loan matured over nine months ago and has not been repaid.
- (c) The Respondents and the Petitioners specifically contracted for the Petitioners' right to appoint a receiver under the Loan and Security Documents. This factor should be given considerable weight in these circumstances: *Bank of Montreal* at para. 116. The Petitioners, as the senior secured creditors of the Respondents, are entitled to enforce on their security and exercise their contractual remedy of appointing a Receiver over the Properties.
- (d) Furthermore, an integral component of the Forbearance Agreement was the Respondents' consent to an Order substantially in the form of the Receivership Order sought in this application. The Respondents' failure to live up to commitments agreed to in exchange for the Petitioners' forbearance also militate in favour of a receivership.
- (e) The Respondents' conduct and repeated failures to repay the Loan after over twenty-six months since the original maturity date leaves the Petitioners with no other acceptable option but to appoint the Receiver. The Petitioners have lost confidence in the Respondents' ability to conduct a sale process and repay the Loan within a reasonable time. The Petitioners have worked extensively with and accommodated the Respondents and yet, the Respondents have been unable to repay the Loan. The Petitioners have provided the Respondents with:
 - (i) three separate extensions of the maturity date for the Loan, with the first extension dating back from April 1, 2022 and the most recent extension ending on September 1, 2023;
 - (ii) ample opportunity to devise and conduct a sales process which has failed; and
 - (iii) a forbearance in order for the Respondents to pursue the Proposed Transaction, which has also failed.
- (f) A court appointment is necessary to enable the Receiver to carry out its' duties more efficiently. Alvarez & Marsal Canada ULC, an affiliate of A&M, has been acting as the financial advisor to the Petitioners throughout the forbearance period with respect to the Real Property and the activities of the Respondents. The Receiver, if appointed, will be in the best position to assess and pursue an appropriate sale process, determine whether to continue to engage the Sale Advisors, liaise with the Sale Advisors as appropriate and engage with parties

involved in the existing sale process, all with a view to maximizing value while providing the Petitioners with the finality that was commercially bargained for.

- (g) The Respondents are special purpose vehicles formed to own and develop the Real Property. The Respondents abandoned the Redevelopment Project and the Real Property does not generate any cash flow. Accordingly, the appointment of the Receiver should not prejudice the Respondents since they do not have any other business activity. The Respondents do not have other material creditors with respect to the Real Property and the Petitioners are the majority stakeholders in this proceeding.
- (h) The Receiver, if appointed, will be sufficiently funded to carry out a robust sale process with respect to the Properties which seeks to maximize value. The Receiver will be empowered to borrow funds from the Petitioners in accordance with a term sheet to fund the necessary expenditures to safeguard the Real Property and fund the professional costs and disbursements of the receivership.

B. Appointing the Receiver over the interests of the beneficial owner is just and convenient

62. In order to properly and efficiently administer the Properties in the proposed receivership proceedings, it is necessary for the Receiver to be appointed over not only the Legal Owner's interests, but also the Beneficial Owner's interest in the Properties. The Petitioners have a first ranking charge over the Beneficial Owner's interest in the Properties.

63. The Beneficial Owner has granted each of the Petitioners a security interest in and to all of its right, title and interest in and to the Properties, and all proceeds thereof, pursuant to the GSA and Nominee Acknowledgement.

64. The Receiver's appointment with respect to the Beneficial Owner is necessary in order to put the Receiver in a position to convey all right, title and interest in the Properties to a potential purchaser. It is accordingly appropriate for the proposed Receivership Order to apply to the Beneficial Owner's interest in the Properties.

The relief sought under the Receivership Order

65. For the above reasons, the Petitioners submit that it is just and convenient that this Court appoint A&M as the Receiver over the Properties on the terms set out in the proposed Receivership Order, which is substantially in the form contemplated under the Consent to Receivership Order.

66. The Petitioners further relies on Rules 10-2 (Receivers) and 13-5 (Sales by Court) of the Rules of Court.

The Respondents are liable to the petitioners for solicitor-client costs

67. Solicitor-client cost awards are generally reserved for exceptional cases involving reprehensible conduct by a party. However, a different set of considerations are engaged when a contractual agreement requires one party to a proceeding to pay the costs of another party on a solicitor-client basis. A contractual indemnity provision that “clearly and unequivocally” establishes the right to indemnification is presumptively enforceable. The burden is on the party opposing indemnification to establish why the court should exercise its discretion to depart from the terms of the contract.

Cardero Coal Ltd. v Carbon Creek Partnership, 2023 BCCA 351 at paras. 146-149

See also the Model Receivership Order at para. 39


68. The Respondents are indebted to the Petitioners for all reasonable out-of-pocket costs and expenses incurred in the enforcement of the Respondents' obligations under the Loan and Security Documents on a substantial indemnity basis (Mortgage, s. 19). There is no basis in the circumstances of this case to deny the Petitioners their costs on a substantial indemnity basis.

Part 4: MATERIALS TO BE RELIED ON

1. Affidavit of Jacob Baron, sworn on June 20, 2024;
2. Such other materials as counsel may advise and this Court allows.

The Petitioners estimate that the hearing of the Petition will take 75 minutes.

Date: June 21, 2024

 (KKS)

Signature of Peter J. Reardon &
Kayla K. Strong
Lawyers for the Petitioners

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this petition

☐ with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of ☐ Judge ☐ Master

SCHEDULE "A"

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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)
)
 _____ JUSTICE _____) DD/MM/YEAR
)
)

ON THE APPLICATION of The United States Life Insurance Company In The City of New York and American Home Assurance Company (collectively, the "**Petitioners**") for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as Receiver and Manager (in such capacity, the "**Receiver**") without security, of the real property and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the real property of (i) SCREO I Metrotown Inc. (the "**Legal Owner**"), and (ii) SCREO I Metrotown L.P. (the "**Beneficial Owner**", and together with the Legal Owner, the "**Debtors**" and each a "**Debtor**"), including the beneficial ownership interest in and to such property, whether held directly or indirectly by the Beneficial Owner for itself or for others, coming on for hearing this day at Vancouver, British Columbia, **AND BY CONSENT**;

AND ON READING the Affidavit #1 of Jacob Baron sworn June 20, 2024 (the "**Baron Affidavit**") and the consent of A&M to act as the Receiver; **AND ON HEARING** Peter Reardon, Counsel for the Petitioners, Lance Williams, Counsel to the Debtors, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. The time for service of the Petition filed June 21, 2024 and supporting materials is hereby abridged such that the Petition is properly returnable today.
2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, A&M is appointed Receiver, without security, of the Debtors' real property with the municipal addresses and legal description set out on Schedule "B" hereto (collectively, the "**Real Property**") and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the Real Property and all proceeds thereof (collectively, the "**Property**"), including the beneficial ownership interest in and to such property, whether held directly or indirectly by the Beneficial Owner for itself or for others.

RECEIVER'S POWERS

3. The Receiver is 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 expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Baron Affidavit, unless otherwise ordered by the Court):
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing or continuing insurance coverage;
 - (c) to manage, operate and carry on the business of either Debtor, 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 such Debtor;
 - (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 purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of either Debtor or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of either Debtor in collecting these amounts, including, without limitation, enforcement of any security held by such Debtor;
 - (g) to settle, extend or compromise any indebtedness owing to either Debtor;

- (h) 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 either Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of either Debtor;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of either Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) 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 considers appropriate;
- (l) to sell, convey, transfer, lease 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 a single transaction for consideration up to \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary;
- (n) to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (p) to instruct, communicate and otherwise consult with any brokers or sale advisors engaged by the Debtors prior to the date of this Order regarding the Property and any existing marketing or sale efforts related to the same (the "**Pre-Receivership Sale Process**");
- (q) to consult with the Petitioners from time to time and to provide such information to the Petitioners as may be reasonably requested by the Petitioners;

- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for or continue any applications for any permits, licences, approvals, zoning changes, variances or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of either Debtor;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of either Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by such Debtor;
- (u) to exercise any shareholder, partnership, joint venture or other rights which either Debtor may have; and
- (v) 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.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. Each of (i) the Debtors; (ii) all of each Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) Slate Canadian Real Estate Opportunity Fund I L.P. and SCREO I Metrotown GP Inc.; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each 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, including without limitation access to the Real Property, and shall deliver all Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs or the Pre-Receivership Sale Process of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that

nothing in paragraphs 4, 5 or 6 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 due to solicitor client privilege or statutory provisions prohibiting such disclosure.

7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. No proceeding or enforcement process in any court or tribunal (each, a **“Proceeding”**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. No Proceeding against or in respect of either Debtor 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 either Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the applicable Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

10. All rights and remedies (including, without limitation, set-off rights) against either Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or either Debtor to carry on any business which such Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and

suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

11. 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 either Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

12. All Persons having oral or written agreements with either Debtor 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 such Debtor are 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 the Receiver shall be entitled to the continued use of such Debtor’s 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 such Debtor 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

13. 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

14. Subject to the employees’ right to terminate their employment, the employees of the Debtors (if any) shall remain the employees of each applicable Debtor until such time as the Receiver, on the applicable Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of any Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*,

S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

PERSONAL INFORMATION

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may 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 applicable Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. Nothing in this Order 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
17. 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 the Receiver is actually in possession.
18. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver’s appointment; or,
 - (b) after the Receiver’s appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver’s gross negligence or wilful misconduct.

19. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

20. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

21. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. 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.
22. The Receiver 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 are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis. If requested by the Court, the Receiver and its legal counsel shall separately account for their fees and disbursements as they relate to each Debtor.
23. 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.

FUNDING OF THE RECEIVERSHIP

24. The Receiver is authorized and empowered to borrow from the Petitioners such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time and pursuant to a Receiver Term Sheet to be entered

into by the Receiver and the Petitioners, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is 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.

25. 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.
26. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
27. 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.

ALLOCATION

28. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver’s Charge and Receiver’s Borrowings Charge amongst the Property.

SERVICE AND NOTICE OF MATERIALS

29. The Receiver shall establish and maintain a website in respect of these proceedings at: www.alvarezandmarsal.com/screometrotown (the “**Website**”) and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
30. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Petitioners a demand for notice in the form attached as Schedule “D” (the “**Demand for Notice**”). The Receiver and the Petitioners need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed

Demand for Notice releases the Receiver and the Petitioners from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.

31. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
32. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
33. Notwithstanding paragraph 31 of this Order, service of the Notice of Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
34. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

35. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
36. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
37. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.
38. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be

necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

39. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is 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.
40. The Petitioners shall have their costs of this application, up to and including entry and service of this Order, as provided for by the terms of the Petitioners' security or, if not so provided by the Petitioners' security, then 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.
41. Endorsement of this Order by counsel appearing on this application other than the Petitioners' counsel is dispensed with.

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

APPROVED AND CONSENTED TO BY:

Signature of Peter J. Reardon
lawyer for the Petitioners

Signature of Lance Williams
lawyer for the Respondents

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

No. _____
_____ Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

LIST OF COUNSEL

PARTIES	COUNSEL
The United States Life Insurance Company In The City Of New York and American Home Assurance Company <i>The Petitioners</i>	Nathanson, Schachter & Thompson LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4 Peter J. Reardon Tel.: 778-328-8940 Email: preardon@nst.ca Kayla K. Strong Tel.: 778-328-8941 Email: kstrong@nst.ca <i>Counsel for the Petitioners</i>
SCREO I Metrotown Inc. and SCREO I Metrotown L.P. <i>The Respondents</i>	McCarthy Tétrault LLP 2400 – 745 Thurlow Street Vancouver, BC V6E 0C5 Lance Williams Tel.: 604-643-7154 Email: lwilliams@mccarthy.ca <i>Counsel for the Respondents</i>

PARTIES	COUNSEL
<p>Alvarez & Marsal Canada Inc. 925 W. Georgia Street, Unit 902 Vancouver, BC V6C 3L2</p> <p>Anthony Tillman Tel.: 604-639-0849 atillman@alvarezandmarsal.com</p> <p>Pinky Law Tel.: 604-638-7446 Pinky.law@alvarezandmarsal.com</p> <p><i>Receiver of the Respondents SCREO I Metrotown Inc. and SCREO I Metrotown L.P.</i></p>	<p>Dentons Canada LLP 250 Howe Street, 20th Floor Vancouver, BC V6C 3R8</p> <p>John R. Sandrelli Tel.: 604-443-7132 Email: john.sandrelli@dentons.com</p> <p><i>Counsel for the Receiver</i></p>

SCHEDULE “B”

“Real Property”

Municipal Address: 4430 Kingsway Avenue, Burnaby, British Columbia

Legal Description: PID 031-357-881, Lot 1 District Lot 153 Group 1 New Westminster District
Plan EPP107270.

SCHEDULE "C"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc. ("**A&M**"), the Receiver and Manager (the "**Receiver**") without security, of the real property with the municipal addresses and legal description set out on Schedule "B" of the Order (as defined below) (collectively, the "**Real Property**") and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the Real Property (the "**Property**") of SCREO I Metrotown Inc. and SCREO I Metrotown L.P. (collectively, the "**Debtors**"), appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the _____ day of _____, [YEAR] (the "**Order**") made in SCBC Action No. _____ and/or SCBC Action No. _____/Estate No. _____ 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 in accordance with the term sheet among the Receiver, The United States Life Insurance Company In The City Of New York, and American Home Assurance Company dated as of [DATE] (the "**Receiver Term Sheet**").
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the 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 Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.
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 to permit the Receiver to deal with the 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 or corporate liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, [YEAR].

Alvarez & Marsal Canada Inc., solely in its
capacity as Receiver, and not in its personal or
corporate capacity

Per:
Name:
Title:

Schedule "D"

Demand for Notice

TO: **THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF
NEW YORK, and AMERICAN HOME ASSURANCE COMPANY**
c/o Nathanson Schachter & Thompson LLP
Attention: Peter J. Reardon
Email: preardon@nst.ca

AND TO: Alvarez & Marsal Canada Inc.
Attention: Anthony Tillman / Pinky Law
Email: atillman@alvarezandmarsal.com / pinky.law@alvarezandmarsal.com

Copy to: Dentons Canada LLP
Attention: John R. Sandrelli
Email: john.sandrelli@dentons.com

**Re: In the matter of the Receivership of SCREO I METROTOWN INC., and SCREO I
METROTOWN L.P.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

OR

2. By facsimile, at the following facsimile number (or numbers):

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

No. _____
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

AND:

Action No. _____
Estate No. _____

ORDER MADE AFTER APPLICATION

Peter J. Reardon

Nathanson, Schachter & Thompson LLP

750 - 900 Howe Street

Vancouver, BC V6Z 2M4

Tel.: 604-662-8840

Email: preardon@nst.ca

SCHEDULE "B"

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

____ JUSTICE _____

)
)
)
)

DD/MM/YEAR

ON THE APPLICATION of The United States Life Insurance Company In The City of New York and American Home Assurance Company (collectively, the "**Petitioners**") for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as Receiver and Manager (in such capacity, the "**Receiver**") without security, of the real property and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the real property of (i) SCREO I Metrotown Inc. (the "**Legal Owner**"), and (ii) SCREO I Metrotown L.P. (the "**Beneficial Owner**", and together with the Legal Owner, the "**Debtors**" and each a "**Debtor**"), including the beneficial ownership interest in and to such property, whether held directly or indirectly by the Beneficial Owner for itself or for others, coming on for hearing this day at Vancouver, British Columbia, **AND BY CONSENT**;

AND ON READING the Affidavit #1 of Jacob Baron sworn [DATE] June 20, 2024 (the "**Baron Affidavit**") and the consent of A&M to act as the Receiver; **AND ON HEARING** Peter Reardon, Counsel for the Petitioners, Lance Williams, Counsel to the Debtors, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. The time for service of the ~~Notice of Application~~Petition filed ~~[DATE]~~June 21, 2024 and supporting materials is hereby abridged such that the ~~Notice of Application~~Petition is properly returnable today.
2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, A&M is appointed Receiver, without security, of the Debtors' real property with the municipal addresses and legal description set out on Schedule "B" hereto (collectively, the "**Real Property**") and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the Real Property and all proceeds thereof (collectively, the "**Property**"), including the beneficial ownership interest in and to such property, whether held directly or indirectly by the Beneficial Owner for itself or for others.

RECEIVER'S POWERS

3. The Receiver is 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 expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Baron Affidavit, unless otherwise ordered by the Court):
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing or continuing insurance coverage;
 - (c) to manage, operate and carry on the business of either Debtor, 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 such Debtor;
 - (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 purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of either Debtor or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of either Debtor in collecting these amounts, including, without limitation, enforcement of any security held by such Debtor;

- (g) to settle, extend or compromise any indebtedness owing to either Debtor;
- (h) 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 either Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of either Debtor;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of either Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) 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 considers appropriate;
- (l) to sell, convey, transfer, lease 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 a single transaction for consideration up to \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary;
- (n) to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (p) to instruct, communicate and otherwise consult with any brokers or sale advisors engaged by the Debtors prior to the date of this Order regarding the Property and any existing marketing or sale efforts related to the same (the "**Pre-Receiver's Sale Process**");

- (q) to consult with the Petitioners from time to time and to provide such information to the Petitioners as may be reasonably requested by the Petitioners;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for or continue any applications for any permits, licences, approvals, zoning changes, variances or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of either Debtor;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of either Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by such Debtor;
- (u) to exercise any shareholder, partnership, joint venture or other rights which either Debtor may have; and
- (v) 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.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. Each of (i) the Debtors; (ii) all of each Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) Slate Canadian Real Estate Opportunity Fund I L.P. and SCREO I Metrotown GP Inc.; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each 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, including without limitation access to the Real Property, and shall deliver all Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs or the Pre-Receivership Sale Process of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.

6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 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 due to solicitor client privilege or statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. No Proceeding against or in respect of either Debtor 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 either Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the applicable Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

10. All rights and remedies (including, without limitation, set-off rights) against either Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or either Debtor to carry on any business which such Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth

in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

11. 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 either Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

12. All Persons having oral or written agreements with either Debtor 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 such Debtor are 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 the Receiver shall be entitled to the continued use of such Debtor’s 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 such Debtor 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

13. 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

14. Subject to the employees’ right to terminate their employment, the employees of the Debtors (if any) shall remain the employees of each applicable Debtor until such time as the Receiver, on the applicable Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of any Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in

respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

PERSONAL INFORMATION

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may 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 applicable Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. Nothing in this Order 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
17. 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 the Receiver is actually in possession.
18. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver’s appointment; or,

- (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- 19. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

- 20. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

- 21. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. 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.
- 22. The Receiver 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 are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis. If requested by the Court, the Receiver and its legal counsel shall separately account for their fees and disbursements as they relate to each Debtor.
- 23. 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.

FUNDING OF THE RECEIVERSHIP

24. The Receiver is authorized and empowered to borrow from the Petitioners such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time and pursuant to a Receiver Term Sheet to be entered into by the Receiver and the Petitioners, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is 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.
25. 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.
26. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
27. 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.

ALLOCATION

28. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver’s Charge and Receiver’s Borrowings Charge amongst the Property.

SERVICE AND NOTICE OF MATERIALS

29. The Receiver shall establish and maintain a website in respect of these proceedings at: ~~{WEB ADDRESS}~~ www.alvarezandmarsal.com/screometrotown (the “**Website**”) and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

30. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Petitioners a demand for notice in the form attached as Schedule “D” (the “**Demand for Notice**”). The Receiver and the Petitioners need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Petitioners from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
31. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
32. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
33. Notwithstanding paragraph 31 of this Order, service of the Notice of Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
34. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

35. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
36. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
37. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

38. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
39. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is 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.
40. The Petitioners shall have their costs of this application, up to and including entry and service of this Order, as provided for by the terms of the Petitioners' security or, if not so provided by the Petitioners' security, then 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.
41. Endorsement of this Order by counsel appearing on this application other than the Petitioners' counsel is dispensed with.

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

APPROVED AND CONSENTED TO BY:

Signature of Peter J. Reardon

lawyer for the Petitioners

Signature of Lance Williams

lawyer for the Respondents

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

No. _____

Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

LIST OF COUNSEL

PARTIES	COUNSEL
The United States Life Insurance Company In The City Of New York and American Home Assurance Company <i>The Petitioners</i>	Nathanson, Schachter & Thompson LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4 Peter J. Reardon Tel.: 778-328-8940 Email: preardon@nst.ca Email: preardon@nst.ca Kayla K. Strong Tel.: 778-328-8941 Email: kstrong@nst.ca Email: kstrong@nst.ca <i>Counsel for the Petitioners</i>

PARTIES	COUNSEL
<p>SCREO I Metrotown Inc. and SCREO I Metrotown L.P.</p> <p><i>The Respondents</i></p>	<p>McCarthy Tétrault LLP 2400 – 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Lance Williams Tel.: 604-643-7154 <u>Email: lwilliams@mccarthy.ca</u> <u>Email: lwilliams@mccarthy.ca</u></p> <p><i>Counsel for the Respondents</i></p>
<p>Alvarez & Marsal Canada Inc. <u>925 W. Georgia Street, Unit 902</u> <u>Vancouver, BC V6C 3L2</u></p> <p><u>Anthony Tillman</u> <u>Tel.: 604-639-0849</u> <u>atillman@alvarezandmarsal.com</u></p> <p><u>Pinky Law</u> <u>Tel.: 604-638-7446</u> <u>Pinky.law@alvarezandmarsal.com</u></p> <p><i>Receiver of the Respondents</i> <i>SCREO I Metrotown Inc. and</i> <i>SCREO I Metrotown L.P.</i></p>	<p>{TBD} Dentons Canada LLP <u>250 Howe Street, 20th Floor</u> <u>Vancouver, BC V6C 3R8</u></p> <p><u>John R. Sandrelli</u> <u>Tel.: 604-443-7132</u> <u>Email: john.sandrelli@dentons.com</u></p> <p><i>Counsel for the Receiver</i></p>

SCHEDULE “B”

“Real Property”

Municipal Address: 4430 Kingsway Avenue, Burnaby, British Columbia

Legal Description: PID 031-357-881, Lot 1 District Lot 153 Group 1 New Westminster District
Plan EPP107270.

SCHEDULE "C"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc. ("**A&M**"), the Receiver and Manager (the "**Receiver**") without security, of the real property with the municipal addresses and legal description set out on Schedule "B" of the Order (as defined below) (collectively, the "**Real Property**") and all of the assets, undertakings and property, both real and personal, located at, relating to or used in connection with the Real Property (the "**Property**") of SCREO I Metrotown Inc. and SCREO I Metrotown L.P. (collectively, the "**Debtors**"), appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the _____ day of _____, [YEAR] (the "**Order**") made in SCBC Action No. _____ and/or SCBC Action No. _____/Estate No. _____ 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 in accordance with the term sheet among the Receiver, The United States Life Insurance Company In The City Of New York, and American Home Assurance Company dated as of [DATE] (the "**Receiver Term Sheet**").
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the 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 Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.
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 to permit the Receiver to deal with the 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 or corporate liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, [YEAR].

Alvarez & Marsal Canada Inc., solely in its
capacity as Receiver, and not in its personal or
corporate capacity

Per:
Name:
Title:

Schedule "D"

Demand for Notice

**TO: THE UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF
NEW YORK, and AMERICAN HOME ASSURANCE COMPANY**
c/o Nathanson Schachter & Thompson LLP
Attention: Peter J. Reardon
Email: preardon@nst.ca

AND TO: Alvarez & Marsal Canada Inc.
Attention: Anthony Tillman / Pinky Law
Email: atillman@alvarezandmarsal.com / pinky.law@alvarezandmarsal.com
c/o ~~[Name of Counsel to the Receiver]~~

Copy to: Dentons Canada LLP
Attention: John R. Sandrelli
Email: _____ Email: john.sandrelli@dentons.com

**Re: In the matter of the Receivership of SCREO I METROTOWN INC., and SCREO I
METROTOWN L.P.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

OR

2. By facsimile, at the following facsimile number (or numbers):

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number:

No. _____

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

AND:

Action No. _____

Estate No. _____

ORDER MADE AFTER APPLICATION

Peter J. Reardon

Nathanson, Schachter & Thompson LLP

750 - 900 Howe Street

Vancouver, BC V6Z 2M4

Tel.: 604-662-8840

Email: preardon@nst.ca
