

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

**B E T W E E N :**

**NATIONAL BANK OF CANADA**

Applicant

and

**SCREO I DIXIE OUTLET MALL L.P., SCREO I DIXIE OUTLET MALL INC., and  
SCREO I DIXIE OUTLET MALL GP INC.**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, as  
amended**

**FACTUM OF THE APPLICANT  
(Application Returnable March 2, 2026)**

February 25, 2026

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**FACTUM OF THE APPLICANT**

**PART I - OVERVIEW<sup>1</sup>**

1. This Application is made by National Bank of Canada (the “**Applicant**” or “**Agent**”), for an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada)<sup>2</sup> (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario)<sup>3</sup> (the “**CJA**”) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manger (the “**Receiver**”), without security, of all of the

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Affidavit of Dana Ades-Landy, sworn February 18, 2026, Tab 2, Application Record of the Applicant (the “**Ades-Landy Affidavit**”).

<sup>2</sup> *Bankruptcy and Insolvency Act*, [R.S.C., 1985, c. B-3](#).

<sup>3</sup> *Courts of Justice Act*, [R.S.O. 1990, c. C.43](#).

assets, undertakings and properties of: (a) SCREO I Dixie Outlet Mall L.P. (the “**Borrower**”); (b) SCREO I Dixie Outlet Mall Inc. (“**Dixie Inc.**”); and (c) SCREO I Dixie Outlet Mall GP Inc. (“**Dixie GP**”, together with Dixie Inc and the Borrower, the “**Debtors**”), including without limitation the real property described in paragraph 9 (the “**Real Property**”) and all beneficial ownership interest in and to the Real Property, whether held directly or indirectly by the Borrower for itself or for others, and all proceeds thereof (collectively, the “**Property**”).

2. The Borrower entered into a credit agreement dated as of December 13, 2018, with an aggregate commitment of \$142,000,000 (advances pursuant thereto being the “**Loans**”). The Loans are secured by a comprehensive security package in favour of the Agent and the Lenders (defined below), including a first-ranking mortgage on the Real Property, and a first-ranking security interest over the Debtors’ personal property.

3. The Loans matured on September 13, 2023 and have not been repaid, despite numerous extensions, accommodations and formal forbearance arrangements granted by the Agent.

4. As at February 12, 2026, the outstanding debts, liabilities and obligations under the Loans (exclusive of costs of enforcement) exceed \$156.9 million.

5. The Debtors have no viable plan to repay the Loans despite being provided with every reasonable opportunity to do so. The Debtors are in default, they have formally consented to the appointment of a receiver in several agreements with the Agent, the Agent has delivered notices of intention to enforce security under s. 244 of the BIA (the “**244 Notices**”) and the notice period thereunder has been waived by the Debtors (and has otherwise long expired), and the Debtors have been given 10 calendar days’ notice of the within application.<sup>4</sup>

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<sup>4</sup> As of the filing of this Factum, the Debtors have not advised the Agent of their position regarding this Application.

6. For the reasons set out herein, it is just and convenient to appoint the Receiver on the terms in the order requested by the Applicant and attached to its Application Record as Tab 3 (the “**Receivership Order**”).

## **PART II – FACTS**

### **A. Background**

#### *The Parties*

7. The Agent acts as an administrative agent for a syndicate of lenders (the “**Lenders**”) under the Credit Agreement (defined below).<sup>5</sup>

8. The Debtors are special purpose vehicles that are affiliated with Slate Canadian Real Estate Opportunity Fund I L.P. (“**Slate CREO Fund**”), which were formed to hold and operate the Real Property, that consists of a shopping centre operating as Dixie Outlet Mall (the “**Mall**”).<sup>6</sup> The Borrower is the beneficial owner of the Real Property and Dixie Inc. holds registered title to the Real Property for and on behalf of the Borrower. Dixie GP is the sole general partner of the Borrower.<sup>7</sup>

#### *The Real Property and Mall*

9. The Real Property is comprised of approximately 35 acres of property on which the Mall is located, municipally known as 1250 South Service Road, Mississauga, Ontario.<sup>8</sup>

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<sup>5</sup> Ades-Landy Affidavit at para 8.

<sup>6</sup> Ades-Landy Affidavit at para 3.

<sup>7</sup> Ades-Landy Affidavit at paras 19-20.

<sup>8</sup> Ades-Landy Affidavit at para 29.

10. Based on a rent roll current to the third quarter of 2025 (the “**2025 Rent Roll**”), approximately 120 commercial tenants occupied approximately 91% of the net rentable area of the Mall.<sup>9</sup> The terms for all the tenancies are relatively short-term and are either set to expire within the next four years or are currently month-to-month.<sup>10</sup>

11. The Agent has been provided with numerous appraisals of the Real Property dating between 2019 and 2025,<sup>11</sup> which collectively illustrate a steady decline of value from 2022 to 2025, all before factoring in any Environmental Issues in respect of the Real Property.<sup>12</sup>

Environmental Matters

12. Prior to the acquisition of the Real Property by the Debtors, a former tenant or tenants of the Mall operated dry cleaning businesses. As a result of historical dry-cleaning operations, certain portions of the Real Property became contaminated with chemicals used in the dry-cleaning process (the “**Environmental Issues**”).<sup>13</sup>

13. While the Debtors have commissioned site assessments, including soil sampling and air quality assessments to better understand the scope of the Environmental Issues, the issues persist and have not been remediated. The Debtors do not have a viable plan to address the Environmental Issues within the context of managing a transaction that would repay the Loans on any timeline reasonably acceptable to the Agent and the Lenders.<sup>14</sup>

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<sup>9</sup> Ades-Landy Affidavit at para 39, with the unredacted version of the 2025 Rent Roll being “**Confidential Exhibit 3**”.

<sup>10</sup> Ades-Landy Affidavit at para 39.

<sup>11</sup> These appraisals are referred to in the Ades-Landy Affidavit as the “**JLL Reports**” (discussed at para 34 and attached as Confidential Exhibit 1) and the “**Historical Appraisals**” (discussed at para 35 and attached as Confidential Exhibit 2).

<sup>12</sup> Ades-Landy Affidavit at para 36.

<sup>13</sup> Ades-Landy Affidavit at para 55.

<sup>14</sup> Ades-Landy Affidavit at paras 55-57.

Limited operations of the Debtors

14. The Debtors have no direct employees. Certain management services are provided in respect of the Mall from affiliates of the Debtors, and Cushman & Wakefield are engaged as the property manager.<sup>15</sup>

15. As of the third quarter of 2025, the Mall Property represented approximately 99% of the Borrower's assets (in net book value). The Borrower's remaining assets (comprised of cash, accounts receivable and prepaid and other assets, all of which are subject to the Agent's security) have been valued at less than approximately \$1.6 million for the same period.<sup>16</sup>

16. Substantially all of the Borrower's cash receipts are generated through leasing the Mall to commercial tenants.<sup>17</sup> In 2025, the Borrower's net cash flow was insufficient to service the interest costs of the Loans and the Borrower did not make a principal repayment. The total interest costs in 2025 were approximately \$11.7 million, which if paid in full would have resulted in the Borrower generating a net cashflow of approximately negative \$7.8 million and having insufficient funds to cover all of its operations.<sup>18</sup>

**B. The Indebtedness and Loan Documents**

17. The original credit agreement was entered into between, among others, the Borrower, the Lenders and the Agent on December 13, 2018. As subsequently amended, the credit agreement is referred to herein as the "**Credit Agreement.**"

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<sup>15</sup> Ades-Landy Affidavit at para 48.

<sup>16</sup> Ades-Landy Affidavit at para 50.

<sup>17</sup> Ades-Landy Affidavit at para 52.

<sup>18</sup> Ades-Landy Affidavit at para 54.

18. As at February 12, 2026, the aggregate outstanding debts, liabilities and obligations under the Credit Agreement (including accrued fees and interest) is \$156,908,879.00 (the “**Indebtedness**”). Such amount is exclusive of costs of enforcement (which are recoverable by the Agent under the Loan Documents) and continues to accrue interest.<sup>19</sup>

19. The Lenders are the senior secured creditors of the Debtors. The Indebtedness is secured by a comprehensive first-ranking security package granted by the Debtors, which includes a secured guarantee on a full recourse basis by Dixie Inc. and Dixie GP.<sup>20</sup>

20. The Indebtedness is also guaranteed by (i) secured guarantees granted to the Agent by SCREO I Windsor Holdings L.P. and SCREO I Windsor Holdings GP Inc., and (ii) limited recourse secured guarantees granted to the Agent by Slate CREO Fund and Slate Canadian Opportunity Fund GP Inc. (collectively, the aforementioned parties together with the Debtors, the “**Credit Parties**”).<sup>21</sup>

21. While the Credit Parties (other than the Debtors) are not included as respondents to the Agent’s within application at this time, the Agent reserves the right to seek to have them included in the within proceedings at a later date, subject to this Court’s approval.<sup>22</sup>

22. The loan and security documents are summarized in paragraphs 62-69 of the Ades-Landy Affidavit (defined collectively as the “**Loan Documents**”).<sup>23</sup>

23. The Agent perfected its personal property security interests by filing financing statements on or about December 3, 2018 against each of the Debtors in Ontario pursuant to the *Personal Property Security Act* (Ontario) (“**PPSA**”).<sup>24</sup>

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<sup>19</sup> Ades-Landy Affidavit at para 9.

<sup>20</sup> Ades-Landy Affidavit at paras 4, 60.

<sup>21</sup> Ades-Landy Affidavit at para 5.

<sup>22</sup> Ades-Landy Affidavit at para 6.

24. The only other party registered under the PPSA against the Debtors is Computershare Trust Company of Canada (“**Computershare**”), which registered two financing statements against the Debtors on or around September 1, 2023 and January 22, 2025.<sup>25</sup> The Computershare security registrations were filed in breach of the Loan Documents, and constitute independently actionable defaults. Computershare was served with this Application on February 23, 2026.<sup>26</sup>

### **C. Circumstances Giving Rise to Enforcement**

25. The Loans had an original maturity date of December 13, 2021. As the original maturity date approached, the Credit Parties informed the Agent they would be unable to repay the loans. Following the original maturity date, the Applicant repeatedly accommodated the Credit Parties through a series of extensions of the maturity date, with the final extension expiring on September 13, 2023 (the “**Maturity Date**”).<sup>27</sup>

#### *Debtors have committed numerous Events of Default*

26. Against the backdrop of the maturity date extensions, a number of actionable Events of Defaults (as defined in the Credit Agreement) occurred and are continuing:

- (a) the Credit Parties failed to repay the Loans on the September 13, 2023 Maturity Date;
- (b) the Borrower failed to maintain a Holdco Leverage Ratio (as defined in the Credit Agreement) of not more than 60% on March 31, 2023;

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<sup>23</sup> Ades-Landy Affidavit at paras 62-69.

<sup>24</sup> *Personal Property Security Act*, [RSO 1990](#), c P.10; Ades-Landy Affidavit at para 71.

<sup>25</sup> Ades-Landy Affidavit at para 73.

<sup>26</sup> Affidavit of Service of Nancy Thompson, sworn February 23, 2026.

<sup>27</sup> Ades-Landy Affidavit at para 76.

- (c) the Borrower failed to maintain Net Operating Income (as defined in the Credit Agreement) of not less than CDN\$1,300,000 for the Fiscal Quarter ending March 31, 2023; and
- (d) as of October 30, 2023, the Debtors granted an unpermitted lien in favour of Computershare in respect of unpermitted indebtedness, all of which is contrary to the Credit Agreement (collectively, “**2023 Events of Default**”).<sup>28</sup>

27. With the Events of Default compounding, the Debtors and Lenders commenced a discussion to investigate whether a consensual path forward would be possible. In conjunction with those discussions, Alvarez & Marsal Canada ULC, an affiliate of A&M, was retained as a consultant to assist with analyzing the Debtors’ financial status and proposals for how to move forward (in such capacity, the “**Financial Advisor**”).<sup>29</sup>

*Further accommodations were provided*

28. Discussion between the Agent and the Credit Parties were formalized in the First Forbearance Agreement dated October 30, 2023, which was premised on a process to sell the Mall in accordance with specific transaction milestones and provided the Credit Parties with an opportunity to manage such sale process.<sup>30</sup>

29. The First Forbearance Agreement also attached the 244 Notices to each Credit Party (including, the Debtors who are respondents in this Application). Each Credit Party explicitly acknowledged receipt of same, and waived the statutory 10-day notice period.<sup>31</sup>

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<sup>28</sup> Ades-Landy Affidavit at paras 77, 79-80.

<sup>29</sup> Ades-Landy Affidavit at para 81.

<sup>30</sup> Ades-Landy Affidavit at para 82.

<sup>31</sup> Ades-Landy Affidavit at para 83.

30. Unfortunately, the Borrower failed to meet the requisite milestones under the sale process, which constituted termination events under the First Forbearance Agreement.<sup>32</sup> The loans remained unpaid.<sup>33</sup>

31. The Credit Parties entered into the Second Forbearance Agreement on May 17, 2024.<sup>34</sup> The Second Forbearance Agreement included an extension of the forbearance period to June 28, 2024 to provide the Credit Parties with more time to conduct their sale process. The Agent also obtained explicit consent from the Credit Parties under the Second Forbearance Agreement to the appointment of A&M as Receiver (“**Consent to Receiver**”).<sup>35</sup>

32. The June 28, 2024 maturity date of the forbearance agreement came and went without a viable sale transaction and without the Loans being repaid. The Agent and Lenders continued to exercise tremendous patience with the Credit Parties and worked with them to find a path forward.<sup>36</sup>

33. On or about August 12, 2024, the Borrower entered into a letter of intent with a potential purchaser (the “**Potential Purchaser**”), providing for the sale of the Real Property. In order to give the Credit Parties time to close a transaction with the Potential Purchaser (the “**Proposed Transaction**”), the Agent, the Lenders and the Credit Parties entered into the Third Forbearance Agreement dated November 21, 2024.<sup>37</sup> The Third Forbearance Agreement also contained the same Consent to Receiver language as was contained in the Second Forbearance Agreement.<sup>38</sup>

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<sup>32</sup> Ades-Landy Affidavit at para 84.

<sup>33</sup> Ades-Landy Affidavit at para 85.

<sup>34</sup> Ades-Landy Affidavit at para 86.

<sup>35</sup> Ades-Landy Affidavit at para 87.

<sup>36</sup> Ades-Landy Affidavit at para 88.

<sup>37</sup> Ades-Landy Affidavit at para 89, with the unredacted version of the Third Forbearance Agreement, with the two amendments thereto, being “**Confidential Exhibit 4**”.

<sup>38</sup> Ades-Landy Affidavit at para 95.

34. The Agent and Lenders also extended closing periods and continued to accommodate the Credit Parties and the Potential Purchaser throughout the negotiation of the Proposed Transaction by the Credit Parties, which were formalized through amendments to the Third Forbearance Agreement.<sup>39</sup>

End of forbearance

35. Despite these extensive accommodations, the Credit Parties failed to close the Proposed Transaction on or before the end of the forbearance period under the Third Forbearance Agreement (as amended), or at all.<sup>40</sup>

36. The Agent waited until the formal deadline for closing the Proposed Transaction (October 15, 2025), and then sent a reservation of rights letter with respect to the expiry of the Third Forbearance Agreement forbearance period on October 16, 2025 (the “**Reservation of Rights Letter**”).<sup>41</sup>

37. The Reservation of Rights Letter advised that the Agent and the Lenders were reserving all rights, including the appointment of a receiver, which as discussed above the Credit Parties explicitly consented to.<sup>42</sup> The Reservation of Rights letter also re-attached the 244 Notices.

38. No further accommodations, nor any formal forbearance arrangements, have been agreed to by the Agent or the Lenders. The Credit Parties have been provided with every reasonable opportunity to conduct a sale process for the Real Property and/or repay the Indebtedness on a timeline that would be acceptable to the Lenders, and nothing has worked.<sup>43</sup>

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<sup>39</sup> Ades-Landy Affidavit at paras 92-94.

<sup>40</sup> Ades-Landy Affidavit at para 96.

<sup>41</sup> Ades-Landy Affidavit at para 97, with the unredacted version of the Reservation of Rights Letter being “**Confidential Exhibit 5**” (together with Confidential Exhibits 1 through 4, the “**Confidential Exhibits**”).

<sup>42</sup> Ades-Landy Affidavit at para 99.

<sup>43</sup> Ades-Landy Affidavit at para 100

39. With material interest accruing monthly (and not being fully paid), and with the value of the Real Property being uncertain (and apparently diminishing), the Lenders have elected to exercise their contractual rights to seek the appointment of the Receiver.<sup>44</sup>

40. The Financial Advisor has been engaged by the Agent and Lenders since September 2023 and is knowledgeable about the Debtors' current operations and cash flows.<sup>45</sup> A&M has extensive experience in Canadian insolvency proceedings, including receiverships in Ontario that principally involve real estate assets.<sup>46</sup>

41. A&M has identified a funding need of approximately \$1.25 million over a 25-week cash flow ending August 7, 2026 (the "**Cash Flow Forecast**"), which is based on assumptions and potential changes in circumstances that may result in additional funding requirements.<sup>47</sup>

### **PART III – ISSUES**

42. The following issues are to be determined in this Application:

- (a) Is it just or convenient for the Court to appoint A&M as Receiver?
- (b) Are the terms of the proposed Receivership Order appropriate?
- (c) Is it appropriate to grant the limited sealing order?

43. In the respectful view of the Applicant, the answer to each question is "yes".

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<sup>44</sup> Ades-Landy Affidavit at para 101.

<sup>45</sup> Ades-Landy Affidavit at para 81.

<sup>46</sup> Ades-Landy Affidavit at para 108.

<sup>47</sup> Supplementary Affidavit of Dana Ades-Landy, sworn February 25, 2026, Exhibit "A".

## **PART IV – THE LAW AND DISCUSSION**

### **A. It is both just and convenient to appoint A&M as Receiver**

44. The Agent seeks the appointment of the Receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA. Subsection 243(1) of the BIA is explicit that where it is “just or convenient” to do so, the court may appoint a receiver. Similarly, the CJA enables the court to appoint a receiver where such appointment is “just or convenient”.<sup>48</sup>

45. In determining whether it is just or convenient to appoint a receiver on an application by a secured creditor, the Court must have regard to all the circumstances of the case, in particular, the nature of the property and the rights and interests of all parties in relation thereto, which includes the rights of the secured creditor under its security.<sup>49</sup>

46. Courts have considered the following factors, among others, when determining whether it is just or convenient to appoint a receiver:<sup>50</sup>

- (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;

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<sup>48</sup> BIA, [s 243\(1\)](#) and CJA, [s 101\(1\)](#), **Schedule “B”** to this Factum.

- (d) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (e) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (f) the effect of the order upon the parties;
- (g) the likelihood of maximizing return to the parties; and
- (h) the goal of facilitating the duties of the receiver.

47. The foregoing factors have recently been endorsed by Justice Osborne (formerly of this Court) in several cases, including *RBC v. Ten 4 System Ltd. et. al.*,<sup>51</sup> in which Justice Osborne observed:

How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “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.”

48. In cases where the security documentation provides for the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As noted by Justice Morawetz (as he then was) in *Elleway Acquisitions Ltd v. Cruise Professionals Ltd* (emphasis added):

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<sup>49</sup> *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996 CanLII 8258](#) (ONSC [Commercial List]) at para [10](#); *1529599 Ontario Ltd v Dalcour Inc.*, [2012 ONSC 5707](#) at para [40](#).

<sup>50</sup> *Maple Trade Finance Inc v. CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#) at para [25](#).

<sup>51</sup> *RBC v. Ten 4 System Ltd. et. al.*, (October 18, 2023) ONSC [Commercial List], Court File No. CV-23-00705869-00CL ([Endorsement](#)) at para 11 [*Ten 4*], leave to appeal ref'd [2023 ONCA 839](#); see also *Waygar Capital Inc. v. El Mocambo Entertainment Inc. et al.*, [2025 ONSC 2034](#) at para [5](#); *Kingsett Mortgage Corp. v. Mapleview Developments Ltd., et al.*, [2024 ONSC 1983](#) at para [24](#).

[...] while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.<sup>52</sup>

49. This principle that a contractual right to the appointment of a receiver “significantly reduces” the extraordinary nature of the remedy has been regularly endorsed by this Court.<sup>53</sup>

50. In the present circumstances, all of the relevant factors, considered on a holistic basis, support the conclusion that it is both just and convenient for this Court to appoint A&M as Receiver, for the following reasons:

- (a) **Maturity and Events of Default.** The Loans matured on September 13, 2023 and the Debtors cannot (and have acknowledged that they cannot) repay the Indebtedness. The Debtors also committed numerous other Events of Default which are continuing and uncured.
- (b) **Agent is entitled under the Loan Documents.** The Agent and Lenders contracted for the right to appoint the Receiver under the Loan Documents:
  - (i) Section 10(r) of the general security agreement dated December 13, 2018 permits the Agent to, upon the occurrence of an Event of Default (under the Credit Agreement) that is continuing, “obtain from any court of competent jurisdiction in an order for the appointment of a Receiver of any or all Debtors or any or all of the Collateral of any or all Debtors”;

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<sup>52</sup> *Elleway Acquisitions Ltd v. Cruise Professionals Ltd*, [2013 ONSC 6866](#) at para 27.

<sup>53</sup> *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at para 43; see also *1599285 Ontario Ltd. et al v. 1000195736 Ontario Ltd. et al*, [2024 ONSC 3847](#) at para 25.

- (ii) Section 22(b) of the collateral charge in respect of the Real Property registered on or around December 13, 2018 permits the Agent to, upon the occurrence of an Event of Default that is continuing, commence “proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Charged Premises [...]” with the “Charged Premises” being the Real Property, together with all buildings, erections, structures, improvements and fixtures situated thereon; and
  - (iii) Section 11 of the Second Forbearance Agreement and Section 12 of the Third Forbearance Agreement contain the Consent to Receiver language, in which the Debtors explicitly agree to the appointment of A&M as receiver and explicitly acknowledge that the Agent and Lenders would not have agreed to the forbearance terms unless the Consent to Receiver language was included.<sup>54</sup>
- (c) **Irreparable harm might be caused if no order is made.** It is critical for the Receiver to be appointed to mitigate the risk of irreparable harm to stakeholders:
- (i) the Historical Appraisals and the JLL Reports in respect of the Real Property illustrate a steady decline of value from 2022 to 2025. In contrast, the Indebtedness owing to the Lenders continue to increase as the Debtors have not been able to repay the interest on the Loans in full as it accrues. The Agent and Lenders cannot continue to stand idle while the Debtors maintain control of the Real Property, especially considering the apparently diminishing value in the Real Property over recent years; and

(ii) the Debtors do not have a viable plan to address the Environmental Issues on any timeline reasonably acceptable to the Agent and the Lenders, including within the context of managing a transaction that would repay the Loans. The Receiver would be well suited and has the necessary experience to engage qualified environmental consultants to better understand the scope of the Environmental Issues and work with stakeholders, including prospective purchasers of the Real Property, to assess options to remediate and/or mitigate the Environmental Issues, to the extent necessary, recommended or advisable in the circumstances.

(d) **Balance of prejudice favours the appointment of the Receiver.** The prejudice to the Debtors created by the appointment of the Receiver is minimal, relative to the prejudice to the Agent and the Lenders if the Receiver is not appointed:

(i) the Debtors do not have direct employees. The Debtors are special purpose vehicles that were formed to hold the Real Property and operate the Mall, and do not have any substantial sources of cash receipts other than leasing the Mall to tenants (with the majority of tenancies being short-term in nature). The appropriate result of the Debtors' inability to meet its obligations under the Credit Agreement is for the Court to appoint the Receiver in accordance with the terms of the Loan Documents, which were agreed to by the Debtors as a condition of receiving the Loans and the accommodations under the Second and Third Forbearance Agreements; and

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<sup>54</sup> Ades-Landy Affidavit at para 104.

(ii) the Debtors have tried and failed to sell the Real Property since October 2023. The Receiver, if appointed, is expected to implement a comprehensive sale process over a reasonable time period. It is not just or convenient for the Debtors to continue holding the Property that is subject to the Agent's first-ranking security interest for loans that matured over 29 months ago.

(e) **Appointment is necessary for the Receiver to carry out its duties more efficiently, with a view to maximize value:**

- (i) a receiver is an independent court officer, and will be best positioned to (a) manage the existing short-term tenancies fairly and transparently and (b) engage with potential new tenants efficiently and transparently, in the best interests of all stakeholders. To the extent there are leasing or other development opportunities, the Receiver would be well-positioned to negotiate and enter into such arrangements with a view to maximize value;
- (ii) if appointed, the Receiver will be able to facilitate a process to obtain the highest and best value for the Property, while concurrently safeguarding the rights and interests of other stakeholders including, but not limited to, the tenants of the Mall. A receiver is also the optimal party to manage any proceeds of the Property that are recovered from a value-maximizing process and to determine the relative priority of any stakeholder claims.

51. The 244 Notices were issued to each of the Debtors on October 30, 2023. The statutory 10-day notice period has been waived and otherwise long expired. The 244 Notices were re-sent to the Credit Parties several times after October 2023, most recently as part of the Reservation of Rights Letter in October 2025. The forbearance period under the Third Forbearance Agreement has lapsed and the Agent and Lenders will no longer provide further accommodations.

52. The Agent and Lenders have exercised tremendous patience with the Debtors. The Debtors were provided with every reasonable opportunity to sell the Real Property and repay the Indebtedness, but have failed to do so. The Agent and Lenders are now exercising their contractual right to appoint the Receiver, including pursuant to the Debtors' Consent to Receiver.

53. The present circumstances justify court intervention. The appointment of the Receiver by this Court is a necessary, just and convenient remedy to preserve and realize the value of the Property, with minimal disruption, and a Court-supervised sale process will provide stability and permit the Receiver to help maximize value for all stakeholders.

**B. The terms of the proposed Receivership Order are appropriate**

54. The terms of the proposed Receivership Order are substantially in line with the Ontario model receivership order promulgated by the Ontario Model Order Subcommittee (the "**Model Order**"). In addition, section 101(2) of the CJA provides that any order under section 101(1) of the CJA may include such terms as are considered just.<sup>55</sup>

55. In the circumstances, the modifications to the Model Order are necessary and appropriate based on the nature and condition of the Property and will help facilitate the duties of the Receiver.

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<sup>55</sup> CJA, [s 101\(2\)](#).

Receiver's Charge

56. Pursuant to subsection 243(6) of the BIA, the Court may make an order respecting the payment of fees and disbursements of the receiver, including one that gives the receiver a charge, ranking ahead of any secured creditors, over all or part of the Debtors' property, but only if this Court is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.<sup>56</sup>

57. Pursuant to subsection 31(1) of the BIA, the Court may authorize a receiver to borrow in order to fund the duties of the receiver, and further permits a receiver to give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the Court.<sup>57</sup> The jurisdiction to authorize such borrowing also arises from the Court's powers under subsection 243(1)(c) of the BIA to "take any other action that the court considers advisable."<sup>58</sup>

58. A&M is knowledgeable of the Debtors' current operations and cash flows and has projected a funding requirement of at least \$1.25 million over the 25-week Cash Flow Forecast period.

59. The proposed Receivership Order provides for a "**Receiver's Charge**" (as defined therein) to secure the reasonable fees and disbursements of the Receiver and its counsel, and a "**Receiver's Borrowings Charge**" in the amount of \$2,000,000 (together with the Receiver's Charge, the "**Charges**") to secure monies borrowed by the Receiver.

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<sup>56</sup> BIA, [s 243\(6\)](#).

<sup>57</sup> BIA, [s 31\(1\)](#).

<sup>58</sup> See *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (October 18, 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00707839-00CL ([Endorsement](#)) at paras 53-55.

60. The Applicants are seeking a Receiver's Borrowings Charge in an amount \$750k greater than the projected liquidity needs in the Cash Flow Forecast. The additional amount under the Receiver's Borrowings Charge is sought to create flexibility, to enable the Receiver, if appointed, to fund unexpected liquidity needs that may arise from either (a) unexpected shortfalls in receipts from tenants, and/or (b) unexpected disbursements including, but not limited to, capital expenditures and additional environmental expenditures in respect of the Real Property and the Mall. The \$2 million cap sought in the proposed Appointment Order provides this flexibility, and would serve to avoid the Receiver having to return to Court to seek an increase.

61. The total quantum of the proposed Receiver's Borrowings Charge is less than 1.3% of the outstanding Indebtedness. The liquidity needs that would be funded by receiver's borrowings secured by the Receiver's Borrowings Charge are supported by a reasonable forecast by the Financial Advisor, and it is anticipated that the Receiver, if appointed, would only borrow amounts necessary to maintain critical liquidity from time to time.

62. Moreover, based on the searches against the Debtors and their property, and the corresponding absence of other secured creditors (except Computershare, who have been served and whose security registration was made in breach of the Loan Documents), the Receiver's Borrowings Charge, as contemplated by the proposed Receivership Order, will only prime the Agent.

63. The Charges, and the quantum of the proposed Receiver's Borrowings Charge, are reasonable and appropriate and within this Court's statutory jurisdiction to grant.

Limitations of Liability

64. The limitations of liability of a receiver are expressly set-out in section 14.06 of the BIA.

As it relates to environmental matters, section 14.06(2) provides that:

Notwithstanding anything in any federal or provincial law, a [receiver] is not personally liable in that position for any environmental condition that arose 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 [...]<sup>59</sup>

65. The proposed Receivership Order seeks to modify the Model Order in respect of the limitation on the receiver's liability as follows (underlined text):

“17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including, without limitation, any liability or obligation in connection with any environmental contamination on or migrating from the Property or arising under any Environmental Legislation, save and except for any gross negligence or wilful misconduct on its part [...].”

66. The proposed Receivership Order also references the *Fisheries Act* (Canada) under the “Limitation on Environmental Liabilities” provision of the Model Order, in addition to the existing references of the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* and the *Ontario Occupational Health and Safety Act*.

67. The modifications to the Model Order: (a) fall under the scope of “federal or provincial law” as expressly contemplated under section 14.06 of the BIA and (b) maintain the exceptions to the limitations of liability for actions that constitute gross negligence and wilful misconduct. As such, these modifications to the Model Order set out in the proposed Receivership Order are

substantively consistent with the provisions under the Model Order and are reasonable and appropriate in the circumstances, in particular given that there is known to be contamination at the Mall, but the precise nature and extent of such contamination is presently unknown.

**C. The test for a sealing order is satisfied**

68. Pursuant to s. 137(2) of the CJA, the Agent requests that the Confidential Exhibits be treated as confidential and sealed and not form part of the public record, until the earlier of (a) the closing of a sale of the Real Property, and (b) further order of the Court sought on not less than 7 days notice to the Receiver, the Debtors and the Agent.

69. In the view of the Applicant, all of the information for which a sealing order is sought is commercially sensitive and reasonably ought to be kept confidential, pending the sale of the Real Property.

70. The test for a sealing order established by the Supreme Court of Canada in *Sierra Club*, and subsequently recast in *Sherman Estate*, considers the following factors when a court is asked to exercise its discretion to limit the “open court” presumption and to seal materials:<sup>60</sup>

- (a) whether court openness poses a serious risk to an important public interest;
- (b) whether the order sought is necessary to prevent the risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.

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<sup>59</sup> BIA, [s 14.06\(2\)](#).

<sup>60</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at para [45](#) [*Sierra Club*]; *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para [38](#) [*Sherman Estate*].

71. Consideration for each of these factors supports the proposed sealing order:

- (a) **Public interest:** This Court accepts that there is a public interest both in maximizing recovery in an insolvency and protecting the integrity of a sale process.<sup>61</sup> This public interest consideration applies to the information contained in the Confidential Exhibits.
- (i) Confidential Exhibit 1 (JLL Reports) and Confidential Exhibit 2 (Historical Appraisals) contain valuations<sup>62</sup> which could materially undermine the integrity of any sale process, by providing the market with an indication of value that may act as a ceiling for bidders;
- (ii) Confidential Exhibit 3 (2025 Rent Roll) contains commercially sensitive information to the operations of the Debtors and tenants, such as the “base rent” by square footage for the on-going leases.<sup>63</sup> The disclosure of each tenants’ base rent could adversely impact the stability of the Mall’s operations and the Receiver’s ability to maximize recovery by potentially hindering any negotiations for new or existing leases,<sup>64</sup> and
- (iii) Confidential Exhibit 4 (Third Forbearance Agreement) and Confidential Exhibit 5 (Reservation of Rights Letter) contain the identity of the Proposed Purchaser, the purchase price of the Proposed Transaction and the deposit

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<sup>61</sup> *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at paras [82](#), [84](#).

<sup>62</sup> Ades-Landy Affidavit at para 116.

<sup>63</sup> Ades-Landy Affidavit at para 117.

<sup>64</sup> As discussed in the Ades-Landy Affidavit at para 118, the Receiver, if appointed, may elect to disclose all rent role information to prospective purchasers, provided confidentiality is maintained through non-disclosure agreements. Accordingly, while the *general* confidentiality of the rent roll information is necessary to maintain the integrity of the sale process, parties who have a *bona fide* reason for receiving disclosure are expected to get it.

structure.<sup>65</sup> The disclosure of this information, in advance of a receiver conducting a comprehensive sale process for the very same property could materially undermine the integrity of any sale process.

- (b) **Lack of reasonable alternative:** There is no reasonable alternative to the sealing order which would protect the confidentiality of the materials.
- (c) **Proportionality:** The preservation of confidential information inherent to a sale process in an insolvency proceeding is recognized as meeting the test for sealing documents in *Sherman Estate*, when limited to materials that contain the confidential and sensitive information and only for as long as may be necessary.<sup>66</sup>
  - (i) *Limited in scope:* the limited sealing order contained in the Receivership Order is only being sought for confidential and commercially sensitive information such as (i) the appraisal reports of the Real Property, (ii) the “base rent” for Confidential Exhibit 3 and (iii) the identity, consideration and deposit structure for Confidential Exhibit 4 and Confidential Exhibit 5.
  - (ii) *Limited in time:* the sealing order is also limited in time, effective until the earlier of the closing of a sale transaction for the Real Property and further order of the Court.

72. The relief sought under the limited sealing order is appropriately proportionate, when weighing the benefits of sealing the confidential and commercially sensitive information against the effects of limiting the “open court” presumption, and should be granted.

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<sup>65</sup> Ades-Landy Affidavit at para 119.

<sup>66</sup> *JBT Transport Inc., Re*, [2025 ONSC 1436](#) at paras [64-65](#).

**PART V – ORDER REQUESTED**

73. For the reasons stated herein, the Applicant submits that the relief sought herein is appropriate in the circumstances and respectfully requests that this Court grant the proposed form of the Receivership Order located at Tab 3 of its Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25th day of February, 2026.

A handwritten signature in black ink, appearing to be "K. W.", positioned above a horizontal line.

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Blake, Cassels & Graydon LLP  
Lawyers for the Applicant

## Schedule “A”

### List of Authorities

Cases	
1.	<i>Bank of Nova Scotia v. Freure Village of Clair Creek</i> , <a href="#">1996 CanLII 8258</a> (ONSC [Commercial List]).
2.	<i>1529599 Ontario Ltd v. Dalcour Inc.</i> , <a href="#">2012 ONSC 5707</a> .
3.	<i>Maple Trade Finance Inc v. CY Oriental Holdings Ltd.</i> , <a href="#">2009 BCSC 1527</a> .
4.	<i>RBC v. Ten 4 System Ltd. et. al.</i> , (October 18, 2023) ONSC [Commercial List], Court File No. CV-23-00705869-00CL ( <a href="#">Endorsement</a> ).
5.	<i>Waygar Capital Inc. v. El Mocambo Entertainment Inc. et al.</i> , <a href="#">2025 ONSC 2034</a> .
6.	<i>Kingsett Mortgage Corp. v. Mapleview Developments Ltd., et al.</i> , <a href="#">2024 ONSC 1983</a> .
7.	<i>Elleway Acquisitions Ltd v. Cruise Professionals Ltd.</i> , <a href="#">2013 ONSC 6866</a> .
8.	<i>BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.</i> , <a href="#">2020 ONSC 1953</a> .
9.	<i>1599285 Ontario Ltd. et al v. 1000195736 Ontario Ltd. et al.</i> , <a href="#">2024 ONSC 3847</a> .
10.	<i>Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.</i> , (October 18, 2023), ONSC [Commercial List], Court File No. CV-23-00707839-00CL ( <a href="#">Endorsement</a> ).
13.	<i>Sierra Club of Canada v. Canada (Minister of Finance)</i> , <a href="#">2002 SCC 41</a> .
14.	<i>Sherman Estate v. Donovan</i> , <a href="#">2021 SCC 25</a> .
15.	<i>Danier Leather Inc., Re.</i> , <a href="#">2016 ONSC 1044</a> .
16.	<i>JBT Transport Inc., Re.</i> , <a href="#">2025 ONSC 1436</a>

## Schedule “B”

### Relevant Statutes

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

#### Liability in respect of environmental matters

**14.06(2)** Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(a) before the trustee’s appointment; or

(b) after the trustee’s appointment unless it is established that the condition arose or the damage occurred as a result of the trustee’s gross negligence or wilful misconduct or, in the Province of Quebec, the trustee’s gross or intentional fault

#### Borrowing powers with permission of court

**31 (1)** With the permission of the court, an interim receiver, a receiver within the meaning of [subsection 243\(2\)](#) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor’s property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor’s property in priority to the creditors’ claims.

#### Court may appoint receiver

**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.

#### Restriction on appointment of receiver

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

### **Definition of *receiver***

**243(2)** Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — 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 — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Orders respecting fees and disbursements**

**243(6)** If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of *disbursements***

**(7)** In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

### **Advance notice**

**244 (1)** A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

### **Period of notice**

**244(2)** Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

### **No advance consent**

**244(2.1)** For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

### **Exception**

**244(3)** This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

### **Idem**

**244(4)** This section does not apply where there is a receiver in respect of the insolvent person.

**Courts of Justice Act, RSO 1990, c C.43**

**Injunctions and receivers**

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

**Terms**

**101(2)** An order under subsection (1) may include such terms as are considered just.

**Sealing documents**

**137(2)** A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**Personal Property Security Act, RSO 1990, c P.10**

NATIONAL BANK OF CANADA.  
Applicant

- and -

SCREO I DIXIE OUTLET MALL L.P, SCREO I DIXIE OUTLET  
MALL INC., and SCREO I DIXIE OUTLET MALL GP INC.  
Respondent

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

Proceeding Commenced at Toronto

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