



This is affidavit #1 of Robert Kates  
in this case and was made on April 16, 2025

No. S-244252  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

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

PETITIONERS

AND:

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

RESPONDENTS

**AFFIDAVIT**

I, ROBERT KATES, Director, Real Estate Services, of 4515 Central Boulevard, Burnaby, British Columbia, SWEAR THAT:

1. I am the Director, Real Estate Services, for Metro Vancouver Regional District, the Greater Vancouver Sewerage and Drainage District, and the Greater Vancouver Water District ("GVWD"). GVWD is a creditor of and claimant against the Respondents in these proceedings. As such, I have personal knowledge of the facts and matters deposed to in this affidavit, except where stated to be based on information and belief, and where so stated, I verily believe them to be true.
2. I am authorized to swear this affidavit on behalf of GVWD.
3. Attached as exhibit "A" to this affidavit is copy of a seismic upgrade variance guarantee (the "Guarantee") that was entered into between the Respondents, Slate Acquisitions Inc. and GVWD as of March 12, 2019.
4. The recitals to the Guarantee set out the earlier agreements leading up to the execution of the Guarantee.
5. As indicated, GVWD agreed to provide a credit of \$9,000,000 on account of the purchase

price to contribute to the costs of seismic upgrades to the buildings on the property being sold by GVWD.

6. In the Guarantee, the Respondents and Slate Acquisitions Inc. agreed to remit the up to the amount of \$9,000,000 GVWD on the occurrence of certain events, including the failure to obtain a building permit for the work.
7. The full \$9,000,000 plus interest is payable to GVWD pursuant to the Guarantee.

SWORN BEFORE ME at Burnaby, British )  
Columbia on April 16, 2025. )



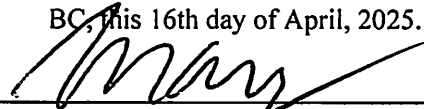
A commissioner for taking affidavits for British )  
Columbia )



**ROBERT KATES**

**MIKE OLSON**  
A Commissioner for taking Affidavits  
for British Columbia  
4515 Central Blvd  
Burnaby, BC V5H 0C6  
Expiry - February 28, 2027

This is exhibit "A" referred to in the 1st affidavit  
of Robert Kates sworn before me at Burnaby,  
BC, this 16th day of April, 2025.

  
\_\_\_\_\_  
A Commissioner for taking Affidavits for  
British Columbia

**MIKE OLSON**  
A Commissioner for taking Affidavits  
for British Columbia  
4515 Central Blvd  
Burnaby, BC V5H 0C6  
Expiry - February 28, 2027

# SEISMIC UPGRADE VARIANCE GUARANTEE

THIS AGREEMENT is made as of March 12, 2019,

BETWEEN:

**SCREO I METROTOWN L.P., by its general partner SCREO I METROTOWN GP INC.**

(the "LP")

AND:

**SLATE ACQUISITIONS INC.**

("Slate")

AND:

**SCREO I METROTOWN INC.**

(the "Nominee")

AND:

**GREATER VANCOUVER WATER DISTRICT**

(the "Seller")

WHEREAS:

- A. Slate and the Seller entered into an agreement of purchase and sale dated November 8, 2018, as amended by an amendment to agreement of purchase and sale dated December 21, 2018, a second amendment to agreement of purchase and sale and conditions removal dated January 4, 2019 and a third amendment to agreement of purchase and sale and conditions removal dated January 25, 2019 (the "Third Amendment" and collectively with such other amendments, the "Purchase Agreement"), wherein Slate agreed to purchase, and the Seller agreed to sell those certain lands and premises located at 4330 Kingsway and 5945 Kathleen Avenue, Burnaby, British Columbia, as more particularly described in the Purchase Agreement (the "Property");
- B. Pursuant to section 3 of the Third Amendment, the Seller agreed to provide Slate with a \$9,000,000 credit on account of the Purchase Price (the "Seismic Upgrade Adjustment Amount") for the sole purpose of contributing to the out of pocket costs of seismic upgrades to the existing buildings on the Property (the "Buildings") incurred by Slate as set out in the report of Glotman Simpson Consulting Engineers dated January 15, 2019 (the "Seismic Work");
- C. By an assignment of agreement of purchase and sale dated as of March 12, 2019 (the "Assignment Agreement"), Slate agreed to assign all of its right, title and interest in and to the Purchase Agreement and the Property to the LP and the LP accepted such assignment on the terms and conditions set out in the Assignment Agreement;
- D. Slate agreed in section 3 of the Third Amendment and the LP agreed by virtue of the Assignment Agreement, to reimburse the Seller if the total cost of the Seismic Work is less than the Seismic Upgrade Adjustment Amount and to provide the Seller with a guarantee (the "Seismic Upgrade

**Variance Guarantee**”) securing such obligation upon the terms and conditions hereinafter set forth;

- E. On the Closing Date (as defined in the Purchase Agreement), the LP will acquire beneficial title to the Property and legal title to the Property will be registered in the name of the Nominee in the Land Title Office pursuant to a Declaration of Bare Trust and Agency Agreement made as of March 12, 2019; and
- F. Slate, the LP and the Nominee are hereinafter collectively called the “**Buyer**”.

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements hereinafter set out, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the Buyer and the Seller hereby agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Agreement.
2. The Buyer shall use commercially reasonable efforts to expeditiously obtain a building permit from the City of Burnaby authorizing the Seismic Work (the “**Seismic Building Permit**”).
3. The Buyer shall provide the Seller with regular written updates (at least once per quarter) on the status of the Seismic Building Permit and the progress of the Seismic Work until the Buyer delivers the Seismic Work Statement (as defined below) to the Seller.
4. No later than 24 months after the receipt by the Buyer of the Seismic Building Permit, the Buyer shall prepare and deliver to the Seller a statement (the “**Seismic Work Statement**”) setting forth the Buyer’s calculation of the out of pocket costs incurred by the Buyer in carrying out the Seismic Work (the “**Actual Seismic Costs**”) and the Reimbursement Payment. The “**Reimbursement Payment**” shall be equal to the Seismic Upgrade Adjustment Amount minus the Actual Seismic Costs, provided that the Reimbursement Payment will be zero if the Actual Seismic Costs equal or exceed the Seismic Upgrade Adjustment Amount. The Seismic Work Statement shall include all receipts and/or invoices evidencing to the reasonable satisfaction of the Seller that an amount at least equal to the Actual Seismic Costs has been incurred and paid for by the Buyer to undertake the Seismic Work.
5. The Seller shall have thirty (30) days from the date it receives the Seismic Work Statement (the “**Seller’s Review Period**”) to review the Seismic Work Statement and notify the Buyer in writing if the Seller disputes the calculation of the Actual Seismic Costs and/or the Reimbursement Payment (the “**Objection Notice**”). The Objection Notice shall briefly set out the Seller’s grounds for such dispute. If the Seller does not provide the Buyer with an Objection Notice during the Seller’s Review Period, the Seller shall be deemed to have approved the calculations set forth in the Seismic Work Statement and, if applicable, the Buyer shall remit the Reimbursement Payment set out in the Seismic Work Statement to the Seller within five (5) business days of the expiration of the Seller’s Review Period.
6. If the Seller delivers an Objection Notice to the Buyer during the Seller’s Review Period, the Buyer shall pay to the Seller within five (5) business days of receipt of the Objection Notice the proposed Reimbursement Payment set out in the Seismic Work Statement and the parties’ dispute regarding the balance of the Reimbursement Payment shall be resolved in accordance with the following procedure:
  - (a) the parties will first attempt to resolve the dispute by senior management representatives of the parties meeting and making reasonable good faith efforts to resolve the dispute by amicable negotiations;

- (b) if the parties are unable to resolve the dispute by negotiation to their mutual satisfaction within 30 days of the delivery of the Objection Notice, and if the parties mutually agree to do so, the dispute shall be referred to and exclusively resolved with finality by arbitration administered by a single arbitrator under the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its Rules; however, a party may at any time apply to a court of competent jurisdiction for: (i) interim protection or equitable relief such as an interlocutory or interim injunction, or (ii) a final determination of the dispute, in either case prior to both parties agreeing to proceed with arbitration. The place of arbitration shall be Vancouver, British Columbia. The arbitrator must be qualified with respect to the matter in dispute and must not be related to either party. The parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) must not be disclosed beyond the tribunal, the BCICAC, the parties, their counsel and any person necessary for the conduct of the proceeding, except as may be required by law or be lawfully required in judicial proceedings relating to the arbitration or otherwise (including as may be required under the *Freedom of Information and Protection of Privacy Act* (British Columbia)). Any documents marked "without prejudice" and exchanged in an effort to negotiate a settlement to the dispute must not be admitted as part of the arbitration. The parties must continue performing their obligations under this Agreement during the dispute resolution or arbitration process.

Within five (5) business days of the resolution of the parties' dispute, the Buyer shall pay to the Seller the balance, if any, of the Reimbursement Payment deemed owing to the Seller.

7. Notwithstanding anything to the contrary in this Agreement, if the Buyer:
- (a) does not obtain the Seismic Building Permit within 2 years after the Closing Date (the "BP Issuance Date"); or
  - (b) sells, conveys or otherwise transfers (other than the sale, conveyance or transfer to a purchaser of a commercial strata lot forming part of the Buyer's intended project on the Property) all of its interest in the Property or this Agreement to any third party prior to delivering the Seismic Work Statement to the Seller; or
  - (c) commences the demolition of all of the Buildings prior to delivering the Seismic Work Statement to the Seller,

then the Buyer shall remit the entire Seismic Upgrade Adjustment Amount to the Seller within five (5) business days of the occurrence of the applicable event set out in this section 7. Notwithstanding the foregoing, the BP Issuance Date will be extended for further 1 year periods (not to exceed an aggregate of 3 years), subject to the Buyer at all times acting in good faith and providing the Seller with proof of actively using commercially reasonable efforts to expeditiously obtain the Seismic Building Permit.

8. In the case of any conflict between the terms and conditions of the Purchase Agreement and the terms or conditions of this Agreement, the terms and conditions of this Agreement will prevail.
9. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Without prejudice to the right of the Seller to commence any proceedings with respect to this Agreement in any other proper jurisdiction, the Buyer hereby irrevocably attorns and submits to the jurisdiction of the courts of the Province of British Columbia.

10. Each of the parties will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.
11. This Agreement may be executed in any number of original counterparts with the same effect as if both parties had signed the same document and will become effective when one or more counterparts have been signed by both parties and delivered to each of the parties. All counterparts will be construed together and evidence only one agreement which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the date first above written.
12. If any provision in this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each covenant, obligation or provision of this Agreement will separately be valid and enforceable to the fullest extent permitted by law.
13. If the Buyer is comprised of more than one party, the covenants, agreements and obligations of the Buyer herein shall be the joint and several covenants, agreements and obligations of each party comprising the Buyer.
14. This Agreement may be executed by the parties and transmitted by fax or other electronic means and, if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had executed and delivered an original Agreement.
15. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors.

***[Signature Page Follows]***


IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**SCREO I METROTOWN L.P., by its general partner  
SCREO I METROTOWN GP INC.**

Per:   
Authorized Signatory

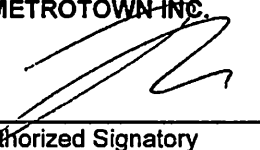
Per: \_\_\_\_\_  
Authorized Signatory

**SLATE ACQUISITIONS INC.**

Per:   
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCREO I METROTOWN INC.**

Per:   
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**GREATER VANCOUVER WATER DISTRICT**

Per: \_\_\_\_\_  
Randy Wenger  
Director, Properties



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**GREATER VANCOUVER WATER DISTRICT**

Per: \_\_\_\_\_  
Randy Wenger  
Director, Properties

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