

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

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

**SUPPLEMENTARY MOTION RECORD
For an interim distribution order
(originally returnable July 17, now returnable August 14, 2018)**

August 13, 2018

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TO: THE SERVICE LIST

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

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TO: THE SERVICE LIST

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DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**SUPPLEMENTARY MOTION RECORD
For an interim distribution order
(originally returnable July 17, now returnable
August 14, 2018)**

GOLDMAN SLOAN NASH & HABER LLP
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Lawyers for the Receiver, Crowe Soberman Inc.

Tab 1

File No. CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondent

**SUPPLEMENTARY REPORT TO THE SECOND REPORT OF CROWE
SOBERMAN INC. in its capacity as Court-appointed Receiver of DEEM
MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

DATED AUGUST 13, 2018

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Appendix H- EXP Services letter regarding time of work and holdback

Appendix I- Kieswetter letter regarding time of work and holdback

Appendix J- Maxion correspondence regarding time of work and holdback

Appendix K – Section 78 of the *Construction Act*

File No. CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondent

**APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT AND SECTION 101 OF THE COURTS OF JUSTICE ACT**

**SUPPLEMENTARY REPORT TO THE
SECOND REPORT OF THE RECEIVER**

AUGUST 13, 2018

INTRODUCTION

1. On May 31, 2018, pursuant to an order of the Honourable Mr. Justice Wilton-Siegel, made on an application by Donald Dal Bianco (“**Dal Bianco**”), Crowe Soberman Inc. was appointed as Receiver (the “**Receiver**”) of (collectively the “**Property**”):
 - (i) the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the “**Real Property**”),
 - (ii) the assets and undertakings of Deem Management Services Limited (“**Deem Management**”) related to the Real Property, and
 - (iii) the property, assets and undertakings of the Uptown Inc. (the “**Uptown**”, together with Deem Management the “**Companies**”).

2. The orders and reports referred to in this Supplementary Report to the Second Report, together with related Court documents, are posted on the Receiver's website, which can be found at <https://crowesoberman.com/insolvency/engagements/deem-management-services-limited/>

PURPOSE

3. The purpose of this report (the "**Supplementary Report**") is to provide further information and recommendations in connection with distribution relief that the Receiver had sought in its motion returnable on July 17, 2018, but which was adjourned.
4. The Receiver has previously served its Second Report dated July 9, 2018 (the "**Second Report**") in support of a motion to:
 - a) approve an agreement of purchase and sale between the Receiver and 10402672 Canada Inc. (the "**Purchaser**") dated July 4, 2018, as amended, in connection with the sale of the Property; and
 - b) authorize the Receiver to distribute part of net proceeds from the transaction with the Purchaser to pay the amounts owing to the first and second mortgagees of the Real Property, being Institutional Mortgage Capital Canada Inc. ("**IMC**") and Dal Bianco, subject to a \$1,000,000.00 reserve for potential construction lien holdback obligations of the Companies.
5. There was no objection to the approval of the transaction with the Purchaser, and Mr. Justice McEwen accordingly issued an approval and vesting order dated July 17, 2018, a copy of which is attached as **Appendix "A"**, and the associated endorsement is attached as **Appendix "B"** along with a typewritten transcription.
6. Some of the construction lien claimants raised concerns on that motion about the proposed distributions, including whether the holdback obligations of the Companies might be more than \$1,000,000.00 and whether the repayment of the first and second mortgages might be limited by the *Construction Act*.

7. The Receiver accordingly adjourned the distribution part of its motion to August 14, 2018 in order to gather more information and to consult with stakeholders. Mr. Justice McEwen also made an order on that issue, a copy of which is attached as **Appendix “C”**.

TERMS OF REFERENCE

8. In developing this Supplementary Report, the Receiver has relied upon certain unaudited financial information prepared by the Companies’ management and staff, the Companies’ books and records and discussions with their management, staff, agents and consultants. The Receiver has not performed an audit or other verification of such information. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Receiver in preparing this Second Report.

BACKGROUND

9. The background to the Property is more fully set out in the First Report dated June 8, 2018, which was attached without appendices as Appendix “B” to the Second Report. For convenience for the review of the mortgagee and construction lien issues in this Supplementary Report, the following is a synopsis of the background:
 - a) Deem Management is a company that has been working for many decades in the Ontario nursing home and retirement home sector. It is the registered owner of the Real Property.
 - b) The Uptown operates a presentation centre located on the Real Property and is engaged in planning related to the redevelopment of the Real Property as a seniors retirement residence project called the Uptown Residences (the “**Project**”). There is currently no active construction or development work on the Project. The work done to date has primarily been in the nature of obtaining approvals relative to Phase 1 of the project, and the excavation and installation of caissons necessary for that part of the development. There is consequently a large hole next door to the Pinehaven home at present.
 - c) A portion of the Real Property is vacant land where the Project has started. The remaining land contains an operating nursing home known as the Pinehaven Nursing

- Home (“**Pinehaven**”), which is an unrelated third party nursing business. Part of Deem Management’s business involves the collection of rent from Pinehaven.
- d) Both Deem Management and the Uptown are owned by Rob Dal Bianco (“**Rob**”), who is the sole director of the Companies, and the son of Dal Bianco.
 - e) Maxion Management Services Inc. (“**Maxion**”) is the general contractor on the Project. The Receiver understands that Maxion is owned by Paul Michelin. The Receiver was also advised by counsel for Michelin and Maxion that its clients assert a joint venture ownership claim, is a shareholder in Uptown, and therefore have a beneficial interest in the Project.
 - f) The Receiver understands that Maxion was advised to cease construction by Rob in the early winter of 2018. Shortly after construction ceased, various service providers registered construction liens against title to the Property commencing on March 7, 2018 totalling \$7,673,672.48.
 - g) In addition to the amounts claimed by the construction lien claimants, the Application Record dated May 28, 2018, outlined various mortgages and loans registered against title to the Property which exceed \$20 million.

ACTIVITIES SINCE THE JULY 17, 2018 MOTION

- 10. Other than regarding the mortgagee and construction lien priorities issues, in the interests of brevity the Receiver will only report briefly regarding its activities insofar as they relate to those issues. The Receiver will report more fully on its activities in a further motion to the Court.

The transaction with the Purchaser

- 11. The transaction with the Purchaser was subject to a due diligence condition. The Receiver has responded to due diligence requests from the Purchaser and has reviewed issues and information as necessary for those requests.
- 12. The culmination of the due diligence process has, as contemplated in the agreement of purchase and sale with the Purchaser and noted in the Second Report, culminated in a notice by the Purchaser to the Receiver of claimed costs that would reduce the purchase price. The Receiver is in discussions with the Purchaser regarding the validity of those claimed

reductions and whether a reduction in the purchase price can be agreed upon by the Receiver.

Collection of information from mortgagees and lien claimants

13. As contemplated in the schedule attached to the July 17, 2018 Order of Justice McEwen, the Receiver has been provided with further information regarding mortgagee and lien claimant priority issues and has where appropriate engaged in consultations with the parties on those issues.
14. IMC and Dal Bianco have provided information regarding the advances made under the first and second mortgages, as follows:

	Date of Registration	Date and nature of advances
IMC, attached as Appendix “D”	May 9, 2017	Fully advanced \$8,255,000.00 on May 9, 2017. Of that, \$2,020,179.32 was retained as reserves, being: a) \$135,000 for future realty taxes, of which \$37,556 remains, b) \$377,670 as an interest reserve, which was depleted as of December 1, 2017, and c) \$1,507,509.32 for construction costs to be incurred by Deem, which was depleted as of October 2, 2017.
Dal Bianco attached as Appendix “E”	June 25, 2015 (postponed to IMC)	Fully advanced June 1, 2015 to repay a prior mortgage to Montrose Mortgage Corporation.

15. The construction lien claimants have also provided information regarding the time when they say that the first work was done on the Project (for purposes of establishing the date when the first lien arose under the *Construction Act*) as well as what they say the amount

of progress on the Project has been (for purposes of estimating holdback under that Act):
as follows:

	Date of first work	Amount of progress or holdback
Deep Foundations Contractors Inc., attached as Appendix “F”	July 11, 2017, but it was not the first trade to work on the Project.	For its work, holdback is \$144,555.74.
OneSpace Unlimited Inc. attached as Appendix “G”	First in December of 2011. Work resumed on June 23, 2018.	For its work, holdback is \$6,858.00
EXP Services Inc., attached as Appendix “H”	November 18, 2015 for engineering services	Its progress is \$336,654.12, but Maxion has claimed holdback of \$2,377,918.60.
Kieswetter Excavating Inc., attached as Appendix “I”	May 11, 2017	It believes that total holdback would be approximately \$450,000.00.
Maxion, attached as Appendix “J”	January or February of 2010	\$23,559,041.73 (which is Maxion’s claimed amount of \$23,779,186.01 less an admitted reduction of \$220,144.28)

RECEIVER’S REVIEW OF MORTGAGEE AND LIEN CLAIMANT PRIORTIY ISSUES

16. The priority issues as between the first and second mortgage on the one hand, and the lien claimants on the other, is governed by section 78 of the *Construction Act*. A synopsis of those distinctions is as follows:

Type of mortgage	Effect on priority
Construction mortgage	s. 78(2) – priority for lien claimants for deficiency in holdback
Capital mortgage registered and advanced before first work	s. 78(3) – priority for mortgagee for the lesser of the advances made or the value of the land when the first lien arose

Capital mortgage registered before first work, but subsequent advances	s. 78(4) – priority for subsequent advances unless a lien registered or the mortgagee had notice of a lien
Capital mortgage registered after first work	s. 78(5) - priority for lien claimants for deficiency in holdback
	s 78(6) – loss of priority if advances made when a lien registered or the mortgagee had notice of a lien

17. A copy of section 78 of the *Construction Act* is attached as **Appendix “K”**.

Factual matters

18. The timing of when the first lien arose is unclear, but is at least late 2015 if not earlier. This is because:

- a) Maxion contends it was 2010, but the facts are not necessarily clear that it was the same improvement, or that there may not have been enough stopping and starting such that first work on the project that actually proceeded may not have been later.
- b) EXP Services has indicated that it was doing lienable engineering work in the Fall of 2015 and a variety of other consultants’ reports were dated at that time and earlier.
- c) While it may seem at first blush that the first work was May of 2017, that was instead just when the first “shovel in the ground” type work was done by trades such as Kieswetter and Deep Foundations.

19. The quantum of holdback is unclear. This is because:

- a) Maxion contends that nearly all of its c. \$23 million of costs that it circulated earlier are lienable services (it appears to agree that the legal fees of \$220,144.28 are not).
- b) The Receiver has doubts about some of that, as Maxion seems to have been acting as both developer and general contractor. This is reflected in Maxion’s inclusion of development fees and expenses in its calculation of construction progress (i.e. development charges to the City of Waterloo, marketing expenses, and an overall development fee in addition to construction work). It is possible that not all of the expenses and fees that Maxion listed would necessarily be construction progress for holdback purposes.

- c) The issue of whether the entire scope of Maxion's asserted work since 2010 was the same improvement (noted in item (a), above) also applies here, because Maxion includes all of that in the c. \$23 million amount. Any finding that there was in fact one or more projects would lead to a lower number for the current one.
- d) Deem Management also disputes that the arrangements with Maxion are as Maxion has described, and that all of the work done was authorized, for value, and that all the fees sought are properly payable.
- e) Maxion has also included claims for work after appointment of the Receiver, which the Receiver is unsure are valid in whole or in part.

Recommendations

- 20. The Receiver believes that notwithstanding that several matters are still unclear, there is support for five conclusions that support making interim distributions to pay out the first and second mortgages:
- 21. Firstly, both mortgages are subject to holdback. That is because:
 - a) At least part of the IMC mortgage was for financing an improvement, so it will be subject to holdback as a hybrid mortgage under s. 78(2) of the *Construction Act*.
 - b) If first work predated both mortgages, then s. 78(5) of the *Construction Act* applies to make them both subject to holdback.
 - c) If first work was after the 2015 Dal Bianco mortgage, then it is postponed to the IMC mortgage in any event so item (i) still governs in any event.
- 22. Secondly, holdback is not going to be larger than \$2,355,904.17. While there may be too many open issues at this point to come to any firm conclusions about progress and holdback, the highest is Maxion's claim of progress of \$23,559,041.73 (being the claimed amount of \$23,779,186.01 less the admitted reduction for legal fees of \$220,144.28). This is an increase from the \$1,000,000 amount that the Receiver had proposed in the Second Report, as a result of the further information and consultation with the lien claimants.
- 23. Thirdly, the limitation on prior-advanced capital mortgages in section 78(3) of the *Construction Act* will not apply to these mortgages, so there is no limitation on their repayment. That is because:

- a) If the first lien arose in 2010 as Maxion contends, then both mortgages are subsequent mortgages under subsections 78(5) and (6). Note that no advances were made in the face of a lien, so subs. 78(6) doesn't arise. The same thing applies to any date for first lien arising before June of 2015.
 - b) If the first lien arose after the 2015 Dal Bianco mortgage but before the IMC mortgage (i.e. as late as when exp Services indicates it worked), then the value of the land at the time of the 2015 Dal Bianco mortgage was more than the c. \$4.5 million advanced.
24. Fourthly, it makes sense to make the interim distributions in order to stop the interest expense of the first and second mortgages, which the Receiver estimates is more than \$110,000 per month and which will erode the entitlement of whoever is to be paid next. In that regard, it is notable that there is a dispute about the validity of a third ranking mortgage in favour of Dal Bianco. Since that is the only other mortgage, if it is not enforceable then the lien claimants would be the next secured creditors, so the reduction of ongoing interest expense could end up benefitting construction lien claimants.
25. Accordingly and fifthly, there is no prejudice to any party if the interim distributions are made provided that they will leave the Receiver holding more than (i) the possible holdback of \$2,355,904.17 plus (ii) amounts necessary to repay all fees and expenses owing to the Receiver and its counsel as well as (iii) a reserve to complete the administration of the estate. The Receiver expects that there will be sufficient funds to meet this condition from the closing with the Purchaser even if the full amount of priced reduction is agreed to by the Receiver.
26. Distribution of any further amounts will of course have to be authorized by further order made on notice. At present, the issues behind further distributions will either require further consent or adjudication.
27. As noted in the Second Report, the Receiver is unaware of any challenge to the validity of the IMC mortgage or the second ranking mortgage in favour of Dal Bianco, and the Receiver's counsel has provided the Receiver with an opinion that those mortgages are valid and enforceable subject to the normal assumptions and qualifications.

RELIEF SOUGHT

28. The Receiver accordingly revises its request for authority to make distributions to an order that, provided that after such distributions there will remain in the Receiver's possession (i) \$2,355,904.17, (ii) amounts necessary to repay all fees and expenses owing to the Receiver and its counsel and (iii) a reserve to complete the administration of the estate, the Receiver is authorized to :

- a) pay the amounts owing to Institutional Mortgage Capital Canada Inc. secured by a mortgage against the Real Property, subject to the Receiver's review of the relevant payout statement and costs claimed; and
- b) pay the amounts owing to Dal Bianco for the mortgage registered on tile to the Real Property dated June 26, 2015 and registered as instrument no. WR888817 (as amended by instrument no. WR1030186 on May 8, 2017 to extend the term to March 1, 2019), subject to the Receiver's review of the relevant payout statement and costs claimed

All of which is respectfully submitted this 13th day of August, 2018

Crowe Soberman Inc.
in its capacity as Court-appointed
Receiver of Deem Management Services Limited
and The Uptown Inc., and not in its personal capacity



for

Per: Hans Rizarri CPA, CA, CIRP

Tab A

Court File No.: CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 17TH

JUSTICE MCEWEN

)

DAY OF JULY, 2018

)



DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Crowe Soberman Inc in its capacity as receiver (the "**Receiver**") of the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the "**Real Property**"), the assets and undertakings of Deem Management Services Limited ("**Deem Management**") related to the Real Property (the "**Related Deem Assets**"), and the property, assets and undertakings (the "**Uptown Assets**") of the Uptown Inc. (the "**Uptown**", together with Deem Management the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 10402672 Canada Inc. (the "**Purchaser**") dated July 4, 2018 and appended to the Second Report of the Receiver dated July 9, 2018 (the "**Second Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets

described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, any other party as indicated on the counsel slip, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of R. Brendan Bissell sworn July 10, 2018, filed:

1. THIS COURT ORDERS that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), the Purchased Assets described in the Sale Agreement, including (i) all of Deem Management's right, title and interest in the Real Property, (ii) all of the right, title and interest of the Debtors in the Deem Related Assets and the Uptown Assets, and (iii) all of the right, title and interest of the Debtors in a lease of a part of the Real Property to Schlegel Villages Inc. dated May 1, 2017 as amended and the building permit, fees and securities described in Section 2.3 of the Sale Agreement, including the Purchased Assets described in the Sale Agreement and listed on **Schedule B** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Wilton-Siegel dated May 31, 2018; (ii) all charges,

security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and

- 4 -

(c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, 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.

A handwritten signature in black ink, appearing to be 'McIntosh', written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 17 2018

PER / PAR: Rm

Schedule A – Form of Receiver’s Certificate

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

PLAINTIFF

Plaintiff

- and -

DEFENDANT

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "Court") dated May 31, 2018, Crowe Soberman Inc. was appointed as the receiver (the "Receiver") of the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the "**Real Property**"), the assets and undertakings of Deem Management Services Limited ("**Deem Management**") related to the Real Property (the "**Related Deem Assets**"), and the property, assets and undertakings (the "**Uptown Assets**") of the Uptown Inc. (the "**Uptown**", together with Deem Management the "**Debtors**").

B. Pursuant to an Order of the Court dated July 17, 2018, the Court approved the agreement of purchase and sale made as of July 4, 2018 (the "**Sale Agreement**") between the Receiver and 10402672 Canada Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a

- 2 -

certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Crowe Soberman Inc., in its capacity as
Receiver of the undertaking, property and
assets of Deem Management Services
Limited and The Uptown Inc. and not in its
personal capacity**

Per: _____

Name: Hans Rizarri

Title: President

Schedule B – Purchased Assets

Legal Description Of The Lands

PIN 22291-0628 (LT)

Property Description: PT. BLOCK A PLAN 1313, BEING PTS. 1, 4 & 5 ON 58R-6774 & PT. 3 ON 58R-2194, S/T EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF WATERLOO

Address: 215 and 229 Lexington Road, Waterloo, Ontario N2K 2E1

Personal Property

ISSUED FOR BUILDING PERMIT

ARCHITECTURAL DRAWING LIST

JUNE 20 2014

- 001 COVER PAGE
- 002 DRAWING LIST, BUILDING STATISTICS, O.B.C MATRIX & CONTEXT PLAN
- 003 SITE PLAN
- 003A COMPLETE PHASING -SITE PLAN
- 004 WALL TYPE SCHEDULE
- 005 FIRE SEPARATION
- 101 B2 LEVEL
- 102 B1 LEVEL
- 103 GROUND & 2ND FLOOR LEVEL
- 104 3RD & 4TH FLOOR LEVEL
- 105 5TH & 6TH FLOOR LEVEL
- 106 MECHANICAL PENTHOUSE LEVEL & ROOF PLAN
- 201 BASEMENT 2ND LEVEL ENLARGED PLAN
- 202 BASEMENT 2ND LEVEL ENLARGED PLAN
- 203 BASEMENT 1ST LEVEL ENLARGED PLAN
- 204 BASEMENT 1ST LEVEL ENLARGED PLAN
- 205 GROUND FLOOR LEVEL ENLARGED PLAN
- 206 GROUND FLOOR LEVEL ENLARGED PLAN
- 207 2ND FLOOR LEVEL ENLARGED PLAN
- 208 2ND FLOOR LEVEL ENLARGED PLAN
- 209 3RD FLOOR LEVEL ENLARGED PLAN
- 210 3RD FLOOR LEVEL ENLARGED PLAN
- 211 4TH FLOOR LEVEL ENLARGED PLAN
- 212 4TH FLOOR LEVEL ENLARGED PLAN
- 213 5TH FLOOR LEVEL ENLARGED PLAN

214 5TH FLOOR LEVEL ENLARGED PLAN
 215 6TH FLOOR LEVEL ENLARGED PLAN
 216 6TH FLOOR LEVEL ENLARGED PLAN
 217 MECHANICAL PENTHOUSE LEVEL ENLARGED PLAN
 301 NORTH & WEST ELEVATIONS
 302 SOUTH & EAST ELEVATIONS
 401 BUILDING SECTIONS
 402 BUILDING SECTIONS
 403 BUILDING SECTIONS
 502 WALL SECTIONS
 701 TYPICAL DETAILS
 702 TYPICAL DETAILS
 801 STAIR PLANS & SECTIONS
 802 STAIR PLANS & SECTIONS

PROJECT SPECIFICATIONS

UPTOWN PROJECT SPECIFICATIONS **412 PAGES**
 ONESPACE UNLIMITED INC. JUNE 25
 2014

PROJECT DOCUMENTS & REPORTS

NOISE FEASIBILITY STUDY **27 PAGES**
 HG ENGINEERING
 MAY 6 2013

PHASE I ENVIRONMENTAL SITE ASSESSMENT **69 PAGES**
 EXP SERVICES INC.
 DECEMBER 15 2014

PHASE II ENVIRONMENTAL SITE ASSESSMENT **87 PAGES**
 XCG CONSULTANTS LTD. SEPT 25
 2006

SUBSIDENCE DUE TO DEWATERING **4 PAGES**
 EXP SERVICES INC.
 DECEMBER 10 2014

ADDITIONAL GEOTECHNICAL INVESTIGATION **26 PAGES**
 EXP SERVICES INC.
 MARCH 10 2014

GEOTECHNICAL INVESTIGATION **31 PAGES**
 EXP SERVICES INC.
 NOVEMBER 21 2013

GEOTECHNICAL INVESTIGATION **21 PAGES**
 EXP SERVICES INC.
 NOVEMBER 6 2013

SUPPLEMENTAL GEOTECHNICAL INVESTIGATION **26 PAGES**
 TROW ASSOCIATES INC.

NOVEMBER 22 2010.

PRELIMINARY GEOCHEMICAL INVESTIGATION
TROW ASSOCIATES INC. APRIL 14
2010

37 PAGES

Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. WR888817 being a charge registered on June 25 2015 from Deem Management Services Limited to Donald Dal Bianco;
2. Instrument No. WR88818 being a notice of assignment of rents registered on June 25, 2015 from from Deem Management Services Limited to Donald Dal Bianco;
3. Instrument No. WR1030186 being a notice of amendment of charge registered on May 8, 2017 from Deem Management Services Limited to Donald Dal Bianco;
4. Instrument No. WR1030622 being a charge registered on May 9, 2017 from Deem Management Services Limited to Institutional Mortgage Capital Canada Inc.;
5. Instrument No. WR1030648 being a postponement of charge registered on May 9, 2017 from Donald Dal Bianco in favour of Institutional Mortgage Capital Canada Inc.;
6. Instrument No. WR1099051 being a charge registered on February 23, 2018 from Deem Management Services Limited to Donald Dal Bianco;
7. Instrument No. WR1100946 being a construction lien registered on March 7, 2018 by Kieswater Excavating Inc.;
8. Instrument No. WR1102134 being a construction lien registered on March 14, 2018 by Deep Foundations Contractors Inc.;
9. Instrument No. WR1102923 being a construction lien registered on March 19, 2018 by Onespace Unlimited Inc.;
10. Instrument No. WR1104680 being a construction lien registered on March 29, 2018 by Maxion Management Services Inc.
11. Instrument No. WR1106904 being a construction lien registered on April 12, 2018 by exp Services Inc.;
12. Instrument No. WR1107271 being a certificate registered on April 16, 2018 by Kieswater Excavating Inc.;
13. Instrument No. WR1107360 being a certificate registered on April 16, 2018 by Deep Foundations Contractors Inc.;
14. Instrument No. WR1110511 being a certificate registered on May 2, 2018 by Onespace Unlimited Inc.; and
15. Instrument No. WR1118147 being an application to register a court order registered on June 12, 2018.
16. Instrument No. WR1120829 being a certificate registered on June 25, 2018 by Maxion Management Services Inc.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Instrument No. 429796 being a development agreement registered August 5, 1970 between Lincoln Village Limited and The Corporation of the City of Waterloo;
2. Instrument No. 620622 being a development agreement registered February 8, 1970 between Pinehaven Nursing Home Limited and The Corporation of the City of Waterloo;
3. Instrument No. 620623 being a development agreement registered February 8, 1970 between Pinehaven Nursing Home Limited and The Corporation of the City of Waterloo;
4. Instrument No. 952613 being a development agreement registered July 22, 1988 between Lexington Holdings Limited and The Regional Municipality of Waterloo;
5. Instrument No. 956866 being a development agreement registered August 18, 1988 between Lexington Holdings Limited and The Corporation of the City of Waterloo;
6. Instrument No. WR853469 being a transfer easement registered November 27, 2014 between Deem Management Services Limited and Waterloo North Hydro Inc.
7. Instrument No. WR875231 being a site plan control agreement registered April 10, 2015 between Lexington Holdings Limited and The Corporation of the City of Waterloo;
8. Instrument No. WR1030548 being a notice of lease registered May 9, 2017 between Deem Management Services Limited and Schlegel Villages Inc., along with the associated lease dated May 1, 2017 between Deem Management Services Limited and Schlegel Villages Inc. as amended.

DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

APPROVAL AND VESTING ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com sw

R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, Crowe Soberman Inc.

Tab B

DONALD DAL BIANCO

and

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Applicant

Respondents

17 JUL 18

Approval + vesting order shall go as per draft. Clerk + signed. No one opposes. Details of sale are reasonable and appear to be the best available option. Sales process has been reasonable as well.

order shall also go as per draft filed. signed on proposed basis concerning rotation for distribution + approving activities. In this regard a sealing order shall also go as the Spirit Club criteria have been met.

McE...

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

MOTION RECORD
for an approval and vesting order and
an interim distribution order
(returnable July 17, 2018)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, Crowe Soberman Inc.

Court File No.: CV-18-598657-00CL

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

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

**ENDORSEMENT OF MR. JUSTICE MCEWEN
DATED JULY 17, 2018 (UNOFFICIAL TYPED VERSION)**

17 July 18

Approval and vesting order shall go as per draft filed and signed. No one opposes. Details of sale are reasonable and appear to be the best available option. Sales process has been reasonable as well.

Order shall also go as per draft filed and signed on unopposed basis concerning motion for distribution and approving activities. In this regard a sealing order shall also go as the Sierra Club criteria have been met.

McEwen J.

DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**ENDORSEMENT OF MR. JUSTICE MCEWEN
DATED JULY 17, 2018
(UNOFFICIAL TYPED VERSION)**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, Crowe Soberman Inc.

Tab C

Court File No.: CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR)
JUSTICE T. McEwen)

TUESDAY, THE 17TH
DAY OF JULY, 2018



DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

ORDER

THIS MOTION, made by Crowe Soberman Inc in its capacity as receiver (the “**Receiver**”) of the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the “**Real Property**”), the assets and undertakings of Deem Management Services Limited (“**Deem Management**”) related to the Real Property (the “**Related Deem Assets**”), and the property, assets and undertakings (the “**Uptown Assets**”) of the Uptown Inc. (the “**Uptown**”, together with Deem Management the “**Debtors**”) for an order authorizing the Receiver to make interim distributions and approving the Second Report of the Receiver dated July 9, 2018 (the “**Second Report**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, any other party as indicated on the counsel slip, and no one appearing for any other

- 2 -

person on the service list, although properly served as appears from the affidavit of R. Brendan Bissell sworn July 10, 2018, filed:

1. THIS COURT ORDERS that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.
2. THIS COURT ORDERS that the portion of the Receiver's motion for distribution, as set out in paragraph (c) of the relief requested in the Notice of Motion returnable today, is adjourned to August 14, 2018 in accordance with the timetable set out at **Schedule "A"**.
3. THIS COURT ORDERS that the Second Report and the activities described therein be and are hereby approved.
4. THIS COURT ORDERS that Confidential Appendices 1-8 to the Second Report are hereby sealed pending the closing of a transaction to sell the Property and the filing of a Receiver's Certificate.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 17 2018

PER / PAR: RW

- 3 -

Schedule "A"**Timetable for Distribution Motion**

a)	All lien claimants to provide the date on which they say work for this project started, along with some evidentiary back-up to substantiate that position	Fri. July 27
b)	All lien claimants to provide the amount that they say the holdback should be for this project, along with some evidentiary back-u to substantiate that position	Fri. July 27
c)	IMC and Dal Bianco to provide date(s) of advance(s) under the IMC and 2015 Dal Bianco mortgages	Fri. July 27
d)	Receiver to serve and file a supplementary report on priorities issues arising out of the information provided in (a), (b) and (c) for purposes of distribution to the IMC and 2015 Dal Bianco mortgages, including reserve for holdback	Thurs. Aug. 9
e)	Further hearing on distribution to the IMC and 2015 Dal Bianco mortgages, including reserve for holdback	Tues. Aug. 14

DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
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Michael B. Rotsztain (LSUC #: 17086M)
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R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, Crowe Soberman Inc.

Tab D

**PALIARE
ROLAND**
BARRISTERS

Chris G. Paliare
Ian J. Roland
Ken Rosenberg
Linda R. Rothstein
Richard P. Stephenson
Nick Coleman
Donald K. Eady
Gordon D. Capern
Lily I. Harmer
Andrew Lokan
John Monger
Odette Soriano
Andrew C. Lewis
Megan E. Shortreed
Massimo Starnino
Karen Jones
Robert A. Centa
Nini Jones
Jeffrey Larry
Kristian Borg-Olivier
Emily Lawrence
Tina H. Lie
Jean-Claude Killey
Jodi Martin
Michael Fenrick
Ren Bucholz
Jessica Latimer
Lindsay Scott
Alysha Shore
Denise Cooney
Paul J. Davis
Lauren Pearce
Elizabeth Rathbone
Daniel Rosenbluth
Glynnis Hawe
Emily Home

COUNSEL
Stephen Goudge, Q.C.

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(1934 - 2006)

Jeffrey Larry

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File 94933

July 26, 2018

VIA EMAIL

Brendan Bissell
Goldman Sloan Nash & Haber LLP
480 University Ave Suite 1600
Toronto, Ontario
M5G 1V2

Dear Mr. Bissell

Re: Deem Management Services Limited et al ats Dal Bianco - CV-18-598657-00CL

In response to the information contemplated at Schedule "A" to the Order of Justice McEwen made July 16, 2018, I write to confirm that on May 9, 2017, Institutional Mortgage Capital Canada Inc. ("IMC") advanced \$8,255,000 to Deem Management Services Limited ("Deem"). The loan was secured by, among other things, a mortgage against 215 and 229 Lexington Road, Waterloo, Ontario (the "Primary Property").

At the time of the initial advance, the amount of \$2,020,179.32 was retained by IMC on account of reserves for the following:

- (i) \$135,000 for future accruing realty taxes;
- (ii) \$377,670 for future accruing interest under the loan; and
- (iii) \$1,507,509.32 for costs to be incurred by Deem in connection with site servicing of the Primary Property.

In connection with the foregoing, I enclose:

- (i) a copy of the Mortgage Loan Closing Statement prepared and acknowledged by Deem at the time of initial funding; and
- (ii) three statements prepared by IMC showing the dates and amounts of the application and/or release of the reserve funds.

I also enclose copies of a Full Recourse Guarantee and an Indemnity, both dated May 8, 2017. Pursuant to section 5.01 of the Full Recourse Guarantee, the Guarantor (defined as Deem Management Limited, Maxison Management Services Inc., The Uptown Inc., 2453678 Ontario Inc., Robert Dal Bianco and Paul Michelin) agreed that all debts and liabilities, present and future, of Deem to

any of the Guarantor parties are thereby assigned to IMC and postponed to the guaranteed obligations, and that all money received by any of the Guarantor parties will be held in trust for IMC and paid over to IMC upon receipt. As a result of these agreements, it is IMC's position that notwithstanding anything provided for in the *Construction Act* or otherwise, none of the Guarantor parties can have priority over IMC in connection with any of the funds that may be at issue.

I trust the following is satisfactory but do not hesitate to contact me if you have any questions.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

A handwritten signature in blue ink, appearing to read 'JL', is positioned above the typed name Jeffrey Larry.

Jeffrey Larry

JL:j

Encls.

c: J. Monardo
R. Melvin
service list

MORTGAGE LOAN CLOSING STATEMENT

Lender:	IMC Limited Partnership ("IMC LP")		
Borrower:	Deem Management Services Limited		
Deal Name:	The Uplown		
Property Address:	215 - 229 Lexington Road		
Property City/Province:	Waterloo, ON		
Closing Date:	May 9, 2017	Interest Adjustment Date:	June 1, 2017

Loan Advance:		\$8,255,000.00
Deposits Paid by Borrower:		
Third Party Deposit	\$10,000.00	
Underwriting Fee Deposit	\$41,275.00	\$51,275.00
Less Expenses Paid by Lender:		
Environmental Review	\$420.42	
Property Insurance Consultant	\$621.50	
Underwriting Fee	1.000% \$82,550.00	(\$83,591.92)
NET LOAN PROCEEDS WIRED TO		CHICAGO TITLE INSURANCE COMPANY
		\$8,222,683.08

Less Expenses Paid by Title Company:

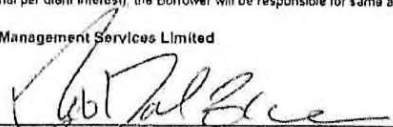
Interest Adjustment to.....	IMS Limited Partnership	\$47,566.29
Broker Fee to.....	Capital West Mortgage Inc.	\$82,550.00
Immediate Reserves to.....	IMS Limited Partnership	
	Realty Tax	\$135,000.00
	Debt Service	\$377,670.00
	Other	\$1,507,509.32
Title Insurance Costs to.....	Chicago Title Insurance Company	
	Premium-Lender	\$4,523.75
	Funding Fee	\$300.00
	Disbursements	\$575.16
	Taxes	\$400.90
Lender's Legal Costs to.....	Rose, Persiko, Rakowsky, Melvin LLP	
	Legal Fee	\$18,000.00
	Disbursements	\$1,327.00
	Taxes	\$2,513.00
	Holdback for Unbilled Disbursements	\$400.00
Payout of Prior Encumbrances to..	Vector Financial Services Limited	\$5,114,722.66
Legal Fees to	Minden Gross LLP	\$4,595.00

Total Borrower Expenses:		\$7,297,683.08
Net Amount due to Borrower or as Borrower may further direct in writing		\$925,000.00

Monthly Reserves to..... IMS Limited Partnership
 Realty Tax \$15,500, commencing January 1, 2018

The Borrower hereby authorizes and directs Chicago Title Insurance Company to disburse the funds as indicated above. Chicago Title Insurance Company undertakes to use its best efforts to wire the funds as directed above. In the event additional funds are required (including additional per diem interest), the Borrower will be responsible for same and

Deem Management Services Limited

Per: 

Name: Robert Bianchi

Title: President

Accepted on May 8, 2017
(month/day)

REALSynergy

Escrows/Reserves/Holdbacks History Report

Effective Date: 5/9/2017 to 3/21/2018

Loan #: 300-0045
 Investor: REDF X LP
 Property Name: The Uptown
 Inw Loan #: The Uptown
 Borrower: Deem Management Services Limited
 Type: Taxes Only
 Escrow/Reserve/ Holdback Item #: 100152
 Address: 209 Lexington Road, Unit F2
 Waterloo, ON N2K 2E1
 Escrow/Reserve/ Holdback Description: Monthly Tax Escrow
 Scope: Escrows, Reserves, and Holdbacks
 Shadow Transactions: Include
 Unfunded: NA
 Shadow: No

Effect. Date	Transaction Description	Payee	Trans Amount	Receipts	Disbursements	Item Balance
5/9/2017	Beginning Balances					0.00
5/9/2017	Initialization/Escrow/Escrow		0.00	0.00		0.00
5/9/2017	Initialization/Escrow Held By Investor/Escrow Transferred To Inv.		0.00	0.00	0.00	0.00
5/9/2017	Cash Receipt/Escrow/Escrow		135,000.00	135,000.00		135,000.00
10/18/2017	Cash Disbursement/Escrow/Escrow	The Uptown Inc.	97,445.00		97,445.00	37,555.00
2/1/2018	Cash Receipt/Full Loan Payment/Escrow		18,778.00	18,778.00		56,333.00
2/14/2018	Cash Disbursement/Escrow/Escrow	Waterloo, City of	6,301.00		6,301.00	50,032.00
2/14/2018	Cash Disbursement/Escrow/Escrow	Waterloo, City of	31,254.00		31,254.00	18,778.00
3/1/2018	Cash Receipt/Full Loan Payment/Escrow		18,778.00	18,778.00		37,556.00
3/21/2018	Ending Balances					37,556.00

Beginning Balance	0.00
Disbursement to Investor	0.00
Receipts from Investor	0.00
Ending Balance	0.00

Beginning Balance	0.00
Receipts	172,556.00
Disbursements	135,000.00
Ending Balance	37,556.00

REALSynergy

Escrows/Reserves/Holdbacks History Report

Effective Date: 5/9/2017 to 3/21/2018

Loan #: 300-0045
 Property Name: The Uptown
 Borrower: Deem Management Services Limited
 Address: 209 Lexington Road, Unit F2
 Waterloo, ON N2K 2E1
 Investor: REDF X LP
 Inv Loan #: The Uptown
 Type: Debt Service Reserve
 Escrow/Reserve/Holdback Item #: 400588
 Escrow/Reserve/Holdback/Description: Interest Reserve
 Scope: Escrows, Reserves, and Holdbacks
 Shadow Transactions: Include
 Unfunded: No
 Shadow: No

Effect. Date	Transaction Description	Payee	Trans Amount	Receipts	Disbursements	Item Balance
5/9/2017	Beginning Balances					0.00
5/9/2017	Initialization/Holdback/Holdback		0.00	0.00		0.00
5/9/2017	Cash Receipt/Holdback/Holdback		377,670.00	377,670.00		377,670.00
6/27/2017	Cash Disbursement/Holdback/Holdback	The Uptown Inc.	47,596.29		47,596.29	330,073.71
7/4/2017	Spread Holdback/Full Loan Payment/Holdback Disbursement	The Uptown Inc.	62,944.37		62,944.37	267,129.34
8/1/2017	Spread Holdback/Full Loan Payment/Holdback Disbursement	The Uptown Inc.	62,944.37		62,944.37	204,184.97
9/1/2017	Spread Holdback/Full Loan Payment/Holdback Disbursement	The Uptown Inc.	62,944.37		62,944.37	141,240.60
10/2/2017	Spread Holdback/Full Loan Payment/Holdback Disbursement	The Uptown Inc.	62,944.37		62,944.37	78,296.23
11/1/2017	Spread Holdback/Full Loan Payment/Holdback Disbursement	The Uptown Inc.	62,944.37		62,944.37	15,351.86
12/1/2017	Spread Holdback/Partial Loan Payment/Holdback Disbursement	The Uptown Inc.	15,351.86		15,351.86	0.00
3/21/2018	Ending Balances					0.00

Borrower Summary	
Beginning Balance	0.00
Receipts	377,670.00
Disbursements	377,670.00
Ending Balance	0.00

REALSynergy

Escrows/Reserves/Holdbacks History Report

Effective Date: 5/9/2017 to 3/21/2018

Loan # : 300-0045 **Investor :** REDF X LP **Scope :** Escrows, Reserves, and Holdbacks
Property Name: The Uptown **Inv Loan # :** The Uptown **Shadow Transactions:** Include
Borrower: Deem Management Services Limited **Type:** Construction Completion **Unfunded:** No
Address: 209 Lexington Road, Unit F2 **Escrow/Reserve/Holdback Item #:** 400590 **Shadow:** No
Waterloo, ON N2K 2E1 **Escrow/Reserve/Holdback Description:** Site Servicing Reserve

Effect Date	Transaction Description	Payee	Trans Amount	Receipts	Disbursements	Item Balance
5/9/2017	Beginning Balances					0.00
5/9/2017	Initialization/Holdback/Holdback		0.00	0.00		0.00
5/9/2017	Cash Receipt/Holdback/Holdback		1,507,509.32	1,507,509.32		1,507,509.32
6/27/2017	Cash Disbursement/Holdback/Holdback	The Uptown Inc.	507,509.32		507,509.32	1,000,000.00
7/25/2017	Cash Disbursement/Holdback/Holdback	The Uptown Inc.	492,545.08		492,545.08	507,454.92
8/22/2017	Cash Disbursement/Holdback/Holdback	The Uptown Inc.	373,592.58		373,592.58	133,862.34
10/2/2017	Cash Disbursement/Holdback/Holdback	The Uptown Inc.	133,862.34		133,862.34	0.00
3/21/2018	Ending Balances					0.00

Borrower Summary	
Beginning Balance	0.00
Receipts	1,507,509.32
Disbursements	1,507,509.32
Ending Balance	0.00

FULL RECOURSE GUARANTEE
(“The Uptown”)

THIS GUARANTEE is made as of May ^{6th}, 2017 (this “**Guarantee**”) between INSTITUTIONAL MORTGAGE CAPITAL CANADA INC. (“**Lender**”) and DEEM MANAGEMENT LIMITED, MAXION MANAGEMENT SERVICES INC., THE UPTOWN INC., 2453678 ONTARIO INC., ROBERT DAL BIANCO and PAUL MICHELIN (individually and collectively, the “**Guarantor**”).

WHEREAS the Lender is making a loan (the “**Loan**”) to Deem Management Services Limited (the “**Borrower**”) in the original principal amount of \$8,255,000.00 pursuant to a commitment letter dated April 20, 2017 (the “**Commitment Letter**”) and secured by a first priority mortgage and charge (the “**Mortgage**”) of certain lands and premises known comprising Part Block A, Plan 1313, being Parts 1, 4 & 5 on Plan 58R-6774 and Part 3 on Plan 58R-2194, PIN 22291-0628 LT, 215 & 229 Lexington Road, Waterloo, Ontario (as defined in the Mortgage, the “**Property**”). As a condition of the Loan, the Guarantor has agreed to provide this Guarantee to the Lender. Unless otherwise defined herein, the capitalized terms and expressions used in this Guarantee have the same meaning as set out in the Mortgage. In this Guarantee, “**Province**” means the Province of Ontario.

NOW THEREFORE in consideration of the premises and the covenants and agreements herein contained, the sum of \$10.00 now paid by the Lender to the Guarantor and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Guarantor), the Guarantor covenants and agrees with and in favour of the Lender as follows:

ARTICLE 1 - GUARANTEE

Section 1.01 Guarantee.

The Guarantor hereby unconditionally and irrevocably guarantees payment and performance by the Borrower to the Lender of all Loan Indebtedness and any and all other debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender or remaining unpaid or unsatisfied by the Borrower to the Lender relating to the Loan (hereinafter collectively referred to as the “**Obligations**”), together with interest thereon as provided in Section 4.01.

Section 1.02 Indemnity.

If any or all of the Obligations are not duly performed by the Borrower and are not performed under Section 1.01 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against all losses resulting from the failure of the Borrower to perform such Obligations.

Section 1.03 Primary Obligation.

If any or all of the Obligations are not duly performed by the Borrower and are not performed under Section 1.01 or the Lender is not indemnified under Section 1.02, in each case, for any reason whatsoever, such Obligations will, as a separate and distinct obligation, be performed by the Guarantor as primary obligor.

Section 1.04 Liability.

The liability of the Guarantor hereunder is and shall be for the full amount of the Obligations without apportionment, limitation or restriction of any kind.

Section 1.05 Joint and Several.

If more than one Person is named as or otherwise becomes liable for or assumes the obligations and liabilities of the Guarantor hereunder, then the obligations and liabilities of all such Persons will be joint and several.

Section 1.06 Guarantee Absolute

The liability of the Guarantor hereunder will be absolute and unconditional and will not be impaired or limited by, or otherwise affected by: (a) any lack of validity or enforceability of any agreements between any Lender Entity and any Borrower Entity, including any of the Loan Documents or any change in the time, manner or place of payment of or in any other term of such agreements or the failure on the part of any Borrower Entity to carry out any of its obligations under such agreements; (b) any impossibility, impracticability, frustration of purpose, illegality, *force majeure* or act of

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government; (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of, or any other change in, any Borrower Entity, Lender Entity or any other party to any agreement to which any Lender Entity is a party, including without limitation, any change in the constitution of any partnership comprising any Lender Entity or Borrower Entity (including the Guarantor); (d) any lack or limitation of power, incapacity or disability on the part of any Borrower Entity or any Lender Entity or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of any Borrower Entity in its obligations to the Lender; (e) any extension or renewal of the Loan or other obligation under the Loan Documents; (f) any sale or assignment of the Loan or any Transfer; (g) the withdrawal or removal of the Guarantor from any current or future position of ownership, management or control of any Borrower Entity or the Property; (h) the accuracy or inaccuracy of the representations and warranties made by any Borrower Entity in any of the Loan Documents; (i) the release of any Borrower Entity or other Person from performance or observance of any obligation contained in any of the Loan Documents, by operation of law, voluntary act or otherwise; (j) the release or substitution in whole or in part of any security or collateral for the Loan, including any Defeasance; (k) the failure of any Person to record, register, perfect, protect, secure or ensure the Lender's security; (l) the modification of any Loan Document; (m) the exercise of any remedies against the Property, any Borrower Entity or other Person; (n) any course of dealings by any Lender Entity with the Property, any Borrower Entity or any other Person; or (o) any other law, regulation or other circumstance which might otherwise constitute a defence available to, or a discharge of, any Borrower Entity in respect of any or all of the Obligations.

Section 1.07 REIT Provision

Notwithstanding any other provision of any Loan Document, if any Borrower Entity is a real estate investment trust (a "REIT"), the obligations of the REIT under the Loan Documents are not personally binding upon, and resort will not be had to, nor will recourse or satisfaction be sought from, the private property of any of: (a) the unit holders of the REIT; (b) annuitants or beneficiaries under a plan of which a unit holder of the REIT acts as a trustee or carrier; and (c) trustees, officers or employees of the REIT, provided that the Property will remain bound by and subject to the Mortgage and the other Loan Documents, and the Lender will have full recourse to the Property, at all times and without limitation or restriction of any kind. Any obligation of the REIT set out in this Guarantee will, to the extent necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the REIT in their capacity as trustees of the REIT. Nothing herein will (i) constitute a bar to any action against the REIT for specific performance of any of its obligations under this Guarantee or any other Loan Document or (ii) limit, restrict or otherwise affect the validity or enforceability of the obligations and liabilities of any Borrower Entity under this Guarantee or any other Loan Document.

ARTICLE 2 - DEALINGS WITH BORROWER AND OTHERS

Section 2.01 No Release.

The liability of the Guarantor hereunder will not be released, discharged, limited or in any way affected by anything done, suffered or permitted by any Lender Entity in connection with any duties or liabilities of any Borrower Entity to any Lender Entity or any security therefor including any loss of or in respect of any security received by the Lender. Without limiting the generality of the foregoing and without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, the Lender may discontinue, reduce, increase or otherwise vary the credit of any Borrower Entity in any manner whatsoever without the consent of or notice to the Guarantor and may either with or without consideration and both before and after an Event of Default:

- (a) make any change in the time, manner or place of payment under, or in an other term of, any agreement between any Borrower Entity and the Lender;
- (b) grant time, renewals, extensions, indulgences, releases and discharges to any Borrower Entity;
- (c) take or abstain from taking or enforcing securities or collateral from any Borrower Entity or from perfecting securities or collateral of any Borrower Entity;
- (d) accept compromises from any Borrower Entity;
- (e) apply all money at any time received from any Borrower Entity or from securities upon such part of the Obligations as the Lender may see fit or change any such application in whole or in part from time to time as the Lender may see fit; and

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(f) otherwise deal with any Borrower Entity and all other Persons and securities as the Lender may see fit.

Without limiting the foregoing, the Guarantor hereby irrevocably consents to any extension, renewal or amendment of the Loan and/or any of the Loan Documents made by the Lender and the Borrower from time to time and acknowledges and agrees that this Guarantee will remain in full force and effect and will continue to apply and be binding on it for the benefit of the Lender with respect to all of the Obligations (as extended, renewed or amended thereby), notwithstanding any such extension, renewal or amendment.

ARTICLE 3 - CONTINUING GUARANTEE

Section 3.01 Continuing Guarantee.

This Guarantee will be a continuing guarantee of the Obligations and will apply to and secure any ultimate balance due or remaining due to the Lender and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Lender. The Guarantor will not be released or discharged from any of its obligations hereunder except upon payment of the total amount guaranteed hereunder together with interest thereon as provided in Section 4.01 and all Costs. This Guarantee will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Lender upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of any Borrower Entity or otherwise, all as though such payment had not been made. Any account settled or stated in writing by or between the Lender and the Borrower will be *prima facie* evidence that the balance or amount thereof appearing due to the Lender is so due.

ARTICLE 4 - DEMAND AND INTEREST

Section 4.01 Demand and Interest.

The Lender will be entitled to make demand upon the Guarantor at any time upon the occurrence of any Event of Default (as defined in the Mortgage) and upon such Event of Default the Lender may treat all Obligations as due and payable and may forthwith collect from the Guarantor the total amount guaranteed hereunder whether or not such Obligations are yet due and payable at the time of demand for payment hereunder. The Guarantor will make payment to the Lender of the total amount guaranteed hereunder forthwith after demand therefor is made to the Guarantor. The Guarantor will pay interest to the Lender at the Interest Rate (as defined in the Mortgage) on the unpaid portion of all amounts payable by the Guarantor under this Guarantee, such interest to accrue from and including the date of demand by the Lender on the Guarantor. The Lender will not be bound or obligated to exhaust its recourse against any Borrower Entity or other Persons or any securities or collateral it may hold or take any other action before being entitled to demand payment from the Guarantor hereunder. In any claim by the Lender against the Guarantor, the Guarantor may not assert any set-off or counterclaim that either the Guarantor or any Borrower Entity may have against the Lender. The Guarantor will pay all reasonable Costs incurred by the Lender in enforcing this Guarantee.

ARTICLE 5 - ASSIGNMENT, POSTPONEMENT AND SUBROGATION

Section 5.01 Assignment, Postponement and Subrogation.

All debts and liabilities, present and future, of the Borrower to any party comprising the Guarantor are hereby assigned to the Lender and postponed to the Obligations, and all money received by any party comprising the Guarantor in respect thereof will be held in trust for the Lender and forthwith upon receipt will be paid over to the Lender, the whole without in any way lessening or limiting the liability of the Guarantor hereunder and this assignment and postponement is independent of the Guarantee and will remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and paid in full. The Guarantor will not be entitled to subrogation until the Obligations are performed and paid in full.

ARTICLE 6 - GENERAL

Section 6.01 Benefit of the Guarantee.

The Guarantor acknowledges and agrees that the Lender may hold the Loan, this Guarantee and the other Loan Documents either for its own account and/or as custodian and agent for all Persons having or acquiring an ownership interest in the Loan from time to time and this Guarantee will enure to the benefit of the Lender and each such Person and their respective successors and assigns (whether or not any such Persons are a party hereto). The Guarantor agrees that the

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Lender will be entitled to hold and enforce all rights and hold the benefit of this Guarantee on behalf and for the benefit of itself and each such Person. Without limiting the foregoing, the Guarantor further agrees that all enforcement actions or proceedings may be brought by the Lender under the Loan and this Guarantee on behalf of itself and all Persons having or acquiring an ownership interest in the Loan from time to time and waives any requirement that any such person be a party to any such actions or proceedings. This Guarantee will be binding upon the Guarantor and its heirs, legal representatives, successors and assigns. Where any reference is made in this Guarantee to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference will be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust. The Loan, the Loan Indebtedness, the Loan Documents (including this Guarantee) or any interest therein may be sold, transferred or assigned by the Lender and/or any other Person having or acquiring an ownership interest in the Loan from time to time at any time and to any Person as it may determine in its sole discretion without restriction and without notice to or the consent of the Guarantor, any other Borrower Entity or Person.

Section 6.02 Entire Agreement.

This Guarantee constitutes the entire agreement between the Guarantor and the Lender with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties with respect to the subject matter of this Guarantee except as expressly set forth herein. The Lender will not be bound by any representations or promises made by the Borrower to the Guarantor and possession of this Guarantee by the Lender will be conclusive evidence against the Guarantor that the Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with.

Section 6.03 Amendments and Waivers.

No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by the Guarantor and the Lender. No waiver of any breach of any provision of this Guarantee will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

Section 6.04 Severability.

If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

Section 6.05 Notices.

Any demand, notice or other communication to be made or given to the Guarantor in connection with this Guarantee may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the Guarantor as follows, or to the last known address of the Guarantor as shown in the Lender's records:

- (a) to Deem Management Limited, The Uptown Inc. and/or Robert Dal Bianco at 209 Lexington Road, Unit F2, Waterloo, Ontario, N2K 2E1, Attention: Robert Dal Bianco, Fax No. 519-772-1034;
- (b) to Maxon Management Services Inc. and/or Paul Michelin at 92 Saunders Road, Unit 1, Barrie, Ontario, L4N 9A8, Attention: Paul Michelin, Fax No. 705-728-4612; and
- (c) to 2453678 Ontario Inc. at 610 Applewood Crescent, Suite 502, Vaughan, Ontario, L4K 0E3, Attention: Paul Michelin, Fax No. 416-238-7818.

Any demand, notice or communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof, and if given by registered mail, on the third Business Day following deposit thereof in the mail, and if given by facsimile transmission, on the first Business Day following the transmittal thereof.

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Section 6.06 Financial Statements.

The Guarantor will furnish to the Lender promptly upon demand by Lender from time to time financial statements of the Guarantor, in form and substance acceptable to the Lender. The Guarantor hereby represents and warrants to the Lender that all financial statements and other information previously provided or to be provided to any Lender Entity with respect to the Guarantor are and will be complete and correct in all material respects and include all material facts and circumstances concerning the financial or other condition or status of the Guarantor, its business and operations necessary to ensure all such statements and information are not misleading as of the date of delivery to such Lender Entity or as of such other date specified therein.

Section 6.07 Release of Information.

The Guarantor acknowledges and agrees that the Loan (or securities or certificates backed by or representing any interest in the Loan or a pool of loans which includes the Loan) may be sold, syndicated or securitized into the secondary market without restriction and without notice to or the consent of the Guarantor or any other Borrower Entity. Each Lender Entity may release, disclose, exchange, share, transfer and assign from time to time, as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, Lease defaults, Tenants or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by any Lender Entity relating to any Borrower Entity, the Property or the Loan (both before and after the Loan advance and/or default) without restriction and without notice to or the consent of the Indemnitor or any other Borrower Entity as follows: (i) to any existing or proposed Lender Entity; (ii) to any subsequent or proposed purchaser of or investor in the Loan or any interest therein; (iii) to the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution; (iv) to the public or other interested Persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Loan or loan pool or any interest therein regardless of format or scope of distribution; (v) to any Governmental Authority having jurisdiction over such sale, syndication or securitization of the Loan or loan pool or any trade of any interest in the Loan or loan pool; (vi) to any other Person in connection with the sale, syndication or securitization of the Loan or in connection with any collection or enforcement proceedings taken under or in respect of the Loan and/or the Loan Documents; and (viii) to any third party advisors and agents of any of the foregoing Persons, such as lawyers, accountants, consultants, appraisers, credit verification sources and servicers. The Guarantor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

The Guarantor acknowledges that certain Lender Entities may collect or come into possession of personal information relating to certain individuals either comprising or otherwise related to any Borrower Entity, including their respective directors, officers, shareholders, partners and principals. The Guarantor acknowledges and agrees that such personal information may be used by Lender Entities in connection with the processing, approving, funding, servicing and administering the Loan and any sale, syndication or securitization of the Loan, and in so doing each Lender Entity may disclose and otherwise deal with personal information in the same manner and to the same persons as provided in the preceding paragraph of this Section without restriction and without notice to or the consent of any Borrower Entity or any related individual. The Guarantor, for itself and on behalf of its directors, officers, shareholders, partners and principals, hereby consents to and authorizes such use and disclosure of all such personal information by each Lender Entity and represents and warrants that it has full power and authority to give such consent and authorization.

Section 6.08 Governing Law.

This Guarantee will be governed by and construed in accordance with the laws of the Province and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Guarantee; and the Guarantor consents to the jurisdiction of the courts of such Province and irrevocably agrees that, subject to the Lender's election in its sole discretion to the contrary, all actions or proceedings arising out of or relating to this Guarantee will be litigated in such courts and the Guarantor unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Guarantee, provided nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right of the Lender to bring proceedings against the Guarantor or any other Borrower Entity in the courts of any other jurisdiction.

Section 6.09 General.

The Guarantor acknowledges having received and reviewed a copy of the Commitment Letter (including all amendments thereto made up to and including the Loan advance), the Mortgage, this Guarantee and each of the other Loan Documents. Sections 1.02 and 1.03 of the Mortgage are incorporated in and form part of this Guarantee *mutatis mutandis*.

Section 6.10 Counterparts.

This Guarantee may be executed in several counterparts, each of which when so executed will be deemed to be an original and which counterparts together will constitute one and the same instrument.

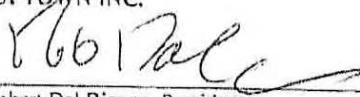
IN WITNESS WHEREOF the Guarantor has executed this Guarantee under seal as of the date set out above with the intention that this Guarantee be a specialty under Applicable Laws and acknowledges receipt of a fully executed copy thereof.

DEEM MANAGEMENT LIMITED

Per: 
Robert Dal Bianco, President

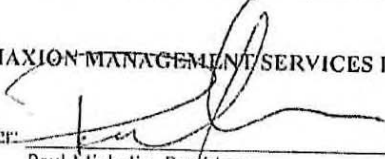
I have authority to bind the Corporation.

THE UPTOWN INC.

Per: 
Robert Dal Bianco, President

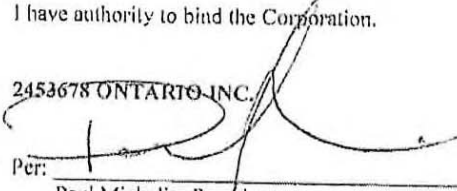
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MAXION MANAGEMENT SERVICES INC.

Per: 
Paul Michelin, President

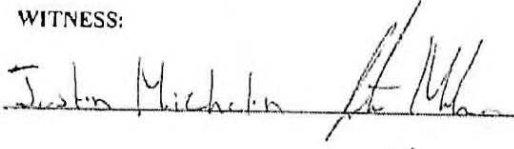
I have authority to bind the Corporation.

2453678 ONTARIO INC.

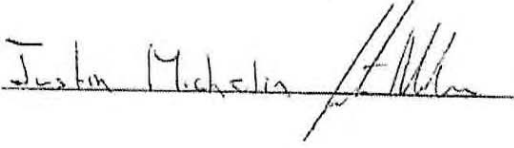
Per: 
Paul Michelin, President

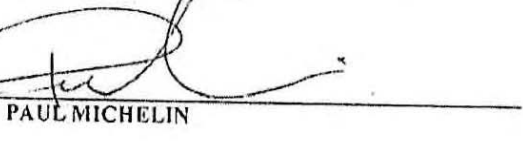
I have authority to bind the Corporation.

WITNESS:


Justin Michelin


ROBERT DAL BIANCO


Justin Michelin


PAUL MICHELIN

INDEMNITY
("The Uptown")

THIS INDEMNITY is made as of May 8th, 2017 (the "Indemnity") between INSTITUTIONAL MORTGAGE CAPITAL CANADA INC. (the "Lender"), and DEEM MANAGEMENT SERVICES LIMITED, DEEM MANAGEMENT LIMITED, MAXION MANAGEMENT SERVICES INC., THE UPTOWN INC., ROBERT DAL BIANCO and PAUL MICHELIN (individually and collectively, the "Indemnitor").

WHEREAS the Lender is making a loan (the "Loan") to Deem Management Services Limited (the "Borrower") in the original principal amount of \$8,255,000.00 pursuant to a commitment letter dated April 20, 2017 (the "Commitment Letter") and secured by a first priority mortgage and charge (the "Mortgage") of certain lands and premises comprising Part Block A, Plan 1313, being Parts 1, 4 & 5 on Plan 58R-6774 and Part 3 on Plan 58R-2194, PIN 22291-0628 LT, 215 & 229 Lexington Road, Waterloo, Ontario (as defined in the Mortgage, the "Property"). As a condition of the Loan, the Indemnitor has agreed to provide this Indemnity to the Lender for the benefit of the Lender and each other Lender Entity. Unless otherwise defined herein, the capitalized terms and expressions used herein have the same meaning as defined in the Mortgage. In this Indemnity, "Province" means the Province of Ontario.

NOW THEREFORE in consideration of the Lender making the Loan to the Borrower and for other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the Indemnitor), the Indemnitor hereby covenants and agrees with and in favour of the Lender, for itself and on behalf and for the benefit of each other Lender Entity, as follows:

1. **Indemnity.** The Indemnitor agrees to indemnify and pay, protect, defend and save each Lender Entity harmless from and against all actions, proceedings, losses, damages, liabilities, taxes, claims, demands, judgments, rights (including set-off), remedies, recourse, costs and expenses of any kind or nature, including legal fees and disbursements on a full indemnity basis and any diminution in value of the Property (collectively, "Claims") made against or incurred by each Lender Entity from time to time, and arising from or relating to, directly or indirectly, any of the following matters, whether or not caused by the Indemnitor or in its control: (i) any Borrower Entity misappropriating any Rents, proceeds under insurance policies or expropriation awards relating to the Property or not applying same in accordance with the Loan Documents; (ii) any Borrower Entity breaching any covenant in the Loan Documents which restricts Transfers or Liens of the Property (including Section 4.02(d) of the Mortgage); (iii) any Borrower Entity committing or permitting waste or damage to the Property as a result of its intentional misconduct, wilful neglect or gross negligence, or any Borrower Entity removing any part of the Property from the Lands subject to the Mortgage; (iv) any Borrower Entity committing any fraud or material misrepresentation in connection with the Loan; (v) any Claim made by any Person that any amount directed by the Borrower from the initial Loan advance to be paid as a reserve under the Loan Documents or on account of Costs has not been fully and immediately advanced to the Borrower for all purposes, does not bear interest at the Interest Rate from and after the date of the initial Loan advance, or is not fully and immediately secured by the Mortgage and the other Loan Documents in priority to all Liens (other than Permitted Encumbrances); (vi) any failure by the Borrower to comply with its obligations under Article 5 of the Mortgage with respect to insurance; (vii) any failure by the Borrower to comply with its obligations under Sections 3.02, 3.03 or 3.04 of the General Assignment of Rents and Leases; or (viii) any of: (a) any actual or alleged breach of Environmental Laws relating to or affecting the Property; (b) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or any part of the Property or surrounding lands, including any personal injury or property damage arising therefrom, (c) any actual or threatened Environmental Proceeding against or affecting the Property including any settlement thereof; (d) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding lands or otherwise ensuring compliance by the Property with Environmental Laws; (e) any breach by any Borrower Entity of any Loan Document or Applicable Law relating to environmental matters, including Subsections 4.02(m) and (n) of the Mortgage. Notwithstanding any provision of any Loan Document restricting recourse to any Borrower Entity, the Indemnitor agrees that each Lender Entity have full and unrestricted recourse to the Indemnitor and all of its property and assets for all such Claims.

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The Indemnitor acknowledges and agrees that the Lender may hold the Loan, this Indemnity and other Loan Documents either for its own account and/or as custodian and agent for and on behalf of all Persons having or acquiring an ownership interest in the Loan from time to time and this Indemnity will enure to the benefit of the Lender and each other Lender Entity and their respective successors and assigns. Claims for which the Lender is entitled to indemnity under this Indemnity include Claims made against or incurred by the Lender and each other Lender Entity from time to time (whether or not specifically stated). To the extent that any Lender Entity is entitled to indemnity for or in respect of any Claims hereunder, the Indemnitor agrees that the Lender will be entitled to hold and enforce all rights and the full benefit of this Indemnity on behalf and for the benefit of itself and each other Lender Entity, whether or not any other Lender Entity is a party hereto. Without limiting the foregoing, the Indemnitor further agrees that all enforcement actions or proceedings may be brought by the Lender under or in respect of the Loan and this Indemnity on behalf of itself and each other Lender Entity from time to time and waives any requirement that any such Lender Entity be a party to any such actions or proceedings.

2. **Defence of Claims.** The Indemnitor will promptly defend all Claims, using counsel acceptable to the Lender at trial, in all appeals and in any settlement negotiations, all at the Indemnitor's expense. At the option of the Lender, it may employ separate counsel and defend such Claims at Indemnitor's expense. If the Indemnitor fails to defend any Claim, the Lender, at its sole option in its sole discretion, may defend and settle such Claims at Indemnitor's expense. No such Claim will be settled or compromised without the consent of the Lender, in its sole discretion. The Indemnitor will pay to the Lender the amount of all Claims within ten (10) days of demand. Any amounts not so paid will bear interest at the Interest Rate from the date of demand until paid.
3. **Waivers by Indemnitor.** To the extent permitted by Applicable Laws, the Indemnitor waives and agrees not to assert or take advantage of, directly or indirectly: (a) any right to require any Lender Entity to proceed against any Borrower Entity or any other Person or against any security or collateral held by any Lender Entity at any time or any defence based on election of remedies; (b) any defence arising from the incapacity, lack of authority, death or disability of any Person; (c) any demand, presentment for payment, notice of non-payment, protest and notice of protest or any lack thereof; (d) any right of marshalling; (e) any Applicable Law in conflict with the terms and provisions of this Indemnity; (f) any duty of any Person to disclose to the Indemnitor any facts that materially increase the risk beyond that which the Indemnitor intends to assume, the Indemnitor being fully responsible for keeping himself fully informed of all circumstances bearing on its liability hereunder; (g) any invalidity, irregularity or unenforceability, in whole or in part, of any Loan Document; (h) the bankruptcy, winding up, liquidation, termination, dissolution or insolvency of, or any other change in, any Person, including any change in the constitution of any partnership comprising any Lender Entity or Borrower Entity (including the Indemnitor); and (i) any Claims by any Borrower Entity against any Lender Entity or their respective assets arising from or relating to the Loan.
4. **No Limitation on Liability.** The liability of the Indemnitor under this Indemnity will be direct, immediate, unconditional, unlimited and absolute and will not be impaired or limited by, or otherwise conditional upon: (i) any extension or renewal of the Loan or other obligation under the Loan Documents; (ii) any sale or assignment of the Loan or any Transfer; (iii) any change in any Borrower Entity or Lender Entity, including the withdrawal or removal of the Indemnitor from any current or future position of ownership, management or control of any Borrower Entity or the Property; (iv) the accuracy or inaccuracy of the representations and warranties made by any Borrower Entity in any of the Loan Documents; (v) the release of any Borrower Entity or other Person from performance or observance of any obligation contained in any of the Loan Documents, by operation of law, voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security or collateral for the Loan, including any Defeasance; (vii) the failure of any Person to record, register, perfect, protect, secure or insure the Lender's security; (viii) the modification of any Loan Document; (ix) the exercise of any remedies against the Property, any Borrower Entity or any other Person; (x) any course of dealing by any Lender Entity with the Property, any Borrower Entity or any other Person; or (xi) any matter referred to in paragraph 3.
5. **Financial Statements.** The Indemnitor will furnish to the Lender promptly upon demand by Lender from time to time financial statements of the Indemnitor, in form and substance acceptable to the Lender. The

- 3 -

Indemnitor hereby represents and warrants to the Lender that all financial statements and other information previously provided or to be provided to any Lender Entity with respect to the Indemnitor are and will be complete and correct in all material respects and include all material facts and circumstances concerning the financial or other condition or status of the Indemnitor, its business and operations necessary to ensure all such statements and information are not misleading as of the date of delivery to such Lender Entity or as of such other date specified therein.

6. **Release of Information.** The Indemnitor acknowledges and agrees that the Loan (or securities or certificates backed by or representing any interest in the Loan or a pool of loans which includes the Loan) may be sold, syndicated or securitized into the secondary market without restriction and without notice to or the consent of the Indemnitor or any other Borrower Entity. Each Lender Entity may release, disclose, exchange, share, transfer and assign from time to time, as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, Lease defaults, Tenants or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by any Lender Entity relating to any Borrower Entity, the Property or the Loan (both before and after the Loan advance and/or default) without restriction and without notice to or the consent of the Indemnitor or any other Borrower Entity as follows: (i) to any existing or proposed Lender Entity; (ii) to any subsequent or proposed purchaser of or investor in the Loan or any interest therein; (iii) to the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution; (iv) to the public or other interested Persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Loan or loan pool or any interest therein regardless of format or scope of distribution; (v) to any Governmental Authority having jurisdiction over such sale, syndication or securitization of the Loan or loan pool or any trade of any interest in the Loan or loan pool; (vi) to any other Person in connection with the sale, syndication or securitization of the Loan or in connection with any collection or enforcement proceedings taken under or in respect of the Loan and/or the Loan Documents; and (viii) to any third party advisors and agents of any of the foregoing Persons, such as lawyers, accountants, consultants, appraisers, credit verification sources and servicers. The Indemnitor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

The Indemnitor acknowledges that certain Lender Entities may collect or come into possession of personal information relating to certain individuals either comprising or otherwise related to any Borrower Entity, including their respective directors, officers, shareholders, partners and principals. The Indemnitor acknowledges and agrees that such personal information may be used by Lender Entities in connection with the processing, approving, funding, servicing and administering the Loan and any sale, syndication or securitization of the Loan, and in so doing each Lender Entity may disclose and otherwise deal with personal information in the same manner and to the same Persons as provided in the preceding paragraph of this Section without restriction and without notice to or the consent of any Borrower Entity or any related individual. The Indemnitor, for itself and on behalf of its directors, officers, shareholders, partners and principals, hereby consents to and authorizes such use and disclosure of all such personal information by each Lender Entity and represents and warrants that it has full power and authority to give such consent and authorization.

7. **General Provisions.** The provisions of Sections 1.02 and 1.03 of the Mortgage are incorporated in and form part of this Indemnity, *mutatis mutandis*. Without limiting the foregoing, in this Indemnity: (a) the obligations of the Indemnitor will be construed as an indemnity and not a guarantee; (b) if more than one Person is named as or otherwise becomes liable for or assumes the obligations and liabilities of the Indemnitor hereunder, then the obligations and liabilities of all such Persons so named or who otherwise become liable for the obligations and liabilities of the Indemnitor will be joint and several; (c) the obligations and liabilities of the Indemnitor under this Indemnity are continuing in nature and will survive the making of any advance or full or partial repayment of the Loan, any full or partial release, termination or discharge of any Loan Document, and any enforcement proceedings taken by any Lender Entity under any Loan Document or Applicable Laws; (d) without limiting the foregoing, the Indemnitor hereby irrevocably consents to any extension, renewal or amendment of the Loan and/or any of the Loan

- 4 -

Documents made by the Lender and the Borrower from time to time and acknowledges and agrees that this Indemnity will remain in full force and effect and will continue to apply and be binding on it for the benefit of each Lender Entity notwithstanding any such extension, renewal or amendment; (e) the obligations of the Indemnitor are independent of the obligations of any other Borrower Entity, and the rights of each Lender Entity under this Indemnity will be in addition to all rights of the Lender under the other Loan Documents; (f) actions may be brought against the Indemnitor whether or not any other Borrower Entity is joined therein; (g) this Indemnity will be binding upon and enure to the benefit of the parties hereto and their respective personal representatives, executors, administrators, heirs, successors and assigns; (h) the Loan, the Loan Indebtedness, the Loan Documents (including this Indemnity) or any interest therein may be sold, transferred or assigned by the Lender and/or any other Person having or acquiring an ownership interest in the Loan from time to time at any time and to any Person as it may determine in its sole discretion without restriction and without the consent of or notice to the Indemnitor or any other Borrower Entity or Person; and (i) this Indemnity will be governed by the laws of the Province and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Indemnity; and the Indemnitor consents to the jurisdiction of the courts of such Province and irrevocably agrees that, subject to the Lender's election in its sole discretion to the contrary, all actions or proceedings arising out of or relating to this Indemnity will be litigated in such courts and the Indemnitor unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Indemnity, provided nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right of the Lender to bring proceedings against the Indemnitor or any other Borrower Entity in the courts of any other jurisdiction. This Indemnity constitutes the entire agreement between the Indemnitor and the Lender with respect to the subject matter hereof and cancels and supersedes any prior understandings between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties with respect to the subject matter of this Indemnity except as expressly set forth herein.

8. **Notices.** Any demand, notice or other communication to be made or given to the Indemnitor may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the Indemnitor as follows, or to the last known address of the Indemnitor as shown in the Lender's records:
- (a) to Deem Management Services Limited, Deem Management Limited, The Uptown Inc. and/or Robert Dal Bianco at 209 Lexington Road, Unit F2, Waterloo, Ontario, N2K 2E1, Attention: Robert Dal Bianco, Fax No. 519-772-1034; and
 - (b) to Maxion Management Services Inc. and/or Paul Michelin at 92 Saunders Road, Unit 1, Barrie, Ontario, L4N 9A8, Attention: Paul Michelin, Fax No. 705-728-4612.

Any demand, notice or communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof, and if given by registered mail, on the third Business Day following the deposit thereof in the mail, and if given by facsimile transmission, on the first Business Day following the transmittal thereof.

9. **Receipt of Loan Documents.** The Indemnitor acknowledges receipt of a copy of the Commitment Letter (including all amendments thereto made up to and including the initial Loan advance), the Mortgage, this Indemnity and each of the other Loan Documents.
10. **Counterparts.** This Indemnity may be executed in several counterparts, each of which when so executed will be deemed to be an original and which counterparts together will constitute one and the same instrument.
11. **REIT Provision.** Notwithstanding any other provision of any Loan Document, if any Borrower Entity is a real estate investment trust (a "REIT"), the obligations of the REIT under the Loan Documents are not personally binding upon, and resort will not be had to, nor will recourse or satisfaction be sought from, the private property of any of: (a) the unit holders of the REIT; (b) annuitants or beneficiaries under a plan of

which a unit holder of the REIT acts as a trustee or carrier; and (c) trustees, officers or employees of the REIT, provided that the Property will remain bound by and subject to the Mortgage and the other Loan Documents, and the Lender will have full recourse to the Property, at all times and without limitation or restriction of any kind. Any obligation of the REIT set out in the Loan Documents will, to the extent necessary to give effect to such obligation, be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the trustees of the REIT in their capacity as trustees of the REIT. Nothing herein will (i) constitute a bar to any action against the REIT for specific performance of any of its obligations under this Indemnity or any other Loan Document or (ii) limit, restrict or otherwise affect the validity or enforceability of the obligations and liabilities of any Borrower Entity under this Indemnity or any other Loan Document.

IN WITNESS WHEREOF, the Indemnitor has executed this Indemnity under seal as of the day and year first above written with the intention that this Indemnity be a specialty under Applicable Laws.

DEEM MANAGEMENT SERVICES LIMITED

Per: [Signature]
Robert Dal Bianco, President

I have authority to bind the Corporation.

MAXION MANAGEMENT SERVICES INC.

Per: [Signature]
Paul Michelin, President

I have authority to bind the Corporation.

DEEM MANAGEMENT LIMITED

Per: [Signature]
Robert Dal Bianco, President

I have authority to bind the Corporation.

THE UPTOWN INC.

Per: [Signature]
Robert Dal Bianco, President

I have authority to bind the Corporation.

WITNESS:

[Signature]
Justin Michelin

[Signature]
Justin Michelin

[Signature]
ROBERT DAL BIANCO

[Signature]
PAUL MICHELIN

Tab E

Brendan Bissell

From: David T. Ullmann <DUllmann@blaney.com>
Sent: Tuesday, July 31, 2018 9:33 AM
To: Brendan Bissell (Bissell@gsnh.com)
Cc: John C. Wolf
Subject: Advances re Dal Bianco first mortgage
Attachments: image001.png; image002.png; image003.png; image004.png; image013.png; image014.png; image015.png; image016.png

Brendan,

We have had a chance to review the advances provided by our client in support of the first Dal Bianco mortgage. It appears that the mortgage, in the amount of approximately \$4.5M was put on in June 2015 as a result of the payout and discharge or assignment of mortgages held by Montrose Mortgage Corporation over the subject property. If you look at a title search for the property (such as was included in our application record) you will see that Montrose held a several instruments on title which are now recorded as deleted or discharged. We are just in the process of reviewing further with our client the nature of the transaction, but our client's records record a payment: "-4,517,511.41 WITHDRAWAL 47501323 CERTFD CHQ T/P MONTROSE MORTGAGE CRP LTD (TD)" on June 1, 2015, which is the exact amount of the Dal Bianco first mortgage, which was registered in June 2015. I believe this is all the receiver is looking for at this time. Please advise what further information you require, if any, in support of this payment.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

🌐 Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

Tab F

Battiston & Associates

Barristers and Solicitors

*Eddy J. Battiston, B.A., LL.B.
**Flavio J. Battiston, LL.B.
Harold Rosenberg, LL.B.
Alexandra M. Battiston, B.A., LL.B.

1013 Wilson Avenue, Suite 202
Toronto, Ontario M3K 1G1
Tel: (416) 630-7151
Fax: (416) 630-7472

Harold Rosenberg
E-mail: h.rosenberg@battistonlaw.com

July 24, 2018

Delivered by Email: bissell@gsnh.com

Goldman Sloan Nash & Haber LLP
Barristers and Solicitors
1600 - 480 University Avenue
Toronto, Ontario M5G 1V6
Attention: R. Brendan Bissell

Dear Sir:

Re: Deep Management Services et al v. Dal Bianco

Further to the order dated July 17th of Mr. Justice Mc Ewen, the lien claimant, Deep Foundations Contractors Inc. ("Deep") states as follows:

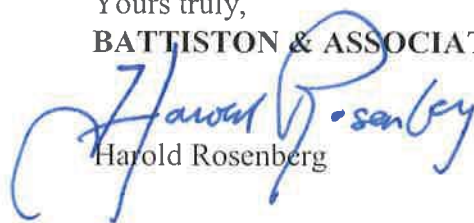
1. Date on which work started on the project:

Deep was not the first subcontractor to work on the project. Deep commenced its supply of work and services on July 11, 2017, as indicated on the time record for the employees, John Accaputo, Cody Christensen, Jesse Ford, Peter Kelly, Nicholas Steppacher and Andrew Waldron-James, enclosed. Accordingly, the first lienable work on the project pre-dated July 11, 2017.

2. Amount of Holdback:

Deep does not possess the documents to enable it to state what the total holdback for this project should be. The holdback under Deep's subcontract is \$144,555.74, as indicated on its invoice dated February 2, 2018, enclosed. The total holdback for the project will therefore exceed that sum.

Yours truly,
BATTISTON & ASSOCIATES



Harold Rosenberg

HR:cdb
Attachments
c.c. client

**E J Battiston Professional Corporation
**Flavio Battiston Professional Corporation*

PR Time Card Entry List

PRGroup: 1 Payroll Date: 15/07/17 All Employees Cert Jobs Only? N
 All Post Dates Totals by Posting Date? Y Earnings ReCap? Y All Timecards All Work Orders

Timecard Date	Craft/Class	Temp Sft	PRDept/ JCDept	Job/Phase	Eq CT	Equipment Usage	Cost Code	Equipment Phase	Rev Code	EC	Rate	Hours	Amt
PR Group: 1	Hourly												

MAXION CONTRACTOR - UPTOWN LIFESTYLE JOB # 17-0059 JH

PR End Date: 15/07/17

Employee: 1 Accaputo John

Tue Jul 11, 2017	NON/NON7	1	Yard Staff/ OI	17-0059-700 102 30						1	31.52000	1.00	31.52
Timecard Totals for Tuesday, July 11, 2017 :													
	NON/NON7	1	Yard Staff/ OI	17-0059-700 102 30						1	31.52000	2.50	78.80
Timecard Totals for Wednesday, July 12, 2017 :													
												2.50	78.80
Employee Totals													
									0.00			3.50	110.32
Earnings Code Recap													
										1	Regular Time for Job Timecards	3.50	110.32
Employee: 1 Accaputo John													

Employee: 352 Christensen Cody

Tue Jul 11, 2017	NON/NON7	1	Yard Staff/ OI	17-0059-700 102 30						1	28.70000	1.00	28.70
Timecard Totals for Tuesday, July 11, 2017 :													
	NON/NON7	1	Yard Staff/ OI	17-0059-700 102 30						1	28.70000	2.00	57.40
Timecard Totals for Wednesday, July 12, 2017 :													
												2.00	57.40
Employee Totals													
									0.00			3.00	86.10
Earnings Code Recap													
										1	Regular Time for Job Timecards	3.00	86.10
Employee: 352 Christensen Cody													

Employee: 55 Duncan Paul

Wed Jul 12, 2017	NON/NON7	1	Yard Staff/ OI	17-0059-700 105 40						1	23.00000	4.00	92.00
Timecard Totals for Wednesday, July 12, 2017 :													
												4.00	92.00
Employee Totals													
									0.00			4.00	92.00
Earnings Code Recap													
										1	Regular Time for Job Timecards	4.00	92.00
Employee: 55 Duncan Paul													

Employee: 64 Ford Jesse

Wed Jul 12, 2017	793753C	1	Field/ ON	17-0059-701 001 1						1	40.50000	8.00	324.00
Timecard Totals for Tuesday, July 11, 2017 :													
	793753C	1	Field/ ON	17-0059-701 001 1						1	40.50000	8.00	324.00
Timecard Totals for Wednesday, July 12, 2017 :													
	793753C	1	Field/ ON	17-0059-701 001 1						2	60.75000	0.50	30.36
Employee Totals													
										12	8.50	354.36	
Earnings Code Recap													
												0.00	215.75
Timecard Totals for Saturday, July 15, 2017 :													
												0.00	215.75

PR Time Card Entry List

PRGroup: 1 Payroll Date: 15/07/17 All Employees Cert Jobs Only? N
 All Post Dates Totals by Posting Date? Y Earnings ReCap? Y All Timecards All Work Orders

Timecard Date	Craft Class	Temp Sft	PRDept/ JCDept	Job/Phase	Eq CT	Equipment	Cost Code	Equipment Usage	Phase	Rev Code	EC	Rate	Hours	Amt
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PR Group: 1 Hourly - Continued

PR End Date: 15/07/17

Employee	Code	Name	Timecard Date	Job/Phase	Rate	Hours	Amt
Employee: 69	Kelly	Peter Daniel	15/07/17	1 Yard Staff/OT	21.00000	1.00	21.00
Timecard Totals for Tuesday, July 11, 2017 : The Uptown Lifestyle Community							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							

Employee	Code	Name	Timecard Date	Job/Phase	Rate	Hours	Amt
Employee: 64	Ford	Jesse	15/07/17	1 Yard Staff/OT	21.00000	1.00	21.00
Timecard Totals for Tuesday, July 11, 2017 : The Uptown Lifestyle Community							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							

Employee	Code	Name	Timecard Date	Job/Phase	Rate	Hours	Amt
Employee: 152	Knapp	Ethan	15/07/17	1 Yard Staff/OT	18.04000	1.00	18.04
Timecard Totals for Wednesday, July 12, 2017 : The Uptown Lifestyle Community							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							

Employee	Code	Name	Timecard Date	Job/Phase	Rate	Hours	Amt
Employee: 270	Steppacher	Nicholas	15/07/17	1 Field/ON	41.25000	3.00	330.08
Timecard Totals for Tuesday, July 11, 2017 : The Uptown Lifestyle Community							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							

Employee	Code	Name	Timecard Date	Job/Phase	Rate	Hours	Amt
Employee: 257	Waldron-James	Andrew	15/07/17	1 Field/ON	41.25000	3.00	330.08
Timecard Totals for Tuesday, July 11, 2017 : The Uptown Lifestyle Community							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							

Employee	Code	Name	Timecard Date	Job/Phase	Rate	Hours	Amt
Employee: 270	Steppacher	Nicholas	15/07/17	12 Mileage for Job Timecards	18.04000	1.00	18.04
Timecard Totals for Saturday, July 15, 2017 : The Uptown Lifestyle Community							
Earnings Code Recap							
Employee Totals							
Earnings Code Recap							
Employee Totals							

PR Time Card Entry List

PRGroup: 1 Payroll Date: 15/07/17 All Employees Cert Jobs Only? N
 All Post Dates Totals by Posting Date? Y Earnings ReCap? Y All Timecards All Work Orders

Timecard Date Craft/Class Craft Temp Sft JCDDept Job/Phase Eq CT Equipment Cost Code Equipment Usage Phase Rev Code EC Rate Hours Amt

PR Group: 1 Hourly - Continued

PR End Date: 15/07/17

Employee: 257 Waldron-James Andrew

Timecard Date	Craft/Class	Craft Temp Sft	JCDDept	Job/Phase	Eq CT Equipment	Cost Code	Equipment Usage Phase	Rev Code	EC	Rate	Hours	Amt		
Tue Jul 11 2017	NON/NON7	1	Yard Staff/ OI	17-0059-700 102.30					1	18.73000	1.00	18.73		
Timecard Totals for Tuesday, July 11, 2017 :														
	NON/NON7	1	Yard Staff/ OI	17-0059-700 102.30					1	18.73000	2.00	37.46		
Timecard Totals for Wednesday, July 12, 2017 :														
Employee Totals											3.00	56.19		
Earnings Code Recap											1	Regular Time for Job Timecards	3.00	56.19
Employee: 257 Waldron-James Andrew											3.00	56.19		



Deep Foundations Contractors Inc.
 145 Ham Forest Road
 Stouffville, Ontario L4A 2G8
 Tel: 905-750-5900 Web: deep.ca

TO: Maxion Construction management - The Uptown Inc.
 610 Applewood Crescent
 Vaughan, Ontario
 L4K 0E3

HOLDBACK INVOICE NO. Revised 1750

DATE: February 2, 2018

CONTRACT: 17-0059 AP

G.S.T/H.S.T. 87187-7866

PROJECT: The Uptown Lifestyle Community

HOLDBACK BILLING: Completed February 1, 2018

ORIGINAL CONTRACT: 1,106,124.80

ADDITIONS: 104,000.00
 Delay Claim Pile 11-17 Standby
 Change orders 69,129.53

1,279,254.33

HST Tax 166,303.06

TOTAL CONTRACT 1,445,557.39

HOLDBACK BILLING \$177,926.43

HST 13% 166,303.06

TOTAL AMOUNT OF HOLDBACK DUE this billing \$144,555.74



Tab G

Frank A. Soppelsa
PROFESSIONAL CORPORATION

Frank A. Soppelsa, B.A., M.A., L.L.B.
Barrister & Solicitor

3700 Steeles Avenue West
Suite 600
Woodbridge, ON
L4L 8K8

t. 905-856-3700
f. 905 856 1213

Reply to: Frank Miceli - fmiceli@westonlaw.ca

July 27, 2018

Goldman Sloan Nash & Haber LLP
Barristers and Solicitors
1600 – 480 University Ave.
Toronto, Ontario, M5G 1V6
ATTN: Brendan Bissell

Via Email to: Bissell@gsnh.com

Dear Sir:

Re: LIEN CLAIMANT: OneSpace Unlimited inc.
ADDRESS: 215/209 Lexington Road, Waterloo
OWNERS: Deem Management Services Limited, 2453678 Ontario Inc.

As you are aware, I am the lawyer for OneSpace Unlimited Inc. (“OneSpace”). I write to you in response to the Order of Justice Mc Ewen, dated July 17, 2018. OneSpace states as follows:

1. OneSpace originally began work on the project in December 2011. After a hiatus, OneSpace again began work on June 23, 2018, while they and Maxion Construction Management Inc. (“Maxion”) negotiated the new contract, which was eventually signed on August 2, 2017.
2. The total amount invoiced by OneSpace on this project is \$68,580.02, as indicated in the attached ‘Aged Accounts Receivable’. Accordingly, the holdback under OneSpace’s contract is \$6,858.00.

Yours truly,

FRANK A. SOPPELSA PROFESSIONAL CORPORATION



Frank Miceli

FM/mm

Encl.

Aged Accounts Receivable

March 14, 2018

1:38:34 PM

Aged as of 3/14/2018

onespace unlimited inc.

Job-to-Date through 3/31/2018

Invoice	Date	Balance	Current	31-60	61-90	91-120	Over 120
Billing Client Name: Maxion Management Services							
Project Number: 11075-2017 The Uptown Project Restart / Principal: Rowbotham / Associate: Alati							
0015646	10/20/2017	8,292.79					8,292.79
0015685	11/23/2017	4,577.37				4,577.37	
0015726	12/18/2017	1,638.50			1,638.50		
0015768	1/23/2018	4,144.84		4,144.84			
0015807	2/23/2018	6,569.26	6,569.26				
Total for 11075-2017		25,222.76	6,569.26	4,144.84	1,638.50	4,577.37	8,292.79
Project Number: 11075-2017EX1 Uptown-Addition of Suites / Principal: Rowbotham / Associate: Alati							
0015647	10/20/2017	9,787.50					9,787.50
0015686	11/23/2017	1,146.95				1,146.95	
0015769	1/23/2018	11,689.85		11,689.85			
Total for 11075-2017EX1		22,624.30		11,689.85		1,146.95	9,787.50
Project Number: 11075-2017EX2 Uptown-DEEM instructed changes / Principal: Rowbotham / Associate: Alati							
0015648	10/20/2017	981.97					981.97
0015687	11/23/2017	10,764.66				10,764.66	
0015725	12/18/2017	5,262.41			5,262.41		
0015770	1/23/2018	3,723.92		3,723.92			
Total for 11075-2017EX2		20,732.96		3,723.92	5,262.41	10,764.66	981.97
Total for Maxion Management Services		68,580.02	6,569.26	19,558.61	6,900.91	16,488.98	19,062.26
Final Totals (Interest Included)		68,580.02	6,569.26	19,558.61	6,900.91	16,488.98	19,062.26
Distribution		100%	10%	29%	10%	24%	28%
Interest Totals							
Final Totals (Net of Interest)		68,580.02	6,569.26	19,558.61	6,900.91	16,488.98	19,062.26

Tab H

KOSKIE MINSKY

JUSTICE MATTERS

August 1, 2018

Jeffrey A. Armel
Direct Dial: 416-595-2069
Direct Fax: 416-204-2826
jarmel@kmlaw.ca

VIA EMAIL

R. Brendan Bissell
Goldman Sloan Nash & Haber LLP
480 University Avenue, Suite 1600
Toronto, ON M5G 1V2

Dear Mr. Bissell:

Re: EXP Services Inc. v. Maxion Construction Management et al
Our File No.: 180528

Further to the Order of Mr. Justice McEwen dated July 17, 2018, our client, EXP Services Inc. ("EXP"), states as follows:

1. EXP commenced its supply of engineering services on or about November 18, 2015.
2. Quantification of Holdback: EXP is unable to quantify the holdback for the entire project. As set forth in EXP's claim for lien, the amount due and owing to EXP is \$336,654.12, inclusive of HST. We note that Maxion has provided the quantification of its holdback which is the sum of \$2,377,918.60.

We trust that this information satisfies your requirements.

Yours very truly,

KOSKIE MINSKY LLP



Jeffrey A. Armel
JAA:bc

- c. David T. Ullmann, lawyers for the Applicant
Bradley Phillips, lawyers for the Respondents
Hans Rizarri, the Receiver
Flavio Battiston, lawyers for Deep Foundations Contractors Inc.
Edward D'Agostino, lawyers for Kieswetter Excavating Inc.
Frank Miceli, lawyers for OneSpace Unlimited Inc.
Eric Gionet, lawyers for Maxion Management Services Inc.
Benjamin Salsberg, lawyers for Maxion Management Services Inc.
Ronald Melvin, lawyers for Institutional Mortgage Capital Canada Inc.

KM-3385204v1

Tab I

Oldfield, Greaves, D'Agostino & Scriven
Barristers & Solicitors

G. Edward Oldfield
Edward L. D'Agostino
Matthew J. McMahon

Lawrence K. Greaves
Robert W. Scriven

July 23, 2018

Fax: 1-416-597-3370
Email: bissell@gsnh.com

R. Brendan Bissell
GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, ON M5G 1V2 Lawyers for the Receiver, Crowe Soberman LLP

Dear Sir:

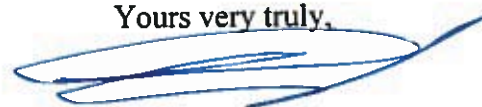
Re: Donald Dal Bianco v. Deem Management, CV-18-598657-00CL
Kieswetter Excavating Inc. v. Deem Management, Our File No.: 39345

Pursuant to the Order of the Honourable Mr. Justice McEwen dated July 17, 2018, Kieswetter Excavating Inc. ("Kieswetter") hereby provides the following:

- (a) Date on which work started on the construction project:
May 11, 2017. Please see the Affidavit of Lee Kieswetter attached.

- (b) Amount of the holdback:
It is Kieswetter's position that the amount of the holdback for this construction project is 10% of all of the construction work that was performed at the Site by Maxion Construction Management – The Uptown Inc. ("Maxion") and its sub-contractors, from and after May 11, 2017. Kieswetter does not possess the documents that will allow it to determine the total holdback. However, based on the various liens that have been registered and, assuming that the Maxion lien includes liens of its sub-contractors, it is Kieswetter's position that the amount of the holdback would total approximately \$450,000.00.

Yours very truly,



Edward L. D'Agostino

ELD/mlw
Enc.

- 2 -

- AND TO: **BLANEY MCMURTRY LLP**
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Lawyers for EXP Services Inc.
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Lawyers for the Receiver, Crowe Soberman LLP
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Lawyers for Deep Foundations Contractors Inc.

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Lawyers for OneSpace Unlimited Inc.

AND TO: DOOLEY LUCENTI LLP
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Barrie, ON L4N 1W1
Eric Gionet
Tele: 705-792-7963/Fax: 705-792-7964
Email: egionet@dllaw.ca
Lawyers for Maxion Management Services Inc.

AND TO: BENJAMIN SALSBERG BARRISTER PROFESSIONAL
CORPORATION
602-80 Bloor Street West
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Lawyers for Maxion Management Services Inc.

AND TO: ROSE, PERSIKO, RAKOWSKY, MELVIN LLP
390 Bay Street, Suite 600
Toronto, ON M5H 2Y2
Ronald B. Melvin
Tele: 416-868-1908/Fax: 416-868-1708
Email: rvmelvin@rprlaw.com
Lawyers for Institutional Mortgage Capital Canada Inc.

Court File No.: CV-18-598657-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

DONALD DAL BIANCO

Applicant

-and-

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

AFFIDAVIT OF LEE KIESWETTER

I, **LEE KIESWETTER**, of the City of Waterloo, in the Regional Municipality of Waterloo, make oath and say:

1. I am the General Manager of Kieswetter Excavating Inc. (“Kieswetter”) and had responsibility for the work Kieswetter performed at 215 – 229 Lexington Road, Waterloo, Ontario (the “Site”). As such, I have knowledge of the matters to which I hereinafter depose.
2. Kieswetter provided goods and services to the Site beginning on May 11, 2017.
3. On May 11, 2017, Maxion Construction Management – The Uptown Inc. (“Maxion”), the company with whom we had our contract, was not on Site, nor were any other sub-contractors.

- 4. From what I observed on May 11, 2017, I do verily believe that there were no other goods or services (Improvements) that had been provided at the Site prior to Kieswetter’s arrival, related to the construction project Kieswetter was starting.

- 5. I do verily believe that the construction project being undertaken at the Site began on May 11, 2017, when Kieswetter started supplying goods and services.

- 6. Although Kieswetter first provided goods and services on May 11, 2017, Sub-Contract Agreement 00000001 was signed on May 17, 2017. Attached to this my Affidavit and marked as Exhibit “A’ is a true copy of the Sub-Contract Agreement.

- 7. I make this Affidavit for the purposes of supplying “evidentiary back up” to substantiate the date on which Kieswetter says that work on this construction project first started.

SWORN before me at the)
 City of Waterloo, in the)
 Regional Municipality of)
 Waterloo, this 26th day of)
 July , 2018)



LEE KIESWETTER


 A COMMISSIONER, ETC.

**This is Exhibit "A" referred to in the
Affidavit of Lee Kieswetter
Sworn before me at the City of
Waterloo, in the Province of Ontario
this 26th day of July, 2018**

A handwritten signature in blue ink, consisting of several overlapping loops and a final downward stroke.

A Commissioner, etc.



Subcontract Agreement

Contractor

Maxion Construction Management - The Uptown Inc.
215 Lexington Road
Waterloo, ON
N2K 2E1

Subcontractor

Kieswetter Excavating Inc.
3135 Boomer Line
St. Clements ON N0B 2M0

Project

14000001
The Uptown Phase 1
215 Lexington Road
Waterloo ON N2K 2E1

Architect

Subcontract: 00000001

- | | | |
|-------------------------|--------------|------------------|
| 1. Agreement Date: | 5/17/2017 | |
| 2. Subcontract Sum: | 1,052,000.00 | HST Extra |
| 3. Retainage Percent: | 10.00% | |
| 4. Completion Schedule: | Start Date: | Completion Date: |

5. Scope of Work:

Provide all labour, supervision, plant, tools, equipment and material necessary to complete the Earthworks / Backfill & Underground Site Services work to the full extent and intent of the Tender Documents all of which is more fully described in the General Requirements dated November 19, 2014, Instructions to Bidders dated November 19, 2014, The Stipulated Price Bid Form submitted on December 10, 2014, Section 01 11 00 - Scope Of Work Underground Services, Section 01 11 00 - Scope Of Work Earthworks and in accordance with the plans, specifications and Addenda referred to therein, together with all work directly or indirectly related thereto and described in the Purchase Order Documents, which work includes competent supervision and the supply of all labour, materials, supplies, products, tools, machinery, equipment and all other services and items necessary to carry out and conduct the same.

The following is clarification of specific scope of work related to this Purchase Order that is to be included in your Scope of Work:

1. Site Clearing - 31110.01 - \$ 32,500.00
2. Earthworks - 31141.01 - \$ 122,600.00
3. Excavation - 31230.01 - \$ 403,900.00
4. Building Backfill - 31231.01 - \$ 24,000.00
5. Site / Underground Services - 33462.02 - \$ 469,000.00

6. Terms and Conditions:

General Terms and Condition Amendments:

It is agreed that the following changes are to be incorporated into Maxion's General Terms and Conditions:

1. Haul & Dispose of contaminated Non-Hazardous Soils off site to Licenced Landfill Facility (Non-Hazardous Characteristics to be confirmed by TCLP Test Results Provided by Others) \$65.00 Unit Rate / tonne.
1. **WORK TO BE PERFORMED** - The Subcontractor shall supply all material, labour, tools and equipment necessary for the proper performance of the Subcontract Work described in the Purchase Order in accordance with the Prime Contract relating to the Project, together with any plans, specifications and other document relating thereto. The Subcontractor acknowledges and agrees that it has access to all of the contract documents including all plans and specifications and

has reviewed them prior to the commencement of the Subcontract Work.

2. PRIME CONTRACT CONDITIONS TO APPLY – The terms, conditions and all requirements of the Prime Contract, so far as they are applicable to this Subcontract, shall be binding upon the Subcontractor as if the word "Owner" appearing therein had read "Contractor" and the word "Contractor" had read "Subcontractor". However, in the event of any conflict between the terms of this Subcontract and the Prime Contract, the terms of this Subcontract shall govern.

3. BONDING – The Subcontractor, if required, shall produce a bond with a surety in a form acceptable to the Contractor and must maintain same in good standing until completion of this Subcontract. The cost of any required Bond shall be the full responsibility of the Subcontractor if called for at that time of tendering or required in the Purchase Order, otherwise the cost shall be the responsibility of Maxion. At the discretion of the Contractor, an irrevocable letter of credit may be acceptable as an alternative to a bond.

4. SUBCONTRACT PRICE – The Subcontract Price stated in the Purchase Order is in Canadian funds and includes all applicable value added taxes such as the Harmonized Sales Tax (HST), unless specified otherwise in the Purchase Order.

5. SCHEDULE - The Subcontractor will begin the Subcontract Work upon award of the Subcontract and will schedule its requirements to carry on and complete the work in accordance with the Contractor's schedule, as amended from time to time, so as not to interfere with or delay the work of the Contractor or any other Subcontractor. The order and schedule of the Work will be determined at the sole discretion of the Contractor in consultation with the Subcontractor. Notwithstanding any such consultation with the Subcontractor, the Contractor's determination of such order and schedule for the Subcontract Work (whether made before or after the signing of this Subcontract) shall be binding upon the Subcontractor. If the Subcontractor fails to perform in accordance with the Contractor's schedule and by reason thereof the Contractor becomes liable for any penalties or damages whatsoever, or incurs additional costs because of non-performance of the Subcontractor, the Subcontractor shall become responsible for payment to the Contractor of such proportionate share of any penalties, damages, losses or additional costs so incurred.

6. PAYMENT -

6.01 For the purposes of this Subcontract, the term "Conditions of Payment" shall mean the following:

(a) The Subcontractor shall deliver to Maxion the following documentation in form and content satisfactory to the Contractor:

- (i) a schedule of values of various parts of the Subcontract Work, aggregating the total amount of the Subcontract Price and divided so as to facilitate evaluation of application for payment;
- (ii) a statutory declaration affirming that the Subcontractor has paid in full all its suppliers and sub-subcontractors;
- (iii) updated certificates of insurance, or certified copies of policies acceptable to the Contractor, evidencing that the insurance required by this Subcontract continues to be in effect;
- (iv) a certificate under the applicable WSIB, or similar legislation requirements, evidencing that the Subcontractor has paid all amounts required to be paid pursuant to such legislation;
- (v) a completed approved Ministry of Labour Registration of Constructors and Employers Engaged in Construction form;
- (vi) Subcontract Security and documentation as required;
- (vii) tax clearance certificates or such other documents as Maxion may require to ensure compliance by the Subcontractor with applicable tax legislation;
- (viii) a Certificate of Release and Indemnity (in the form presented by Maxion, which is available for Subcontractors review upon request, prior to executing this Subcontract agreement, and which is deemed to accede upon execution of the Subcontract) from the Subcontractor; AND

(b) Occurrence of all the following:

- (i) the Consultant shall have certified in writing that the amount of the payment to the Subcontractor is correct;
- (ii) the Contractor shall have received payment from the Owner on account of the amounts to be paid to the Subcontractor;
- (iii) all provisions of the applicable construction lien legislation shall have been complied with;
- (iv) there shall not be any claims or liens against the Project for which the Subcontractor or any of its suppliers or sub-subcontractors are totally or partially responsible;
- (v) all time periods herein set out as a precondition to payment to the Subcontractor shall have expired; and
- (vi) The Subcontractor shall have executed and delivered to the Contractor, all such other documents and instruments as may be requested by the Contractor respecting the performance of the Subcontract Work.

6.02 The Contractor agrees, subject to additions, deductions and set-offs determined in accordance with the Subcontract Documents, to pay to the Subcontractor, the Subcontract Price as the entire compensation of the Subcontractor for the performance of the Subcontract Work.

6.03 The Subcontractor shall submit proper monthly progress draw requests as the Subcontract Work progresses together with supporting sworn statements and other documents required by the Subcontract Documents on or before the 25th day of each month for approval and due processing. The amount claimed shall be for the value, proportionate to the amount of the Subcontract Work performed and products delivered to the Place of the Work up to the 25th day of the month. Payment by the Contractor to the Subcontractor in respect of any particular progress draw or any requested payment, net of applicable holdback(s), and adjusted for additions, deductions and set-offs, shall only become due and payable seven (7) days after the Contractor receives payment from the Owner pursuant to the Prime Contract for the portion of the Subcontract Work in respect of which the progress draw is made. Provided that, prior to payment being made by Maxion to the Subcontractor, all other Conditions of Payment as specified above shall have been satisfied.

6.04 Holdback funds that have been withheld from the Subcontractor, as adjusted for additions, deductions and set-offs, shall be paid to the Subcontractor within seven (7) days of Maxion receiving such Holdback funds from the Owner and after the expiration of any applicable statutory period stipulated in the construction lien legislation in force where the Project is located. Provided that, prior to payment being made by Maxion to the Subcontractor of the Holdback funds, all other Conditions of Payment as specified above shall have been satisfied.

6.05 Final payment of the Subcontract Price, adjusted for additions, deductions and set-offs, shall become due and payable seven (7) days after Maxion receives final payment from the Owner. Provided that, prior to final payment being made by Maxion to the Subcontractor:

- (i) the Consultant shall have certified in writing that all of the Subcontractor Work has been totally performed;
- (ii) the Contractor, the Owner and the Consultant shall have accepted all of the Subcontract Work;
- (iii) all Conditions of Payment as specified above shall have been satisfied; and
- (iv) all drawings, manuals, instructions, brochures, warranties, guarantees, certificates, documents and instruments shall have been delivered to the Contractor.

6.06 No progress draw certifications, final certification by the Consultant or payments made by Maxion under this Subcontract shall be considered as conclusive evidence of the proper performance of this Subcontract, either in whole or in part, or to be construed in any way as an acceptance of improper or defective work or materials.

6.07 The Subcontractor shall, at its sole cost and expense, pay when due, all government sales taxes, goods and services taxes, value added taxes, customs, duties and excise taxes, and any charges or levies which may be imposed with respect to this Subcontract. If requested by Maxion, the Subcontractor shall provide evidence of payment of such taxes, duties, charges or levies. Where any exemption or recovery of such taxes, duties, charges or levies is available in respect of any payment to be made by the Contractor to the Subcontractor under this Subcontract, the Subcontractor shall provide the Contractor with all assistance and shall execute, deliver and file all documentation required to facilitate such exemption or recovery for the Contractor. The monies recovered shall accrue solely to the benefit of the Contractor.

7. LETTERS OF DIRECTION – Notwithstanding any other amounts that the Contractor may recover from the Subcontractor, or remedies available to the Contractor, the Subcontractor expressly agrees that in the event that it provides a Letter of Direction to the Contractor to make payment on its behalf to one or more of its suppliers, sub-trades or creditors, the Contractor shall be entitled to deduct from the Subcontract Price, an amount equal to two percent (2%) of the value of such payments made.

8. OVERTIME

8.01 If the Subcontractor falls behind in the Subcontract Work, or if in the opinion of the Contractor or Consultant, the Subcontractor delays the progress of any of the work necessary to complete the project, then if directed by the Contractor, the Subcontractor shall provide such additional man power or use such overtime as may be necessary to keep abreast with the general progress of the work, and the costs and expense thereby incurred shall be the full responsibility of the Subcontractor.

8.02 The subcontractor acknowledges that all overtime costs shall be included in the Subcontract Price except, if as a consequence of unanticipated conditions, the Subcontractor shall, at the instruction of the Contractor, work overtime. The Subcontractor shall be paid only the actual cost of such overtime over the regular rate.

8.03 No such overtime costs shall be payable by the Contractor where the Subcontractor is in default hereunder. No payment for overtime shall be made unless time slips covering overtime are approved daily by the Contractors project superintendent. No commission or premium will be allowed to the Subcontractor for such overtime. Overtime will not be paid for shift work or other variation in normal starting and/or quitting time established to suit conditions which ought to have been anticipated.

9. LABOUR – The Subcontractor agrees that in the execution of this contract it will employ labour under conditions satisfactory to the Contractor and further agrees that in the event of labour troubles due to the employment of works by the Subcontractor or by the presence of the Subcontractor on the work, it will make such arrangements as may be necessary, in the opinion of the Contractor, to prevent delay to the work and expense to the Contractor. The Subcontractor agrees to remove any of its employees from the site who may be unsatisfactory to the Contractor.

10. SAFETY – The Subcontractor will ensure that all provincial Health, Fire, Safety, other legislation and regulations in force at the place where the Project is located and the safety policy of the Contractor are strictly adhered to during the performance of the Subcontract Work. The Subcontractor acknowledges having received a copy of the Contractor's safety policy and its respective agents and employees and each of its Sub-subcontractors shall conduct the Subcontract work in accordance with such safety policy. Failure to comply with these regulations beyond two written warnings, will result in the automatic issuance of monetary fines by the Contractor, the value of which will reflect the severity of the violations to that point. Further, the Subcontractor will comply with the requirements of the Subcontractor Orientation Package, issued with this Subcontract and will have all of its workers complete an onsite orientation, before commencement of the Subcontract Work. The Subcontractor hereby acknowledges and agrees that the first progress draw will not be paid by the Contractor, until this condition has been satisfied. Prior to the payment of the first progress draw, the Subcontractor shall provide a copy of its safety policy.

11. MOULD – If the Contractor or subcontractor observes or reasonably suspects the presence of mould at the Place of the Work, the remediation of which is not expressly part of the Subcontract Work, the observing party shall promptly report the circumstances to the Contractor in writing, and the Contractor and the Subcontractor shall promptly take all reasonable steps, including stopping the Subcontract Work if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and if the Contractor and the Subcontractor do not agree on the existence, significance or cause of the mould or as to what steps need to be taken to deal with it, the Contractor shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Contractor and the Subcontractor.

12. MATERIALS IDENTIFICATION – The Subcontractor will ensure that all materials relating to the Subcontract Work, delivered to the site are to be properly labeled and accompanied with corresponding Material Safety Data Sheets (MSDS) in accordance with regulations from the Ontario Ministry of Labour W.H.M.I.S. (Workplace Hazardous Materials Information Systems).

13. GARBAGE – The Subcontractor shall, at its own costs and expenses, remove from the site daily all debris resulting from the performance of the Subcontract Work. At completion of its work, the Subcontractor shall remove promptly from the site all debris, tools, equipment, temporary facilities, excess materials and other belongings of itself or its Sub-subcontractors and leave the parts of the site in which it was working "broom clean" unless specified otherwise in the Purchase Order.

14. PROTECTION OF WORK – The Subcontractor shall adequately protect all materials and equipment that it has delivered and/or installed on site from all the elements, casualty and damage until takeover by the Owner. This shall include protection from such things as, but not limited to, theft, vandalism, accidental damage, moisture and water damage. The Subcontractor shall repair any damage to the Subcontract Work at its expense, unless such repair costs are recoverable from another party. To the extent the Subcontractor or any of the Sub-subcontractors cause any damage to the work or property of others, the subcontractor shall be fully responsible for all such damage, at the Subcontractors sole cost and expense, and shall indemnify the Contractor in respect thereof.

15. MAINTENANCE – The Subcontractor hereby agrees to repair and make good any damages or fault in its Subcontract Work for the greater of one year from the Date of Substantial Performance or such other period as required in the Contract Documents and / or Prime Contract.

16. CO-ORDINATION OF WORK WITH OTHER SUBCONTRACTORS - The subcontractor agrees to co-operate with the Consultant, the Contractor and with all other subcontractors working at the Project site, in order to avoid any conflict and to ensure that all work on the Project proceeds without conflict, hindrance or delay. The Subcontractor shall, at its sole cost and expense, repair all damage which it causes to the work of others on the Project, and shall do all things necessary, including cutting and patching, to make the Subcontract Work match that of the other trades.

17. CHANGES

17.01 The Subcontractor acknowledges the right of the Contractor throughout performance of the Subcontract Work, to order changes in the Subcontract Work. The Subcontractor shall not carry out any work which is extra to the Subcontract Work, without the prior written approval of the Contractor.

17.02 For changes to the Subcontract Work which involve a change in the payment obligations of the Owner or require approval of the Owner, the Subcontractor acknowledges that it will be governed by the same provisions regarding changes in the Subcontract Work as apply to the Contractor under the Prime Contract.

17.03 In the case of changes to the Subcontract Work that do not involve a change in the payment obligations of the Owner, or the approval of the Owner, the Contractor shall only be liable to pay a reasonable amount agreed upon in writing between the Contractor and the Subcontractor prior to the Subcontractor carrying out the extra work.

17.04 In the case of all changes, the Subcontractor shall provide timely quotations complete with breakdown of labour, materials and equipment in sufficient detail to allow review and verification by the Contractor, and by the Consultant and Owner where their approvals are required.

18. DAMAGES – The Subcontractor agrees to indemnify and save harmless the Owner and the Contractor from and against all claims, suits, judgments and damages brought, recovered or extracted against them through the direct or indirect actions of the said Subcontractor, his agents, employees or sub-subcontractors.

19. PARTIAL OCCUPANCY – Should the Consultant or Owner request partial occupancy of the Project, the Subcontractor shall prepare the portion of the Subcontract Work necessary for such partial occupancy. The Contractor shall endeavor to make arrangements with the Consultants or Owner to accept those portions to be occupied.

20. INSURANCE AND WSIB – Before commencement of Subcontract Work, the Subcontractor agrees to, at its sole cost and expense, procure and maintain insurance required by the Contractor and shall provide the Contractor with insurance certificates naming the Contractor and Owner as an additional insured and showing proof of adequate public liability and property damage and non-owned automobile insurance to the level of coverage required outlined on the Insurance Certificate Requirements document specific to Project. Coverage should include complete operations and projects liability extending to at least twenty-four (24) months after the expiry date of the policy. The Contractor will be responsible for carrying a wrap up liability policy. The wrap up will carry a limit of \$20,000,000.00 per occurrence with a \$10,000.00 deductible. The Contractor will be responsible for the builders risk and boiler and machinery builders risk policies and this policy will also carry a \$10,000.00 deductible. It is the responsibility of the Subcontractor to satisfy itself as to the adequacy of such insurance. Subcontractors and Sub-subcontractors shall be responsible for any deductible amounts under the policies as may be applicable to their operations and activities and shall be liable to pay any deductible which shall become payable as a consequence of the Subcontractors conduct. In the event that the Subcontractor fails to obtain or maintain any insurance coverage required under this Subcontract, the same shall constitute a default of the Subcontract and, in addition to any other remedy of the Contractor, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or may terminate this Subcontract.

Prior to the payment of the first progress draw, the Subcontractor shall provide a copy of its current Workplace Safety and Insurance Board clearance certificate. The Subcontractor shall also provide a current Workplace Safety and Insurance Board clearance prior to the payment of each progress draw and holdback.

21. CANCELLATION OF THE PRIME CONTRACT – If the Prime Contract shall be terminated in whole or in part for any reason whatsoever, the Contractor may, by written notice to the Subcontractor, terminate this Subcontract to the extent that performance is not required due to the entire or partial termination of the Prime Contract. Upon termination of this Subcontract, the Contractor shall be liable to pay for that portion of the Subcontract Work actually performed by the Subcontractor and certified complete by the Consultant, such payment to be made in accordance with the provisions of Article 6.0.

22. SUBCONTRACTOR'S DEFAULT

22.01 Without limitation, the Subcontractor shall be in default if at any time the Subcontractor:

- (i) fails, delays, or refuses to perform the Subcontract Work, or any part thereof, including the provision of materials, supplies, products and or labor or proper quality and quantity in a manner required by this Subcontract; or
- (ii) fails to observe or perform any other provisions contained in the Subcontract Document
- (iii) fails to remove a lien claimed or filed with respect to this Subcontract by the Subcontractor or by any Sub-subcontractors; or
- (iv) fails to promptly pay accounts or claims against it with respect to the Subcontract or the Subcontract Work.

On the occurrence of any such event, the Contractor may give the Subcontractor written notice specifying such default and if such default shall continue for a period of forty-eight (48) hours following the default notice, the Contractor, without prejudice to any other rights or remedies it may have, may terminate this Subcontract and or, may cure such default or make good such deficiencies, or may complete the outstanding Subcontract Work, all at the cost and expense of the Subcontractor.

22.02 If the Subcontractor should:

- (i) become bankrupt or insolvent or have a receiving order made against it, or if a final judgment is awarded against it and is not satisfied by it; or
- (ii) file a petition seeking any reorganization, arrangement, dissolution, or similar relief; or
- (iii) allow its assets to be subject to a general assignment for benefit of creditors, or execution.

then on the occurrence of any such event, the Subcontractor shall be deemed to be in default of this Subcontract and the Contractor, without prejudice to any other rights or remedies it may have, may terminate the Subcontract and may complete the outstanding Subcontract Work, all at the cost and expense of the Subcontractor.

22.03 For the purpose of curing any default or correcting deficiencies pursuant to Article 20.01 or completing any of the Subcontract Work pursuant to Article 20.02, the Contractor may take possession of all materials, supplies, products, tools, machinery and equipment upon the Project site, and may either cure the default, correct the deficiencies or complete the Subcontract Work itself or employ any other person, firm or corporation to do so, charging all costs incurred in connection therewith, including legal costs on a solicitor and its own client basis, to the Subcontractor. Furthermore, for the purpose of curing any default, correcting deficiencies or completing any of the Subcontract Work, the Subcontractor shall forthwith upon request of the Contractor, assign to the Contractor, or its designate, such of the Subcontractor's contracts and subcontracts as may be required by the Contractor.

22.04 The Contractor may, in an emergency, stop the progress of the Subcontract Work whenever, in the Contractor's sole opinion, such stoppage may be necessary to ensure safety of life, or safety of any part of the Project, or safety of any neighboring property. The Contractor has the right, in such circumstances, to terminate this Subcontract or make changes to this Subcontract as may be necessary to ensure such safety.

22.05 Upon the occurrence of any default which is not cured to the satisfaction of the Contractor, the Subcontractor shall not be entitled to receive any further payment under the Subcontract until the Subcontract Work shall be wholly completed and certified as such by the Consultant. After completion of the Subcontract Work, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by the Contractor in curing defaults, in correcting deficiencies or in finishing the Subcontract Work, such excess shall be paid by the Contractor to the Subcontractor in accordance with Article 6.00 However, if such expenses incurred by the Contractor shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor forthwith upon demand. For greater certainty, for the purposes of this Article 20.05, "expenses incurred by the Contractor", include all costs incurred by the Contractor in curing any defaults, in correcting any deficiencies and in completing such work including the Contractor's overhead costs calculated at 15% of the costs of curing defaults, correcting deficiencies and completing the work, legal costs incurred by the Contractor on a solicitor and its own client basis, the amount of any Claims for which the Subcontractor is liable or required to indemnify under Article 25.00 and a reasonable amount to cover any costs incurred or which may be incurred by the Contractor in curing or correcting any work subject to any warranty or guarantee.

23. DISCREPANCIES, ERRORS AND OMISSIONS AND INSTRUCTIONS

23.01 If the Subcontractor finds any discrepancies, errors or omissions in the plans or specifications for the Subcontract Work and the physical conditions of the Subcontract Work, or any discrepancies, errors or omissions in such plans or specifications or in the survey lines or levels given for the construction of the Subcontract Work, it shall immediately inform the Contractor in writing, and shall cease carrying on that portion of the Subcontract Work as may be affected by the discrepancy, error or omission. Until such time as the Contractor authorizes the Subcontractor in writing to recommence the Subcontract Work, any work done after discovery will be done at the Subcontractor's sole cost, risk and expense, and in the absence of written authorization from the Contractor, the Subcontractor shall be liable for all costs incurred by others due to the Subcontractor proceeding or continuing to carry on the Subcontract Work or due to the Subcontractor failing to inform the Contractor.

23.02 The Subcontractor will carry out all instructions of the Contractor relative to the Subcontract Work. Should the Subcontractor determine such instruction to be at variance with the Subcontract Documents, or to involve changes in work already built, fixed, ordered or in hand, or to be given in error, it shall notify the Contractor in writing before proceeding to carry them out. If the Contractor and the Subcontractor fail to reach agreement with respect to any such instruction, and the Contractor decides to have such instruction carried out, the Subcontractor shall comply with such instructions without delay. Any unresolved questions of cost resulting from any such instruction shall be decided in the manner provided in Article 27.

24. ASSIGNMENT AND SUBCONTRACTING

24.01 The Subcontractor agrees not to assign this Subcontract, or any payments to be made to it hereunder, without the prior consent in writing of the Contractor, which consent may be unreasonably or arbitrarily withheld by the Contractor.

24.02 The Subcontractor agrees to provide the Contractor with a list of the names of Sub-subcontractors prior to the Subcontractor's execution of this Subcontract. The Sub-subcontractors identified on the aforesaid list are the only Sub-subcontractors to be used to carry out those portions of the work noted in such list and the Subcontractor shall not employ or retain anyone who the Contractor reasonably objects to. No such sub-subcontracting by the Subcontractor will relieve the Subcontractor from any of its obligations under the Subcontract Documents.

24.03 The Subcontractor shall preserve and protect the rights of the parties to this Subcontract with respect to Subcontract Work to be performed under a sub-subcontract and shall:

- (i) enter into written agreements with Sub-subcontractors which require them to perform their work as provided in the Subcontract Documents;
- (ii) incorporate the terms and conditions of the Subcontract Documents into all agreements with Sub-subcontractors;
- (iii) be fully responsible to the Contractor and the Owner for acts, omissions and negligence of the Sub-subcontractors and their agents, employees and others for whom they are responsible for at law; and
- (iv) ensure that each agreement with Sub-subcontractors is fully and unconditionally assignable to the Contractor in the event the Contractor requests an assignment pursuant to Article 20.03.

25. SETOFF AND PAYMENTS AGAINST THE SUBCONTRACTOR -

25.01 With respect to all amounts which may, at any time, be paid or incurred by the Contractor for or on behalf of the Subcontractor and which are the Subcontractor's responsibility, including amounts paid or incurred under Article 20.00 and under Article 22.02, and the amount of any Claims pursuant to Article 25.00 and any other amounts which may at any time be owing by the Subcontractor to the Contractor pursuant to any of the provisions of the Subcontract Documents, the Contractor shall have the right to set-off the sums so paid or incurred by the Contractor, against any monies otherwise payable to the Subcontractor under this Subcontract or under any other agreement between or binding upon the Contractor and the Subcontractor or any of their respective affiliates or related corporations.

25.02 The Subcontractor shall promptly settle and pay all accounts or claims on the Subcontract Work. The Contractor may give the Subcontractor five (5) days written notice to settle and pay such accounts or claims. If, after such notice, the Subcontractor fails to settle and pay the same, the Contractor may settle and pay such accounts or claims for the account of the Subcontractor, and incur such costs for the account of the Subcontractor in respect thereof, including legal fees on a solicitor and its own client basis. Notwithstanding the foregoing, the Subcontractor shall not be required to settle or pay any such account or claim if it has reasonable grounds for disputing same, and the Contractor, in such circumstances, will only have the right to pay or settle such accounts or claims in such manner as it determines will not prejudice the Subcontractor's right to dispute same.

26. DELAYS

26.01 Should the Subcontractor be delayed in the prosecution or completion of any portion of the Subcontract Work by the act, neglect, delay or default of the Owner, Contractor or Consultant or by another contractor retained directly by the Contractor, or by any damage which may occur by fire, lightning, earthquake or hurricane, or by legal strikes and/or lock-outs, then provided the Subcontractor shall have used its reasonable commercial efforts to cure the delay, and further provided that the delay is not due to a default by the Subcontractor, the time fixed for the completion of that portion of the Subcontract Work which is delayed, shall be extended for a period equivalent to the time lost by reason of any of the causes aforesaid, but no such time allowance shall be made unless a claim for the same is delivered in writing to the Contractor within 24 hours of the commencement of the occurrence or event giving rise to the delay. In no event, shall the Subcontractor be entitled to payment for costs incurred by the Subcontractor for such delays unless the Contractor recovers such costs attributable to such delay from the Owner or from any other person. Nothing herein shall obligate the Contractor to attempt to recover any delay costs from the Owner or from any other person.

26.02 If the Subcontractor is permitted to continue to perform the Subcontract Work after the time to complete the Subcontract Work has expired, the same shall not be construed as a waiver by the Contractor of damages against the Subcontractor for delay.

27. SETTLEMENT OF DISPUTES - If a dispute arises between the Contractor and Subcontractor, the parties shall make reasonable efforts to negotiate a resolution of such dispute, and failing resolution, the parties may refer the dispute to the Courts in the jurisdiction where the Subcontract Work is performed or to any other form of dispute resolution, including arbitration, which the Contractor and Subcontractor agree to use.

28. GUARANTEE, WARRANTY AND DEFECTS

28.01 The Subcontractor guarantees and warrants that the Subcontract Work will meet or exceed the guarantee and warranty requirements set forth in the Prime Contract, both as to coverage and duration. No payment to the Subcontractor and no partial or entire use or occupancy of the Subcontract Work by the Owner, shall be construed as an acceptance of any work or material not in accordance with this Subcontract. The Subcontractor agrees that any separate guarantee or warranty issued by it or by any Sub-subcontractors which in any way limits or reduces the coverage or duration of the guarantee and warranty obligations set forth in this Article 24.01, shall not be binding upon the Contractor or the Owner.

28.02 The Subcontractor shall ensure that each of the Sub-subcontractors provide guarantees and warranties that their respective work, materials, supplies and products will meet or exceed the guarantee and warranty requirements set forth in the Prime Contract, both as to coverage and duration. All guarantees and warranties to be provided by the Subcontractor and each of the Sub-subcontractors, shall provide that such guarantees and warranties shall be issued for the benefit of the

Contractor and the Owner and such other parties as may be designated by the Contractor.

28.03 The Subcontractor agrees to repair and make good any defects, errors, imperfections, damages or faults in the Subcontract Work that may appear within the duration of the guarantee or warranty period specified in the Prime Contract, but nothing contained in this Article 24.00 shall be construed as in any way restricting or limiting the liability of the Subcontractor under this Subcontract.

29. LIABILITY AND INDEMNIFICATION AND COST RECOVERY

29.01 In this Subcontract, the following terms shall have the following meanings:

- (i) "Claims" mean all actions, causes of action, damages, demands, claims, suits, judgments, expenses, penalties, fines losses (including, without limitation, economic losses), liabilities, costs (including, without limitation, legal costs on a solicitor and its own client basis), premiums, lien bond costs and interest charges; and
- (ii) "Indemnified Persons" means the Contractor and its successors, assigns, directors officers, agents, consultants and employees, the Owner, and all others who are entitled to a contribution or indemnity under the Prime Contract.

29.02 The Subcontractor shall be liable to and shall indemnify and save harmless the Indemnified Persons, and each of them, for all Claims which the Indemnified Persons, or any one or more of them, may sustain, pay or incur as a direct or indirect result of anything occurring or arising due to the acts, omissions, negligence or breach by the Subcontractor or officers, agents, consultants or employees or others for who they are responsible at law, including the following:

- (i) any breach or default of the Subcontract Documents;
- (ii) injury to persons (including death) and damage and loss to property, to the extent caused by the acts, omissions, negligence in the performance of the Subcontract Work;
- (iii) any acts, omissions or negligence in the performance of the Subcontract Work;
- (iv) Claims by employees or agents of the Subcontractor or by any of the Sub-subcontractors or their respective employees or agents, or the dependents of any such employees or agents under the provisions of any applicable Workers Compensation legislation;
- (v) by reason of anything supplied under this Subcontract or to the Subcontract Work being a breach of an intellectual property right, and at the sole cost and expense of the Subcontractor, the Subcontractor will defend any action brought against the Indemnified Persons founded upon a claim that any such thing or part thereof, infringes any such intellectual property right;
- (vi) any infringement Claims and payment of any royalties or other payments which may be payable in connection with any Claim referred to in Article 25.02(v);
- (vii) any construction or similar liens against the Project in respect of the Subcontract Work which may be filed or registered by the Subcontractor or any Sub-subcontractors or their respective agents or employees or others for who the Subcontractor and Sub-subcontractors are responsible for at law, and any steps taken by the Contractor to remove, discharge pay or otherwise satisfy such liens;
- (viii) without limiting the generality of Article 25.02(i), any interference or delays referred to in Article 5;
- (ix) without limiting the generality of Article 25.02(i), any failure of the Subcontractor or Sub-subcontractors or their respective agents or employees or others for whom they are responsible for at law, to comply with all laws, rules, codes and ordinances as referred to in Article 27; and
- (x) without limiting the generality of Article 25.02(i), any failure on the part of the Subcontractor to make such arrangements and take such action as may be necessary in the opinion of the Contractor, to prevent any strikes, slowdowns or other delays and to prevent any damages or expenses to the Contractor all in accordance with Article 9

29.03 The Subcontractor, at its sole cost and expense, will procure and maintain insurance to the extent required by the Contractor, or other security satisfactory to the Contractor, to protect the Indemnified Persons and keep them indemnified from and against Claims pursuant to Article 25.02. The inability or failure of the Subcontractor to procure and maintain insurance or proper insurance shall not in any way limit its obligations under this Article 25.00.

29.04 For greater certainty, nothing set forth in this Article 25.00 is intended to impose any liability on the Subcontractor for the acts or omissions of others, save and except for acts and omissions of Sub-subcontractors and the acts and omissions of the employees and agents of the Subcontractor and of Sub-subcontractors and others for whom they are responsible for at law.

30. RIGHTS AND REMEDIES AND WAIVERS -

30.01 The duties and obligations imposed by this Subcontract and the rights and remedies available hereunder are in addition to and not in substitution for and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity, and such rights and remedies may be enforced either successively or concurrently.

30.02 No action or failure to act by the Contractor shall constitute a waiver of any right or duty afforded to it under this Subcontract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, excepting only as may be specifically agreed to in writing by the Contractor.

31. LAW OF THE CONTRACT, REGULATIONS AND PERMITS -

- (i) The law of the jurisdiction in which the Project is located shall govern this Subcontract.
- (ii) The Owner and Contractor shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for permits, licenses and certificate fees referred to in Article 27.
- (iii) or for which the Subcontract Documents specify as the responsibility of the Subcontractor
- (iv) The Subcontractor, at its sole cost and expense, shall obtain all permits, licenses and certificates required to carry out and conduct the Subcontract Work.

32. RECEIPT OF AND ADDRESS FOR NOTICE IN WRITING - Notices in Writing will be addresses to the recipient at the address set out on the Purchase Order. All notices shall be in writing and shall be deemed to have been received by the addressee on the date of delivery, if delivered by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communications during the transmission of which no indication of failure of receipt is communicated to the sender and if sent by mail it shall be deemed to have been received 5 business days after the date on which it was mailed. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article.

33. OTHER PROVISIONS

- (i) The Subcontractor shall not remove any materials, supplies, products, machinery or equipment brought onto the project site for incorporation into or performance of the Subcontract Work, without the prior written consent of the Contractor.
- (ii) Time shall in all respects be the essence in this Subcontract.
- (iii) The Contractor and Subcontractor agree that delivery of an executed copy or counterpart of this Subcontract by facsimile or other form of electronic

communication constitutes valid execution and delivery.

34. This Subcontract supersedes all prior negotiations, representations or agreements, either written or oral.

SIGNATURE

This agreement entered into as of the date written above.



Contractor (Signature)

Bruno M. Antidormi, Exec VP

Printed Name and Title



Subcontractor (Signature)

LEE KIESWETTER, GENERAL MANAGER

Printed Name and Title

DONALD DAL BIANCO **-and-** **DEEM MANAGEMENT SERVICES**
Court File No.: CV-18-598657-00CL

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

Proceeding Commenced at Toronto

AFFIDAVIT OF LEE KIESWETTER

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Lawyers for Kieswetter Excavating Inc.

Tab J

Brendan Bissell

From: Eric Gionet <EGionet@dlaw.ca>
Sent: Thursday, July 26, 2018 9:07 AM
To: Brendan Bissell
Cc: dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; hans.rizarri@crowesoberman.com; f.battiston@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; ben@bensalsberglaw.com; darren.schmidt@imcapital.com; jean.monardo@imservicing.ca; rbmelvin@rprlaw.com; jeff.larry@paliareroland.com; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; CHOW, MILLY; Jeffrey Armel; Eddy Battiston; Harold Rosenberg
Subject: Dal Bianco v. Deem and Uptown Inc. - CV-18-598657-00CL
Attachments: 11b Full S&UF Mar 2018 PBA re Uptown.pdf; 10 MMSI Stmt of Acct 31.Mar.2018 re Uptown.pdf; Maxion-Uptown Time Line 2010 -2018 -2.pdf

Hi Brendan,

I am providing this email and attachments on behalf of my client (Maxion) in response to the Order of Justice McEwen dated July 17, 2018.

Question #1 (date work on this project started)

For your assistance and review, I am attaching a spreadsheet chart that provides a brief outline of the Maxion's Project time line from 2010-2018. Please note that this chart is nowhere near exhaustive. The chart simply provides a brief description of some of the types of activities undertaken by Maxion in the respective years.

It is Maxion's position that work on this project "improvement" began back in **Jan/Feb 2010**.

Furthermore, Maxion continued providing services to the project in 2012, 2013 and 2014 (ie. before the Dal Bianco second mortgage was first registered on title on June 25, 2015). During those years (2012-2014), Maxion rendered approximately 34 invoices to the Owner, for which payment was received.

As I currently do not have the information as to when the various mortgage funds were advanced by Dal Bianco or Institutional Mortgage Capital Canada, I'm not certain as to the degree to which you require back up documentation regarding the earliest services provided by Maxion. Certainly, my client has a tremendous amount of documentation. If you require copies of such documents, please contact me, and we can work out a suitable arrangement to get you copies of the documentation you seek. I anticipate that the Receiver likely already has copies of much of this documentation from Deem Management as part of the Receiver's efforts to market/sell the project. In any event, let me know what you may require, and I will assist in getting copies to you.

Question #2 (quantification of holdback)

At the time Maxion registered its construction lien (March 29, 2018), Maxion had provided materials and services to the Project worth \$23,218,902.53 (incl. of HST). In this regard, I am attaching a copy of Maxion's Statement of Account dated Mar 31, 2018 showing the invoices rendered and payments received. You will note that the total invoiced is **\$23,218,902.53**. I am also attaching Maxion's Source and Use of Funds spreadsheet which gives a categorical breakdown of the expenditures. You will note that the "Total Work in Place" is the sum of **\$20,546,201.31**. This amount

does not include HST. I have not sent along copies of all the invoices rendered by Maxion, but if you want these, please let me know. I will have to send them along in hard copy, or perhaps Drop Box.

Subsequent to registering its first lien claim, from April 1, 2018 - July 13, 2018 Maxion continued to incur Project costs in the sum of \$560,283.48 (for which, as you already know, a second lien was registered by Maxion on July 13, 2018).

Therefore, the total value of materials and services provided by Maxion is \$23,779,186.01. It is Maxion's position that the holdback is calculated at 10% of this value.

As such, it is Maxion's position that the Owner's holdback amount is **\$2,377,918.60**.

I trust the above meets with your requirements. Please let me know if you need anything further.

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca



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From: Harold Rosenberg [mailto:h.rosenberg@battistonlaw.com]

Sent: Wednesday, July 25, 2018 10:07 AM

To: Brendan Bissell <bissell@gsnh.com>

Cc: Eric Gionet <EGionet@dllaw.ca>; dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; hans.rizarri@crowesoberman.com; f.battiston@battistonlaw.com; h.rosenberg@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; ben@bensalsberglaw.com; darren.schmidt@imcapital.com; jean.monardo@imservicing.ca; rbmelvin@rprlaw.com; jeff.larry@paliarerland.com; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; CHOW, MILLY <MILLY.CHOW@blakes.com>; Jeffrey Armel <jarmel@kmlaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>

Subject: Re: Deem v Dal Bianco - CV-18-598867-00CL

Please find attached my letter dated July 24, 2018, containing the response on behalf of Deep Foundations Contractors Inc. to items 1 and 2 of the schedule to Justice McEwen's order dated July 17, 2018.

Harold Rosenberg
 Battiston & Associates

Suite 202, 1013 Wilson Avenue

Toronto, Ontario, M3K 1G1

phone: (416) 630-7151 x 237
(number to call in event of transmission failure)

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Dated: 31-Mar-18

Statement of Account - The Uptown Inc.

	<i>Invoiced</i>	<i>HST</i>	<i>Total</i>	<i>Paid</i>	<i>Deem Retained for Expenses</i>	<i>Balance Carried</i>
2012-02-29	\$ 117,466.45	\$ 15,270.64	\$ 132,737.09	\$ 132,737.09	-\$ 0.00	\$ -
2012-04-23	\$ 162,293.01	\$ 21,098.09	\$ 183,391.10	\$ 183,391.10	\$ 0.00	\$ -
2012-05-23	\$ 114,623.23	\$ 14,901.02	\$ 129,524.25	\$ 129,524.25	-\$ 0.00	\$ -
2012-06-25	\$ 214,699.85	\$ 27,910.98	\$ 242,610.83	\$ 242,610.83	\$ 0.00	\$ -
2012-07-25	\$ 148,453.67	\$ 19,298.98	\$ 167,752.65	\$ 167,752.65	-\$ 0.00	\$ -
2012-08-22	\$ 190,485.41	\$ 24,763.10	\$ 215,248.51	\$ 215,248.51	\$ 0.00	\$ -
2012-09-28	\$ 187,528.48	\$ 24,378.70	\$ 211,907.18	\$ 211,907.18	\$ 0.00	\$ -
2012-10-31	\$ 295,494.83	\$ 38,414.33	\$ 333,909.16	\$ 333,909.16	-\$ 0.00	\$ -
2012-12-01	\$ 119,201.16	\$ 15,496.15	\$ 134,697.31	\$ 134,697.30	\$ 0.01	\$ -
2012-12-31	\$ 75,497.57	\$ 9,814.68	\$ 85,312.25	\$ 85,312.25	\$ 0.00	\$ -
2013-01-31	\$ 118,724.71	\$ 15,434.21	\$ 134,158.92	\$ 134,158.92	\$ 0.00	\$ -
2013-02-28	\$ 211,023.65	\$ 27,433.08	\$ 238,456.73	\$ 238,456.73	\$ 0.00	\$ -
2013-03-28	\$ 189,742.47	\$ 24,666.52	\$ 214,408.99	\$ 214,408.99	\$ 0.00	\$ -
2013-04-30	\$ 128,302.97	\$ 16,679.39	\$ 144,982.36	\$ 144,982.35	\$ 0.01	\$ -
2013-05-31	\$ 158,430.85	\$ 20,596.01	\$ 179,026.86	\$ 161,391.13	\$ 17,635.73	\$ -
2013-06-30	\$ 106,876.92	\$ 13,894.00	\$ 120,770.92	\$ 120,770.91	\$ 0.01	\$ -
2013-07-31	\$ 84,637.49	\$ 11,002.87	\$ 95,640.36	\$ 95,640.36	\$ 0.00	\$ -
2013-08-31	\$ 152,074.22	\$ 19,769.65	\$ 171,843.87	\$ 171,843.87	-\$ 0.00	\$ -
2013-09-30	\$ 151,596.37	\$ 19,707.53	\$ 171,303.90	\$ 171,303.90	-\$ 0.00	\$ -
2013-10-31	\$ 184,657.79	\$ 24,005.51	\$ 208,663.30	\$ 208,663.30	\$ 0.00	\$ -
2013-11-30	\$ 563,318.29	\$ 73,231.38	\$ 636,549.67	\$ 636,549.67	-\$ 0.00	\$ -
2013-12-31	\$ 91,454.55	\$ 11,889.09	\$ 103,343.64	\$ 87,529.35	\$ 15,814.29	\$ -
2014-01-31	\$ 212,600.49	\$ 27,638.06	\$ 240,238.55	\$ 240,238.55	\$ 0.00	\$ -
2014-02-28	\$ 175,015.78	\$ 22,752.05	\$ 197,767.83	\$ 197,767.84	-\$ 0.01	\$ -
2014-03-31	\$ 225,367.48	\$ 29,297.77	\$ 254,665.25	\$ 248,369.59	\$ 6,295.66	\$ -
2014-04-30	\$ 251,164.98	\$ 32,651.45	\$ 283,816.43	\$ 283,816.43	-\$ 0.00	\$ -
2014-05-31	\$ 366,832.38	\$ 47,688.21	\$ 414,520.59	\$ 414,520.59	-\$ 0.00	\$ -
2014-06-30	\$ 320,867.25	\$ 41,712.74	\$ 362,579.99	\$ 362,580.00	-\$ 0.01	\$ -
2014-07-31	\$ 321,841.09	\$ 41,839.34	\$ 363,680.43	\$ 360,379.10	\$ 3,301.33	\$ -
2014-08-31	\$ 346,513.69	\$ 45,046.78	\$ 391,560.47	\$ 391,560.47	-\$ 0.00	\$ -
2014-09-30	\$ 272,332.55	\$ 35,403.23	\$ 307,735.78	\$ 307,735.78	\$ 0.00	\$ -
2014-10-31	\$ 223,187.65	\$ 29,014.39	\$ 252,202.04	\$ 252,202.04	\$ 0.00	\$ -
2014-11-30	\$ 257,936.43	\$ 33,531.74	\$ 291,468.17	\$ 212,743.36	\$ 78,724.81	\$ -
2014-12-31	\$ 198,443.28	\$ 25,797.63	\$ 224,240.91	\$ 224,240.91	-\$ 0.00	\$ -
2015-01-31	\$ 157,746.44	\$ 20,507.04	\$ 178,253.48	\$ 150,224.83	\$ 28,028.65	\$ -
2015-02-28	\$ 153,434.35	\$ 19,946.47	\$ 173,380.82	\$ 154,030.23	\$ 23,380.82	\$ -
2015-03-31	\$ 169,332.20	\$ 22,013.19	\$ 191,345.39	\$ 191,345.39	\$ -	\$ -
2015-04-30	\$ 157,594.41	\$ 20,487.27	\$ 178,081.68	\$ 178,081.68	\$ -	\$ -
2015-05-31	\$ 96,467.24	\$ 12,540.74	\$ 109,007.98	\$ 109,007.98	\$ -	\$ -
2015-06-30	\$ 75,961.94	\$ 9,875.05	\$ 85,836.99	\$ 85,836.99	\$ -	\$ -
2015-07-31	\$ 72,494.02	\$ 9,424.22	\$ 81,918.24	\$ 81,918.24	\$ -	\$ -
2015-08-31	\$ 41,893.27	\$ 5,446.12	\$ 47,339.39	\$ 47,339.39	\$ -	\$ -
2015-09-30	\$ 28,358.11	\$ 3,686.55	\$ 32,044.67	\$ 32,044.67	\$ -	\$ -
2015-10-31	\$ 129,483.60	\$ 16,832.87	\$ 146,316.47	\$ 146,316.47	\$ -	\$ -
2015-11-30	\$ 69,190.00	\$ 8,994.70	\$ 78,184.70	\$ 78,184.70	\$ -	\$ -
2015-12-31	\$ 58,641.16	\$ 7,623.35	\$ 66,264.51	\$ 66,264.52	\$ -	\$ 0.01
2016-01-31	\$ 1,324,103.61	\$ 172,133.47	\$ 1,496,237.08	\$ 1,496,237.08	\$ -	\$ -
2016-02-29	\$ 2,275,739.69	\$ 295,846.16	\$ 2,571,585.85	\$ 2,571,585.85	\$ -	\$ -
2016-03-31	\$ 100,969.31	\$ 13,126.01	\$ 114,095.32	\$ 114,095.32	\$ -	\$ -
2016-04-30	\$ 123,866.35	\$ 16,102.63	\$ 139,968.98	\$ 139,968.98	\$ -	\$ -

2018-07-11

2016-05-31	\$ 198,192.58	\$ 25,765.04	\$ 223,957.62	\$ 223,957.62		
2016-06-30	\$ 116,609.73	\$ 15,159.27	\$ 131,769.00	\$ 131,769.00		
2016-07-31	\$ 105,691.36	\$ 13,739.88	\$ 119,431.24	\$ 119,431.24		
2016-08-31	\$ 102,639.69	\$ 13,343.16	\$ 115,982.85	\$ 115,982.85		
2016-09-30	\$ 143,343.77	\$ 18,634.69	\$ 161,978.46	\$ 161,978.46		
2016-10-31	\$ 145,166.51	\$ 18,871.65	\$ 164,038.16	\$ 164,038.16		
2016-11-30	\$ 142,919.17	\$ 18,579.49	\$ 161,498.66	\$ 161,498.66		
2016-12-31	\$ 194,814.72	\$ 25,325.91	\$ 220,140.63	\$ 220,140.63		
2017-01-31	\$ 182,895.96	\$ 23,776.47	\$ 206,672.43	\$ 206,672.43		
2017-02-28	\$ 181,155.85	\$ 23,550.26	\$ 204,706.11	\$ 204,706.11		
2017-03-31	\$ 209,065.70	\$ 27,178.54	\$ 236,244.24	\$ 236,244.24		
2017-04-30	\$ 160,008.15	\$ 20,801.06	\$ 180,809.21	\$ 180,809.21		
2017-05-31	\$ 435,880.60	\$ 56,664.48	\$ 492,545.08	\$ 492,545.08		
2017-06-30	\$ 360,220.07	\$ 46,828.61	\$ 407,048.68	\$ 407,048.68		
2017-07-31	\$ 330,612.90	\$ 42,979.68	\$ 373,592.58	\$ 373,592.58		
2017-08-31	\$ 515,231.82	\$ 66,980.14	\$ 582,211.96	\$ 582,211.96	\$	-
2017-09-30	\$ 777,326.56	\$ 101,052.45	\$ 878,379.01	\$ 878,379.01	\$	-
2017-10-31	\$ 685,635.70	\$ 89,132.64	\$ 774,768.34	\$ 304,721.48	\$	470,046.86
2017-11-30	\$ 364,249.35	\$ 47,352.42	\$ 411,601.77		\$	411,601.77
2017-12-31	\$ 614,797.77	\$ 79,923.71	\$ 694,721.48		\$	694,721.48
2018-01-31	\$ 1,558,023.72	\$ 202,543.08	\$ 1,760,566.80		\$	1,760,566.80
2018-02-28	\$ 357,246.73	\$ 46,442.07	\$ 403,688.80		\$	403,688.80
2018-03-31	\$ 692,010.23	\$ 89,961.33	\$ 781,971.56		\$	781,971.56
	\$ 20,547,701.33	\$ 2,671,201.19	\$ 23,218,902.53	\$ 18,527,154.18	\$ 173,181.32	\$ 4,522,597.27

Current	30 days	60 days	90 days	120 days +	Total
\$ 781,971.56	\$ 403,688.80	\$ 1,760,566.80	\$ 694,721.48	\$ 881,648.63	\$ 4,522,597.28

Total of Invoices-to-date: \$ 20,547,701.33

SOURCE AND USE OF FUNDS SCHEDULE
 HARD & SOFT COSTS
 ADVANCE NO. 28

BORROWER : The Uptown Inc.
 PROJECT: The Uptown
 215 Lexington Road
 Waterloo, Ontario



DATE OF SITE VISIT :
 WORK IN PLACE AT :
 PREPARED BY :

March 25, 2018
 March 25, 2018
 TMG

Description of Work	% Of Construction Cost	Original Budget (Nov 2015)	Budget Changes	Revised Budget (May 2017)	Budgeted or Contracted Cost (Bold)	Variance To Committed Cost / Savings (Extra Cost)	Change Orders & Changes / (Credits) Extras	Revised Contract Value	Total Work in Place	Work in Place : Previous Advances	Work in Place : This Advance	Cost to Complete	% Complete of Revised Budget
HARD COSTS - Construction													
Furniture, Fixtures & Equipment	3.56%	1,679,377.07	0.00	1,679,377.07	1,679,377.07	0.00	0.00	1,679,377.07	0.00	0.00	0.00	1,679,377.07	0%
Construction of Sales Centre	1.13%	530,839.04	0.00	530,839.04	582,745.51	(51,906.47)	0.00	582,745.51	582,745.51	582,745.51	0.00	0.00	100%
General Conditions	6.18%	2,915,900.70	0.00	2,915,900.70	2,915,900.70	0.00	513,179.91	3,429,080.61	2,159,346.56	1,988,635.71	170,710.85	1,269,734.05	63%
Project Specific Insurance	0.48%	227,503.95	0.00	227,503.95	154,895.08	72,608.87	0.00	154,895.08	122,955.86	122,955.86	0.00	31,939.22	79%
Soils Investigation - Phase 1	0.07%	34,392.24	0.00	34,392.24	34,392.24	0.00	0.00	34,392.24	34,392.24	34,392.24	0.00	0.00	100%
Inspection and Testing	0.46%	214,640.78	0.00	214,640.78	214,640.78	0.00	0.00	214,640.78	69,155.28	56,679.00	12,476.28	145,485.50	32%
Site Demolition - Removal of Existing Gabian Wall	0.12%	20,850.00	34,060.00	54,910.00	42,860.75	12,049.25	0.00	42,860.75	42,860.75	42,860.75	0.00	0.00	100%
Excavation and Mechanical Services	3.06%	942,099.00	472,901.50	1,415,000.50	1,052,000.00	363,000.50	413,740.21	1,465,740.21	843,420.21	843,420.21	0.00	622,320.00	58%
Site Backfilling	0.04%	105,870.00	(86,790.00)	19,080.00	2,948.00	16,132.00	0.00	2,948.00	2,948.00	2,948.00	0.00	0.00	100%
Dewatering	0.26%	60,000.00	35,000.00	95,000.00	95,000.00	0.00	0.00	95,000.00	1,090.81	1,333.56	(242.75)	93,909.19	1%
Shoring & Underpinning & Caissons	4.84%	3,000,000.00	(716,975.00)	2,283,125.00	2,147,974.80	135,150.20	125,086.68	2,275,061.48	1,175,234.33	1,175,234.33	0.00	1,097,807.15	52%
Electrical Site Services	0.91%	428,000.00	0.00	428,000.00	428,000.00	0.00	0.00	428,000.00	0.00	0.00	0.00	428,000.00	0%
Hard Landscaping	0.83%	368,770.00	23,085.00	391,855.00	391,855.00	0.00	0.00	391,855.00	0.00	0.00	0.00	391,855.00	0%
Formwork	0.56%	213,480.00	48,666.00	262,146.00	262,146.00	0.00	0.00	262,146.00	0.00	0.00	0.00	262,146.00	0%
Reinforcing Steel	14.46%	5,542,877.00	1,279,865.50	6,822,742.50	6,388,866.00	433,876.50	0.00	6,388,866.00	0.00	0.00	0.00	6,388,866.00	0%
Concrete Supply	4.48%	1,832,439.00	283,309.00	2,115,748.00	1,991,150.00	124,598.00	0.00	1,991,150.00	0.00	0.00	0.00	1,991,150.00	0%
Precast Concrete	3.38%	1,216,568.00	378,723.00	1,595,291.00	1,595,291.00	0.00	0.00	1,595,291.00	2,757.00	2,757.00	0.00	1,592,534.00	0%
Masonry	0.39%	129,200.00	54,000.00	183,200.00	183,200.00	0.00	0.00	183,200.00	0.00	0.00	0.00	183,200.00	0%
Structural Steel and Deck	0.20%	114,275.00	(20,700.00)	93,575.00	93,575.00	0.00	0.00	93,575.00	0.00	0.00	0.00	93,575.00	0%
Miscellaneous Metals	1.38%	491,650.00	158,350.00	650,000.00	650,000.00	0.00	0.00	650,000.00	0.00	0.00	0.00	650,000.00	0%
Roofing and Flashing	0.63%	285,976.00	10,351.00	296,327.00	296,327.00	0.00	0.00	296,327.00	0.00	0.00	0.00	296,327.00	0%
Waterproofing	1.03%	243,735.00	241,990.00	485,725.00	485,725.00	0.00	0.00	485,725.00	0.00	0.00	0.00	485,725.00	0%
Ceramicous Waterproofing	0.14%	5,400.00	0.00	5,400.00	5,400.00	0.00	0.00	5,400.00	0.00	0.00	0.00	5,400.00	0%
Traffic Topping	0.36%	0.00	171,000.00	171,000.00	171,000.00	0.00	0.00	171,000.00	0.00	0.00	0.00	171,000.00	0%
Building Insulation	0.23%	13,860.00	96,360.00	110,220.00	110,220.00	0.00	0.00	110,220.00	0.00	0.00	0.00	110,220.00	0%
Metal Siding	0.03%	5,600.00	8,500.00	14,100.00	14,100.00	0.00	0.00	14,100.00	0.00	0.00	0.00	14,100.00	0%
Freestopping and Sealants	0.30%	129,580.00	13,700.00	143,280.00	143,280.00	0.00	0.00	143,280.00	0.00	0.00	0.00	143,280.00	0%
Aluminum Windows & Doors / Curtain Wall	4.45%	1,969,500.00	127,850.00	2,097,350.00	2,097,350.00	0.00	0.00	2,097,350.00	0.00	0.00	0.00	2,097,350.00	0%
Overhead Doors	0.04%	20,000.00	0.00	20,000.00	20,000.00	0.00	0.00	20,000.00	0.00	0.00	0.00	20,000.00	0%
Miscellaneous Glass & Glazing	0.95%	476,100.00	(26,450.00)	449,650.00	449,650.00	0.00	0.00	449,650.00	0.00	0.00	0.00	449,650.00	0%
Finish Hardware & Washroom Accessories	1.47%	602,550.00	92,350.00	694,900.00	694,900.00	0.00	0.00	694,900.00	0.00	0.00	0.00	694,900.00	0%
Temporary Work	0.17%	79,900.00	0.00	79,900.00	79,900.00	0.00	0.00	79,900.00	0.00	0.00	0.00	79,900.00	0%
Kitchen Cabinets	1.17%	551,275.00	2,250.00	553,525.00	553,525.00	0.00	0.00	553,525.00	0.00	0.00	0.00	553,525.00	0%
Hollow Metal Doors & Frames	1.01%	470,500.00	5,100.00	475,600.00	475,600.00	0.00	0.00	475,600.00	0.00	0.00	0.00	475,600.00	0%
Gypsum Board & Acoustic Ceilings	0.27%	130,330.00	(4,825.00)	125,505.00	125,505.00	0.00	0.00	125,505.00	0.00	0.00	0.00	125,505.00	0%
Tile & Interior Stone	5.53%	2,583,850.00	(165,900.00)	2,417,950.00	2,607,525.00	189,575.00	0.00	2,607,525.00	0.00	0.00	0.00	2,607,525.00	0%
Epoxy Flooring	0.48%	392,825.00	226,925.00	619,750.00	226,925.00	0.00	0.00	226,925.00	0.00	0.00	0.00	226,925.00	0%
Wood Flooring	0.07%	45,250.00	(11,700.00)	33,550.00	33,550.00	0.00	0.00	33,550.00	0.00	0.00	0.00	33,550.00	0%
Resilient Flooring & Carpet	1.55%	757,400.00	(27,050.00)	730,350.00	730,350.00	0.00	0.00	730,350.00	0.00	0.00	0.00	730,350.00	0%
Painting & Wallcovering	1.00%	325,725.00	145,780.00	471,505.00	471,505.00	0.00	0.00	471,505.00	0.00	0.00	0.00	471,505.00	0%
Wayfinding Signage	1.25%	425,515.00	166,714.00	592,229.00	591,729.00	0.00	0.00	591,729.00	0.00	0.00	0.00	591,729.00	0%
Exterior Signage	0.05%	25,000.00	0.00	25,000.00	25,000.00	0.00	0.00	25,000.00	0.00	0.00	0.00	25,000.00	0%
Operable Partitions	0.01%	5,000.00	0.00	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00	0.00	0.00	5,000.00	0%
Lockers	0.01%	2,625.00	0.00	2,625.00	2,625.00	0.00	0.00	2,625.00	0.00	0.00	0.00	2,625.00	0%
Storage Shelving	0.00%	2,100.00	0.00	2,100.00	2,100.00	0.00	0.00	2,100.00	0.00	0.00	0.00	2,100.00	0%
Flagpoles	0.01%	5,000.00	0.00	5,000.00	5,000.00	0.00	0.00	5,000.00	0.00	0.00	0.00	5,000.00	0%
Window Washing Equipment	0.11%	50,000.00	0.00	50,000.00	50,000.00	0.00	0.00	50,000.00	0.00	0.00	0.00	50,000.00	0%
Theatre & Stage Equipment	0.10%	45,000.00	0.00	45,000.00	45,000.00	0.00	0.00	45,000.00	0.00	0.00	0.00	45,000.00	0%

Description of Work	% Of Construction Cost	Original Budget (Nov 2015)	Budget Changes	Revised Budget (May 2017)	Budgeted or Contracted Cost (Boif)	Variance To Committed Cost / Savings (Extra Cost)	Change Orders & Changes / (Credits) Extras	Revised Contract Value	Total Work in Place	Work in Place : Previous Advances	Work in Place : This Advance	Cost to Complete	% Complete of Revised Budget
Laundry Equipment	0.05%	24,000.00	0.00	24,000.00	24,000.00	0.00	0.00	24,000.00	0.00	0.00	0.00	24,000.00	0%
Parking Control Equipment	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%
Garage Curbs	0.06%	30,300.00	0.00	30,300.00	30,300.00	0.00	0.00	30,300.00	0.00	0.00	0.00	30,300.00	0%
Food Service Equipment	0.85%	400,000.00	0.00	400,000.00	400,000.00	0.00	0.00	400,000.00	2,950.00	2,950.00	0.00	397,050.00	1%
Residential Appliances	0.82%	386,950.00	1,650.00	388,600.00	386,600.00	0.00	0.00	386,600.00	0.00	0.00	0.00	386,600.00	0%
Multiple Seating	0.10%	48,000.00	0.00	48,000.00	48,000.00	0.00	0.00	48,000.00	0.00	0.00	0.00	48,000.00	0%
Elevators & Dumbwaiter	2.04%	890,000.00	70,000.00	960,000.00	960,000.00	0.00	0.00	960,000.00	0.00	0.00	0.00	960,000.00	0%
Mechanical	11.04%	4,672,450.00	534,350.00	5,206,800.00	5,206,800.00	0.00	0.00	5,206,800.00	24,269.26	24,269.26	0.00	5,182,530.74	0%
Fire Protection	1.17%	464,250.00	68,625.00	532,875.00	532,875.00	0.00	0.00	532,875.00	0.00	0.00	0.00	532,875.00	0%
Geothermal System	2.08%	915,165.53	68,312.29	983,477.82	983,477.82	0.00	0.00	983,477.82	192,187.84	192,187.84	0.00	791,289.98	20%
Electrical & Security	11.29%	4,619,260.00	707,387.50	5,326,647.50	5,326,647.50	0.00	0.00	5,326,647.50	24,413.61	24,413.61	0.00	5,302,233.89	0%
Allowances	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%
Subtotal Hard Costs	100%	43,179,803.31	3,992,089.79	47,171,893.10	46,066,384.25	1,105,508.85	1,052,006.80	47,118,391.05	5,280,747.26	5,097,802.88	182,944.38	41,837,643.79	11%
Construction Contingency	2.76%	1,300,115.00	0.00	1,300,115.00	1,300,115.00	0.00	0.00	1,300,115.00	0.00	0.00	0.00	1,300,115.00	0%
Total Hard Costs (A)		43,179,803.31	5,292,204.79	48,472,008.10	47,366,499.25	2,405,623.85	1,052,006.80	48,418,506.05	5,280,747.26	5,097,802.88	182,944.38	43,137,758.79	10.9%
% CONTRACTED / PROJECTED SAVINGS "A"													
SOFT COST - Construction													
Consultant Fees		5,225,756.21	2,199,679.21	7,425,435.42	7,512,665.81	(87,230.39)	498,024.81	8,010,690.62	7,570,518.51	7,138,481.90	432,036.61	565,172.11	95%
Onespace Unlimited Inc.		814,853.79	250,000.00	1,064,853.79	1,064,853.79	0.00	39,601.75	1,104,455.54	919,521.79	919,521.79	0.00	184,933.75	86%
Y & V Engineering		354,122.50	0.00	354,122.50	301,432.50	52,690.00	0.00	301,432.50	301,432.50	301,432.50	0.00	0.00	85%
EXP Structural		0.00	61,000.00	61,000.00	150,000.00	(89,000.00)	38,358.90	188,358.90	146,490.72	110,825.98	35,664.74	41,868.18	240%
Trace Engineering		142,450.00	87,250.00	229,700.00	229,700.00	0.00	10,460.00	240,160.00	228,910.00	220,160.00	8,750.00	11,250.00	100%
Geo-Xeby		195,000.00	0.00	195,000.00	195,000.00	0.00	(19,550.00)	175,450.00	175,450.00	175,450.00	0.00	0.00	90%
Upper Canada Consulting		64,440.21	0.00	64,440.21	64,440.21	0.00	0.00	64,440.21	61,740.21	61,740.21	0.00	2,700.00	96%
Roth Landscaping		30,500.42	0.00	30,500.42	30,500.42	0.00	0.00	30,500.42	13,750.00	13,750.00	0.00	16,750.42	45%
HGC		31,150.00	0.00	31,150.00	31,150.00	0.00	0.00	31,150.00	10,200.00	10,200.00	0.00	20,950.00	33%
Ingensof & Associates		20,950.00	0.00	20,950.00	20,950.00	0.00	0.00	20,950.00	20,950.00	20,950.00	0.00	0.00	100%
EXP Phase 2 Geotechnical & Environmental		39,025.26	0.00	39,025.26	39,025.26	0.00	7,395.00	46,420.26	44,460.26	44,460.26	0.00	1,960.00	114%
Randal Brown		13,400.00	0.00	13,400.00	13,400.00	0.00	0.00	13,400.00	13,400.00	13,400.00	0.00	0.00	100%
Soberman Engineering		6,600.00	0.00	6,600.00	6,600.00	0.00	0.00	6,600.00	3,000.00	3,000.00	0.00	3,600.00	45%
Edward C. Kennedy		8,300.00	0.00	8,300.00	8,300.00	0.00	0.00	8,300.00	8,300.00	8,300.00	0.00	0.00	100%
Land Surveyor		1,315.00	0.00	1,315.00	1,315.00	0.00	0.00	1,315.00	1,315.00	1,315.00	0.00	0.00	100%
Waterloo Energy Products		19,670.00	0.00	19,670.00	19,670.00	0.00	0.00	19,670.00	19,670.00	19,670.00	0.00	0.00	100%
Jensen Hughes		32,250.00	0.00	32,250.00	32,250.00	0.00	0.00	32,250.00	29,125.00	29,125.00	0.00	3,125.00	90%
Terra Engineering & Structural Consultants Inc.		18,200.00	0.00	18,200.00	18,200.00	0.00	652.50	18,852.50	13,952.50	13,952.50	0.00	4,900.00	105%
Geothermal Design Consultant Review		28,750.00	0.00	28,750.00	28,750.00	0.00	7,500.00	36,250.00	24,500.00	24,500.00	0.00	12,000.00	135%
Disbursement Budget		142,141.52	0.00	142,141.52	142,141.52	0.00	0.00	142,141.52	28,750.00	28,750.00	0.00	0.00	100%
Preconstruction Services and Preliminary Budgeting		300,000.00	0.00	300,000.00	300,000.00	0.00	0.00	300,000.00	61,607.24	61,607.24	0.00	80,534.28	43%
Consultant Review of Design Interfacing and Coordination		2,400,261.94	1,470,944.72	3,871,206.66	3,871,206.66	0.00	0.00	3,871,206.66	3,871,206.66	3,871,206.66	0.00	0.00	100%
Deem Management Expenses (Realty Taxes, Property Maint etc)		142,233.81	69,703.34	211,937.15	211,937.15	0.00	0.00	211,937.15	625,543.81	237,921.94	387,621.87	0.00	295%
Market Feasibility & Land Appraisal Reports		45,025.00	14,981.15	60,006.15	71,606.15	(11,600.00)	0.00	71,606.15	71,606.15	71,606.15	0.00	0.00	119%
Financial Modelling by Lardner & Niron LLP		61,361.87	0.00	61,361.87	61,361.87	0.00	0.00	61,361.87	39,250.00	39,250.00	0.00	22,111.87	64%
Design Coordination for 2017 Code Compliance Submission & SPA		180,823.89	210,000.00	390,823.89	210,000.00	(180,823.89)	0.00	210,000.00	35,811.39	35,811.39	0.00	174,188.61	17%
Legal Fees		132,931.00	22,500.00	155,431.00	155,431.00	0.00	0.00	155,431.00	155,431.00	155,431.00	0.00	0.00	100%
Lender Fees		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%
Municipal Rezoning Fees		22,290.00	0.00	22,290.00	22,290.00	0.00	0.00	22,290.00	22,290.00	22,290.00	0.00	0.00	100%
Municipal SPA Fees		305,756.60	18,764.30	324,520.90	324,520.90	0.00	0.00	324,520.90	324,520.90	324,520.90	0.00	0.00	100%
Municipal Building Permit Fees		229,905.29	0.00	229,905.29	215,247.50	14,657.79	0.00	215,247.50	215,247.50	215,247.50	0.00	0.00	94%
Municipal Development Charges		3,190,629.31	(18,764.30)	3,171,865.01	3,071,564.86	110,299.45	0.00	3,071,564.86	3,071,564.86	3,071,564.86	0.00	0.00	96%
Bonding of Subcontractors		454,829.46	0.00	454,829.46	0.00	454,829.46	0.00	0.00	0.00	0.00	0.00	0.00	0%
Marketing Services		641,182.65	0.00	641,182.65	641,182.65	0.00	0.00	641,182.65	612,741.04	612,741.04	0.00	28,441.61	96%
Total Soft Costs (B)		10,089,113.82	2,199,679.21	12,288,793.03	11,787,471.72	501,321.31	498,024.81	12,285,496.53	11,816,882.81	11,384,846.20	452,036.61	593,613.72	96.2%
PROJECTED SAVINGS "B"													
CONTINGENCY													
General Contingency		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%
Total Contingency (C)		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.0%

Description of Work	% Of Construction Cost	Original Budget (Nov 2015)	Budget Changes	Revised Budget (May 2017)	Budgeted or Contracted Cost (bold)	Variance To Committed Cost / Savings (Extra Cost)	Change Orders & Changes / (Credits) Extras	Revised Contract Value	Total Work in Place	Work in Place : Previous Advances	Work in Place : This Advance	Cost to Complete	% Complete of Revised Budget
Total Soft Costs (B + C)		10,089,113.82	2,199,579.21	12,288,793.03	11,787,471.72	501,321.31	498,024.81	12,285,496.53	11,816,882.81	11,384,846.20	432,036.61	593,613.72	96.2%
Total Phase I (A + B)		53,268,917.13	7,491,884.00	60,760,801.13	59,153,970.97	2,906,945.16	1,550,031.61	60,704,002.58	17,097,630.06	16,482,649.07	614,980.99	43,731,372.52	28.1%
PROJECTED SAVINGS " A + B "						1,356,913.55							
ADDITIONAL CHANGES TO PHASE 1 SCOPE													
Demolition of Existing Pinehaven Retirement		0.00	436,244.43	436,244.43	436,244.43	0.00	0.00	436,244.43	399,697.23	399,697.23	0.00	36,547.20	92%
Site Remediation		0.00	142,870.00	142,870.00	142,870.00	0.00	(34,016.84)	108,853.16	108,853.16	108,853.16	0.00	(0.00)	100%
Soils Remediation		0.00	1,078,414.30	1,078,414.30	1,112,711.49	(34,297.19)	0.00	1,112,711.49	1,156,787.87	1,112,711.49	44,076.38	(44,076.38)	107%
Total Changes Outside Phase 1 Scope (C)		0.00	1,657,528.73	1,657,528.73	1,691,825.92	(34,297.19)	(34,016.84)	1,657,809.08	1,665,338.26	1,621,261.89	44,076.38	(7,529.18)	100.5%
Total A + B + C		53,268,917.13	9,149,412.73	62,418,329.86	60,845,796.89	2,872,647.97	1,516,014.77	62,361,811.66	18,762,968.33	18,103,910.96	659,057.37	43,723,843.33	30.1%
5% Development Management Fees (D)		2,456,082.87	664,833.62	3,120,916.49	3,120,916.49	0.00	0.00	3,120,916.49	1,783,232.99	1,750,280.12	32,952.87	1,337,683.50	57.1%
Total A + B + C + D		55,725,000.00	9,814,246.35	65,539,246.35	63,966,713.38	2,872,647.97	1,516,014.77	65,482,728.15	20,546,201.31	19,854,191.08	692,010.23	45,061,526.84	31.3%

UPTOWN Project Time Line 2010-2018



Date	Activity	Documents	Filed Documents
January 26, 2010	Pinehaven General Accounts Budget	D08	
February 4, 2010	Co-ordination Meeting Minutes No. 1	D06	
February 17, 2010	Pinehaven Nursing Home Facility Feb17 2010 Construction Schedule	D09	
February 22, 2010	Co-ordination Meeting Minutes No. 2	D07	
February 25, 2010	Maxion Initial Site Investigation (Photos)		Uptown/Photos/ 10.1
April 7, 2010	Pre-Construction Proposal Phase 1	D02	
April 12, 2010	Pre-Construction Proposal Phase 1 2nd Draft	DO3	
May 1, 2010	Pre-Construction Proposal Phase 1	D04	
June 30, 2010	Co-ordination Meeting Minutes No. 4	D05	
2010-2012	Verka / Deem / Maxion Design & Project Budget Review / Co-ordination		
January 2012	New Consultants / Design Team Established (OneSpace / Y&V Engineering / Trace Engineering)		
February 27, 2012	Email City of Waterloo Zoning By-Law information	E11	
April 24, 2012	Email Onespace confirming Stats of the Unit Counts & Parking Counts	E01	
May 7, 2012	Email Onespace requesting copy of Earlier Pinehaven Submission	E02	
May 7, 2012	Email City of Waterloo UTSC Permit Drawings & SPA of the UTSC	E03	
May 15, 2012	Email Y&V Engineering ; Received Signed permit Application UTSC	E04	
May 17, 2012	Email City of Waterloo UTSC Permit Application	E05	
May 17, 2012	Email Myles Burke to proceed on UPTOWN Model for the UTSC	E06	
May 28, 2012	Email Meeting Request OneSpace : Pre-consultation Meeting SPA held at the City of Waterloo o June 13 2012	E07	
June 13, 2012	Email OneSpace summary of meeting held with City of Waterloo SPA	E08	
July 3, 2012	Email MOL Registered Notice of Project for the UTSC	E09	
July 3, 2012	Commenced UTSC Project		
August 2, 2012	Email Y&V Engineering site visit report No.1	E10	
October 1, 2012	UTSC Complete		
September 10, 2013	Email EXP confirmed that Bore Hole Investigation to commence October 10 2014	E12	
October 22, 2013	Geotechnical Bore Hole Investigation		Uptown/Photos/ 10.25
July 22, 2014	Email GeoSource Engineering Commenced Geo Thermal Test BoreHole July 21 2014	E13	
2012-2017	Drawing Co-ordination 2012 - 2017 (Co-ordination & Permit Resubmission)		4.0 Consultants / 4.0 Drawing Co-ordination
October 29, 2014	Executed Development Management Contract between Maxion & Deem	D01	
May 16, 2017	Initial Clearing & Grubbing Work (Kieswetter Excavation)		Uptown/Photos/ 10.31
June 2, 2017	1st Phase Soil Remediation		Uptown/Photos/ 10.33
July 17, 2017	Deep Foundation Mobilized On Site		Uptown/Photos/ 10.39
July 26, 2017	Phase One Site Services intallation (Kieswetter)		Uptown/Photos/ 10.41
May 31, 2018	Project fell into Receivership		

Brendan Bissell

From: Eric Gionet <EGionet@dllaw.ca>
Sent: Tuesday, August 07, 2018 11:43 AM
To: Brendan Bissell
Cc: Andrew Wood; ben@bensalsberglaw.com
Subject: RE: Dal Bianco v. Deem and Uptown Inc. - CV-18-598657-00CL

Importance: High

Hi Brendan,

I hope you had a fun canoeing trip.

Further to my email below, this email will address some of the specific expenditures you have questioned in your email of July 26th.

The Sales Centre was part of the overall project (ie. part of “the improvement”) and was in fact constructed on the same parcel of land, not a different parcel as suggested in your email. Thus, it is lienable work.

Some of the “Deem Management Expenses” *may* not be lienable, although it would likely take a line-by-line review of this category to parse out the lienable items from the non-lienable items. It have not done such a forensic exercise yet, and would only do so if it became necessary. We can discuss this further.

I agree that Legal Fees are not lienable.

The remainder of the items listed in your email appear to me to be lienable, for reasons explained below.

In the case of *Toronto Dominion Bank v. 450477 Ontario Ltd, 2016 ONSC 4908* (“the TD Case”) Master Wiebe did an in-depth review of the jurisprudence to determine the test for the lienability of services and materials. Rather than simply trying to pigeon hole various types of lienable services and/or materials, the Master decided that the “functional nexus test” was the most appropriate. In the words of Master Wiebe (para 42), “This test focuses on the importance of the work’s function to the project, namely whether the construction parties, particularly the owner, considered the subject services necessary for the completion of the project and whether the services benefitted the majority of the contractors and subcontractors.”

In the TD Case, Master Wiebe cited numerous other cases in which the functional nexus test had been applied.

Applying the functional nexus test to the majority of the items in your list, it seems to me that these items would be considered lienable because the expenses were absolutely necessary in order to allow the project to proceed. In other words, the progress of the improvement depended on those expenses being incurred. For example, without the various municipal fees and charges being paid, there could be no development, no construction and thus no improvement. Furthermore, these expenses were specifically contemplated by the owner and Maxion as being necessary to incur for the benefit of the improvement. These expenses fall within the “Reimbursible Expenses and Cost of the Work” contract provisions applicable to Maxion’s fee for the project as set out in the Joint Venture and Development Management Contract (see Appendix “A” of contract). For example, item “L” in Appendix “A” includes all charges levied by authorities having jurisdiction, and item “v” includes the cost of financing the project. Having these items specifically included in the contract as reimbursable and a “Cost of the Work” shows that the owner and Maxion considered them to be important and necessary for the completion of the project (using Master Wiebe’s wording and

analysis in the TD Case). Again, these expenses benefitted all contractors and subcontractors because without these expenses being incurred and paid by Maxion, there would be no project.

In summary, other than the legal fees, and perhaps some items included in the Deem Management Expenses category, it will be Maxion's position that the remainder of the items listed in your email are properly lienable, and thus the 10% holdback amount would be applicable to those amounts.

I am in the office today and tomorrow, if you wish to chat. I will be away all day Thursday and likely Friday as well.

Let me know.

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca



10 Checkley Street, Barrie, Ontario L4N 1W1
Tel: (705) 792-7963 Fax : (705) 792-7964

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From: Eric Gionet
Sent: Wednesday, August 01, 2018 12:57 PM
To: 'Brendan Bissell' <bissell@gsnh.com>
Cc: Andrew Wood <awood@dllaw.ca>; ben@bensalsberglaw.com
Subject: RE: Dal Bianco v. Deem and Uptown Inc. - CV-18-598657-00CL

Brendan,

As per our call last week, I am going to send you a couple emails with responses to the issues raised below.

I will address the scope of the "improvement" in this email.

I am attaching an excel file containing a Gantt Chart of the Uptown project time line. This demonstrates that there were no gaps in the flow of Maxion's work. My client has backup information to confirm start and finish dates.

Maxion did undertake 5 small renovation projects to the existing Pinehaven retirement home and LTC, however these were billed separately and independently to Deem and are not included in The Uptown project timeline and costs.

I am also attaching the Maxion "Presentation Package" from February 2012 as well as the Uptown Business Plan also from 2012. These are just a few of the many documents available to show that the Project that was under construction was the same project going back to at least 2012.

There is an abundance of documentation to establish that there was only one large "improvement".

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca



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From: Brendan Bissell [<mailto:bissell@gsnh.com>]

Sent: Thursday, July 26, 2018 4:52 PM

To: Eric Gionet <EGionet@dllaw.ca>

Cc: dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; hans.rizarri@crowesoberman.com; f.battiston@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; ben@bensalsberglaw.com; darren.schmidt@imcapital.com; jean.monardo@imservicing.ca; rbelvin@rprlaw.com; jeff.larry@paliaroland.com; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; CHOW, MILLY <MILLY.CHOW@blakes.com>; Jeffrey Armel <jarmel@kmlaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>; Harold Rosenberg <h.rosenberg@battistonlaw.com>; Graeme Hamilton <Graeme.Hamilton@CroweSoberman.com>; Michael Rotsztain (rotsztain@gsnh.com) <rotsztain@gsnh.com>

Subject: RE: Dal Bianco v. Deem and Uptown Inc. - CV-18-598657-00CL

Eric: Thank you for your email.

As I indicated in my voicemail message, I would like to discuss this with you to get a better understanding of some unclear and/or confusing aspects, including:

- a) Whether this scope of work is all for one "improvement", or project; I note that some consultant's reports refer to "re-starting", which when combined with the period of time here and the lengthy gaps (2012 to 2014, and 2014 to 2017 stand out) raise this question. This goes to both holdback quantification and when "first lien arose" for purposes of mortgage priority.
- b) Even assuming that the amounts set out in the sources and use of funds spreadsheet are accurate (which is not a criticism, but merely a reflection of the state of the record at present), there are some amounts that raise questions as to whether they would form part of lienable work, such as:

Description	Amount listed as being in place (w/o HST)	Comments
Construction of Sales Centre	\$582,745.51	The sales centre is on a different parcel. It may also be a separate improvement than the development.
Deem Management Expenses (Realty Taxes, Property Maint. Etc.)	\$625,543.81	Seemingly unrelated to construction, even under an expanded view of pre-construction work. Also by the owner.
Market Feasibility & Land Appraisal Reports	\$71,606.15	Seemingly unrelated to construction, even under an expanded view of pre-construction work.

Financial Modelling by Lardner & Nixon LLP	\$39,250.00	Seemingly unrelated to construction, even under an expanded view of pre-construction work.
Legal Fees	\$220,144.28	Does not seem lienable.
Lender Fees	\$155,431.00	Does not seem lienable.
Municipal Rezoning Fees	\$22,290.00	Does not seem lienable.
Municipal SPA Fees	\$324,570.90	Does not seem lienable.
Municipal Building Permit Fees	\$215,247.50	Does not seem lienable.
Municipal Development Charges	\$3,071,564.86	Does not seem lienable.
Marketing Services	\$617,741.04	Does not seem lienable.
5% Development Management Fees	\$1,783,232.99	As distinct from construction management or "own forces" work, does not seem lienable. Also the 5% fee is not readily discernable in the JV contract provided.

I would ask for your comments on that, please.

Regards,
Brendan

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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From: Eric Gionet [<mailto:EGionet@dllaw.ca>]

Sent: Thursday, July 26, 2018 9:07 AM

To: Brendan Bissell <bissell@gsnh.com>

Cc: dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; hans.rizarri@crowesoberman.com; f.battiston@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; ben@bensalsberglaw.com; darren.schmidt@imcapital.com; jean.monardo@imservicing.ca; rbrmelvin@rprlaw.com; jeff.larry@paliareroland.com; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; CHOW, MILLY <MILLY.CHOW@blakes.com>; Jeffrey Armel <jarmel@kmlaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>; Harold Rosenberg <h.rosenberg@battistonlaw.com>

Subject: Dal Bianco v. Deem and Uptown Inc. - CV-18-598657-00CL

Hi Brendan,

I am providing this email and attachments on behalf of my client (Maxion) in response to the Order of Justice McEwen dated July 17, 2018.

Question #1 (date work on this project started)

For your assistance and review, I am attaching a spreadsheet chart that provides a brief outline of the Maxion's Project time line from 2010-2018. Please note that this chart is nowhere near exhaustive. The chart simply provides a brief description of some of the types of activities undertaken by Maxion in the respective years.

It is Maxion's position that work on this project "improvement" began back in **Jan/Feb 2010**.

Furthermore, Maxion continued providing services to the project in 2012, 2013 and 2014 (ie. *before* the Dal Bianco second mortgage was first registered on title on June 25, 2015). During those years (2012-2014), Maxion rendered approximately 34 invoices to the Owner, for which payment was received.

As I currently do not have the information as to when the various mortgage funds were advanced by Dal Bianco or Institutional Mortgage Capital Canada, I'm not certain as to the degree to which you require back up documentation regarding the earliest services provided by Maxion. Certainly, my client has a tremendous amount of documentation. If you require copies of such documents, please contact me, and we can work out a suitable arrangement to get you copies of the documentation you seek. I anticipate that the Receiver likely already has copies of much of this documentation from Deem Management as part of the Receiver's efforts to market/sell the project. In any event, let me know what you may require, and I will assist in getting copies to you.

Question #2 (quantification of holdback)

At the time Maxion registered its construction lien (March 29, 2018), Maxion had provided materials and services to the Project worth \$23,218,902.53 (incl. of HST). In this regard, I am attaching a copy of Maxion's Statement of Account dated Mar 31, 2018 showing the invoices rendered and payments received. You will note that the total invoiced is **\$23,218,902.53**. I am also attaching Maxion's Source and Use of Funds spreadsheet which gives a categorical breakdown of the expenditures. You will note that the "Total Work in Place" is the sum of **\$20,546,201.31**. This amount does not include HST. I have not sent along copies of all the invoices rendered by Maxion, but if you want these, please let me know. I will have to send them along in hard copy, or perhaps Drop Box.

Subsequent to registering its first lien claim, from April 1, 2018 - July 13, 2018 Maxion continued to incur Project costs in the sum of \$560,283.48 (for which, as you already know, a second lien was registered by Maxion on July 13, 2018).

Therefore, the total value of materials and services provided by Maxion is \$23,779,186.01. It is Maxion's position that the holdback is calculated at 10% of this value.

As such, it is Maxion's position that the Owner's holdback amount is **\$2,377,918.60**.

I trust the above meets with your requirements. Please let me know if you need anything further.

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca



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From: Harold Rosenberg [<mailto:h.rosenberg@battistonlaw.com>]

Sent: Wednesday, July 25, 2018 10:07 AM

To: Brendan Bissell <bissell@gsnh.com>

Cc: Eric Gionet <EGionet@dllaw.ca>; dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; hans.rizarri@crowesoberman.com; f.battiston@battistonlaw.com; h.rosenberg@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; ben@bensalsbergglaw.com; darren.schmidt@imcapital.com; jean.monardo@imservicing.ca; rvmelvin@rprlaw.com; jeff.larry@paliarerland.com; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; CHOW, MILLY <MILLY.CHOW@blakes.com>; Jeffrey Armel <jarmel@kmlaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>

Subject: Re: Deem v Dal Bianco - CV-18-598867-00CL

Please find attached my letter dated July 24, 2018, containing the response on behalf of Deep Foundations Contractors Inc. to items 1 and 2 of the schedule to Justice McEwen's order dated July 17, 2018.

Harold Rosenberg
 Battiston & Associates

Suite 202, 1013 Wilson Avenue
 Toronto, Ontario, M3K 1G1

phone: (416) 630-7151 x 237
 (number to call in event of transmission failure)

fax: (416) 630-7472
 email: h.rosenberg@battistonlaw.com

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Tab K

Priority over mortgages, etc.

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 78 (1); 2017, c. 24, s. 70.

Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered. R.S.O. 1990, c. C.30, s. 78 (2).

Prior mortgages, prior advances

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
 - (i) advanced in the case of a mortgage, and
 - (ii) advanced or secured in the case of a conveyance or other agreement. R.S.O. 1990, c. C.30, s. 78 (3); 2017, c. 24, s. 70, 71.

Prior mortgages, subsequent advances

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (4); 2017, c. 24, s. 53 (1), 70.

Special priority against subsequent mortgages

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. R.S.O. 1990, c. C.30, s. 78 (5); 2017, c. 24, s. 70.

General priority against subsequent mortgages

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (6); 2017, c. 24, s. 53 (1), 70.

Advances to trustee under Part IX

(7) Despite anything in this Act, where an amount is advanced to a trustee appointed under Part IX as a result of the exercise of any powers conferred upon the trustee under that Part,

- (a) the interest in the premises acquired by the person making the advance takes priority, to the extent of the advance, over every lien existing at the date of the trustee's appointment; and
- (b) the amount received is not subject to any lien existing at the date of the trustee's appointment. R.S.O. 1990, c. C.30, s. 78 (7); 2017, c. 24, s. 70.

Where postponement

(8) Despite subsections (4) and (6), where a preserved or perfected lien is postponed in favour of the interest of some other person in the premises, that person shall enjoy priority in accordance with the postponement over,

- (a) the postponed lien; and
- (b) where an advance is made, any unpreserved lien in respect of which no written notice has been received by the person in whose favour the postponement is made at the time of the advance,

but nothing in this subsection affects the priority of the liens under subsections (2) and (5). R.S.O. 1990, c. C.30, s. 78 (8); 2017, c. 24, s. 70.

Saving

(9) Subsections (2) and (5) do not apply in respect of a mortgage that was registered prior to the 2nd day of April, 1983. R.S.O. 1990, c. C.30, s. 78 (9).

Financial guarantee bond

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where,

- (a) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; or
- (b) a letter of credit or a guarantee from a bank listed in Schedule I or II to the *Bank Act* (Canada),

in the prescribed form is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit. R.S.O. 1990, c. C.30, s. 78 (10); 1997, c. 19, s. 30; 2017, c. 24, s. 53 (2), 70.

Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer. R.S.O. 1990, c. C.30, s. 78 (11).

Section Amendments with date in force (d/m/y)

1997, c. 19, s. 30 - 10/10/1997

2017, c. 24, s. 53 (1, 2), 70, 71 - 12/12/2017

Tab 2

Court File No.: CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 17TH
)
JUSTICE) DAY OF JULY, 2018
)

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

**ORDER
(Interim Distributions)**

THIS MOTION, made by Crowe Soberman Inc in its capacity as receiver (the “**Receiver**”) of the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the “**Real Property**”), the assets and undertakings of Deem Management Services Limited (“**Deem Management**”) related to the Real Property (the “**Related Deem Assets**”), and the property, assets and undertakings (the “**Uptown Assets**”) of the Uptown Inc. (the “**Uptown**”, together with Deem Management the “**Debtors**”) for an order authorizing the Receiver to make interim distributions was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Supplementary Report (the “**Supplementary Report**”) dated August 13, 2018 to the Second Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the

service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. THIS COURT ORDERS that the time for service of the Motion Record in respect of this motion and the Supplementary Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

2. THIS COURT ORDERS that that, provided that after such distributions there will remain in the Receiver's possession (i) \$2,355,904.17, (ii) amounts necessary to repay all fees and expenses owing to the Receiver and its counsel and (iii) a reserve to complete the administration of the estate, the Receiver is authorized to:

- a) pay the amounts owing to Institutional Mortgage Capital Canada Inc. secured by a mortgage against the Real Property, subject to the Receiver's review of the relevant payout statement and costs claimed; and
 - b) pay the amounts owing to Dal Bianco for the mortgage registered on tile to the Real Property dated June 26, 2015 and registered as instrument no. WR888817 (as amended by instrument no. WR1030186 on May 8, 2017 to extend the term to March 1, 2019), subject to the Receiver's review of the relevant payout statement and costs claimed.
3. THIS COURT ORDERS that the Receiver not make any other distributions except pursuant to an Order made on notice to the Service List.
-

DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**ORDER
(Interim Distributions)**

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Lawyers for the Receiver, Crowe Soberman Inc.

Tab 3

Court File No. CV-18-598657-00CL

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

B E T W E E N:

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

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(as of July 9, 2018)**

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AS REPRESENTED BY THE MINISTER OF FINANCE**
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Lawyers for Schlegel Villages/Pine Haven Nursing Home

- 6 -

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DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced TORONTO

SUPPLEMENTARY MOTION RECORD
For an interim distribution order
**(originally returnable July 17, now returnable
August 14, 2018)**

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