

COURT FILE NUMBER 130306092

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANT DOWLAND CONTRACTING LTD.,  
0849809 B.C. LTD. (FORMERLY DOWLAND INDUSTRIAL  
WORKS LTD.), DOWLAND CONSTRUCTION, INC., AND  
6070 N.W.T. LIMITED

DOCUMENT **SIXTH REPORT OF ALVAREZ & MARSAL CANADA  
INC., IN ITS CAPACITY AS COURT APPOINTED  
RECEIVER OVER THE PROPERTY**

**November 20, 2014**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**RECEIVER**

ALVAREZ & MARSAL CANADA INC.  
Suite 1680, Commerce Place  
400 Burrard Street  
Vancouver, BC V6C 3A6  
Todd Martin/Callum Beveridge  
Telephone: (604) 638-7445 / (604) 638-7447  
Email: [tmartin@alvarezandmarsal.com](mailto:tmartin@alvarezandmarsal.com)  
[cbeveridge@alvarezandmarsal.com](mailto:cbeveridge@alvarezandmarsal.com)

**COUNSEL**

MILLER THOMSON LLP  
Thomas Gusa  
2700 Commerce Place  
10155 – 102 Street  
Edmonton, Alberta T5J 4G8  
Phone: (780) 429-9767  
Fax: (780) 424-5866  
Email: [tgusa@millერთhompson.com](mailto:tgusa@millერთhompson.com)  
File# : 182818.1

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## 1.0 INTRODUCTION

1.1 Effective May 21, 2013, pursuant to the order of the Honourable Associate Chief Justice J.D. Rooke (the “Receivership Order”), Alvarez & Marsal Canada Inc. was appointed Receiver and Manager (the “Receiver” or “A&M”) without security of all the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”) of Dowland Contracting Ltd. (“DCL”), 0849809 B.C. Ltd. (“0849809”) and 6070 N.W.T. Limited (“6070”) (collectively, the “Dowland Group” or the “Company”) pursuant to section 13(2) of the Judicature Act, R.S.A. 2002, c. J-2 and section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, (the “BIA”) and 65(7) of the Personal Property Security Act, R.S.A. 2000, c. P-7 in the within action (the “Receivership Proceeding”).

1.2 On August 16, 2013, the Receiver sought and obtained the following court orders:

- a) Approving Sales and Vesting Orders in respect of select parcels of real property relating to land and buildings comprising Parcels A to D located at Inuvik, NWT, and Parcels E and F located at Iqaluit, NU;
- b) Approving Sales and Vesting Orders in respect of personal property located at various locations in Alberta, British Columbia, Northwest Territories, Nunavut, and Saskatchewan;
- c) an order approving the KIA Settlement Agreements; and
- d) a Temporary Sealing Order relating to the Approving Sales and Vesting Orders noted at 1.2(a) above.

The Approval and Vesting Orders noted in (a) and (b) above are hereinafter referred to as the “August 16 Vesting Orders”.

1.3 The Receiver’s legal counsel has filed a notice of application dated November 21, 2014 (the “Notice of Application”) to be heard November 28, 2013 seeking:

- a) orders Approving Sales and Vesting Orders and approving the marketing and sale activities of the Receiver (the “Second Sales Process”) in respect of the Remaining Properties (subsequently defined); and
- b) a Temporary Sealing Order in respect of a confidential summary of tendered offers to purchase (the “Confidential Offer Summary”).

- 1.4 The Receivership Order, with the Notices of Application and select motion material and other documents filed in the Receivership Proceedings, are posted on the Receiver's website at [www.amcanadadocs.com/dowland](http://www.amcanadadocs.com/dowland).

## 2.0 PURPOSE OF REPORT

- 2.1 This is the Receiver's sixth report (the "Sixth Report") and it has been prepared as a special purpose report to advise this Honourable Court of the Receiver's activities and conclusions and recommendations with respect to the following matters:

- a) The Second Sales Process as it relates to the sale of select miscellaneous real property owned by DCL and situated at Inuvik, Tuktoyaktuk and Paulatuk, NWT; and
- b) an Approving Sales and Vesting Order and a Temporary Sealing Order sought by the Receiver pursuant to this Notice of Application.

- 2.2 Capitalized words or terms not defined or otherwise ascribed a meaning in this Third Report are defined or ascribed a meaning in the Receiver's First, Second, Third, Fourth and Fifth Reports and the Receivership Order.

- 2.3 All references to dollars are in Canadian currency unless otherwise noted.

## 3.0 THE SALES PROCESS

### Receiver's Powers and Basis for Selected Sales Process

- 3.1 As noted in previous reports of the Receiver, pursuant to section 3 of the Receivership Order, the Receiver is empowered to among other things:

*"3. . . . (k) to market any and all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;*

*(l) to sell, convey, transfer. Lease or assign the Property or any part or parts thereof out of the ordinary course of business,*

*(i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and*

*(ii) with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,*

*and in each such case notice under subsection 60(8) of the PPSA shall not be required;*

*(m) to apply for any vesting order or other such orders necessary to convey the Property or and part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; . . .”*

3.2 Certain real property owned by DCL situated in remote locales in the Northwest Territories (“NWT”) include the following:

- a) fee simple title land and a 2-story industrial building located at Lots 18, 19 and 20, Block 49, Plan 633, Inuvik, NWT (the “Inuvik Blue Building”). Inuvik is located 2,000 km north west of Edmonton, Alberta above the Arctic Circle;
- b) a fee simple title land and a quonset hut located at Lot 19, Block 21, Plan 3422 and a residence located at Lot 19, Block 34, Plan 1652, Tuktoyaktuk, NWT (together, the “Tuk Properties”). Tuktoyaktuk is located 130 km north of Inuvik and is only accessible by air all year round, by road in the winter and by sea in the summer; and
- c) a leasehold interest in land and a derelict trailer located at Lot 46, Plan 5529 Paulatuk, NWT (the “Paulatuk Property”). Paulatuk is located 400 km north east of Inuvik and is only accessible by sea in the summer and by air all year round.

The Inuvik Blue Building, the Tuk Properties and the Paulatuk Property are hereinafter, referred to collectively as the “Remaining Properties”.

#### **Sales Process**

3.3 The Receiver launched the original Sales Process on June 26, 2013 and provided potential interested parties with copies of the Asset Information Package. The Asset Information Package contained information on the Inuvik Blue Building but the Receiver did not receive any acceptable offers for that particular property. The Tuk Properties and the Paulatuk Property were not included in the Asset Information Package due to the uncertainty surrounding title, condition for use and the general nature of these properties. The Receiver’s Third Report sets out information on the Sales Process conducted.

#### **Inuvik Blue Building**

3.6 Prior to the Receivership Proceeding, the Inuvik Blue Building was used by DCL as an administrative and/or head office and warehouse/storage facility. In addition to DCL’s use of the Inuvik Blue Building, DCL had leased approximately 5,000 square feet to Acklands-Grainger Inc. (“Acklands”) which held a five year lease (with an option to renew for another 5 years) which was set to expire on May 31, 2014.

- 3.7 Subsequent to the granting of the August 16 Vesting Orders, the Receiver has received a number of enquiries from potentially interested parties regarding a purchase of the Inuvik Blue Building and it became abundantly clear that maintaining the commercial lease with Acklands would be a material factor in concluding a sale of the property at a reasonable value.
- 3.8 In order to preserve and/or enhance the commercial value of the Inuvik Blue Building, the Receiver worked with Acklands to renew the lease at current market terms and a lease renewal was entered into in May 2014. The Receiver had not actively marketed the Inuvik Blue Building until such time as the Acklands' lease was renewed as failure to have a strong commercial tenant in the building would have likely had a material impact on the value of the property.
- 3.9 Given the remote locale of the property, the relatively benign economic activity and outlook for the region and the limited buyer universe for such a property, the Receiver approached a number of commercial entities in Inuvik who had previously expressed interest in the Inuvik Blue Building and requested non-binding offers to purchase by August 22, 2014. The Receiver received 4 non-binding offers and proceeded to enter into further discussions with the two parties which had submitted the highest offers. These short listed parties were asked to submit final revised bids based on certain acceptable conditions such as board approval, building inspection, financing and the approval of this Honourable Court.
- 3.10 As a result of the process described in 3.9 above, one party submitted the highest offer (the "Inuvik Blue Building Purchaser") as set out in the Confidential Offer Summary and the Receiver accepted this offer subject to board approval and the Inuvik Blue Building Purchaser's right to inspect the building and the approval of this Honourable Court. The building inspection subsequently performed by an independent engineer on behalf of the Inuvik Blue Building Purchaser highlighted certain structural issues which required some degree of remediation and through further negotiations, the Receiver and the Inuvik Blue Building Purchaser agreed to a revised price as set out in the Confidential Offer Summary whereby Inuvik Blue Building Purchaser would be responsible for all repairs to the Inuvik Blue Building as well as interim remedial repairs upon completion of the sale.
- 3.11 The Receiver has accepted the revised offer of the Inuvik Blue Building Purchaser despite having received a higher competing offer as set out in the Confidential Offer Summary from another party as this offer was received prior to the inspection and identification of potential repairs/remediation to the property with estimated costs of approximately \$100,000. The Receiver has confirmed with an independent engineer the estimated costs and extent of repairs required to the Inuvik Blue Building and is satisfied that the revised purchase price from the

Inuvik Building Purchaser as set out in the Confidential Offer Summary is commercially reasonable in the circumstances.

- 3.12 The Receiver also received 2 additional offers for the Inuvik Blue Building which are set out in the Confidential Offer Summary. These offers are significantly below the Inuvik Blue Building Purchaser's revised offer price.

### **Tuk Properties**

- 3.13 During the course of the original sales process launched in June 2013, the Receiver received an offer to purchase the Tuk Properties as set out in the Confidential Offer Summary. The 2013 NWT property tax assessments relating to the land comprising the Tuk Properties was \$34,000. Both buildings on each parcel of land comprising the Tuk Properties were in very poor condition when the Receivership Order was granted and the prospective purchaser has since made certain improvements to the residence to make it safe and secure. The offer received for the Tuk Properties was the only offer received since the original sales process was launched in 2013 and is considered by the Receiver to be commercially reasonable in light of the poor condition of the buildings, the remoteness of the location and the relatively low value of the property.

### **Paulatuk Property**

- 3.14 The Receiver advertised the Paulatuk Property for sale in December 2013 through the community hamlet office in Paulatuk. The Paulatuk Property is approximately 0.66 acres and is leasehold interest which expires in 2022. The 2013 NWT property tax assessment for the land was \$40,500. Through this process the Receiver received only one offer to purchase the Paulatuk Property for the amount as set out in the Confidential Offer Summary which given the poor condition of the trailer and quonset hut on the site, the pending expiry of the leasehold and the remoteness of the location, is considered commercially reasonable.

### **Receiver's Considerations**

- 3.15 The Receiver's acceptance of the offers for the Remaining Properties, as set out in the Confidential Offer Summary, involved consideration of the following issues:
- a) the extent to which the highest price was achieved from the parcels of real estate that have been marketed;
  - b) the extent to which prices offered for various parcels of real estate are consistent with third party indications of value (such as appraisals and property tax assessments), where available;

- c) the overall execution risk associated with closing a transaction with a particular prospective purchaser;
- d) to the extent possible, the reputation and financial wherewithal of each of the prospective purchasers;
- e) the parties knowledge of the locations and conditions of the assets being sold;
- f) the economic interests of Dowland Group's principal secured creditors; and
- g) the expected timing of closing the transactions in late November or early December 2014 which will see the purchasers taking possession of the real estate by the end of 2014 so that the Receiver is no longer responsible for the heating and upkeep of the Remaining Properties during the demanding winter months in the Canadian north.

3.16 The Receiver is seeking a Temporary Sealing Order in respect of the disclosure of offers received and those accepted (subject to Court approval). In that regard, a "Confidential Offer Summary" has been prepared by the Receiver and will be provided to this Honourable Court under seal in order to preserve the confidentiality of the identity of the offering parties (except as disclosed herein) and the offer prices and terms. The Receiver believes this is an appropriate and reasonable course of action as disclosure of the commercial information contained in the Sixth Report if disclosed to third parties prior to the closing of sales transactions may compromise future sales of assets should they not close as part of the Court applications referenced herein.

#### 4.0 **ORDER APPROVING SALE AND VESTING ORDERS**

4.1 As contained in the Notices of Application, the Receiver will be seeking the approval of various sales transactions as well as the vesting of title in and to various real estate properties to select purchaser parties. The form of the "Order Approving Sale and Vesting Orders" contains, among other things:

- a) the Court's approval of the marketing activities of the Receiver;
- b) the Court's approval and ratification of the sales transactions accepted by the Receiver;  
and
- c) an order vesting title in the various real property parcels to third party purchasers free and clear of all liens, encumbrances and other such limitations or restrictions in respect of title, except for Permitted Encumbrances.



- 4.2 Independent legal counsel for the Receiver has opined that the security granted to each of the secured creditors, being Royal Bank of Canada, Intact Insurance Company and Continental Casualty Company, is valid and enforceable against Dowland. The estimated net recoveries from the liquidation of the assets of Dowland will be significantly less than the balances owing to these secured creditors, and as a result, the Receiver's legal counsel only intends to give notice of this application to the secured creditors. The Receiver agrees with that course of action.

## 5.0 **RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusions**

- 5.1 The Receiver is of the view that it has made commercially reasonable efforts to obtain the highest realizations for the Remaining Properties. The offers to purchase which have been accepted by the Receiver and referenced herein are, in the opinion of the Receiver, fair and commercially reasonable and on balance, are not inconsistent with, independent third party indications of value that the Receiver has obtained for the Remaining Properties.
- 5.2 The Receiver is satisfied that the interests of Dowland's financial stakeholders have been considered during the course of the Second Sales Process and the Receivership Proceedings generally.
- 5.3 The Receiver is of the view that the current timing and execution of the Second Sales Process was appropriate in the circumstances to take advantage of the lease renewal of the Inuvik Blue Building and to avoid the Receiver having to heat and maintain the properties through another winter.
- 5.4 The Receiver is of a view that that Second Sales Process adopted with respect to the Remaining Properties was efficient, effective and that the integrity of the sales process has been maintained throughout.
- 5.5 The Receiver is satisfied that the Second Sales Process is inherently fair and has been conducted in a manner such that no parties to the Second Sales Process have experienced preferential or unfair treatment.

### **Recommendations**

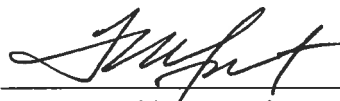
- 5.6 The Receiver respectfully recommends that this Honourable Court:
- a) grant the Sales and Vesting Orders sought by the Receiver in respect of the sales of the Remaining Properties as referenced in the Notice of Application; and

- b) Grant a Temporary Sealing Order in respect of the sales of the Remaining Properties referenced in the Notice of Application.

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All of which is respectfully submitted to this Honourable Court this 20th day of November, 2014

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Receiver of Dowland Contracting Ltd.,  
0849809 B.C. Ltd. and 6070 N.W.T. Limited**



Per: Todd M. Martin  
Senior Vice President



Per: Callum D. M. Beveridge  
Senior Director