

Clerk's Stamp:



COURT FILE NUMBER

1303 06092

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

ROYAL BANK OF CANADA

DEFENDANTS

DOWLAND CONTRACTING LTD., DOWLAND
INDUSTRIAL WORKS LTD., DOWLAND CONSTRUCTION
INC. and 6070 N.W.T. LIMITED

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

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File No.: 125665-8417/RCR

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff, Royal Bank of Canada ("RBC"), is a bank chartered pursuant to the laws of Canada with offices in Edmonton and elsewhere throughout Alberta.
2. The Defendant Dowland Contracting Ltd. ("Contracting") is a corporation incorporated pursuant to the laws of the Northwest Territories and is extra-provincially registered in Alberta.
3. The Defendant Dowland Industrial Works Ltd. ("Industrial") is a corporation incorporated pursuant to the laws of British Columbia and is extra-provincially registered in Alberta.
4. The Defendant Dowland Construction, Inc. ("Construction") is a corporation incorporated pursuant to the laws of the State of Alaska.

5. The Defendant 6070 N.W.T. Limited ("6070") is a corporation incorporated pursuant to the laws of the Northwest Territories.
6. The Defendants are part of the same corporate family, and have common officers and directors. They also coordinate business and assets between themselves.
7. The Defendants have entered into an agreement with RBC dated April 15, 2013 (the "April 2013 Agreement"), whereby the Defendants agreed that any action, directly or indirectly related to the indebtedness or security discussed below shall be properly commenced and continued in the Judicial Centre of Edmonton.

CONTRACTING

8. Contracting borrowed money from RBC which it agreed to repay to RBC with interest. As a result of such borrowing, Contracting is directly indebted to RBC as follows:
 - (a) operating loan 28016731-001 - \$15,503,189.38, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$1,541.10 per day as at April 25, 2013;
 - (b) term loan 28016731-012 - \$569,131.48, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$62.11 per day as at April 25, 2013;
 - (c) term loan 28016731-008 - \$546,208.59, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$61.80 per day as at April 25, 2013;
 - (d) term loan 28016731-009 - \$410,781.54, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$46.43 per day as at April 25, 2013;
 - (e) term loan 28016731-011 - \$669,871.67, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$75.89 per day as at April 25, 2013;
 - (f) term loan 28016731-006 - \$435,439.20, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$50.46 per day as at April 25, 2013;
 - (g) term loan 28016731-010 - \$2,678,972.83, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$292.05 per day as at April 25, 2013;
 - (h) visa - \$209,727.76, plus all sums charged to visa accounts issued in the name of Contracting from and after April 25, 2013, plus interest upon all such indebtedness at a rate of 19.9% percent per annum;

- (i) overdraft 03749-1070473 - \$348,344.10, plus interest thereon from and after the 25th day of April, 2013 plus interest thereon at a rate equal to RBC's prime interest rate per annum in effect from time to time ("Prime") plus 5%, plus costs on a solicitor and his own client full indemnity basis;
- (j) any further credit or loan amounts extended by RBC to Contracting from and after April 25, 2013 in RBC's absolute discretion; and
- (k) costs on a solicitor and his own client full indemnity basis with respect to all legal and financial advisory (including without limitation monitoring costs), incurred from time to time.

(all sums payable to RBC in paragraphs (a) – (k) above are herein collectively referred to as the "Contracting Indebtedness").

- 9. The indebtedness pursuant to the above referenced operating loan is payable upon demand. The visa cards of Contracting have been revoked and the visa indebtedness of Contracting to RBC is fully due and payable.
- 10. On or about April 4, 2013, RBC did demand payment of the operating loan and visa facilities of the Contracting Indebtedness, inclusive of costs, but Contracting has failed or neglected and continues to fail or neglect to pay that Contracting Indebtedness to RBC. Concurrent with the issuance of a demand for payment, RBC did serve on Contracting a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*.
- 11. By reason of the default of Contracting in relation to the repayment of the operating loan and visa indebtedness, the indebtedness under the remaining term loan facilities referenced above became fully and immediately repayable upon demand.
- 12. On or about April 22, 2013, RBC did demand payment of the term loan facilities of the Contracting Indebtedness inclusive of costs, but Contracting has failed or neglected and continues to fail or neglect to pay that Contracting Indebtedness to RBC. Concurrent with the issuance of that demand for payment, RBC did serve on Contracting a supplemental Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*. By this Statement of Claim, RBC does again demand payment of the Contracting Indebtedness.
- 13. On or about April 26, 2013, the Defendants, jointly and severally, defaulted on and breached the terms of the April 2013 Agreement in that they failed to permanently pay down the Operating Loan of Contracting by \$1,000,000 as required by the April, 2013 Agreement. As a result, on or about April 27, 2013, RBC terminated the forbearance period created by the April 2013 Agreement (the breach and the termination being referred to herein as the "Breach and Forbearance Period Termination"). Upon the Breach and Forbearance Period Termination, the time for repayment of the term loan facilities was accelerated and all of the Defendants' indebtedness to RBC pursuant to any and all credit facilities matured and immediately became due, owing and payable to RBC and all indebtedness guaranteed pursuant to any guarantees provided by the Defendants became immediately fully due, owing and payable to RBC (the "Acceleration").
- 14. The Contracting Indebtedness is fully due, owing and payable to RBC.

15. At all material times, Contracting has been and continues to be the registered owner of the following lands:

LOTS SIXTEEN (16) TO TWENTY TWO (22), INCLUSIVE
BLOCK FORTY NINE (49)
PLAN 633
INUVIK
(the "Contracting Plan 633 Lands")

16. By a Collateral Mortgage dated April 24, 2003 and registered in the Land Titles Office in the Northwest Territories registration district as instrument number 129,762, Contracting mortgaged to RBC Lots 19 and 20, Block 49, Plan 633 Inuvik for securing payment of the sum of \$1,500,000.00, plus interest thereon at a rate equal to Prime plus 2% per annum, plus costs on a solicitor and his own client full indemnity basis (the "First Contracting Mortgage").
17. By the First Contracting Mortgage, Contracting covenanted with RBC:
- (a) to pay all taxes, rates and assessments on the mortgaged lands which may fall due or be unpaid;
 - (b) to keep the mortgaged lands free and clear of all liens, mortgages, charges and other encumbrances which charge or otherwise affect the mortgaged lands other than any such liens, mortgages, charges or encumbrances approved in writing by RBC;
 - (c) to maintain in form, substance and amount (and with insurance satisfactory to RBC) all insurance required by RBC from time to time with respect to the mortgaged lands; and
 - (d) to maintain all buildings, erections, equipment, machinery and improvements on the mortgaged lands in good condition and repair to the satisfaction of RBC, and not permit waste to be committed or suffered on the mortgaged lands or any part thereof.

And in default of any or all of the above, RBC is entitled by the First Contracting Mortgage to do the same and to add to the First Contracting Mortgage all costs and expenses incurred by RBC in that regard and in respect of any proceedings taken to realize monies secured by the First Contracting Mortgage, including legal costs, taxed as between solicitor and his own client and an allowance for the time, work and expenses of RBC, its servants or agents.

18. There is due and owing to RBC pursuant to the First Contracting Mortgage the sum of \$1,500,000, plus interest charged thereon, plus costs on a solicitor and his own client full indemnity basis.
19. By a Collateral Mortgage dated January 18, 2012 and registered in the Land Titles Office in the Northwest Territories registration district as instrument number 177,085, Contracting mortgaged to RBC the Contracting Plan 633 Lands for securing payment of the sum of \$2,800,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum, plus costs on a solicitor and his own client full indemnity basis (the "Second Contracting Mortgage").
20. By the Second Contracting Mortgage, Contracting covenanted with RBC:

- (a) to pay all taxes, rates and assessments on the Contracting Plan 633 Lands which may fall due or be unpaid;
- (b) to keep the Contracting Plan 633 Lands free and clear of all liens, mortgages, charges and other encumbrances which charge or otherwise affect the Contracting Plan 633 Lands other than any such liens, mortgages, charges or encumbrances approved in writing by RBC;
- (c) to maintain in form, substance and amount (and with insurance satisfactory to RBC) all insurance required by RBC from time to time with respect to the Contracting Plan 633 Lands; and
- (d) to maintain all buildings, erections, equipment, machinery and improvements on the Contracting Plan 633 Lands in good condition and repair to the satisfaction of RBC, and not permit waste to be committed or suffered on the Contracting Plan 633 Lands or any part thereof.

And in default of any or all of the above, RBC is entitled by the Second Contracting Mortgage to do the same and to add to the Second Contracting Mortgage all costs and expenses incurred by RBC in that regard and in respect of any proceedings taken to realize monies secured by the Second Contracting Mortgage, including legal costs, taxed as between solicitor and his own client and an allowance for the time, work and expenses of RBC, its servants or agents.

- 21. There is due and owing to RBC pursuant to the Second Contracting Mortgage the sum of \$2,800,000.00, plus interest charged thereon, plus costs on a solicitor and his own client full indemnity basis.
- 22. The amounts secured by the First Contracting Mortgage and the Second Contracting Mortgage (collectively herein referred to as the "Original Contracting Mortgages") are payable upon demand.
- 23. On or about April 4, 2013, RBC did demand payment of the indebtedness secured by the Original Contracting Mortgages, and a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* was issued along with these demands, but Contracting has failed or neglected and continues to fail or neglect to pay all or any of such secured indebtedness to RBC. By this Statement of Claim, RBC does again demand payment pursuant to the Original Contracting Mortgages.
- 24. The indebtedness outstanding pursuant to the Original Contracting Mortgages is fully due, owing and payable to RBC.
- 25. Contracting is in default of payment of the Contracting Indebtedness, and default has been made in payment of the principal sum and interest secured pursuant to the terms of the Original Contracting Mortgages.
- 26. RBC states that the default alleged herein of Contracting has not been due to causes beyond its control and that having regard to its ability to pay and the value of RBC's security, the period of redemption in the Judgment in this action should be shortened to less than six months.

27. On or about April 24, 2003, Contracting granted to RBC a General Security Agreement (the "First Contracting GSA") securing to RBC all of its present and after acquired personal property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The First Contracting GSA secures all of the Contracting Indebtedness.
28. Default has been made in payment of the principal sum and payment of interest secured by the terms of the First Contracting GSA.
29. Further, and at all material times, Contracting has been and continues to be the registered owner of a fee simple interest in the following further lands:

LOTS 5 AND 6, INCLUSIVE
BLOCK 47
PLAN 564
INUVIK,
SUBJECT TO SECTIONS 13 TO 16 AND 19 OF THE TERRITORIAL LANDS ACT, AS SET FORTH
IN INSTRUMENT OF GRANT REGISTERED UNDER DAYBOOK NUMBER 116,240;
(the "Plan 564 Inuvik Lands")

LOT 19
BLOCK 34
PLAN 1652
TUKTOYAKTUK
(the "Plan 1652 Tuktoyaktuk Lands");

LOT 21
BLOCK 87
PLAN 2182
INUVIK
(the "Plan 2182 Inuvik Lands");

LOT 19
BLOCK 21
PLAN 3422
TUKTOYAKTUK
(the "Plan 3422 Tuktoyaktuk Lands");

and

LOTS 1, 2, 3, 4, 5, 6, 11, 12, 13, 14, 15 AND 16
BLOCK 97
PLAN 3820
INUVIK
(the "Plan 3820 Inuvik Lands");

(the Plan 564 Inuvik Lands, Plan 1652 Tuktoyaktuk Lands, Plan 2182 Inuvik Lands, Plan 3422 Tuktoyaktuk Lands and Plan 3820 Inuvik Lands are herein collectively referred to as the "Contracting 2013 Lands")

(the Contracting Plan 633 Inuvik Lands and the Contracting 2013 Lands are herein collectively referred to as the "Contracting Fee Simple Lands")

30. Additionally, and at all material times, Contracting has been and continues to be the registered owner of a leasehold interest in the following lands:

LOT 7
BLOCK 228
PLAN 3586
IQALUIT
(the "Plan 3586 Iqaluit Lands")

LOT SK-004
SACHS HARBOUR
(the "Sachs Harbour Lands")

and

Lot 46
PLAN 3529
PAULATUK
(the "Paulatuk Lands")

(the Sachs Harbour Lands and Paulatuk Lands are herein collectively referred to as the "Contracting NWT Lands")

(the Contracting NWT Lands and the Plan 3586 Iqaluit Lands are herein collectively referred to as the "Contracting Leasehold Lands")

(the Contracting Fee Simple Lands and Contracting Leasehold Lands are herein collectively referred to as the "Contracting Lands")

31. By a Collateral Mortgage dated November 27, 2012 and registered in the Land Titles Office in the Nunavut registration district as instrument number 131,658, Contracting mortgaged to RBC the Plan 3586 Iqaluit Lands for securing payment of the sum of \$1,000,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum, plus costs on a solicitor and his own client full indemnity basis (the "Third Contracting Mortgage");

32. Contracting has granted the following additional security in favour of RBC:

- (a) By a Collateral Mortgage dated April 15, 2013 and registered in the Land Titles Office in the Northwest Territories registration district as instrument number 181,110, Contracting mortgaged to RBC the Plan 633 Inuvik Lands for securing payment of the sum of \$3,000,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum,

plus costs on a solicitor and his own client full indemnity basis (the "Fourth Contracting Mortgage");

- (b) By a Collateral Mortgage dated April 15, 2013 and registered in the Land Titles Office in the Northwest Territories registration district as instrument number 181,138, Contracting mortgaged to RBC the Contracting 2013 Lands for securing payment of the sum of \$1,000,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum, plus costs on a solicitor and his own client full indemnity basis (the "Fifth Contracting Mortgage");
- (c) By a Collateral Mortgage dated April 15, 2013 and registered in the Land Titles Office in the Nunavut registration district as instrument number 132,013, Contracting mortgaged to RBC the Plan 3586 Iqaluit Lands for securing payment of the sum of \$400,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum, plus costs on a solicitor and his own client full indemnity basis (the "Sixth Contracting Mortgage");
- (d) By a Collateral Mortgage dated April 15, 2013 (which as of the date of issuance of this Statement of Claim has not been registered in any Land Titles Office due to lack of information provided by Contracting regarding the underlying leases), Contracting mortgaged to RBC the Contracting NWT Lands for securing payment of the sum of \$1,000,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum, plus costs on a solicitor and his own client full indemnity basis (the "Seventh Contracting Mortgage");
- (e) By General Security Agreement - Floating Charge on Land dated April 15, 2013, Contracting granted to RBC a security interest in all of its present and after acquired property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof (the "Second Contracting GSA"). The Second Contracting GSA also grants RBC a mortgage by way of a floating charge over all of Contracting's present and after acquired real property. The Second Contracting GSA secures all of the Contracting Indebtedness;
- (f) By a Share Pledge Agreement dated April 15, 2013, Contracting mortgaged, pledged, charged, assigned and transferred to RBC all shares registered and/or beneficially owned by Contracting in Construction for securing payment of all of the Construction Indebtedness (the "First Contracting Share Pledge"); and
- (g) By a Share Pledge Agreement dated April 15, 2013, Contracting mortgaged, pledged, charged, assigned and transferred to RBC all shares registered and/or beneficially owned by Contracting in Industrial for securing payment of all of the Construction Indebtedness (the "Second Contracting Share Pledge").

(Fourth Contracting Mortgage, Fifth Contracting Mortgage, Sixth Contracting Mortgage and Seventh Contracting Mortgage are collectively herein referred to as the "2013 Contracting Mortgages").

(the First Contracting Share Pledge and the Second Contracting Share Pledge are collectively herein referred to as the "Contracting Share Pledges")

(the Third Contracting Mortgage, the 2013 Contracting Mortgages, Second Contracting GSA and Contracting Share Pledges are collectively herein referred to as the "Additional Contracting Security")

33. The indebtedness secured by each of the Third Contracting Mortgage and the 2013 Contracting Mortgage is payable upon demand.
34. On or about April 22, 2013, RBC did demand payment within 10 days of April 22, 2013 of the full indebtedness secured by the Third Contracting Mortgage and the 2013 Contracting Mortgages, but Contracting has failed or neglected and continues to fail or neglect to pay all or any of such secured indebtedness to RBC as of the date of issuance of this Statement of Claim. Concurrent with the issuance of this demand for payment, RBC did serve on Contracting a supplemental Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (the "Supplemental Contracting NOI"). All of the Additional Contracting Security was included in the Supplemental Contracting NOI.
35. The 10 day period referenced in the Supplemental Contracting NOI has not expired as of the date of issuance of this Statement of Claim.
36. By the issuance of this Statement of Claim, RBC does not and is not seeking to enforce any of the Additional Contracting Security or obtain any judgment pursuant to the Additional Contracting Security, including without limitation the Third Contracting Mortgage and the 2013 Contracting Mortgages, since the 10 day period in the Supplemental Contracting NOI has not expired as of the date of issuance of this Statement of Claim. RBC reserves all of its rights and remedies to seek to enforce the Additional Contracting Security and to seek judgment pursuant to the Additional Contracting Security, including without limitation the indebtedness secured by the Third Contracting Mortgage and the 2013 Contracting Mortgages, whether by way of a separate action, an Amendment to this Statement of Claim, or otherwise once the 10 day period referenced above has lapsed in the event of non-payment in full of the Contracting Indebtedness.

INDUSTRIAL

37. Industrial borrowed money from RBC which it agreed to repay to RBC with interest. As a result of such borrowing, Industrial is directly indebted to RBC as follows:
 - (a) visa - \$41,299.34, plus all sums charged to Visa accounts issued in the name of Industrial from and after April 25, 2013, plus interest upon all such indebtedness at a rate of 19.9 percent per annum;
 - (b) any further credit or loan amounts extended by RBC to Industrial from and after April 25, 2013 in RBC's absolute discretion; and
 - (c) costs on a solicitor and his own client full indemnity basis with respect to all legal and financial advisory (including without limitation monitoring costs), incurred from time to time.

(all sums payable to RBC in paragraphs (a) – (c) above are herein collectively referred to as the "Industrial Direct Indebtedness").

38. The Industrial Direct Indebtedness is fully due, owing and payable to RBC.
39. On or about November 18, 2011, Industrial granted to RBC a continuing guarantee and postponement of claim, guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$10,000,000.00 on demand, plus interest thereon at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "First Industrial Guarantee").
40. On or about July 19, 2012, Industrial granted to RBC a guarantee and postponement of claim guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$24,345,000.00 on demand, plus interest thereon at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "Second Industrial Guarantee") (the First Industrial Guarantee and the Second Industrial Guarantee are herein collectively referred to as the "Industrial Guarantees").
41. As described above, Contracting is indebted to RBC in the amount of \$20,921,666.55, plus interest thereon from and after April 25, 2013, plus costs (including without limitation legal and financial advisory costs) on a solicitor and his own client full indemnity basis. Thus, Industrial is indebted to RBC pursuant to:
- (a) the First Industrial Guarantee in the amount of \$10,000,000.00, plus interest and costs in accordance with terms of the First Industrial Guarantee; and
 - (b) the Second Industrial Guarantee in the amount of \$20,921,666.55, plus interest and costs in accordance with terms of the Second Industrial Guarantee
- (the indebtedness payable under the First Industrial Guarantee and the Second Industrial Guarantee is herein collectively referred to as the "Industrial Guarantee Indebtedness")
- (the Industrial Direct Indebtedness and the Industrial Guarantee Indebtedness are herein collectively referred to as the "Industrial Indebtedness").
42. The amounts payable pursuant to the Industrial Guarantees are payable upon demand.
43. On or about April 4, 2013, RBC did demand payment of the Industrial Indebtedness, pursuant to both the Industrial Direct Indebtedness and the Industrial Guarantee Indebtedness, both inclusive of costs, but Industrial has failed or neglected and continues to fail or neglect to pay that Industrial Indebtedness to RBC. Concurrent with the issuance of a demand for payment, RBC did serve on Industrial a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*. On or about April 22, 2013, RBC did serve on Industrial a supplemental Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*.
44. Further, as a result of the Breach and Forbearance Period Termination and the Acceleration, all of the Industrial Indebtedness became immediately fully due, owing, payable to RBC.
45. The Industrial Indebtedness is fully due, owing and payable to RBC.

46. On or about November 18, 2011, Industrial granted to RBC a General Security Agreement (the "First Industrial GSA") securing to RBC all of its present and after acquired personal property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The First Industrial GSA secures all of the Industrial Indebtedness.
47. Default has been made in payment of the principal sum and payment of interest pursuant to the terms of the First Industrial GSA.
48. As further security in favour of RBC, on or about April 15, 2013, Industrial granted to RBC a General Security Agreement – Floating Charge on Land (the "Second Industrial GSA") securing to RBC all of its present and after acquired property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The Second Industrial GSA also grants RBC a mortgage by way of a floating charge over all of Industrial's present and after acquired real property. The Second Industrial GSA secures all of the Industrial Indebtedness.
49. As indicated above, on or about April 22, 2013, RBC did issue a supplemental demand for payment within 10 days of April 22, 2013 for the Industrial Indebtedness, and concurrent with the issuance of that demand, RBC served on Industrial a supplemental Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (the "Supplemental Industrial NOI"). The Second Industrial GSA was included in the Supplemental Industrial NOI.
50. The 10 day period referenced in the Supplemental Industrial NOI has not expired as of the date of issuance of this Statement of Claim.
51. By the issuance of this Statement of Claim, RBC is not seeking to enforce the Second Industrial GSA since the 10 day period in the Supplemental Industrial NOI has not expired as of the date of issuance of this Statement of Claim. RBC reserves all of its rights and remedies to seek to enforce the Second Industrial GSA, whether by way of a separate action, an Amendment to this Statement of Claim, or otherwise once the 10 day period referenced above has lapsed in the event of non-payment in full of the Industrial Indebtedness.

CONSTRUCTION

52. On or about April 15, 2013, Construction granted to RBC a guarantee and postponement of claim guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$20,000,000.00 on demand, with interest at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "Construction Guarantee").
53. The amounts secured by and owing under the Construction Guarantee are payable upon demand.
54. Contracting is indebted to RBC in an amount in excess of \$20,000,000.00, plus interest thereon from and after the 25th day of April, 2013 plus costs (including without limitation legal and financial advisory costs) on a solicitor and his own client full indemnity basis. Thus, Construction is indebted to RBC in the amount of \$20,000,000.00, plus interest and costs in accordance with terms of the Construction Guarantee (the "Construction Indebtedness").

55. On or about April 22, 2013, RBC did demand payment from Construction in the amount of \$20,000,000.00, plus interest and costs pursuant to the Construction Guarantee, but Construction has failed or neglected and continues to fail or neglect to pay the Construction Indebtedness to RBC. Concurrent with the issuance of a demand for payment, RBC did serve on Construction a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (the "Construction NOI").
56. Further, as a result of the Breach and Forbearance Period Termination and the Acceleration, all of the Construction Indebtedness became immediately fully due, owing and payable to RBC.
57. The Construction Indebtedness is fully due, owing and payable to RBC.
58. As security in favour of RBC, on or about April 15, 2013, Construction granted to RBC a General Security Agreement – Floating Charge on Land (the "Construction GSA") securing to RBC all of its present and after acquired property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The Construction GSA also grants RBC a mortgage by way of a floating charge over all of Construction's present and after acquired real property. The Construction GSA secures all of the Construction Indebtedness.
59. As indicated above, on or about April 22, 2013, RBC did issue a demand for payment within 10 days of April 22, 2013 for the Construction Indebtedness, and concurrent with the issuance of that demand, RBC served on Construction the Construction NOI. The Construction GSA was included in the Construction NOI.
60. The 10 day period referenced in the Construction NOI has not expired as of the date of issuance of this Statement of Claim.
61. By the issuance of this Statement of Claim, RBC is not seeking to enforce the Construction GSA since the 10 day period in the Construction NOI has not expired as of the date of issuance of this Statement of Claim. RBC reserves all of its rights and remedies to seek to enforce the Construction GSA, whether by way of a separate action, an Amendment to this Statement of Claim, or otherwise once the 10 day period referenced above has lapsed in the event of non-payment in full of the Construction Indebtedness.

6070

62. On or about November 24, 2009, 6070 granted to RBC a continuing guarantee and postponement of claim, guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$1,500,000.00 on demand, with interest thereon at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "First 6070 Guarantee").
63. On or about November 18, 2011, 6070 granted to RBC a guarantee and postponement of claim guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$10,500.00 on demand, with interest at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "Second 6070 Guarantee").
64. 6070 had contracted with RBC to provide to RBC a guarantee in the amount of \$10,500,000.00 and not \$10,500.00 with respect to the Second 6070 Guarantee. The Second 6070 Guarantee

ought to have provided for a \$10,500,000.00 guarantee, as opposed to a \$10,500.00 guarantee, and the \$10,500.00 figure was an inadvertent clerical error on the part of 6070.

65. On or about July 19, 2012, 6070 granted to RBC a guarantee and postponement of claim guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$24,345,000.00, on demand, plus interest thereon at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "Third 6070 Guarantee").
66. On or about April 15, 2013, 6070 granted to RBC a guarantee and postponement of claim guaranteeing to RBC the indebtedness of Contracting to RBC for up to the sum of \$10,500,000.00 on demand, plus interest at Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis (the "Fourth 6070 Guarantee"). While the Fourth 6070 Guarantee was granted by 6070 to RBC in addition to, and not in substitution of, the Second 6070 Guarantee, 6070 granted the Fourth 6070 Guarantee to RBC with the express purpose of rectifying the erroneously referenced amount of \$10,500.00 in the Second 6070 Guarantee.
67. If the Fourth 6070 Guarantee is adjudged or declared for any reason to be invalid or unenforceable, RBC seeks rectification of the Second 6070 Guarantee such that the Second 6070 Guarantee is for the principal sum of \$10,500,000, as opposed to \$10,500.
68. The amounts secured by and owing under the First 6070 Guarantee, the Second 6070 Guarantee (as rectified, if rectification is necessary and granted by this Honourable Court), the Third 6070 Guarantee and the Fourth 6070 Guarantee (which are collectively herein referred to as the "6070 Guarantees") are payable upon demand.
69. As described above, Contracting is indebted to RBC in the amount of \$20,921,666.55 plus interest thereon from and after the 25th day of April, 2013 plus costs (including without limitation legal and financial advisory costs) on a solicitor and his own client full indemnity basis. Thus, 6070 is indebted to RBC pursuant to:
 - (a) the First 6070 Guarantee in the amount of \$1,500,000.00, plus interest and costs in accordance with terms of the First 6070 Guarantee;
 - (b) the Second 6070 Guarantee in the amount of \$10,500.00 (or in the alternative if rectified, \$10,500,000.00), plus interest and costs in accordance with terms of the Second 6070 Guarantee;
 - (c) the Third 6070 Guarantee in the amount of \$20,921,666.55, plus interest and costs in accordance with terms of the Third 6070 Guarantee;
 - (d) the Fourth 6070 Guarantee in the amount of \$10,500,000.00, plus interest and costs in accordance with terms of the Fourth 6070 Guarantee;

(the indebtedness payable under the First 6070 Guarantee, Second 6070 Guarantee, Third 6070 Guarantee, and Fourth 6070 Guarantee is herein collectively referred to as the "6070 Indebtedness").
70. On or about April 4, 2013, RBC did demand payment from 6070 of the respective amounts owing under each of the First 6070 Guarantee, Second 6070 Guarantee and Third 6070

78. Pursuant an agreement dated April 15, 2013 that the Defendants entered into with RBC, the Defendants agreed to pay to RBC costs (legal, financial, advisory and monitoring) on a solicitor and own client full indemnity basis.
79. RBC states that this action should be categorized as a Standard Case. RBC states that a Dispute Resolution Process would not be beneficial and would not likely result in an agreement between the parties or alternatively there is a compelling reason why a Dispute Resolution Process should not be attempted by the parties or in the alternative, the Court will be satisfied that engaging in a Dispute Resolution Process would be futile.

Remedies sought:

- (a) An Order waiving the responsibilities of the parties to participate in a Dispute Resolution Process.
- (b) Judgment against Contracting in favour of RBC in the following amounts pursuant to the outstanding Facilities:
 - (i) operating loan 28016731-001 - \$15,503,189.38, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$1,541.10 per day as at April 25, 2013;
 - (ii) term loan 28016731-012 - \$569,131.48, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$62.11 per day as at April 25, 2013;
 - (iii) term loan 28016731-008 - \$546,208.59, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$61.80 per day as at April 25, 2013;
 - (iv) term loan 28016731-009 - \$410,781.54, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$46.43 per day as at April 25, 2013;
 - (v) term loan 28016731-011 - \$669,871.67, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$75.89 per day as at April 25, 2013;
 - (vi) term loan 28016731-006 - \$435,439.20, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$50.46 per day as at April 25, 2013;
 - (vii) term loan 28016731-010 - \$2,678,972.83, plus interest thereon from and after the 25th day of April, 2013 in accordance with the terms of that credit facility, which equates to \$292.05 per day as at April 25, 2013;
 - (viii) visa - \$209,727.76, plus all sums charged to visa accounts issued in the name of Contracting from and after April 25, 2013, plus interest upon all such indebtedness at a rate of 19.9% percent per annum;

- (ix) overdraft 03749-1070473 - \$348,344.10, plus interest thereon from and after the 25th day of April, 2013 plus interest thereon at a rate equal to prime interest rate per annum in effect from time to time ("Prime") plus 5%, plus costs on a solicitor and his own client full indemnity basis;
 - (x) any further credit or other loan amounts extended by RBC to Contracting from and after April 25, 2013 in RBC's absolute discretion; and
 - (xi) Costs with respect to all legal and financial advisory, including without limitation monitoring costs, incurred from time to time on a solicitor and his own client full indemnity basis or on such further and other basis as this Honourable Court may direct.
- (c) A declaration as to the amounts owing under the Original Contracting Mortgages, with interest according to the terms thereof, and in default of payment, sale to RBC or otherwise or foreclosure and in either case possession of the Contracting Plan 633 Lands.
- (d) In the alternative, immediate foreclosure and possession of the Contracting Plan 633 Lands.
- (e) Judgment in favour of RBC against Contracting in the amounts declared to be due and owing pursuant to the Original Contracting Mortgages.
- (f) An Order for possession of the Contracting Plan 633 Lands.
- (g) An Order shortening the period of redemption with respect to the Contracting Plan 633 Lands or setting the period of redemption for such period as the Court may direct.
- (h) Judgment against Industrial in favour of RBC in the following amounts:
- (i) visa - \$41,299.34, plus all sums charged to visa accounts issued in the name of Industrial from and after April 25, 2013, plus interest upon all such indebtedness at a rate of 19.9 percent per annum;
 - (ii) any further credit or other loan amounts extended by RBC to Industrial from and after April 25, 2013 in RBC's absolute discretion;
 - (iii) \$20,921,666.55 plus interest thereon from and after April 25, 2013 at the rate of Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis pursuant the Industrial Guarantees; and
 - (iv) costs with respect to all legal and financial advisory, including without limitation monitoring costs, incurred from time to time on a solicitor and his own client full indemnity basis or on such further and other basis as this Honourable Court may direct.
- (i) A Declaration that the Second 6070 Guarantee is rectified and that principal sum secured by that guarantee is \$10,500,000.00, as opposed to \$10,500.00.

- (j) Judgment against Construction in favour of RBC in the amount of \$20,000,000.00 plus interest thereon from and after April 25, 2013 at the rate of Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis pursuant the Construction Guarantee, or in such further and other amount or on such further and other basis as this Honourable Court may direct.
- (k) Judgment against 6070 in favour of RBC in the amount of \$20,921,666.55 plus interest thereon from and after April 25, 2013 at the rate of Prime plus 5%, plus costs on a solicitor and his own client full indemnity basis pursuant the 6070 Guarantees or in such further and other amount or on such further and other basis as this Honourable Court may direct.
- (l) Such further accounts and inquiries as may be necessary.
- (m) The appointment of a receiver or receiver and manager of the undertaking, property and assets of the Defendants.
- (n) The appointment of an interim receiver of the undertaking, property and assets of the Defendants.
- (o) The appointment of a receiver or receiver and manager of the Contracting Plan 633 Lands.
- (p) The appointment of an interim receiver of the Contracting Plan 633 Lands;
- (q) In the alternative, such appointment or relief as may be necessary to ensure the preservation of Contracting and Industrial's secured property, including without limitation the Contracting Plan 633 Lands.
- (r) A Declaration that the enforceable security (as advised herein) granted by Contracting and Industrial, respectively, in favour of RBC may be enforced by the sale of the whole or any part of undertaking, property and assets of the Contracting and Industrial, including without limitation the Contracting Plan 633 Lands.
- (s) An Order dispensing with any bond or other security that might otherwise be required to be posted by an interim receiver, receiver, receiver and manager or person tasked with the preservation of the Contracting Plan 633 Lands.
- (t) An Order that no action at law or otherwise (other than this action) shall be taken or continued against the interim receiver, the receiver or the receiver and manager of the Defendants' undertaking, property and assets without leave of this Honourable Court first having been obtained.
- (u) Costs on a solicitor and his own client full indemnity basis or on such further and other basis as this Honourable Court may direct.
- (v) Such further and other relief as the nature of the case may require and this Honourable Court may deem meet.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at **Edmonton**, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s)' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.