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ROYAL BANK OF CANADA

DEFENDANT

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



DOCUMENT

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

August 9, 2013

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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"), Dowland Industrial Works Ltd. ("DIW") 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 The Receiver's legal counsel have filed two notices of application dated August 8, 2013 (together, the "Notice of Application") to be heard August 16, 2013 seeking:

- a) orders Approving Sales and Vesting Orders and approving the marketing and sale activities of the Receiver in respect of select parcels of Property (the "Sales Process");
- b) a Temporary Sealing Order in respect of a confidential summary of tendered offers to purchase (the "Confidential Bid Summary") select parcels of Property; and
- c) an order approving and authorizing the Receiver to enter into and carry out a settlement agreement with NCC Dowland Construction Limited ("NCC Dowland"), NCC Investment Group Inc. ("NCC Investment") and Kitikmeot Region Properties Inc. ("Kitikmeot") dated August 6, 2013 (the "KIA Project Settlement Agreement").

1.3 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.

2.0 PURPOSE OF REPORT

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

- a) the Sales Process;
- b) various Orders Approving Sales and Vesting Orders sought by the Receiver pursuant to the Notices of Application; and

c) the KIA Project Settlement Agreement.

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 and Second 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 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 As noted in the Receiver's previous reports to the Court, the majority of Dowland's operations and active construction projects as at the Receivership Date were dormant, abandoned and/or in the process of being assumed for completion by certain sureties under performance bonds and/or labour and material bonds. As such, much of the Property (namely, equipment and real estate that supported Dowland's contracting operations in Western and Northern Canada) was idled with equipment either stored in Dowland owned or leased facilities or in the possession or control of third party project owners.

3.3 Given the nature and the remote geographic locations of the Property, it was imperative that the Receiver effect a sale of the Property on an expedited but coordinated basis so as to reduce the on-going holding costs of maintaining security and staff in many remote locations as well as to

mitigate the on-going risk of theft, vandalism and damage from the elements. Consideration of an appropriate realization strategy by the Receiver also required an assessment of the potential costs of demobilizing equipment from remote project sites and branch locations, which in Dowland's case, are material.

- 3.4 After its initial appointment, the Receiver deployed personnel at approximately 12 different Dowland locations and to third party construction project sites in order to secure, inventory, reconcile to Dowland's books and records and catalogue all the equipment and real estate assets at these locations. That exercise was time consuming and logistically challenging in some respects given some of the more remote locations in which Dowland operated. In particular, a significant volume of equipment that comprises Dowland's entire fleet of equipment was located in Inuvik, NT and Iqaluit, Nunavut and as far north as Cambridge Bay in Nunavut. This exercise was completed on an expedited basis so that the Receiver could launch its sales process having in hand, updated equipment listings in early June 2013 to take advantage of the summer season to effect the sale of as much Property as possible so that purchasers could either deploy the equipment for the balance of the summer/fall construction season or ready it for relocation in more favourable weather conditions.
- 3.5 Based on the operating status of Dowland as at the Receivership Date (largely shuttered with projects in default or abandoned) as well as the nature of the parts of the Property (a large volume of used construction equipment and related warehouse and shop facilities), it is very evident that a going-concern type sale of Dowland's business and assets would not be feasible. Accordingly, the Receiver has adopted an approach to marketing select parcels of Property by way of an "Invitation for Offers to Purchase" involving a wide solicitation to interested parties.

Invitation for Offers to Purchase

- 3.6 A&M launched its Sales Process on June 26, 2013 with the dispatch of a "Summary of the Opportunity" to approximately 264 parties. A copy of the Summary of the Opportunity is attached hereto as Appendix "A".
- 3.7 Subsequently, an "Asset Information Package" prepared by the Receiver was made available to interested parties and posted on a secure web based data site for viewing by interested parties. The Asset Information Package is attached hereto as Appendix "B". For ease of reference for the Court, the substantive information contained in the Asset Information Package is summarized below:

- a) description of sales procedures, locations and tentative dates for inspection of assets, the format of offers and a deadline of July 22, 2013 for receipt of offers;
- b) description of asset packages split between real estate assets and other assets, namely equipment, with detailed lists for the following parcels:

Real Estate Assets:

Parcel A - Office Building, Inuvik
 Parcel B - Tundra Building, Inuvik
 Parcel C - Upper Yard, Inuvik
 Parcel D - Residences, Inuvik
 Parcel E - Building & Yard, Iqaluit
 Parcel F - Residence, Iqaluit

Other Assets (Equipment):

Parcel G - Edmonton, AB
 Parcel H - Kamloops, BC
 Parcel I - Inuvik, NT
 Parcel J - Iqaluit, NU
 Parcel K - Wainwright, AB
 Parcel L - Drumheller, AB
 Parcel M - Lloydminster, AB (note below)
 Parcel N - Regina, SK
 Parcel O - Rocanville, SK
 Parcel P - Patuanak, SK
 Parcel Q - Whitehorse, YT (note below)
 Parcel R - Terrace, BC
 Parcel S - Cambridge Bay, NU

Note: Parcels M and Q were subsequently withdrawn after the Receiver entered into an agreement to sell these assets.

- c) terms and conditions of sale which includes among other things, receipt of a 10% deposit, possible Court approval of any sales transaction and that all sales are on an “*as is, where is*” basis with no representations or warranties expressed or implied as to title, condition or fitness for use; and
- d) a form of offer or proposal which denotes the identity of the prospective purchaser, amounts offered for each parcel and whether the offer is made *en bloc*.

3.8 Through discussions with former management of Dowland, independent research, searching Canadian and U.S. construction industry association data bases and other such sources, A&M contacted 264 parties in Canada including:

- 232 construction or construction related companies,
- 15 construction equipment rental companies,
- 7 established liquidation or auctioneer firms, and
- 10 realty firms.

3.9 In addition to the direct solicitation of parties indicated above, the Receiver advertised the Invitation for Offers to Purchase in the following regional and national Canadian newspapers:

- Globe & Mail (National Edition), June 22, 2013,
- Edmonton Journal, June 27, 2013,
- Vancouver Sun, June 29, 2013,

- The Whitehorse Star, June 25, 2013,
- Kamloops Daily News, June 29, 2013,
- Yellowknifer, June 28, 2013,
- Inuvik Drum, June 27, 2013, and
- Nunavut News/North, July 1, 2013.

3.10 As indicated, the Receiver established a secure web based data site for prospective purchasers to access the Asset Information Package, photographs of equipment and real estate, equipment listings and other related due diligence materials. As of the date the data site was discontinued, July 26, 2013, 150 individuals from 131 separate organizations were provided access to the Receiver's data site and of these, 123 individuals accessed information from the data site. Through this data site, the Receiver provided updates on the Sales Process to all bidders, including details of assets added to or withdrawn from each parcel.

3.11 The deadline for submitting offers to purchase was July 22, 2013. A&M subsequently extended the deadline for a limited number of parties who had difficulty or logistical challenges inspecting assets in remote locations.

Offers Received to Date

3.12 In total, A&M received 35 separate offers to purchase some of which were for individual assets, individual or multiple parcels. The Receiver's preference was, as stated in the Asset Information Package made available to all prospective purchasers, to receive offers on individual or multiple parcels.

3.13 Subsequent to the deadline of June 22, 2013, the Receiver has confirmed or clarified certain offers and the conditions contained in various offers and sought final offers in some cases. On July 30, 2013, the Receiver selected a short list of prospective purchasers and requested final offers by 5pm MDT on August 2, 2013.

3.14 In order to be able to more fully assess the commercial reasonableness of offers received, the Receiver has obtained an independent third party liquidation appraisal of the Dowland Equipment (by piece and by location) prepared as of May 21, 2013 and also has at its disposal, certain real estate valuation reports that Dowland had previously commissioned in respect of select real estate parcels in Inuvik and Iqaluit.

Offers Accepted Subject to Court Approval

- 3.15 As indicated, the Receiver has been presented 35 separate offers to purchase individual assets or individual or multiple parcels as noted in paragraph 3.7 (b) above. After review and analysis and clarification of certain terms of offer and related matters, the Receiver has taken a decision to accept, subject to the Court's approval, a number of offers to purchase which in aggregate represent approximately \$5.75 million.
- 3.16 With a view to maximizing the overall realizations from the multiple parcels of assets and a preference to offers on individual or multiple parcels, the Receiver selected one auctioneer's ("Auctioneer") offer that encompassed 7 of 13 equipment related parcels and then selected the highest individual and/or en bloc offers for the balance of the parcels including the real estate parcels. Specific comments on select offers are presented below.

Auctioneer Offer (Parcels G,H,K,L,N,O and R)

- 3.17 The offer of the Auctioneer was one of six submitted by auction houses or liquidation firms. The Receiver believes that this offer provides the Receiver with the preferred offer to purchase on multiple equipment parcels for a number of reasons including:
- a) the amount of overall consideration for the multiple parcels was the highest acceptable offer received and was an "outright cash offer";
 - b) other than the conveyance of clear title and Court approval, the offer was unconditional and required no further inspections or due diligence;
 - c) the Receiver would not be required to incur any incremental demobilization costs;
 - d) use of Dowland locations and/or project sites was not required;
 - e) Auctioneer complied in all material respects with the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package including provision of the 10% cash deposit amount; and
 - f) when combined with the other offers received on the highest individual or en bloc offers on the other equipment parcels, the total sales proceeds realized will be maximized.

Parcel I – Inuvik Equipment

- 3.18 An interested party presented the Receiver with the preferred offer to purchase Dowland's equipment that is located in various yards and warehouses in or around Inuvik, NT. The Receiver understands that this offer was presented by a company owned, controlled or otherwise related to

Mr. Guy Pemberton. By virtue of Mr. Pemberton's equity investment in Dowland (Mr. Pemberton holds the majority of common shares of 6070 which is the holding company of the Dowland operating entities), this interested party may be considered to be a related party to Dowland.

- 3.19 The offer for the equipment in Inuvik which has been accepted by the Receiver was the highest in terms of consideration to be paid for Parcel I and was unconditional and conformed in all material respects with the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package including provision of the 10% cash deposit amount. It should be noted, that a sale of the equipment to a local purchaser (the Receiver understands that the prospective purchaser is based in and plans to operate in Inuvik) obviates the need and attendant costs of demobilizing a significant amount of equipment from Inuvik.

Parcels J and S – Iqaluit and Cambridge Bay Equipment

- 3.20 The offer to purchase Parcels J and S which is preferred by the Receiver is from a company related to a shareholder in NCC Dowland. This party has made the highest offer to purchase Dowland's equipment located in Iqaluit (Parcel J) and has also made the highest offer for Parcel S which is equipment located on the KIA Project (subsequently defined) construction site in Cambridge Bay, Nunavut. As a result of the receivership of Dowland, NCC Dowland and/or a sister company may have assumed responsibility for the completion of the KIA Project and has offered to purchase Dowland's equipment that was being utilized and on site as at the Receivership Date which was the highest offer submitted.
- 3.21 The offers by the particular party related to NCC Dowland and accepted by the Receiver were both the highest in terms of consideration to be paid and were unconditional and conformed in all material respects with the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package including provision of the 10% cash deposit amount. As with the sale of Parcel I to a local purchaser in Inuvik, the sale of the equipment comprising Parcel J and S to a local purchaser avoids the costs of demobilization of the equipment from rather remote locations in Iqaluit and Cambridge Bay, Nunavut.

Parcels A-F – Real Estate in Inuvik, Iqaluit and Tuktoyaktuk

- 3.22 The Receiver was presented with offers in respect of warehouse and residential properties in Inuvik and Iqaluit as well as a small real estate property in Tuktoyaktuk. In all cases, the offers accepted (subject to Court approval) by the Receiver were the highest offers received on either an individual or en bloc basis. A company controlled by Mr. Guy Pemberton, has offered to

purchase Parcels A, B, C and D (excluding the main building and associated land in Inuvik) and land and buildings in Tuktoyaktuk (this was not included as a parcel in the Asset Information Package) for an en bloc purchase price. As noted above, Mr. Pemberton is related to Dowland by virtue of his shareholdings in 6070. The Receiver is satisfied that the prospective purchaser and/or Mr. Pemberton conformed in all material respects with the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package including provision of the 10% cash deposit amount.

3.23 Parcel E is Dowland's warehouse and office facility in Iqaluit, Nunavut and is a leasehold interest with the Commissioner of Nunavut dated April 1, 2012 (the "Warehouse Lease"). The highest offer submitted for Parcel E was accepted by the Receiver and it is satisfied that the prospective purchaser conformed in all material respects with the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package including provision of the 10% cash deposit amount. The assignment of the Warehouse Lease requires the consent of the Commissioner of Nunavut.

3.24 Parcel F is Dowland's staff housing residence in Iqaluit and is a leasehold interest with the Commissioner of Nunavut dated June 16, 1994 (the "Residence Lease"). The highest offer submitted for Parcel F was from an individual purchaser. This party complied in all material respects with the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package including the provision of the 10% cash deposit amount. The assignment of the Residence Lease requires the consent of the Commissioner of Nunavut.

Receiver's Considerations

3.25 The Receiver's review of the Sales Process and review of all offers to purchase submitted involved consideration of the following issues:

- a) the extent to which the highest price was achieved from the parcels of Property that have been marketed;
- b) the total consideration being offered and the net estimated proceeds realized after consideration of any potential purchase price adjustments including possible transportation or demobilization costs associated with equipment located in Canada's northern regions;
- c) the extent to which prices offered for various parcels of real estate and equipment are consistent with independent appraisals and valuations;

- d) the overall execution risk associated with closing a transaction with a particular prospective purchaser;
- e) the reputation and financial wherewithal of each of the prospective purchasers;
- f) the extent to which sales transactions could be completed with parties in the various jurisdictions or regions where Dowland previously conducted operations and the interests of certain Dowland stakeholders that operate in these regions;
- g) the economic interests of Dowland's principal secured creditors, Royal Bank of Canada , Intact Insurance Company and Continental Casualty Company, all of whom have been provided preliminary and summary information in respect of the offers to purchase presented herein; and
- h) the expedited timing, execution and fairness of the Sales Process generally and the degree to which offers conformed to the terms of the Invitation for Offers to Purchase as set out in the Asset Information Package and the extent to which prospective purchasers complied with the Sales Process.

Confidential Bid Summary and Temporary Sealing Order

- 3.26 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 Bid 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 Confidential Bid Summary 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 and personal property (i.e. equipment) 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 and personal property parcels to third party purchasers free and clear of all liens, encumbrances and other such limitations or restrictions in respect of title.

5.0 KIA PROJECT SETTLEMENT AGREEMENT

Background

- 5.1 Pursuant to a Unanimous Shareholder Agreement, dated effective July 1, 2010 (the “USA”), DCL and NCC Investment agreed, among other things, to incorporate NCC Dowland primarily for the purpose of submitting bids for and obtaining contracts for construction projects in Nunavut.
- 5.2 NCC Dowland entered into a construction contract (the “KIA Contract”) with Kitikmeot, as owner, dated October 19, 2011, in relation to the construction of the KIA office building (the “KIA Project”) on lands located in Cambridge Bay, Nunavut (the “Lands”). NCC Dowland was the prime contractor on the KIA Project and DCL was the sub-contractor although DCL performed all of the management and administrative functions necessary to execute the KIA Contract. As was the purpose of the USA, NCC Dowland was simply a “flow through” entity and performed no physical construction contracting services.
- 5.3 During 2012 and until in or around the Receivership Date, DCL completed certain work on the KIA Project and prepared and submitted certain progress billings to Kitikmeot pertaining to the KIA Project. Total progress billings up to May 31, 2013 were \$5,505,891.24, a significant portion of which remain outstanding and unpaid.
- 5.4 The Receiver has advanced a claim against Kitikmeot for outstanding amounts owing with respect to the KIA Project pursuant to the progress billings and the Receiver has also asserted claims against NCC Dowland, NCC Investment and certain of the directors and officers of NCC Investment and NCC Dowland, pursuant to the USA, with respect to the KIA Project.
- 5.5 Kitikmeot has asserted a claim against the Receiver with respect to certain amounts which it claims are owed by DCL with respect to the KIA Project which was had not reached substantial completion as at the Receivership Date.
- 5.6 Kitikmeot has claimed that pursuant to the KIA Contract it is entitled to withhold and set off against progress billings rendered by DCL in an amount of \$2,629,522.49 for certain unpaid supplier and subcontractor accounts, amounts paid to suppliers directly from held back funds, certain rental overcharges and some direct and payroll costs incurred subsequent to the Receivership Date in continuing the KIA Project.

- 5.7 Summarized in the table below are the particulars of DCL's outstanding progress billings and the alleged set off amounts claimed by Kitikmeot:

Dowland Contracting Ltd. et al - In Receivership	
Summary of KIA Project Progress Billings and Potential Set Off Claims	
as at August 2, 2013	
	(\$000's)
DCL Progress Billings:	
Invoice 09 - Jan. 31, 2013	\$ 1,120
Invoice 10 - Feb. 28, 2013	1,347
Invoice 11 - Mar. 31, 2013	1,214
Invoice 12 - Apr. 30, 2013	1,453
Invoice 13 - May 31, 2013	372
	<u>\$ 5,506</u>
Potential Set Off Claims:	
Trade accounts payable	\$ 2,414
Other amounts	216
	<u>\$ 2,630</u>

- 5.8 In order to preserve its rights and potential recovery in this matter, the Receiver registered a mechanic's lien against the Lands in the Nunavut Land Title's Office on June 10, 2013 and subsequently filed a statement of claim against NCC Dowland and Kitikmeot on July 24, 2013 and the Certificate of Lis Pendens was issued by the Supreme Court of Nunavut on July 25, 2013 and was delivered to the Registrar of Land Titles for Nunavut to be filed on July 25, 2013 and the Receiver is currently awaiting confirmation of that registration.
- 5.9 In order to avoid expensive and what would likely be protracted litigation, address in a commercially expeditious fashion the settlement of supplier and subcontractor claims which are provided for in the KIA Contract and attempt to facilitate continuity of the KIA Project during the favourable summer/fall seasons, settlement discussions were initiated starting with meetings held in Toronto, Ontario on June 17 and 18, 2013 between representatives of Kitikmeot, NCC Dowland, NCC Investment, the Receiver and respective legal counsel.
- 5.10 Effective August 6, 2013 the Receiver, NCC Dowland, NCC Investments and Kitikmeot entered into a settlement agreement subject to certain terms and conditions including Court approval. The KIA Project Settlement Agreement is attached hereto as Appendix "C".

Material Terms of the KIA Project Settlement Agreement

5.11 As indicated above, the Receiver, NCC Dowland, NCC Investments and Kitikmeot are parties to the KIA Project Settlement Agreement, the material terms and conditions of which include the following:

- a) Kitikmeot agrees to pay the Receiver \$5,505,891.24 less agreed claims to be deducted or set off totalling \$2,629,522.49 which relate to (i) accounts paid directly from certain held back funds; (ii) a certain rental overcharges; (iii) direct costs incurred to date in continuing the KIA Project; and (iv) certain payroll and additional amounts paid to former DCL employees by Kitikmeot. The net amount to be paid to the Receiver is \$2,876,368.75;
- b) Kitikmeot agrees to complete the KIA Project and pay the trade creditors described in Schedule "B" to the Settlement Agreement up to a maximum amount of \$2,413,701.10 and Kitikmeot agrees to indemnify and save harmless each of the Receiver and DCL from and with respect to all obligations owed to trade creditors described in Schedule "B";
- c) NCC Investment, NCC Dowland and Kitikmeot irrevocably release and forever discharge each of the Receiver, DCL and each of their directors, officers, servants, agents and employees from any and all actions and/or liabilities, arising from and with respect to the KIA Contract and the KIA Project;
- d) the Receiver and DCL irrevocably release and forever discharge each of NCC Investment, NCC Dowland and Kitikmeot, and their directors, officers, servants, agents and employees from any and all actions and liabilities, arising from and with respect to the KIA Contract and the KIA Project;
- e) the Receiver shall no later than 7 days following this Court's approval of the KIA Settlement Agreement, deliver a registerable discharge of the mechanic's lien registered on the title to the Lands, a discontinuance of any legal action commenced by the Receiver to enforce the mechanic's lien and a registerable discharge of any Lis Pendens filed on the title to the Lands;
- f) the Receiver shall assign whatever rights and interests the Receiver has, if any, in the Debtor's supplier warranties and manufacturer warranties to Kitikmeot or Kitikmeot's designee. In addition, the Receiver shall use reasonable commercial efforts to obtain an assignment of the insurance policies related to the KIA Project to Kitikmeot or Kitikmeot's designee; and

- g) the KIA Project Settlement Agreement is subject to the Receiver obtaining Court approval to it by August 16, 2013.

6.0 RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The Sales Process

- 6.1 The Receiver is of the view that it has made commercially reasonable efforts to obtain the highest realizations for the Property which has been the subject of the Sales Process. 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 appraisals and valuations that the Receiver has obtained.
- 6.2 The Receiver is satisfied that the interests of Dowland's financial stakeholders have been considered during the course of the Sales Process and the Receivership Proceedings generally and that acceptance of certain offers to purchase will facilitate the completion of some incomplete Dowland construction projects and/or furthered the commercial interests of certain communities in Canada's northern regions.
- 6.3 The Receiver is of the view that expedited timing and execution of the Sales Process was appropriate in the circumstances to take advantage of favourable summer and early autumn seasons as well as to mitigate or avoid on-going holding costs and potential demobilization transportation costs associated with the remote location of a significant portion of Dowland's equipment.
- 6.4 The Receiver is of a view that that Sales Process was efficient, effective and that the integrity of the Sales Process has been maintained throughout.
- 6.5 The Receiver is satisfied that the Sales Process is inherently fair and has been conducted in a manner such that no parties to the Sales Process have experienced preferential or unfair treatment

KIA Project Settlement Agreement

- 6.6 The Receiver considers the terms and conditions contained in the KIA Project Settlement Agreement to be commercially reasonable and in the interests of the stakeholders of Dowland. The KIA Project Settlement Agreement provides for a substantial settlement involving the payment of approximately \$2.9 million to the Receiver and has obviated the need to pursue a lien claim through protracted and expensive litigation against the owner of a partially constructed office building in Cambridge Bay, Nunavut.


- 6.7 A key consideration for the Receiver also involved obtaining a release for itself and DCL (and its Officers and Directors) for any liabilities, damages or other such amounts arising under the KIA Contract or relating to the KIA Project including delay and other consequential damages claims. The Receiver felt it was fair and reasonable to extend a similar mutual release to NCC Dowland, NCC Investments and Kitikmeot (and its Officers and Directors) and limited same to and claims that the Receiver or DCL may have against the counterparties arising under the KIA Contract or relating to the KIA Project.
- 6.8 The Receiver sought to ensure that certain suppliers and subcontractors many with potential lien rights and trust claims are to be paid as part of the KIA Project Settlement Agreement by requiring that Kitikmeot agree to pay approximately \$2.4 million to approximately 48 separate claimants. These amounts are required to be paid under the KIA Contract and/or would have been subject to set off by Kitikmeot as they would likely need to pay these claims in order to ensure retention of the contractors and suppliers on site in Cambridge Bay and to complete the KIA Project with minimal disruption and extra cost.


Receiver's Recommendations

- 6.9 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 DCL assets referenced in the Notice of Application; and
 - b) grant an order approving the entering into and completion of the terms contained in the KIA Project Settlement Agreement.

All of which is respectfully submitted to this Honourable Court this 8th day of August, 2013.

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


Per: Todd M. Martin
Senior Vice President


Per: Callum D. M. Beveridge
Senior Director