

COURT FILE NUMBER 2001-05630  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANTS



IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.

DOCUMENT **AFFIDAVIT #2 OF THOMAS CROESE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCarthy Tétrault LLP  
4000, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis  
Tel: 403-260-3531 / 3710 / 3536  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

**AFFIDAVIT #2 OF THOMAS CROESE**  
Sworn on MAY 28<sup>th</sup>, 2020

I, Thomas Croese, of the City of Yellowknife, Northwest Territories, **SWEAR AND SAY THAT:**

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("DDMI"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.
2. Dominion Diamond Mines ULC ("Dominion") and DDMI are successors in interest (in this capacity, each a "Participant") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended pursuant to:

- (a) Amending Agreement, dated as of December 1, 1995, between Kennecott Canada Inc. and Aber Resources Limited;
- (b) Amending Agreement (NO.2), dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber Diamond Mines Limited; and,
- (c) Amending Agreement (NO.3), dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber Diamond Mines Limited (collectively, the “**JVA**”).

A copy of the JVA is attached to my affidavit sworn on April 30, 2020 (“**April 30 Affidavit**”) and marked as Confidential Exhibit “1”.

3. In swearing this affidavit (the “**Supplemental Affidavit**”), I have reviewed the JVA and the affidavits of Kristal Kaye sworn in the within proceedings on April 21, May 8, and May 13, 2020 (collectively, the “**Kaye Affidavits**”). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the JVA or Kaye Affidavits.

#### **Cash Calls**

4. As detailed in paragraphs 13 – 16 of the April 30 Affidavit, under section 9.2 of the JVA, the Manager is required to submit to each of the Participants a billing for each Participant’s share of the estimated Costs for the following month. As further described in paragraph 17 of the April 30 Affidavit, a billing cycle was established by a resolution of the Management Committee dated effective December 22, 2008, according to which the Manager shall submit to each Participant its billing at the beginning and middle of each calendar month for a period of approximately the next two weeks to be paid within seven calendar days.

5. On April 15, 2020, consistent with the above billing cycle, DDMI issued to Dominion its second cash call notice of the month (the “**Dominion April #2 Cash Call Notice**”) in the amount of \$16.0 million Attached hereto and marked **Exhibit “1”** to this Affidavit is a true copy of a letter from me to Ms. Kristal Kaye of Dominion with the subject line “Notice of Cover Payment – April #2” and dated May 21, 2020. Attached as Schedule “A” to **Exhibit “1”** is a copy of the Dominion April #2 Cash Call Notice.

6. On April 15, 2020, the Manager had also issued to DDMI its second Cash Call of the month (the “**DDMI April #2 Cash Call Notice**”) in the amount of \$24.0 million. Attached as Schedule “B” to **Exhibit “1”** is a true copy of the DDMI April #2 Cash Call Notice. Consistent with

the normal interval of seven calendar days between the issuance of the Manager's Cash Call to the Participants and payment of the same, DDMI paid in full its April #2 Cash Call on April 22, 2020.

7. On April 22, 2020, Dominion filed its Originating Application without notice, and payment of its April #2 Cash Call was not made.

#### **Cover Payments Made by DDMI**

8. The Initial Order was amended effective May 15, 2020, to allow DDMI to make Cover Payments on behalf of Dominion, the Defaulting Participant, pursuant to section 9.4 of the JVA and as described in paragraphs 18 – 19 of the April 30 Affidavit.

9. As the Non-Defaulting Participant, on May 21, 2020, DDMI issued a Notice to Dominion advising that DDMI was exercising its rights under Section 9.4 of the JVA to meet the Dominion April #2 Cash Call ("**DDMI April Notice**"), that such contribution would constitute an indebtedness to DDMI under section 9.4(b) of the JVA, and further that DDMI would avail itself of the security interest granted to it under section 9.4(c) of the JVA. The DDMI April Notice is attached hereto and marked as **Exhibit "2"**.

10. On May 21, 2020, DDMI paid the full amount of Dominion's April #2 Cash Call, which is to say DDMI made a substantial overpayment.

11. On May 1, 2020, the Manager issued a Cash Call to Dominion in the amount of \$17.6 million (the "**Dominion May #1 Cash Call Notice**") and to DDMI in the amount of \$26.4 million (the "**DDMI May #1 Cash Call Notice**"). Attached hereto and marked as **Exhibit "2"** to this Affidavit is a letter from me to Ms. Kristal Kaye of Dominion with the subject lined "Notice of Cover Payment – May #1" and dated May 21, 2020. Attached as Schedule "A" to **Exhibit "2"** is a true copy of the Dominion May #1 Cash Call Notice. Attached as Schedule "B" to **Exhibit "2"** is a true copy of the DDMI May #1 Cash Call Notice.

12. The DDMI May #1 Cash Call was due and paid in full on May 8, 2020.

13. By letter dated May 21, 2020, and attached to this Affidavit as **Exhibit "2"**, DDMI provided Notice to Dominion that it would meet Dominion's May #1 Cash Call pursuant to section 9.4 of the JVA ("**DDMI May Notice**"). DDMI further reminded Dominion of the Defaulting Participant's

and Non-Defaulting Participant's respects obligations and rights under sections 9.4(b) and 9.4(c) of the JVA.

14. On May 21, 2020, DDMI paid the full amount of the Dominion May #1 Cash Call, once again making a substantial overpayment. Attached as Schedule "D" to **Exhibit "2"** is a true copy of a bank statement evidencing such payment.

15. On May 15, 2020, the Manager had also issued a Cash Call to DDMI in the amount of \$18.0 million (the "**DDMI May #2 Cash Call Notice**"), and a Cash Call to Dominion in the amount of \$12.0 million (the "**Dominion May #2 Cash Call Notice**") Attached hereto and marked as **Exhibits "3" and "4"** are true copies of DDMI May #2 Cash Call Notice and Dominion May #2 Cash Call Notice, respectively.

16. DDMI paid the full amount of the DDMI May #2 Cash Call Notice on May 19, 2020.

#### **Future Cash Call Payments**

17. As described in paragraph 35 of the April 30 Affidavit, the JVA's program and budget for the period 2020-2025 was approved pursuant to a resolution of the Management Committee executed by Dominion on December 2, 2019 (the "**JVA Budget**").

18. On the basis of the JVA Budget, the Manager has prepared a forecast of the Participants' respective Cash Calls for the balance of the 2020 calendar year. This forecast is conditions-based and is subject to revision. However, it presently represents the Manager's best estimate of the remaining Cash Calls to be issued. Attached hereto and marked as **Confidential Exhibit "A"** is a spreadsheet with the file name "20 05 26 UPDATED 2020 Cash Calls".

19. On the tab of **Confidential Exhibit "A"** titled "Reforecast" is a table titled "Diavik Joint Venture 2020 Reforecast Cash Calls - April 2020". The April reforecasts for the Participants' Cash Calls are located in lines 35 and 36 of the table.

20. However, the Manager has updated the Participants' rescheduled Cash Calls in order to reflect (i) actual year-to-date ("YTD") cash calls and (ii) the anticipated timing variation for when the actual winter road costs will become payable. The Participants' revised Cash Calls are located

on lines 46-48. It should be noted that the total projected amount for the Participants' combined Cash Call remains unchanged at \$536.4 million.<sup>1</sup>

21. Line 46 of the spreadsheet forecasts DDMI's revised Cash Calls for the period June 1 – December 31, 2020, in a projected aggregate amount of \$123.3 million. Line 48 of the spreadsheet forecasts Dominion's revised Cash Calls for the period June 1 – October 31, 2020, in the amount of \$57.7 million. If this period is extended through to December 31, 2020, the projected aggregate amount of Dominion's revised Cash Calls is \$82.2 million.<sup>2</sup>

22. Accordingly, if DDMI continues to meet Dominions' Cash Calls under section 9.4(a) of the JVA, the total value of its sole contributions to the JVA Budget for 2020 are estimated to range between \$181 million - \$205.6 million.

### **Environmental Agreement and Closure Security Agreement**

23. DDMI is a signatory to the Environmental Agreement, dated March 8, 2000 (the "**Environmental Agreement**"), together with the Government of the Northwest Territories and the Minister of Indian Affairs and Northern Development ("**GoC**"), as amended from time to time. Attached hereto and marked as **Exhibit "5"** is a true copy of the Environmental Agreement, as amended. Under section 15.1 of the Environmental Agreement, a Security Deposit was consented to by DDMI in its capacity as Manager of the Diavik Mine (the "**EA Security Deposit**").

24. As described in paragraph 61 of the affidavit of Kristal Kaye, sworn April 21, 2020 ("**April 21 Kaye Affidavit**"), Dominion's outstanding share of the closure costs and reclamation liabilities for the Diavik Mine is governed by the Closure Security Agreement between DDMI and Dominion, dated December 13, 2019 ("**CSA**"). Attached hereto and marked as **Confidential Exhibit "B"** is a true copy of the CSA.

25. Pursuant to the CSA, as of March 11, 2020, Dominion had delivered six letters of credit with a total value of CDN \$105 million, with a further CDN \$35 million to be posted on January 1, 2021, to cover its proportionate share of the close-out costs and reclamation liabilities for the Diavik Mine. As is also noted in the recitals to the CSA, "the Diavik diamond mine is projected to

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<sup>1</sup> The reforecasted combined amount is found at cell N37; the revised combined amount is located at cell N49. Again, the amounts are identical.

<sup>2</sup> This amount is arrived at by adding to the \$57,712,000 of revised Dominion Cash Calls for the period June 1 – October 31, 2020, the November and December revised Dominion Cover Payments located in cells L47 (\$13,160,000) and M47 (\$11,348,000 million).

cease commercial production of Products in 2025 and the Manager has begun planning for Total Closure Activities and the windup of Operations”.

26. As at December 31, 2019, the total closure obligations related to the closure and reclamation of the Diavik Mine were estimated to be \$365.3 million. Pursuant to the JVA, Dominion’s share of the closure obligations is 40%.

**Letters of Credit Issued in Connection with Closure Obligations**

27. The Diavik Mine is projected to cease commercial operation in 2025. Closure and reclamation work is already being progressively performed and will accelerate in coming years as the end of commercial operation nears. In this context the CSA was entered into. Accordingly, DDMI holds, as beneficiary, letters of credit in the aggregate amount of \$105 million (collectively, the “LoCs”).

28. Attached hereto and collectively marked as **Exhibit “6”** are true copies of each of the LoCs.

29. The draw conditions of the LoCs are:

- (a) Partial drawings are permitted in the event that Dominion does not pay ongoing closure costs for progressive reclamation.
- (b) The entire amount of each of the LoCs can be drawn if the provider of a LoC does not extend their respective LoC beyond the current expiry date of October 25, 2020.

30. The LoCs are all set to expire on October 25, 2020 and if the same are not renewed on or before September 25, 2020, then DDMI is entitled to draw the full amount thereunder and to hold the proceeds in trust for the benefit of DDMI in relation unfunded reclamation obligations in accordance with the terms and conditions of the CSA.

**DDMI SIF**

31. I have been informed by counsel at McCarthy Tétrault and do verily believe that this Court’s authorization has been sought for a “Stalking Horse Bid” and accompanying DIP Financing. In assessing the merits of the bid, I believe it should be brought to the Court’s attention that a term sheet for the future provision of Stapled Interim Funding (“SIF”) was transmitted to

counsel for the Monitor on May 18, 2020. Attached hereto and marked as **Exhibit "7"** is a true copy of the SIF. The SIF would have permitted Dominion to access credit to fund its share of the Cash Call obligations at the Diavik Mine.

32. I am further informed by counsel at McCarthy Tétrault LLP that no response was received to this proposed term sheet.

**DDMI Sealing Order**

33. DDMI seeks to seal the spreadsheet containing the Participants' projected Cash Calls for 2020 under the JVA that it has tendered as **Confidential Exhibit "A"**. The spreadsheet contains information which is confidential and commercially sensitive. Disclosure of the Cash Call projections and the value of the Participants' issued invoices will cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the spreadsheets or the information contained therein.

34. DDMI also seeks to seal the CSA that it has tendered as **Confidential Exhibits "B"**. The CSA contains information which is confidential and commercially sensitive. Disclosure of the CSA will likewise cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the CSA or the information contained therein.

35. I make this Affidavit in response to the Stay Extension Application.

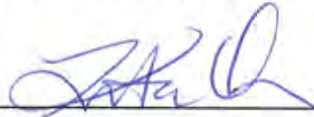
SWORN BEFORE ME at the City of  
Yellowknife, Northwest Territories, this 28<sup>th</sup>  
day of May, 2020.

  
\_\_\_\_\_  
A COMMISSIONER FOR OATHS  
in and for the Northwest Territories

  
\_\_\_\_\_  
THOMAS CROESE

**KRISTA QUINN**  
A Notary Public in and for the  
Northwest Territories.  
My appointment expires  
March 11, 2021.

This is Exhibit "1" referred to in the Affidavit #2 of  
Thomas Croese  
sworn before me this 28<sup>th</sup> day of May, 2020.



\_\_\_\_\_  
A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**  
A Notary Public in and for the  
Northwest Territories.  
My appointment expires  
March 11, 2021.





Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201 – 50<sup>th</sup> Avenue  
 Yellowknife, NT X1A 2P8  
 Canada  
 T (867) 669 6500  
 F (866) 313 2754

May 21, 2020

VIA E-MAIL ([Kristal.Kaye@ddcorp.ca](mailto:Kristal.Kaye@ddcorp.ca)); ([pmerrin@washcorp.com](mailto:pmerrin@washcorp.com))

**Dominion Diamond Mines ULC**

900 – 606 4 Street SW  
 Calgary, Alberta  
 T1P 1T1  
 To Whom it May Concern

**Re: Diavik joint venture agreement (the “JVA”) dated as of March 23, 1995 between Dominion Diamond Mines ULC (“Dominion”) and Diavik Diamond Mines (2012) Inc. (“DDMI”) as successors in interest to Aber Resources Limited and Kennecott Canada Inc., respectively, as amended.**

**Notice of Cover Payment – April #2**

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Dear Sirs/Mesdames,

On April 22, 2020 Dominion along with certain entities related to Dominion sought and obtained an initial order (the “**Initial Order**”) from the Court of the Queen's Bench of Alberta (the “**Court**”) under the Companies' Creditors Arrangement Act R.S.C. 1985, c. C-36, as amended (“**CCAA**”). The Initial Order provides, among other things, a stay of proceedings which may be extended from time to time. The Initial Order has since been amended including, effective May 15, 2020, to permit DDMI to make Cover Payments as defined in the JVA.

To this end, we refer to the JVA. We also refer to the billing statement (the “**Dominion April #2 Cash Call Notice**”) for a cash call (the “**Dominion April #2 Cash Call**”) in the amount of C\$16,000,000 issued to Dominion on April 16, 2020. A copy of the Dominion April #2 Cash Call Notice is attached as Schedule A. We further refer to the billing statement (the “**DDMI April #2 Cash Call Notice**”) for a cash call (the “**DDMI April #2 Cash Call**”) in the amount of C\$24,000,000 issued to DDMI on April 15, 2020. A copy of the DDMI April #2 Cash Call Notice is attached as Schedule B.

The DDMI April #2 Cash Call was due on April 22, 2020 and we can confirm that DDMI paid the full C\$24,000,000 on April 22, 2020. A bank statement evidencing such payment is attached as Schedule C.

The Dominion April #2 Cash Call was due on April 22, 2020. To date Dominion has not paid any portion of the amount due under the Dominion April #2 Cash Call.

With Dominion having elected to contribute to the 2020 Program and Budget and then defaulted in its obligation to pay the Dominion April #2 Cash Call, DDMI by notice to Dominion elects to meet the Dominion April #2 Cash Call on behalf of Dominion (the "**April #2 Cover Payment**").

Accordingly, DDMI hereby notifies Dominion that DDMI has made the April #2 Cover Payment on May 21, 2020. A bank statement evidencing such payment is attached as Schedule D.

As provided under Section 9.4(b) of the JVA, the April #2 Cover Payment shall constitute indebtedness due from Dominion to DDMI, which indebtedness shall be payable upon demand and shall bear interest from the date incurred to the date of payment at the rate specified in Section 9.3 of the JVA. This notice constitutes evidence of the foregoing indebtedness.

We remind you that under Section 9.4(c) of the JVA you have, among other things, granted to us, as security for repayment of the indebtedness described above together with interest thereon, reasonable legal fees and all other reasonable costs and expenses incurred in collecting payment of such indebtedness and enforcing such security interest, a mortgage of and security interest in your right, title and interest in, to and under, whenever acquired or arising, your Participating Interest and the Assets (each as defined in the JVA).

We also remind you that, having sought protection under the *Companies' Creditors Arrangement Act*, all of the periods of notice under Section 9.4 have been abridged such that no advance notice is required to be given to you under any of the provisions of said Section 9.4.

Yours very truly,



Thomas Croese  
Manager, Finance  
**Diavik Diamond Mines (2012) Inc.**

cc/ Richard Storrie, President and Chief Operating Officer (DDMI)  
Andrew Petch, Dominion Diamond Mines

## SCHEDULE "A"

## DOMINION APRIL #2 CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P6 Canada  
T (867) 669 6500 F 1-866-313-2754

## BILLED TO:

Dominion Diamond Mines ULC  
800 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 15-APR-20

INVOICE: DDC 04-20B-R1

DESCRIPTION	AMOUNT
100%	40%
April Cash Requirement – 2nd cash call	\$16,000,000.00
40,000,000.00	
GST Registration # 83952 4048RT	

TOTAL CASH CALL \$16,000,000.00

(DUE ON April 22, 2020)

Document #: DCON-000-1010

Template #: DCON000-1010

Registered in Canada

Page 1 of 1

SCHEDULE "B"  
DDMI APRIL #2 CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201 – 50<sup>th</sup> Avenue  
Yellowknife, NT  
X1A 2P8

BILLED TO:

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201 – 50<sup>th</sup> Avenue  
Yellowknife, NT  
X1A 2P8

Attention: Accounts Payable

DATE: 15-APR-20

INVOICE: DDMI 04-20B-R1

DESCRIPTION	AMOUNT
100%	60%
April Cash Requirement-Cash Call 2 40,000,000.00	\$24,000,000.00
GST Registration # 83652 4048RT	

TOTAL CASH CALL \$24,000,000.00

(DUE ON Apr 22, 2020)

Document #: DCCN-000-1010 RO (example only-enter your # here or contact document control)

Template #: DCCN-036-1010

Registered in Canada

Page 1 of 1

## SCHEDULE "C"

### PAYMENT OF DDMI APRIL #2 CASH CALL

RIO TINTO-ALCAN INC  
 Statement of Account (Bank)  
 Wednesday, April 22, 2020



Account Name: 04160 5295859	Account: 5295859	Branch: 4160	Currency: CAD
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B/D Description	Debit	Credit	Date	Balance
Balance Forward			04/22/2020	Redacted
200412W4789900TRF-FR		\$24,000,000.00	04/22/2020	DDMI-2nd cash call for Apr
200412W4780100RPU	Redacted		04/22/2020	
200412B4794200RPU	Redacted		04/22/2020	
VSA DEP04745741 MSP		Redacted	04/22/2020	
EFO411 04745741 MSP		Redacted	04/22/2020	
EDI - PAYMENT	Redacted		04/22/2020	
VSA FEE04745741 MSP	Redacted		04/22/2020	
SWIFT040 042FEE BU5	Redacted		04/22/2020	Redacted
Closing Balance			04/22/2020	Redacted

<b>Totals:</b>	\$Redacted	Redacted	
<b>Item Count:</b>	5	3	

## SCHEDULE "D"

## PAYMENT OF DOMINION APRIL #2 CASH CALL

RIO TINTO ALCAN INC  
Statement of Account (Bank)  
Thursday, May 13, 2020



Account Name:	Account:	Branch:	Currency:
04160 8295859	8295859	4160	CAD

B/D	Description	Debit	Credit	Date	Balance
	Balance Forward			Redacted	Redacted
	MC DEP 04745741 MSP		Redacted	Redacted	Redacted
	VSA DEP04745741 MSP		Redacted	Redacted	Redacted
	200521W0835300TRF-FR		\$16,000,000.00	05/21/2020	
	200521W0835400TRF-FR		Redacted	Redacted	Redacted
	Closing Balance			Redacted	Redacted
<b>Total:</b>		50.00	Redacted		
<b>Item Count:</b>		0		4	

Generated on: 11:18:54 Thu May 21, 2020

Page 1

This is Exhibit "2" referred to in the Affidavit #2 of  
Thomas Croese  
sworn before me this 28<sup>th</sup> day of May, 2020.



\_\_\_\_\_  
A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**  
A Notary Public in and for the  
Northwest Territories.  
My appointment expires  
March 11, 2021.





Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201 – 50<sup>th</sup> Avenue  
 Yellowknife, NT X1A 2P8  
 Canada  
 T (867) 669 6500  
 F (866) 313 2754

May 21, 2020

VIA E-MAIL ([Kristal.Kaye@ddcorp.ca](mailto:Kristal.Kaye@ddcorp.ca)); ([pmerrin@washcorp.com](mailto:pmerrin@washcorp.com))

**Dominion Diamond Mines ULC**  
 900 – 606 4 Street SW  
 Calgary, Alberta  
 T1P 1T1  
 To Whom it May Concern

**Re: Diavik joint venture agreement (the “JVA”) dated as of March 23, 1995 between Dominion Diamond Mines ULC (“Dominion”) and Diavik Diamond Mines (2012) Inc. (“DDMI”) as successors in interest to Aber Resources Limited and Kennecott Canada Inc., respectively, as amended.**

**Notice of Cover Payment – May #1**

---

Dear Sirs/Mesdames,

On April 22, 2020 Dominion along with certain entities related to Dominion sought and obtained an initial order (the "**Initial Order**") from the Court of the Queen's Bench of Alberta (the "**Court**") under the Companies' Creditors Arrangement Act R.S.C. 1985, c. C-36, as amended ("**CCAA**"). The Initial Order provides, among other things, a stay of proceedings which may be extended from time to time. The Initial Order has since been amended including, effective May 15, 2020, to permit DDMI to make Cover Payments as defined in the JVA.

To this end, we refer to the JVA. We also refer to the billing statement (the "**Dominion May #1 Cash Call Notice**") for a cash call (the "**Dominion May #1 Cash Call**") in the amount of C\$17,600,000 issued to Dominion on May 1, 2020. A copy of the Dominion May #1 Cash Call Notice is attached as Schedule A. We further refer to the billing statement (the "**DDMI May #1 Cash Call Notice**") for a cash call (the "**DDMI May #1 Cash Call**") in the amount of C\$26,400,000 issued to DDMI on May 1, 2020. A copy of the DDMI May #1 Cash Call Notice is attached as Schedule B.

The DDMI May #1 Cash Call was due on May 8, 2020 and we can confirm that DDMI paid the full C\$26,400,000 on May 8, 2020. A bank statement evidencing such payment is attached as Schedule C.



The Dominion May #1 Cash Call was due on May 8, 2020. To date Dominion has not paid any portion of the amount due under the Dominion May #1 Cash Call.

With Dominion having elected to contribute to the 2020 Program and Budget and then defaulted in its obligation to pay the Dominion May #1 Cash Call, DDMI by notice to Dominion elects to meet the Dominion May #1 Cash Call on behalf of Dominion (the "**May #1 Cover Payment**").

Accordingly, DDMI hereby notifies Dominion that DDMI has made the May #1 Cover Payment on May 21, 2020. A bank statement evidencing such payment is attached as Schedule D.

As provided under Section 9.4(b) of the JVA, the May #1 Cover Payment shall constitute indebtedness due from Dominion to DDMI, which indebtedness shall be payable upon demand and shall bear interest from the date incurred to the date of payment at the rate specified in Section 9.3 of the JVA. This notice constitutes evidence of the foregoing indebtedness.

We remind you that under Section 9.4(c) of the JVA you have, among other things, granted to us, as security for repayment of the indebtedness described above together with interest thereon, reasonable legal fees and all other reasonable costs and expenses incurred in collecting payment of such indebtedness and enforcing such security interest, a mortgage of and security interest in your right, title and interest in, to and under, whenever acquired or arising, your Participating Interest and the Assets (each as defined in the JVA).

We also remind you that, having sought protection under the *Companies' Creditors Arrangement Act*, all of the periods of notice under Section 9.4 have been abridged such that no advance notice is required to be given to you under any of the provisions of said Section 9.4.

Yours very truly,



Thomas Croese  
Manager, Finance  
**Diavik Diamond Mines (2012) Inc.**

cc/ Richard Storrie, President and Chief Operating Officer (DDMI)  
Andrew Petch, Dominion Diamond Mines

## SCHEDULE "A"

## DOMINION MAY #1 CASH CALL NOTICE



DiaVik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 200, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 8500 F 1-866-313-2754

## BILLED TO:

Dominion Diamond Mines ULC  
900 – 608 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 01-MAY-2020

INVOICE: DDC 05-20A

DESCRIPTION		AMOUNT
	100%	40%
MAY Cash Requirement – 1 <sup>st</sup> cash call	44,000,000.00	\$17,600,000.00
GST Registration # B30524048RT		

TOTAL CASH CALL \$17,600,000.00

(DUE ON MAY 08, 2020)

Document #: DCON-006-1010

Template #: DCON-030-1010

Registered in Canada

Page 1 of 1

**SCHEDULE "B"**  
**DDMI MAY #1 CASH CALL NOTICE**



Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201 – 50<sup>th</sup> Avenue  
 Yellowknife, NT  
 X1A 2P8

**BILLED TO:**

Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201 – 50<sup>th</sup> Avenue  
 Yellowknife, NT  
 X1A 2P8

Attention: Accounts Payable

**DATE:** 01-MAY-20

**INVOICE:** DDMI 05-20A

DESCRIPTION		AMOUNT
100%		60%
May Cash Requirement-Cash Call 1	44,000,000.00	\$26,400,000.00
<small>GST Registration # 83652 4048RT</small>		

**TOTAL CASH CALL**     \$26,400,000.00

(DUE ON May 08, 2020)

## SCHEDULE "C"

### PAYMENT OF DDMI MAY #1 CASH CALL

RIO TINTO ALCAN INC  
Statement of Account (Blank)  
Friday, May 08, 2020



Account Name:	Account:	Branch:	Currency:
04160 6195859	6195859	4160	CAD

B/D	Description	Debit	Credit	Date	Balance
	Balance Forward			05/08/2020	Redacted
	RIO TINTO CANAD MSP		Redacted	05/08/2020	
	200503W4198400TRF-FR		<b>\$26,400,000.00</b>	05/08/2020	DDMI 1st Cash call May 2020
	VSA DEP04745741 MSP		Redacted	05/08/2020	
	EF0507 04745741 MSP		Redacted	05/08/2020	
	EDI - PAYMENT	Redacted		05/08/2020	
	VSA FEE04745741 MSP	Redacted		05/08/2020	Redacted
	Closing Balance			05/08/2020	Redacted
<b>Total:</b>		Redacted	Redacted		
<b>Item Count:</b>		2	4		

**SCHEDULE "D"**

**PAYMENT OF DOMINION MAY #1 CASH CALL**

RIO TINTO ALCAN INC  
 Statement of Account (Bank)  
 Thursday, May 21, 2020



Account Name:	Account:	Branch:	Currency:
04160 6295859	6295859	4160	CAD

B/D Description	Debit	Credit	Date	Balance
Balance Forward			05/21/2020	Redacted
MC DEP 04745741 MSP		Redacted	05/21/2020	
VSA DEP04745741 MSP		Redacted	05/21/2020	
200521W0835300TRF-FR		Redacted	05/21/2020	
200521W0835400TRF-FR		\$17,600,000.00	05/21/2020	Redacted
Closing Balance			05/21/2020	Redacted
<b>Totals:</b>	\$0.00	Redacted		
<b>Item Count:</b>	0		4	

This is Exhibit "3" referred to in the Affidavit #2 of

Thomas Croese

sworn before me this 28<sup>th</sup> day of May, 2020.



---

A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**

A Notary Public in and for the  
Northwest Territories.

My appointment expires  
March 11, 2021.



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201 – 50<sup>th</sup> Avenue  
Yellowknife, NT  
X1A 2P8

**BILLED TO:**

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201 – 50<sup>th</sup> Avenue  
Yellowknife, NT  
X1A 2P8

Attention: Accounts Payable

**DATE: 15-MAY-20**

**INVOICE: DDMI 05-20B**

DESCRIPTION		AMOUNT
	100%	60%
May Cash Requirement-Cash Call 2	30,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON May 22, 2020)

Croese,  
Thomas  
(RTHQ)  
Digitally signed by  
Croese, Thomas  
(RTHQ)  
Date: 2020.05.14  
16:26:26 -06'00'

This is Exhibit "4" referred to in the Affidavit #2 of

Thomas Croese

sworn before me this 28<sup>th</sup> day of May, 2020.



---

A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**  
A Notary Public in and for the  
Northwest Territories.  
My appointment expires  
March 11, 2021.



# Rio Tinto

Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201-50th Avenue  
 Yellowknife, NT X1A 2P8 Canada  
 T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
 900 – 606 4 Street SW  
 Calgary, AB T2P 1T1  
 Canada

Attention: DDC-AP

**DATE: 15-MAY-2020**

**INVOICE: DDC 05-20B**

DESCRIPTION	AMOUNT
100%	40%
MAY Cash Requirement – 2nd cash call      30,000,000.00	\$12,000,000.00
GST Registration # 83952 4048RT	

**TOTAL CASH CALL      \$12,000,000.00**

(DUE ON MAY 22, 2020)

Croese,  
 Thomas (RTHQ)

Digitally signed by  
 Croese, Thomas (RTHQ)  
 Date: 2020.05.14  
 16:23:11 -05'00'

This is Exhibit "5" referred to in the Affidavit #2 of

Thomas Croese

sworn before me this 28<sup>th</sup> day of May, 2020.



---

A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**  
A Notary Public in and for the  
Northwest Territories.  
My appointment expires  
March 11, 2021.

**ENVIRONMENTAL AGREEMENT**

This Agreement made as of the 8<sup>th</sup> day of March, 2000.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the  
**Minister of Indian Affairs and Northern Development**

(hereinafter referred to as "Canada")

**AND**

**THE GOVERNMENT OF THE NORTHWEST  
TERRITORIES**  
as represented by the  
**Minister of Resources, Wildlife and Economic Development**

(hereinafter referred to as the "GNWT")

**AND**

**DIAVIK DIAMOND MINES INC.**  
(hereinafter referred to as "DDMI")

**AND**

**DOGRIB TREATY 11 COUNCIL**

**AND**

**LUTSEL K'E DENE BAND**

**AND**

**YELLOWKNIVES DENE FIRST NATION**

**AND**

**DLAVIK ENVIRONMENTAL AGREEMENT**  
**TABLE OF CONTENTS**

1.1	PURPOSE .....	3
1.2	GUIDING PRINCIPLES .....	4
2.1	NO PREJUDICE.....	5
2.2	TRANSITIONAL .....	5
3.1	DEFINITIONS.....	5
3.2	EXTENDED MEANINGS .....	9
3.3	TIME OF ESSENCE .....	9
3.4	BUSINESS DAY .....	9
3.5	REFERENCES .....	9
3.6	HEADINGS .....	9
3.7	LEGISLATION .....	9
4.1	ENVIRONMENTAL MONITORING ADVISORY BOARD.....	10
4.2	MANDATE OF THE ADVISORY BOARD .....	10
4.3	PARTIES CONSIDER WRITTEN RECOMMENDATION .....	11
4.4	MINISTER TO ENCOURAGE COMPLIANCE .....	12
4.5	COMPOSITION OF THE ADVISORY BOARD.....	12
4.6	FUNCTIONING OF THE ADVISORY BOARD.....	13
4.7	ANNUAL ADVISORY BOARD REPORT.....	14
4.8	FUNDING.....	14
4.9	ADMINISTRATION, TRADITIONAL KNOWLEDGE AND SCIENTIFIC SUPPORT .....	16
4.10	INFORMATION AND CO-OPERATION .....	16
4.11	TRANSITIONAL .....	17
5.1	COMPLIANCE.....	17
5.2	DDMI TO COMPLY .....	17
5.3	DDMI TO TAKE PROMPT AND APPROPRIATE ACTION .....	17
5.4	CONFIRMING COMPLIANCE .....	18
6.1	PROVISION OF ENVIRONMENTAL MANAGEMENT PLANS .....	18
6.2	ENVIRONMENTAL MANAGEMENT PLANS .....	19
6.3	REVIEW OF ENVIRONMENTAL MANAGEMENT PLANS.....	20
7.1	PROVISION OF ENVIRONMENTAL MONITORING PROGRAMS.....	21

7.2	ENVIRONMENTAL MONITORING COMPONENTS .....	22
7.3	DDMI TO USE ADAPTIVE ENVIRONMENTAL MANAGEMENT.....	22
7.4	MONITORING DATA AND RESULTS.....	22
7.5	REVIEW OF ENVIRONMENTAL MONITORING PROGRAMS .....	23
7.6	ABORIGINAL COMMUNITY INVOLVEMENT.....	23
8.1	DDMI TO MITIGATE SOCIO-ECONOMIC EFFECTS .....	24
9.1	REGIONAL CUMULATIVE EFFECTS ASSESSMENT .....	24
10.1	RECLAMATION AND ABANDONMENT.....	24
11.1	PROTECTION OF KNOWN SITES.....	25
11.2	ARCHAEOLOGICAL SURVEYS.....	25
12.1	ANNUAL REPORT .....	26
13.1	PARAMOUNTCY.....	28
13.2	NON-DUPLICATION.....	28
13.3	EXERCISE OF STATUTORY DUTIES .....	28
14.1	GENERAL COMMUNICATIONS PRINCIPLES .....	28
14.2	COMMUNICATION PLAN .....	29
14.3	PUBLIC REGISTRY .....	29
15.1	SECURITY .....	29
15.2	GNWT JURISDICTION .....	35
15.3	EVENTS OF DEFAULT AND REMEDIES .....	35
15.4	DISPUTE SETTLEMENT .....	39
16.1	DISPUTE RESOLUTION.....	39
16.2	PARTIES SHALL USE ALL REASONABLE EFFORTS.....	39
16.3	SELECTION OF THE ARBITRATOR(S).....	40
16.4	COMMERCIAL ARBITRATION ACT AND CODE .....	40
16.5	ADVISORY BOARD MAY INTERVENE .....	40
16.6	COSTS OF DISPUTE RESOLUTION.....	40
16.7	JURISDICTION OF THE ARBITRATOR(S).....	41
16.8	INTERLOCUTORY RELIEF .....	41
17.1	REMEDIES NOT EXCLUSIVE .....	41
17.2	REVIEW AND AMENDMENT OF AGREEMENT.....	42
17.3	GOVERNING LAW.....	42
17.4	FURTHER ASSURANCES .....	42

17.5	SUCCESSORS AND ASSIGNS .....	42
17.6	ASSIGNMENT .....	42
17.7	SEVERABILITY .....	43
17.8	MEMBER OF HOUSE OF COMMONS NOT TO BENEFIT .....	43
17.9	NOT A PARTNERSHIP OR JOINT VENTURE .....	43
17.10	LIABILITY .....	43
17.11	DDMI COMMITMENTS .....	44
17.12	REVIEW OF AGREEMENT .....	44
17.13	DDMI AS MANAGER .....	44
17.14	FORCE MAJEURE .....	44
17.15	SUSPENSION OF OPERATIONS .....	44
17.16	NOTICES .....	45
17.17	COUNTERPARTS .....	47
18.1	TERM .....	48
18.2	AGREEMENT TERMINATION .....	48
18.3	MINISTERIAL DISCRETION AT PROJECT TERMINATION .....	48
	SCHEDULE 1 .....	51

NORTH SLAVE MÉTIS ALLIANCE

AND

KITIKMEOT INUIT ASSOCIATION

RECITALS

- A. WHEREAS DDMI as manager of an unincorporated Joint Venture with Aber Diamond Mines Ltd. ("Aber") proposes to establish the Project to be located at the East Island in Lac de Gras, Northwest Territories for the production of rough diamonds;
- B. AND WHEREAS the Responsible Authorities conducted a comprehensive study of the Project pursuant to the *Canadian Environmental Assessment Act* and issued the Comprehensive Study Report wherein the Responsible Authorities concluded that, taking into account the implementation of appropriate mitigation measures, the Project is not likely to cause significant adverse environmental effects;
- C. AND WHEREAS the Minister of the Environment and the Responsible Authorities have determined that the Project, taking into account the implementation of appropriate mitigation measures, is not likely to cause significant adverse environmental effects;
- D. AND WHEREAS the CSR includes a requirement for the Minister, as the lead Responsible Authority, to develop an environmental agreement to provide a formal mechanism to ensure that the mitigation measures outlined in DDMI's Commitments, in addition to the mitigation measures and follow-up requirements which will be specified as terms and conditions by Regulatory Instruments, are appropriately implemented and monitored;
- E. AND WHEREAS the air, land, water, aquatic resources, and wildlife are essential to the lives and well-being of the Aboriginal Peoples;
- F. AND WHEREAS DDMI proposes to conduct adaptive environmental management to minimize the environmental impact of the Project;
- G. AND WHEREAS DDMI and the Aboriginal Peoples have entered into or are in the process of negotiating and settling Participation Agreements in connection with the Project;

JJB  
11/22/87

H. AND WHEREAS, DDMI and the GNWT have entered into a Socio-economic Monitoring Agreement which is intended to meet the requirement of the CSR and provides for the involvement of Aboriginal Peoples.

NOW THEREFORE, in consideration of the premises and the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties covenant and agree as follows:

## ARTICLE I

### STATEMENT OF PURPOSE AND GUIDING PRINCIPLES

#### 1.1 PURPOSE

This Agreement is intended to be a legally binding agreement for the achievement of the following purposes:

- (a) To ensure that the mitigation measures outlined in DDMI's Commitments and in the Responsible Authorities' conclusions as documented in the CSR are appropriately implemented;
- (b) To provide for additional monitoring which, in conjunction with the monitoring requirements of Regulatory Instruments, will serve to verify the accuracy of the environmental assessment of the Project and the effectiveness of mitigation measures, and whether Commitments are being fulfilled;
- (c) To facilitate the use of holistic and ecosystem-based approaches for the monitoring, management and regulation of the Project;
- (d) To respect and protect air, land, water, aquatic resources, wildlife, archaeological and cultural resources, and the land-based economy that are essential to the way of life and well-being of the Aboriginal Peoples;
- (e) To create opportunities for community and public input and participation;
- (f) To provide advice and direction to DDMI in order to assist DDMI in managing the Project consistent with these purposes;
- (g) To maximize the effectiveness and co-ordination of environmental monitoring and regulation of the Project; and

*J.P.*  
11/11/15



(h) To facilitate effective communication about the Project with Affected Communities and effective participation of the Aboriginal Peoples and the general public in the achievement of the above purposes.

## 1.2 GUIDING PRINCIPLES

The Parties agree to carry out their responsibilities under this Agreement and the Regulatory Instruments consistently with the purposes in Article 1.1 and guided by the following principles:

- (a) Adaptive environmental management;
- (b) Sustainable development;
- (c) Design and implementation of Environmental Protection Measures to minimize adverse effects on Environmental Quality to the extent technically and economically feasible;
- (d) Precautionary Principle;
- (e) Promotion of capacity-building for the Aboriginal Peoples respecting Project-related environmental matters;
- (f) Recognition of the particular environmental values of the Lac de Gras region;
- (g) Full consideration and use of both traditional knowledge and other scientific information where appropriate; and
- (h) Promotion of a co-operative approach among the Parties respecting Project-related environmental matters.

*AGP*  
*March 21/01*

## ARTICLE II

### NO PREJUDICE

#### 2.1 NO PREJUDICE

This Agreement is without prejudice to the positions of the Parties respecting any:

- (a) existing Aboriginal or treaty rights of the Aboriginal Peoples;
- (b) on-going or future land claims or self-government negotiations affecting Aboriginal Peoples;
- (c) constitutional changes which may occur in the Northwest Territories;
- (d) changes to legislation or regulations resulting from the settlement of land claims and self-government negotiations, or resulting from constitutional changes or devolution; or
- (e) existing or future Participation Agreements.

#### 2.2 TRANSITIONAL

In the event that jurisdiction or regulatory authority relating to the Project or any aspect of the Project, is transferred or devolved as a result of constitutional change, treaty, self-government or land claim agreement, or otherwise, the Parties shall negotiate, in good faith, to amend this Agreement to reflect such transfer or devolution, while maintaining the purposes and principles of this Agreement.

## ARTICLE III

### INTERPRETATION

#### 3.1 DEFINITIONS

In this Agreement, unless the context otherwise indicates, the following terms shall have the meanings ascribed to them below:

"Aboriginal Peoples" means the Dogrib Treaty 11 Council, the Lutsel K'e Dene Band, the Yellowknives Dene First Nation, the North Slave Métis Alliance and the Kitikmeot Inuit Association.

*Handwritten signature and date:*  
AP  
March 8/00

**"Affected Communities"** means the communities identified in the CSR which are affected in relation to the subject matter within which they are referenced in the CSR. <sup>a</sup> <sup>6</sup> JAB

**"Annual Report"** has the meaning attributed thereto in Article 12.1.

**"Arbitrator(s)"** means the arbitrator or arbitrators selected pursuant to Article 16.3 in respect of any particular dispute.

**"Archaeological Site"** means a site or work of archaeological, ethnological or historical importance, interest, or significance or a place where an archaeological specimen is found and includes explorers' cairns.

**"Commercial Production"** means production at the rate of 80% of design capacity for the Project processing plant for 30 consecutive days.

**"Commitment"** means:

- (a) any commitment to a mitigation measure or a follow-up program made by DDMI, whether
  - (i) given to a Responsible Authority in the course of seeking or securing any recommendation or decision under the *Canadian Environmental Assessment Act* with respect to the Project, or
  - (ii) given to the governmental agency responsible for issuing any Regulatory Instrument, in the course of seeking or securing the issuance of the Regulatory Instrument,
 provided that
  - (iii) where the commitment as originally given by DDMI was modified by DDMI and where the modification was accepted by the Responsible Authority (in the case of a commitment referred to in paragraph (a)(i) of this definition) or the responsible governmental authority (in the case of a commitment referred to in paragraph (a)(ii) of this definition) in the recommendation, decision or Regulatory Instrument, or prior to the making or issuance thereof, "Commitment" means the commitment as so modified, and
  - (iv) where the commitment as originally given by DDMI is departed from in order to comply with the requirements of the principle of adaptive environmental management, "Commitment" means the commitment modified to comply with those requirements; and
- (b) any obligation imposed upon DDMI by or pursuant to the terms of any such recommendation, decision, or Regulatory Instrument.

**"Consult" or "Consultation"** shall mean, at a minimum:

- (a) the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented.

JAB  
March 91

"CSR" means the report entitled "Comprehensive Study Report - Diavik Diamonds Project" dated June 1999 and includes the Responsible Authorities' Response to Public Comments dated September 1999.

"\$" means Canadian dollars.

"Effective Date" has the meaning assigned to it in Article 18.1 (a).

"Environment" means the components of the Earth, and includes:

- (a) land, water, and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b)

"Environmental Management Plans" has the meaning attributed thereto in Article VI.

"Environmental Monitoring Advisory Board" means the Advisory Board referred to in Article IV.

"Environmental Monitoring Programs" has the meaning attributed thereto in Article VII.

"Environmental Plans and Programs" means the Environmental Management Plans, Environmental Monitoring Programs, the Reclamation and Abandonment Plan and any other environmental management plans or environmental monitoring programs carried out or conducted in connection with the Project.

"Environmental Protection Measures" means all measures taken to effect Environmental Quality, including but not limited to, assessment and prediction of impacts, monitoring, measures to avoid or mitigate impacts, setting of limits for environmental degradation, and measures for construction, operations, closure, reclamation and abandonment of the Project.

"Environmental Quality" means the state of the environment at any time as compared to natural, unaltered characteristics of the area with respect to biological diversity and ecosystem structures and processes. Environmental Quality is maximized when measured indicators show that ecological processes are functioning naturally, ecosystem structure and reproductive capacity of animal and plant populations is unimpaired, and human interference has negligible impacts.

"Joint Venture" means the unincorporated joint venture established by the parties to the Joint Venture Agreement.

"Joint Venture Agreement" means the agreement between DDMI and Aber.

"Land Leases" means the following leases under the *Territorial Lands Act*: 76D/8-5-2 (Water Lot B A154/418), 76D/8-6-2 (Quarry/PKC/North Inlet), 76D/8-7-2 (Infrastructure), 76D/9-5-2 (Airstrip), and 76D/9-9-2 (Water Lot E A21), which as of the date of this Agreement, have not yet been fully executed; and includes any renewal, amendment or replacement thereof.

"Minister" means the Minister of Indian Affairs and Northern Development.

"Minister's Report" means a report that may be provided by the Minister to DDMI in the event that any Annual Report, Environmental Management Plan, or Environmental Monitoring Program provided to the Minister by DDMI is determined by the Minister to be deficient.

AB  
March 8/

"Notice of Default" means a notice which may be issued by the Minister upon the occurrence of any non-compliance by DDMI with any provisions of this Agreement describing the specific default or defaults including a requirement to rectify such default or defaults.

"NWT" means the Northwest Territories.

"Nunavut" means the Territory of Nunavut.

"Participation Agreements" means those participation agreements, also known as impact benefit agreements or other similar agreements, entered into between DDMI and the Aboriginal Peoples with respect to the Project and as same may be supplemented, revised, restated or replaced from time to time during the term of this Agreement.

"Parties" means those parties listed on the face page and second page of this Agreement who actually sign this Agreement in accordance with the provisions of Article 18, and "Party" shall mean any one of them.

"Precautionary Principle" means, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing reasonable measures to prevent environmental degradation.

"Project" means the Project described in the Project Description Submission submitted by DDMI in March 1998 for the purpose of providing the Responsible Authorities with sufficient information to initiate the Federal Environmental Assessment Process, with such refinements or alterations as have been submitted since the Project Description Submission and considered in the CSR or which are required by Responsible Authorities or regulatory authorities.

"Reclamation and Abandonment Plan(s)" has the meaning attributed thereto in Article X.

"Regulatory Instrument(s)" means any authorization, licence, lease, or permit required under any legislation required for the carrying out of the Project and includes without limitation, the Water Licence, the Fisheries Authorization(s) issued under s.35 of the *Fisheries Act*, the Land Use Permits, the Land Leases, the Explosives Factory Licences, and the Navigable Waters Permits.

"Responsible Authorities" means those departments identified as such in the CSR.

"Socio-economic Monitoring Agreement" means the agreement made the 2<sup>nd</sup> day of October, 1999 between the GNWT and DDMI pursuant to the requirements of the CSR.

"Water Licence" means the Type A Water Licence #N7L2-1645 for which original application was made by DDMI on March 4, 1998, revised September 10, 1999, and which as of the date of this Agreement, has not yet been issued by the Northwest Territories Water Board pursuant to the *Northwest Territories Waters Act* and *Northwest Territories Waters Regulations* and includes any renewal, amendment or replacement under that or any successor or other applicable legislation.

JPB  
March 8/00

### 3.2 EXTENDED MEANINGS

Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; words importing persons include firms and corporations.

### 3.3 TIME OF ESSENCE

Time shall be of the essence in all respects of this Agreement.

### 3.4 BUSINESS DAY

Whenever a payment to be made or action to be taken under this Agreement is required to be made or taken on a day which is a Saturday, Sunday or statutory holiday in the NWT, then such payment shall be made or action taken on the next succeeding day that is not a Saturday, Sunday or statutory holiday in the NWT.

### 3.5 REFERENCES

References to an article, section, subsection, paragraph or schedule shall be construed as references to an article, section, subsection, paragraph or schedule to this Agreement unless the context otherwise requires and all references to this Agreement mean this Environmental Agreement dated as of March 8, 2000.

### 3.6 HEADINGS

The division of this Agreement into articles and subsections and the insertion of headings are for convenience of reference only and shall not alter the construction or interpretation of this Agreement.

### 3.7 LEGISLATION

A reference to any statute shall be construed as including any regulations promulgated thereunder, any amendments thereto, and any successor legislation.

*AD*  
March 8/

## ARTICLE IV

### ENVIRONMENTAL MONITORING ADVISORY BOARD

#### 4.1 ENVIRONMENTAL MONITORING ADVISORY BOARD

- (a) The Environmental Monitoring Advisory Board (the "Advisory Board") for the Project shall be established as a non-profit organization under the *Societies Act*, R.S.N.W.T 1988, c. S-11. Canada shall arrange to have the Advisory Board established within sixty (60) days of the coming into effect of Article IV.
- (b) The costs incurred by Canada in establishing the Advisory Board shall be credited against Canada's contribution to the first year's budget under Article 4.8(d).

#### 4.2 MANDATE OF THE ADVISORY BOARD

The Advisory Board shall operate at arm's length and independent from the Parties, and shall perform its functions consistently with the purposes and guiding principles in Article I. The mandate of the Advisory Board shall be, in respect of the Project, to:

- (a) provide an integrated approach to achieving the purposes in Article I;
- (b) assist the Parties to implement a co-operative approach to achieving the purposes and implementing the guiding principles in Article I;
- (c) serve as a public watchdog of the regulatory process and the implementation of this Agreement;
- (d) review Environmental Plans and Programs, Annual Reports, Environmental Protection Measures, compliance or monitoring reports and other reports and data bearing on Environmental Quality that are produced by any of the Parties or regulatory authorities pursuant to this Agreement, Regulatory Instruments and laws of general application;
- (e) in respect of a matter reviewed pursuant to (d), make recommendations for the achievement of the purposes and guiding principles in Article I, to DDMI, the Minister and any other Party or body having regulatory or management responsibility for the matter;

*[Handwritten signature]*  
*[Handwritten initials]*

- (f) make recommendations on issues relating to access for purposes of wildlife harvesting;
- (g) make recommendations respecting the participation of each of the Aboriginal Peoples and Affected Communities in training initiatives and monitoring programs bearing on Environmental Quality;
- (h) make recommendations concerning the need for and design of traditional knowledge and other studies, and, where appropriate, facilitate the management and implementation of these studies;
- (i) facilitate programs to provide information to Affected Communities and the general public on matters bearing on Environmental Quality;
- (j) report to the Parties and the public on the Advisory Board's activities and the achievement of its mandate;
- (k) provide an accessible and public repository of environmental data, studies and reports relevant to the Advisory Board's mandate;
- (l) participate as an intervenor, as appropriate for the achievement of its mandate, in regulatory processes, the dispute resolution process under this Agreement and other legal processes; and
- (m) provide a meaningful role for each of the Aboriginal Peoples in the review and implementation of environmental monitoring plans in respect of the Project.

4.3 The Minister, DDMI, or any other Party, shall within sixty (60) days of receipt of any written recommendation of the Advisory Board directed to it, give full and serious consideration to the written recommendation; and either:

- (a) accept for implementation a written recommendation of the Advisory Board that is determined by the recipient to be appropriate and report to the Advisory Board to that effect; or
- (b) provide the Advisory Board with written reasons where it has been determined by the recipient that the recommendation is not appropriate and will not be implemented.

*AB*  
MARCH 81



4.4 The Minister shall encourage any regulatory authority to which a written recommendation is provided by the Advisory Board to comply with the requirements in Article 4.3.

4.5 COMPOSITION OF THE ADVISORY BOARD

(a) Subject to Article 4.6 (a), the Parties may appoint their respective members to the Advisory Board as follows:

- Dogrib Treaty 11 Council ..... 1 representative
- Yellowknives Dene First Nation.....1 representative
- Lutsel K'e Dene Band.....1 representative
- Kitikmeot Inuit Association ..... 1 representative
- North Slave Métis Alliance ..... 1 representative
- GNWT..... 1 representative
- Government of Canada..... 1 representative
- DDMI ..... 1 representative

(b) Subject to Article 4.6 (b), the Government of Nunavut may appoint one representative to the Advisory Board.

(c) The Parties may jointly appoint two public representatives to the Advisory Board.

(d) Subject to Article 4.6 (a) and (b), each of the Parties and the Government of Nunavut may appoint one alternate representative.

(e) Either or both of the representative and the alternate representative appointed to the Advisory Board by the Parties and the Government of Nunavut shall be resident in the Northwest Territories or Nunavut.

*Handwritten signature and date:*  
JBB  
March 1

#### 4.6 FUNCTIONING OF THE ADVISORY BOARD

Each Party to this Agreement and the Government of Nunavut shall be entitled to appoint representatives to the Advisory Board as follows:

- (a) A representative and an alternate shall be appointed by each Party within sixty (60) days, or as soon as practicable, following the later of the signing of this Agreement by that particular Party or the conditions in Article 18.1(c) being satisfied or waived;
- (b) The Government of Nunavut shall appoint its representative and alternate within sixty (60) days, or as soon as practicable, following the conditions in Article 18.1(c) being satisfied or waived;
- (c) Notice of appointments shall be given in writing to the Minister, and to the Chair of the Advisory Board once a Chair has been appointed;
- (d) Each of the Parties and the Government of Nunavut may, from time to time, change the representatives on the Advisory Board appointed by it, upon notice in accordance with Article 4.6(c);
- (e) The Parties may, from time to time, jointly change or remove either or both of the public representatives on the Advisory Board, upon notice in accordance with Article 4.6(c);
- (f) In the event of any vacancy or vacancies, the Advisory Board may conduct its business with such members as have been appointed;
- (g) The Advisory Board shall establish procedural rules and by-laws that are not inconsistent with the purposes and principles of this Agreement;
- (h) Terms of appointment and selection of officials and similar matters such as remuneration and conflict of interest shall be governed by the Advisory Board's by-laws;
- (i) No representative shall be deemed to be in a conflict of interest in representing the general interest of the Party or government that appointed that representative;

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*March 2*

- (j) The Advisory Board shall have an annual audit of its accounts done and shall provide a copy of the audit report to the Parties and to the Government of Nunavut. The Advisory Board shall maintain its financial records in accordance with generally accepted accounting principles; and
- (k) The Advisory Board may coordinate its activities with the activities of the board established pursuant to the Socio-economic Monitoring Agreement.

#### 4.7 ANNUAL ADVISORY BOARD REPORT

The Advisory Board shall provide an annual report of its activities and recommendations to the Parties and the Government of Nunavut. The annual report shall be made available to the public.

#### 4.8 FUNDING

- (a) During the term of this Agreement, DDMI shall provide funding, in accordance with the Advisory Board's budget, to the Advisory Board to carry out its mandate.
- (b) DDMI will pay to the Advisory Board the full amount of its contribution to the budget for a 12-month period sixty (60) days prior to the commencement of the period or, in the case of the first budget, within thirty (30) days following the establishment of the Advisory Board. *Board estab. + 30 days from Board DDMI decision.*
- (c) The Advisory Board shall manage and conduct its affairs in a fiscally prudent, reasonable and cost-effective manner and shall to that end endeavour wherever possible to reduce the cost of fulfilling its responsibilities hereunder including by: making full use of information, data and resources that may be available from DDMI or public sources; avoiding the duplication of monitoring and other activities being conducted by DDMI or governmental agencies or departments; and co-ordinating its activities with those of the board established pursuant to the Socio-economic Monitoring Agreement, including sharing office space and administrative and secretarial functions where practicable.
- (d) The Advisory Board's annual budget for each of the first two years after its establishment shall be \$800,000. DDMI, Canada, and the GNWT shall contribute respectively, \$600,000, \$150,000, and \$50,000 of that amount. The first two years' budget contains start-up costs that are non-recurring and accordingly shall not be considered a base amount for future years. Thereafter, Canada and the GNWT shall have no obligation to provide funding for future years to the Advisory Board.

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March 81*

- (e) After the first two years, the Advisory Board's budget will be for two year periods, unless the Advisory Board and DDMI agree on a shorter or longer period. The Advisory Board's budget for a period shall be determined as follows:
- (i) At least 180 days before the expiry of the then current budget period, the Advisory Board shall prepare a recommended budget for the next budget period, based on a plan of anticipated work for that period and a review of past work and financial experience;
  - (ii) The Advisory Board shall make best efforts to ensure that the amount of DDMI's contribution to the budget for any two year period shall not, without the agreement of DDMI, exceed DDMI's contribution to the budget for the preceding two year period by a percentage which is greater than the percentage change in the Consumer Price Index published by Statistics Canada over that two year period. For this purpose, the budget for the second year shall be considered \$600,000.
  - (iii) DDMI and the Advisory Board shall jointly review the plan of anticipated work and the recommended budget, and shall attempt to agree on a budget for the period;
  - (iv) In the event that DDMI and the Advisory Board cannot agree on the budget within sixty (60) days following the initiation of the joint review under Article 4.8 (e)(iii), they shall forthwith confer with the Minister and each of them will submit to the Minister a proposed budget; and
  - (v) If DDMI, the Minister, and the Advisory Board cannot within thirty (30) days following the initiation of the process under Article 4.8(e)(iv), agree on a budget for a period, the Minister shall forthwith select either the budget submitted by DDMI or, provided the Minister is reasonably satisfied that the Advisory Board has complied with Article 4.8(e)(ii), the budget submitted by the Advisory Board, and the budget so selected by the Minister shall be the budget for the next two year period.
- (f) In addition to the budget, DDMI may provide additional funding to the Advisory Board for research and monitoring activities or unforeseen circumstances, based on proposals submitted to DDMI by the Advisory Board for which funding is not available in the budget. DDMI shall in good faith review and consider proposals submitted by the Advisory Board for additional funding and shall provide written reasons to the Advisory Board and Canada if any request for funding is not accepted by DDMI. If requested by the Advisory Board or DDMI, the Minister

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shall review the matter and provide the Advisory Board and DDMI with his/her views on how this matter might be resolved and shall make public those views.

- (g) Any funds provided by DDMI, Canada, or GNWT in a budget period that are not expended in that period shall be applied to fund the costs of the Advisory Board in accordance with the budget for the succeeding budget period, provided that funds that are designated for a program that continues into a new budget period may be used for that program.

#### 4.9 ADMINISTRATION, TRADITIONAL KNOWLEDGE AND SCIENTIFIC SUPPORT

- (a) The Advisory Board may establish a secretariat to support it in its activities.
- (b) The Advisory Board may from time to time establish two panels of experts as follows:
- (i) One panel to assist in the application and consideration of traditional knowledge; and
- (ii) One panel to assist in the application and consideration of other types of scientific knowledge.
- (c) Each panel shall act on specific instruction from the Advisory Board to assist it in carrying out the Advisory Board's mandate.
- (d) The panels of experts may, both separately and jointly, meet, prepare reports and meet with the Advisory Board from time to time.
- (d) Scientific and traditional knowledge obtained through the operation or activities of the Advisory Board shall be considered public information. In the case of traditional knowledge, the agreement of the Aboriginal Peoples providing the traditional knowledge shall be necessary before the information is made public.

#### 4.10 INFORMATION AND CO-OPERATION

Each of the Parties shall co-operate with the Advisory Board and provide the Advisory Board in a timely fashion with such information and assistance requested by the Advisory Board that such Parties are reasonably able to provide and which is required for the Advisory Board to carry out its mandate.

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*March 8/00*

#### 4.11 TRANSITIONAL

The Parties shall review this Article IV two years after the Effective Date of this Agreement. Taking into account the results of the regional cumulative effects assessment and management framework initiative referred to in Article IX and the experience of other advisory environmental boards, including the BHP Independent Environmental Monitoring Agency, the Parties may negotiate to amend the provisions of this Article IV. DDMI shall not, as a result of such negotiations, be required to provide, in relation to the Project, any funding in excess of its funding obligations specified in Article 4.8.

### ARTICLE V

#### ENVIRONMENTAL COMPLIANCE

##### 5.1 COMPLIANCE

DDMI shall carry out the Project in compliance with all environmental laws and regulations and Regulatory Instruments applicable to the Project including, without limitation, the following:

- (a) the Water Licence;
- (b) Authorization(s) issued under Section 35 of the *Fisheries Act*;
- (c) Explosives Factory Licences issued under the *Explosives Act*;
- (d) the Land Leases;
- (e) Navigable Waters Permits issued under the *Navigable Waters Protection Act*; and
- (f) Any and all additional Regulatory Instruments applicable to the Project at any time.

5.2 In carrying out the Project, DDMI shall comply with this Agreement and all Environmental Plans and Programs submitted and reviewed in accordance with this Agreement.

5.3 DDMI shall take prompt and appropriate corrective action to remedy any non-compliance with Article 5.1 or Article 5.2.

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March 2/07

#### 5.4 CONFIRMING COMPLIANCE

- (a) The Minister may direct, on his or her own initiative or at the request of the Advisory Board, any qualified person to conduct investigations to confirm compliance with Article 5.2 of this Agreement.
- (b) DDMI shall admit the qualified person to the Project and shall provide the qualified person with all reasonable assistance.
- (c) The Minister will take all reasonable efforts to co-ordinate investigations under this Agreement with inspections under the Regulatory Instruments.
- (d) The qualified person shall prepare a report of his or her investigations for the Minister and the Advisory Board.

### ARTICLE VI

#### ENVIRONMENTAL MANAGEMENT PLANS

##### 6.1 PROVISION OF ENVIRONMENTAL MANAGEMENT PLANS

###### Construction Phase(s)

DDMI has provided the Parties and the Government of Nunavut, and will provide the Advisory Board (when established), with copies of its Environmental Management Plans for the Construction Phase(s) of the Project. The Environmental Management Plans contain specific and comprehensive plans to deal with environmental matters of particular concern during construction of the Project. DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made.

###### Operating Phase

Not later than six months before the commencement of Commercial Production from the Project, DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with updated copies of its Environmental Management Plans for the operating phase of the Project. The Environmental Management Plans shall contain specific and comprehensive plans to deal with environmental matters of particular concern during

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operation of the Project. Thereafter DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made. DDMI shall consider technological advances as factors in the development of Environmental Management Plans during operations. In order to effectively incorporate the traditional knowledge of Aboriginal Peoples in its Environmental Plans and Programs, DDMI shall undertake or fund such traditional knowledge studies as a Party can reasonably demonstrate are necessary and relevant, do not duplicate existing studies, and can be carried out at reasonable cost. Where applicable, traditional knowledge shall be considered fully along with scientific knowledge in developing, reviewing and amending the Environmental Management Plans.

#### Closure Phase

Not later than three years before planned closure activities are scheduled to occur, DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with current copies of its Environmental Management Plans for the Closure and Post Closure phase(s) of the Project. Thereafter DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made.

## 6.2 ENVIRONMENTAL MANAGEMENT PLANS

DDMI shall undertake environmental management of the Project through the implementation of Environmental Management Plans. The Environmental Management Plans shall, where applicable, include the following specific and comprehensive plans designed as part of a program of adaptive environmental management:

- (a) Waste Management Plan;
- (b) Water Management Plan;
- (c) Hazardous Materials Management Plan;
- (d) Blasting/Explosives Management Plan;
- (e) Quarry Management Plan;
- (f) Emergency Response Plan;
- (g) Processed Kimberlite Containment Management Plan;
- (h) Country Rock and Till Storage Management Plan;
- (i) Dredged Lakebed Sediment Management Plan;
- (j) Reclamation and Abandonment Plan(s) (including Initial, Interim and Final Plans);
- (k) Biotite Schist Management Plan;
- (l) Exploration Environmental Management Plan;

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March 8/00



- (m) Traffic Management Procedures;
- (n) Fish Habitat Management Plan;
- (o) Construction Area and Activity Management Plan;
- (p) Operations Area and Activity Management Plan; and
- (q) Wildlife Management Related Extracts from above noted plans.

The Environmental Management Plans shall include the mitigation measures outlined in DDMI's Commitments and in the conclusions of the Responsible Authorities documented in the CSR. DDMI shall adapt or revise these mitigation measures in accordance with the principles of adaptive environmental management.

DDMI shall, in the development and implementation of Environmental Plans and Programs include, where appropriate, the following:

- (a) quality control and assurance programs;
- (b) environmental awareness training for employees and contractors;
- (c) regular briefings on environmental matters to on-site supervisors; and
- (d) detailed adaptive environmental mitigation measures.

### 6.3 REVIEW OF ENVIRONMENTAL MANAGEMENT PLANS

- (a) In the event that, at any time, the Minister on his/her own initiative, or in response to a request from any Party or the Advisory Board and after Consultation with DDMI, determines that an Environmental Management Plan is inadequate or incomplete, the Minister may provide DDMI with a Minister's Report and DDMI shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report, provide:
  - (i) the Minister with revisions to the Environmental Management Plan which address to the Minister's satisfaction the deficiencies described in the Minister's Report;
  - (ii) a replacement Environmental Management Plan which addresses to the Minister's satisfaction the deficiencies described in the Minister's Report; or

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- (iii) specific replies to the deficiencies described in the Minister's Report and DDMI's detailed explanation, to the Minister's satisfaction, as to why, in DDMI's view, the Environmental Management Plan need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DDMI with a Minister's Report pursuant to Article 6.3 (a) when the Minister receives a request from the GNWT pursuant to that Article and the GNWT's request shall be included in the Minister's Report.
- (c) The Minister may provide DDMI with an extension of time where DDMI is bona fide delayed in complying with this Article.

## ARTICLE VII

### ENVIRONMENTAL MONITORING PROGRAMS

#### 7.1 PROVISION OF ENVIRONMENTAL MONITORING PROGRAMS

DDMI shall undertake compliance and environmental effects monitoring of the Project through the Environmental Monitoring Programs. DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board (when established) with copies of its Environmental Monitoring Programs. The Environmental Monitoring Programs contemplated by this Article shall be reviewed in accordance with Article 7.5 of this Agreement. The Environmental Monitoring Programs shall be revised on an ongoing basis as necessary and where appropriate in response to changing circumstances and additional information.

The Environmental Monitoring Programs shall include activities designed to:

- (a) meet the monitoring requirements of all Regulatory Instruments;
- (b) verify the accuracy of the environmental assessment of the Project;
- (c) determine the effectiveness of measures taken to mitigate any adverse environmental effects of the Project;
- (d) consider traditional knowledge;
- (e) establish or confirm thresholds or early warning signs;
- (f) trigger action by adaptive mitigation measures where appropriate;
- (g) provide opportunities for the involvement or active participation of each of the Aboriginal Peoples in the implementation of the monitoring programs; and
- (h) provide training opportunities for each of the Aboriginal Peoples.

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March 8/00

## 7.2 ENVIRONMENTAL MONITORING COMPONENTS

The Environmental Monitoring Programs shall include, but not necessarily be limited to, the following programs:

- (a) An Environmental Air Quality Monitoring Program;
- (b) A Wildlife/Vegetation Monitoring Program;
- (c) An Aquatic Effects Monitoring Program;
- (d) A Geotechnical Monitoring Program;
- (e) An Operational Health and Safety Program (limited to effects on human health resulting from environmental changes); and
- (f) Other specific environmental monitoring programs as required under territorial or federal legislation or as required in the CSR.

7.3 The Environmental Monitoring Programs will include the identification of monitoring objectives and the monitoring programs outlined in DDMI's Commitments and in the conclusions of the Responsible Authorities documented in the CSR. DDMI shall adapt or revise the Environmental Monitoring Programs in accordance with the principles of adaptive environmental management.

## 7.4 MONITORING DATA AND RESULTS

- (a) DDMI shall deliver monitoring data and information to the Parties, the Government of Nunavut, and the Advisory Board in time-frames and in formats developed in Consultation with the Advisory Board.
- (b) The formats for submission of monitoring program results and analysis shall not be inconsistent with reporting requirements established under legislation, regulations and Regulatory Instruments and the requirements of such legislation, regulations and Regulatory Instruments shall apply to the extent of any inconsistency.
- (c) Reporting dates will be established to conform with the requirements of the appropriate Regulatory Instruments.
- (d) DDMI shall carry out the monitoring in a manner which will provide data consistent with any cumulative effects monitoring programs and shall Consult and co-operate with the regulatory agencies undertaking such programs, as appropriate.

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March 9/0

## 7.5 REVIEW OF ENVIRONMENTAL MONITORING PROGRAMS

- (a) In the event that, at any time, the Minister, on his/her own initiative, or in response to a request of any Party or the Advisory Board, and after Consultation with DDMI, determines that an Environmental Monitoring Program is inadequate or incomplete, including with respect to a matter under Article 7.4, the Minister may provide DDMI with a Minister's Report and DDMI shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report, provide:
- (i) the Minister with revisions to the Environmental Monitoring Program which address to the Minister's satisfaction the deficiencies described in the Minister's Report;
  - (ii) a replacement Environmental Monitoring Program which addresses to the Minister's satisfaction the deficiencies described in the Minister's Report; or
  - (iii) specific replies to the deficiencies described in the Minister's Report and DDMI's detailed explanation, to the Minister's satisfaction, as to why, in DDMI's view, the Environmental Monitoring Program need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DDMI with a Minister's Report pursuant to Article 7.5(a) when the Minister receives a request from the GNWT pursuant to that Article and the GNWT's request shall be included in the Minister's Report.
- (c) The Minister may provide DDMI with an extension of time where DDMI is bona fide delayed in complying with this section.

## 7.6 ABORIGINAL COMMUNITY INVOLVEMENT

In addition to the participation of Aboriginal Peoples in the review of Environmental Management Plans and Environmental Monitoring Programs through participation on the Advisory Board and its activities, and the resulting capacity building, DDMI shall use its best efforts to:

- (a) provide for the involvement of members of each of the Aboriginal Peoples in Environmental Monitoring Program design and implementation;

- (b) give priority to members of each of the Aboriginal Peoples in the provision of training and employment in relation to environmental monitoring in accordance with the provisions of the Socio-economic Monitoring Agreement; and
- (c) provide technical training opportunities for youth of each of the Aboriginal Peoples.

#### ARTICLE VIII

#### SOCIO-ECONOMIC EFFECTS RESULTING FROM ENVIRONMENTAL CHANGE

- 8.1 DDMI shall comply with all requirements of the CSR relating to monitoring and mitigation of potential socio-economic effects resulting from environmental changes.

#### ARTICLE IX

#### REGIONAL CUMULATIVE EFFECTS ASSESSMENT & MANAGEMENT FRAMEWORK

- 9.1 DDMI will participate in the initiative announced by the Minister of the Environment on November 3, 1999 to develop a regional cumulative effects assessment and management framework. This framework is to consider both scientific and traditional knowledge, and be used in conjunction with adaptive management to ensure sustainable development.

#### ARTICLE X

#### RECLAMATION AND ABANDONMENT

##### 10.1 RECLAMATION AND ABANDONMENT

- (a) DDMI shall submit Reclamation and Abandonment Plan(s) as and when required pursuant to the *Northwest Territories Waters Act*, the *Mackenzie Valley Resource Management Act*, and the *Territorial Lands Act*;
- (b) The Parties acknowledge that the Reclamation and Abandonment Plan(s) will evolve over time during the life of the Project as part of the process of adaptive environmental management and through the incorporation of new and emerging technologies;

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- (c) The final Project will be abandoned using the most current technology reasonably practicable; and
- (d) DDMI will implement progressive reclamation and abandonment of the Project in a manner consistent with sustainable development.

## ARTICLE XI

### ARCHAEOLOGICAL SITES

#### 11.1 PROTECTION OF KNOWN SITES

DDMI shall establish, after Consultation with the Aboriginal Peoples and the appropriate government agencies, including the Prince of Wales Northern Heritage Centre, appropriate protection of the Archaeological Sites in the vicinity of the Project, in accordance with applicable laws and regulations, to minimize the impacts on Archaeological Sites.

#### 11.2 ARCHAEOLOGICAL SURVEYS

- (a) In the continuing exploration and development of the Project, DDMI shall conduct Archaeological surveys to meet the prevailing standards of the day and respecting places of significance to Aboriginal Peoples.
- (b) Archaeological surveys shall to the greatest extent possible, be designed and, where possible, implemented in partnership with the Aboriginal Peoples and Affected Communities or if not possible, in Consultation with the Aboriginal Peoples and Affected Communities.
- (c) DDMI shall Consult with Aboriginal Peoples and Affected Communities to ensure that traditional knowledge is incorporated into the archaeological surveys and to ensure that burial sites are identified.
- (d) In the event that an Archaeological Site is discovered in carrying out the Project, DDMI shall immediately notify the Minister, the GNWT and Aboriginal Peoples of the presence of the Archaeological Site and, subject to Article 11.2(e), DDMI shall take all reasonable steps necessary to protect the Archaeological Site.

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- (e) In conducting archaeological surveys and in the event that it becomes necessary to disturb the Archaeological Site and collect the artifacts, DDMI shall Consult with Aboriginal Peoples and obtain all necessary authorizations and comply with all applicable laws.

## ARTICLE XII

### ANNUAL REPORTS

#### 12.1 ANNUAL REPORT

- (a) DDMI shall prepare and submit an annual report (the "Annual Report") to the Parties, the Government of Nunavut, and the Advisory Board on March 31, (or on such other date as prescribed by the Minister from time to time), for each calendar year during the term of this Agreement, commencing March 31, 2001.
- (b) Each Annual Report shall include the results of Environmental Monitoring Programs, and a rolling summary and analysis of environmental effects data over the life of the Project to illustrate any trends. The actual performance of the Project shall be compared to the results predicted in the environmental assessment and the CSR and an evaluation provided as to how DDMI's adaptive environmental management has performed to the date of each Annual Report.
- (c) Each Annual Report shall include, but not be limited to, the following:
- (i) a comprehensive summary of all supporting information, data and results from the Environmental Monitoring Programs and all studies and research;
  - (ii) a comprehensive summary of all compliance reports required by the Regulatory Instruments;
  - (iii) a comprehensive summary of operational activities during the preceding year;
  - (iv) actions taken or planned to address effects or compliance problems which are set out in the Annual Report;
  - (v) a comprehensive summary of operational activities for the next year;
  - (vi) lists and abstracts of all Environmental Plans and Programs;
  - (vii) verification of accuracy of environmental assessments;
  - (viii) determination of effectiveness of mitigative measures;
  - (ix) a comprehensive summary of all adaptive management measures taken;
  - (x) a comprehensive summary of public concerns and responses to public concerns;

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11 March 2/01

- (xi) a comprehensive summary of the new technologies investigated;
  - (xii) the Minister's comments, including any Minister's Report, on the previous Annual Report; and
  - (xiii) a plain English executive summary and translations into Dogrib, Chipewyan, and Innuinaqtun using appropriate media.
- (d) In order to prepare each Annual Report and with a view to both ensuring that an opportunity is provided for early disclosure and discussion of problems and that each Annual Report meets with the requirements of this Agreement, DDMI shall Consult with the Minister and the Advisory Board as DDMI compiles the information and data to be included in such Annual Report.
- (e) Within forty-five (45) days of the receipt of the Annual Report, any Party or the Advisory Board may advise the Minister whether such Annual Report is satisfactory or unsatisfactory.
- (f) Within ninety (90) days of the receipt by the Minister of the Annual Report, the Minister shall advise DDMI whether such Annual Report is satisfactory or whether the Minister has determined that such Annual Report is deficient. In the event that the Minister has determined the Annual Report to be deficient, the Minister shall provide DDMI with a Minister's Report.
- (g) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DDMI with a Minister's Report pursuant to Article 12.1(f) when the Minister receives advice from the GNWT that the Annual Report is unsatisfactory and the GNWT's advice shall be included in the Minister's Report.
- (h) Within sixty (60) days of the receipt by DDMI of a Minister's Report, DDMI shall reply to the Minister's Report and provide the Minister with a revised Annual Report or an addendum which addresses satisfactorily the deficiencies described in the Minister's Report.
- (i) The Minister may provide DDMI with an extension of time where DDMI is bona fide delayed in completing an Annual Report or providing a reply to a Minister's Report.

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*March 8/*



## ARTICLE XIII

## REGULATORY AUTHORITY

13.1 PARAMOUNTCY

In the event that any provisions of this Agreement are in conflict with or inconsistent with any legislation or Regulatory Instrument with respect to the Project, the terms of such legislation or Regulatory Instrument shall prevail over any of the terms of this Agreement to the extent of the conflict or inconsistency.

13.2 NON-DUPLICATION

The Parties to this Agreement acknowledge that it is not the intention of this Agreement to cause any duplication with the requirements of any Regulatory Instrument. In the event that any provisions of this Agreement duplicate the requirements of any Regulatory Instrument, satisfaction of the requirements of the Regulatory Instrument shall be accepted as compliance with the requirements of this Agreement.

13.3 EXERCISE OF STATUTORY DUTIES

Nothing in this Agreement shall be construed as limiting the Minister or any other regulatory authority in the exercise of statutory powers and duties.

## ARTICLE XIV

## COMMUNICATION AND PUBLIC ACCESS TO INFORMATION

14.1 GENERAL COMMUNICATIONS PRINCIPLES

- (a) The Advisory Board shall ensure that a timely, responsive, pro-active and cooperative approach to communication and exchange of information among the Parties, between the Advisory Board and the Parties, and between the Advisory Board and the Affected Communities is in place at all times.
- (b) The Parties shall remain respectful of the functions and responsibilities of each other in the conduct of their duties.
- (c) The Parties shall provide to the Advisory Board adequate copies of all information (including data, studies, reports and other material) they generate for another body, or the public, which relates to this Agreement and is non-proprietary.

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- (d) The Parties shall take reasonable steps to provide access for the public and Affected Communities to all plans, programs, reports and other documents referred to in this Agreement.
- (e) DDMI in Consultation with the Advisory Board shall make each Annual Report available to the public and shall arrange for public meetings to review and discuss each Annual Report.
- (f) The Parties' obligations under this Agreement to collect or provide information and documentary materials are subject to any applicable legislation regarding access to information or privacy.

#### 14.2 COMMUNICATION PLAN

The Advisory Board shall develop a Communication Plan. The Communication Plan shall ensure timely, effective, efficient and consistent communication of information related to the environmental management of the Project.

#### 14.3 PUBLIC REGISTRY

The Advisory Board shall maintain a public registry and a listing of all materials placed on the public registry. All written correspondence, reports, or other materials received by the Advisory Board that relate to this Agreement shall be placed on the public registry in the Advisory Board's office and shall be made available to the public.

### ARTICLE XV

#### SECURITY AND ENFORCEMENT

##### 15.1 SECURITY

The Security Deposit, the EA Security Deposit and the Additional Security Deposit shall be held by the Minister as security for the performance by DDMI of its reclamation and abandonment obligations under the Water Licence and Land Leases, any other obligations of DDMI under environmental laws and regulations or under any other Regulatory Instruments for which the Minister is responsible, and any other obligations of DDMI under this Agreement, on and subject to the terms and conditions of this Article XV.

- (a) Within 20 days of the Effective Date of this Agreement, DDMI shall provide to the Minister a security deposit, in the amount of \$15,000,000.

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- (b) On March 31, 2001 and annually on March 31 thereafter, DDMI shall provide the Minister with additional security so that the amount of security deposited with the Minister shall equal the amount specified for that particular year in Column A in Schedule 1 as adjusted pursuant to Articles 15.1(g), 15.1(h) and 15.1(i). The \$15,000,000 amount deposited pursuant to Article 15.1(a) together with such additional amounts deposited under this Article 15.1(b) shall hereinafter be referred to as the "Security Deposit".
- (c) Column A of Schedule 1 is the estimated cost of DDMI undertaking the reclamation and abandonment of the Project should abandonment take place in any particular year. As of the Effective Date, Column A of Schedule 1 is the estimated projected cost of restoration and abandonment for the Project as prepared for DDMI by an independent professional engineer with recognized expertise in this area.
- (d) In addition to the Security Deposit, on March 31, 2003 and annually on March 31 thereafter, DDMI shall provide to the Minister additional security so that the aggregate amount of additional security deposited with the Minister shall equal the amount specified for that particular year in Column B of Schedule 1. Such aggregate amount of additional security is hereinafter referred to as the "Additional Security Deposit". Where the Additional Security Deposit held by the Minister on March 31 of any year exceeds the amount specified in Column B of Schedule 1 for that year, the Minister shall refund to DDMI any excess. The Additional Security Deposit includes security for the incremental costs which Canada will incur if it has to conduct reclamation and abandonment of the Project due to a default by DDMI, contingencies, potential for increases in environmental liabilities related to variations in Project configuration and operations which may occur over the life of the Project, and defaults under this Agreement not related to reclamation and abandonment. At the fifth anniversary of the Effective Date and at five-year intervals thereafter, the Minister at his or her sole discretion may adjust the Additional Security Deposit by an amount not to exceed the average change in the Consumer Price Index over the five-year interval. DDMI may at any time request that the Minister review the amount of the Additional Security Deposit. Upon receiving such a request the Minister shall review the amount of the Additional Security Deposit and may, in his/her sole discretion, acting in a commercially reasonable manner and in the public interest, reduce the amount of the Additional Security Deposit that DDMI is required to provide to the Minister. In making determinations under this Article 15.1(d), the Minister will take into account the extent to which the development and operations of the Project have reduced the need for the Minister to hold additional security for contingencies and for the

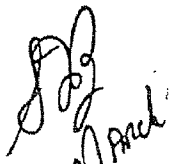
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potential for increases in environmental liabilities related to variations in Project configuration and operations, as well as the principle that there should be no duplication between the security for costs and contingencies which DDMI provides by way of the Security Deposit and the security which it provides for costs and contingencies by way of the Additional Security Deposit. The Minister will provide DDMI and the Advisory Board with reasons for all his/her decisions made pursuant to this Article 15.1(d).

- (e) The Security Deposit and the Additional Security Deposit shall be maintained throughout the term of this Agreement. In the event that all or any portion of the Security Deposit or the Additional Security Deposit is used by the Minister pursuant to Article 15.3 of this Agreement, DDMI shall, unless otherwise directed by the Minister, within thirty days of demand by the Minister showing particulars of use reimburse to the Minister the amount so used so that the amounts of the Security Deposit and the Additional Security Deposit are at all times equal, respectively, to the amounts required to be maintained pursuant to Article 15.1(b), subject to adjustment as provided in Articles 15.1(g), 15.1(h) and 15.1(i), and Article 15.1(d).
- (f) The amount of each security deposit which DDMI posts with the Minister pursuant to the Land Leases or the Water Licence shall be credited first against the Security Deposit and then against the Additional Security Deposit provided that any credit against the Additional Security Deposit shall not exceed 67% of the Additional Security Deposit. For greater certainty, a credit will not reduce either the quantum of the Security Deposit required by Article 15.1(b) or the quantum of the Additional Security Deposit required by Article 15.1(d), but rather will be an amount that is deemed to have been provided as required. Also for greater certainty, if the security posted under the Water Licence or the Land Leases is reduced, then: the credit given under this Article 15.1(f) shall decrease by an amount which corresponds to the reduction; and DDMI shall provide without delay an addition to the Security Deposit, and/or an addition to the Additional Security Deposit, to fully offset the decrease in the credit.
- (g) As provided for in Article X of this Agreement, DDMI is required to undertake progressive reclamation and abandonment of the Project in accordance with the principles of sustainable development.
- (i) Column C of Schedule 1 sets out DDMI's projected cumulative expenditures on progressive reclamation work that it will undertake over the life of the Project.

*[Handwritten signature]*  
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- (ii) Prior to January 31, 2005 and prior to January 31 of each year thereafter, DDMI may deliver to the Minister and the Advisory Board a report detailing the progressive reclamation work undertaken by or for DDMI during the previous calendar year(s), the costs incurred in undertaking this progressive reclamation work and a revised estimate of the cost of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, taking into account this progressive reclamation, certified by an independent professional engineer with recognized expertise in this area. By March 31 of the same year, the Minister will review the report and determine the extent to which the progressive reclamation work has reduced the estimated cost of DDMI undertaking the reclamation and abandonment over the remaining life of the Project and the extent to which the estimate contained in the report accurately reflects the revised costs of DDMI undertaking the remaining reclamation and abandonment of the Project. To the extent the Minister is satisfied that the progressive reclamation work undertaken by DDMI has reduced the estimated costs of reclamation and abandonment remaining over the life of the Project, the Minister shall make a determination to that effect and provide a copy to DDMI and the Advisory Board. The amount of the Security Deposit which DDMI must provide to the Minister on March 31 of that year and subsequent years shall be reduced so that it is equal to the revised estimated costs of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, as accepted by the Minister and Column A of Schedule I shall be adjusted accordingly. Where the amount of the Security Deposit which DDMI has provided to the Minister exceeds the estimated cost of DDMI undertaking reclamation and abandonment over the life of the Project on any March 31 date, as accepted by the Minister, the Minister shall refund to DDMI any such excess, subject to applicable legislation.
- (h) At any time after the second anniversary of the Effective Date of this Agreement, DDMI may deliver to the Minister and the Advisory Board a report detailing a revised estimate of the cost of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, taking into account changes to the Project and any other relevant factors not considered in Article 15.1(g) above, prepared by an independent professional engineer with recognized expertise in this area. Within ninety days of receipt of the report, the Minister will review the report and determine the extent to which this revised estimate accurately reflects the costs of DDMI undertaking the remaining reclamation and abandonment of the Project. To the extent the Minister is satisfied that this estimate accurately reflects the costs of DDMI undertaking the remaining reclamation and abandonment of the Project, the Minister shall make a determination to that effect and will provide a copy to

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DDMI and the Advisory Board. The amount of the Security Deposit which DDMI must provide to the Minister on the next March 31, and March 31 of subsequent years shall be reduced so that it is equal to the revised estimated costs of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, as accepted by the Minister and Column A of Schedule I will be amended to reflect the Minister's determination. Where the amount the Security Deposit which DDMI has provided to the Minister exceeds the estimated cost of DDMI undertaking reclamation and abandonment over the life of the Project on any March 31 date, as accepted by the Minister, the Minister shall refund to DDMI any such excess subject to applicable legislation.

- (i) At any time after the second anniversary date of the Effective Date of this Agreement, the Minister may notify DDMI and the Advisory Board that he/she intends to seek a report containing an updated estimate of the cost of reclamation and abandonment for the Project prepared by an independent professional engineer with recognized expertise in this area. DDMI shall be offered a reasonable opportunity to provide comments to the Minister on the scope of such a report. When any such report is then available, the Minister shall provide a copy to DDMI and the Advisory Board and will again provide to DDMI a reasonable opportunity to provide comments on the report. To the extent that the Minister determines that he/she does accept the updated estimates of the costs of reclamation and abandonment over the remaining life of the Project, and should such estimated costs of reclamation and abandonment to the extent accepted by the Minister as at that time be greater than the amount of the Security Deposit, DDMI shall provide the Minister with an additional amount of security so that the amount of the Security Deposit required as at that time is equal to the estimated costs of reclamation and abandonment as at that time, such additional security to be provided to the Minister within 60 days of a demand by the Minister to do so, and Column A of Schedule I will be amended to reflect the Minister's determination.
- (j) The reviews of the Security Deposit contemplated in Articles 15.1(g), 15.1(h) and 15.1(i) shall, to the extent practicable, be co-ordinated with the reviews of security posted pursuant to the Land Leases and/or the Water Licences. In addition, where there has been a reduction in the amount of the security under either the Water Licence or the Land Leases, the Minister shall, at the request of DDMI, review the amount of the Security Deposit to determine if the Security Deposit should be adjusted, giving serious consideration to the rationale for any such reduction in the amount of security posted under the Water Licence and Land Leases.

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- (k) In addition to the Security Deposit and the Additional Security Deposit, as security for the performance of its obligations under this Agreement, DDMI shall provide to the Minister within 90 days of the signing of this Agreement, and shall at all times maintain with the Minister, a security deposit (the "EA Security Deposit") in a form satisfactory to the Minister and on terms satisfactory to the Minister in the amount of \$3,000,000. At the fifth anniversary of the Effective Date and at five-year intervals thereafter, the Minister at his or her sole discretion may adjust the EA Security by an amount not to exceed the average change in the Consumer Price Index over the five-year interval. In the event that all or any portion of the EA Security Deposit is used by the Minister pursuant to Article 15.3 to cure a default under this Agreement, DDMI shall within thirty days of demand by the Minister showing particulars of use reimburse to the Minister the amount so used so that the aggregate amount of the EA Security Deposit shall at all times equal \$3,000,000 subject to adjustment as herein provided.
- (l) The Security Deposit, the EA Security Deposit and at least sixty-seven percent (67%) of the Additional Security Deposit shall be provided in the form of: cash; an irrevocable unconditional letter of credit; an amount held in a Qualifying Environmental Trust established through an indenture that has been approved by the Minister; any other form of security proposed by DDMI and satisfactory to the Minister; or any combination of the foregoing. Up to thirty-three percent (33%) of the Additional Security Deposit need not be provided in the form of: cash; an irrevocable unconditional letter of credit; an amount held in a Qualifying Environmental Trust established through an indenture that has been approved by the Minister; or any combination of the foregoing, but may be provided in the form of: an irrevocable guarantee; insurance; or any other form of security proposed by DDMI; or any combination of the foregoing, provided that the Additional Security Deposit is in a form(s) satisfactory to the Minister.
- (m) If the Security Deposit, the Additional Security Deposit or the EA Security Deposit is composed in whole or in part of cash, how it is invested and how interest which may be earned thereon will be allocated, shall be determined by the Minister and DDMI in the terms of the applicable security instrument(s). The terms on which the Security Deposit, the Additional Security Deposit or the EA Security Deposit will be delivered to and held by the Minister, if the Security Deposit, the Additional Security Deposit or the EA Security Deposit is not wholly in the form of cash, shall be consistent with the terms of this Agreement and be determined by the Minister and DDMI in the applicable security instrument(s).

*ADJ*  
*March 8'*

- (n) Once DDMI has completed the reclamation and abandonment of the project to the satisfaction of the Minister, the Minister shall return to DDMI any unused portion of the Security Deposit, the EA Security Deposit and of the Additional Security Deposit less any amounts related to ongoing monitoring and maintenance of the Project, if and to the extent required by this Agreement. The Minister's obligation to return any unused portion of the Additional Security Deposit shall include taking appropriate steps to terminate, cancel or release guarantees, insurance or like assurances comprised in the Additional Security Deposit.
- (o) Schedule 1 shall form part of this Agreement and shall be deemed to be amended from time to time to incorporate changes made to it pursuant to this Article 15.1.

## 15.2 GNWT JURISDICTION

- (a) The Minister shall provide DDMI with a Notice of Default, in accordance and compliance with the process in Article 15.3, when the Minister is notified in writing by the GNWT that, in the opinion of the GNWT DDMI has not performed any of its obligations under this Agreement with respect to a matter substantially within the jurisdiction of the GNWT.
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall, within 30 days after the Minister has drawn funds on the Security Deposit, the EA Security Deposit or the Additional Security Deposit in accordance with Article 15.3(a)(iii) or Article 15.3(a)(iv), pay to the GNWT from the funds so drawn reimbursement of all reasonable costs expended by the GNWT in rectifying non-compliance by DDMI under Article V.

## 15.3 EVENTS OF DEFAULT AND REMEDIES

- (a) (i) Subject to Articles 15.3(b) and 15.3(d), in the event that in the opinion of the Minister DDMI has not performed any of its obligations under this Agreement, the Minister will advise DDMI, specifying the failure, and DDMI will have a reasonable period determined by the Minister in his/her discretion in which to either explain to the Minister's satisfaction why such failure has not occurred, or commence to carry out, and thereafter diligently continue to carry out, all required steps to remedy the failure and to prevent its recurrence.

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- (ii) If, within the determined period, DDMI fails to explain to the Minister's satisfaction and fails to commence carrying out to the Minister's satisfaction all required steps to remedy the failure and to prevent its recurrence, or if DDMI, having commenced to carry out all required steps, thereafter fails to continue carrying out to the Minister's satisfaction any required step, then the Minister shall be entitled to give Notice of Default to DDMI.
- (iii) Subject to Article 15.3(iv) below, if the default has arisen as a result of DDMI's failure to comply with any of its obligations under this Agreement, and if within 30 days, or such longer period as the Minister will grant if reasonable in his/her opinion, of receipt of such Notice of Default DDMI does not commence to carry out, and thereafter diligently continue to carry out, all required steps to remedy the failure and to prevent its recurrence, the Minister shall be entitled to draw down and use the Security Deposit, the Additional Security Deposit and the EA Security Deposit as and when required to carry out any work reasonably required to cure such default, provided that the Minister shall draw down and use the portion of the Additional Security Deposit that is described in the second sentence of Article 15.1(l) only after utilizing the security posted under the Water Licence, the Land Leases, the Security Deposit, the remainder of the Additional Security Deposit and the EA Security Deposit, to the extent available. In addition, if such default has arisen as a result of DDMI's failure to comply with its obligations under Article V or X of this Agreement, and if such default is substantial and material, and if DDMI does not commence to carry out, and thereafter diligently continue to carry out, all required steps to remedy the failure and to prevent its recurrence, the Minister shall, in addition to the right to use the Security Deposit, the Additional Security Deposit and the EA Security Deposit, be entitled to suspend the operations of the Project and/or terminate the Land Leases.
- (iv) The Minister shall be entitled to draw down and use the EA Security Deposit, as and when required, only to remedy defaults under this Agreement except for defaults under Article 5.1.
- (b) In the case of a serious and imminent threat to the environment for which DDMI is responsible under this Agreement and in respect of which DDMI has been informed and is not taking measures satisfactory to the Minister, the Minister shall

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be immediately entitled to use the Security Deposit (unless the security deposit under the Water Licence or the security deposits under the Land Leases are available for that purpose) and the Additional Security Deposit without the requirement for any demand, notice or other formality whatsoever.

- (c) In the event that DDMI fails to provide the Minister with the Security Deposit, the EA Security Deposit or the Additional Security Deposit as required by Article 15.1, fails to increase the Security Deposit or the Additional Security Deposit as required by Article 15.1 or fails to reimburse any amounts drawn on the Security Deposit, the Additional Security Deposit or the EA Security Deposit as required by this Agreement, within 30 days of the delivery to DDMI of a Notice of Default, or any such longer period as the Minister in his/her sole discretion may decide, the Minister shall be entitled to suspend the operations of the Project and/or terminate the Land Leases.
- (d) In the event that DDMI is adjudged or declared bankrupt or adjudged or declared insolvent or makes an assignment for the benefit of its creditors or petitions or makes a proposal in bankruptcy or applies to any tribunal for the appointment of a receiver or trustee for DDMI or for any substantial part of its property, or commences any proceedings, other than a Permitted Arrangement, relating to it under any reorganization, arrangement or re-adjustment of debt, dissolution or liquidation law, law enabling corporate reorganizations or statute of any jurisdiction whether now or hereafter in effect relating to or governing debtors, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for DDMI or any part of its property, or suffers the appointment of any receiver or trustee or administrative receiver, DDMI shall, absent a declaration to the contrary by the Minister, be immediately deemed to be in default under this Agreement and the Minister shall immediately be entitled to the full amount of the Security Deposit, the Additional Security Deposit and the EA Security Deposit without the requirement for any notice or demand or other formality whatsoever provided, however, that as long as DDMI is otherwise in compliance with its obligations under this Agreement, the Water Licence, the Land Leases and any other applicable Regulatory Instruments, the Minister shall not withdraw any amounts from the Security Deposit, the EA Security Deposit and the Additional Security Deposit, it being acknowledged and agreed that the Security Deposit, the EA Security Deposit and the Additional Security Deposit shall only be used to fund performance, by or on behalf of the Minister, of said obligations in the event DDMI defaults in the performance of such obligations and, except in the case of a serious and imminent threat to the environment resulting from such default of which DDMI has been informed and in respect of which DDMI is not taking measures satisfactory to the Minister, in which case the Minister shall be immediately

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entitled to use the Security Deposit, EA Security Deposit and the Additional Security Deposit as provided in Article 15.3(b), DDMI does not cure such default to the Minister's satisfaction within thirty (30) days, or such longer period as the Minister may grant if reasonable in his/her opinion, of the Minister providing DDMI with notice of such default. DDMI shall no longer be deemed to be in default under this Article 15.3(d) in the event that a plan, proposal or arrangement under the *Bankruptcy and Insolvency Act* or *Companies' Creditors Arrangement Act* or similar or analogous proceedings are approved and implemented.

'Permitted Arrangement' means an arrangement, amalgamation or winding-up under the *Canada Business Corporations Act* or any similar legislation which the Minister has consented to, such consent not to be unreasonably withheld, or which (a) would not in any way compromise, adversely affect or adversely modify the rights, ranking and priority of the claims of Her Majesty arising under this Agreement, the Water Licence, the Land Leases or any other applicable Regulatory Instruments or any security provided in connection herewith or therewith against DDMI or its assets or property it being acknowledged that a substitution, in accordance with the provisions of Article 17.6, of a new or successor corporation for DDMI that would not itself be deemed to be in default pursuant to this Article 15.3(d), will not in and of itself be an adverse modification of Her Majesty's rights, (b) would not convert or create any entitlement (whether conditional or otherwise) to conversion of any equity into indebtedness, other than indebtedness which by its terms is subordinated to the claims of Her Majesty under this Agreement and (c) would not result in the holder of any claim which, prior to such arrangement taking effect, ranked subordinate to or *pari passu* with the claims of Her Majesty arising under this Agreement, the Water Licence, the Land Leases or any other applicable Regulatory Instruments or any security provided in connection herewith or therewith acquiring a priority (or prior right or claim) over such claims of Her Majesty.

- (e) The remedies provided for hereunder are not exclusive and are not intended to replace remedial measures which are given effect pursuant to environmental legislation, regulations or under the Regulatory Instruments. For greater certainty, notwithstanding Article 15.3(a) and (b); any security taken pursuant to the Water Licence shall be used in accordance with the Northwest Territories Waters Act.
- (f) Any costs which are incurred by Canada in connection with default by DDMI under the terms of this Agreement, and which exceed the amount available under any of the security deposits, shall be recoverable from DDMI as a debt due to Her Majesty.

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- (g) In using the Security Deposit, EA Security Deposit and the Additional Security Deposit to remedy defaults under this Agreement, the Minister shall be required to act in a commercially reasonable manner, and shall not remedy any default to a higher standard than would be required of DDMI.
- (h) To the extent not prohibited by law, DDMI shall have the right to audit, from time to time on reasonable notice to the Minister and at DDMI's expense, any expenditure of funds withdrawn by the Minister from the Security Deposit, EA Security Deposit or the Additional Security Deposit.

#### 15.4 DISPUTE SETTLEMENT

Any determination by the Minister under Articles 15.1(g), 15.1(h) or 15.1(i) shall be subject to arbitration by DDMI and the Minister in accordance with the provisions of Article XVI in the event that such determination is disputed by DDMI. Any other dispute or matter arising under or with reference to this Article XV shall not be dealt with pursuant to Article XVI but shall instead be within the jurisdiction of the courts.

### ARTICLE XVI

#### RESOLUTION OF DISPUTES

#### 16.1 DISPUTE RESOLUTION

Subject to Article 15.4, where there is a dispute between any Parties (the "disputing parties") arising out of or in connection with this Agreement, then the disputing parties shall submit the matter to binding arbitration subject to the dispute resolution provisions set out below.

- 16.2 In the event a dispute arises, the disputing parties shall use all reasonable efforts, including mediation if the disputing parties agree, to amicably resolve the dispute within sixty (60) days, or such extended time as the disputing parties may agree, within delivery of notice in writing of a dispute from one disputing party to another.

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### 16.3 SELECTION OF THE ARBITRATOR(S)

If the dispute is not resolved pursuant to Article 16.2, then the disputing parties shall refer the dispute to binding arbitration and the following provisions shall apply:

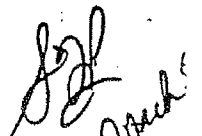
- (a) the dispute shall be referred to a single arbitrator if the disputing parties agree; otherwise it shall be referred to three arbitrators, one of whom shall be chosen by the Party or Parties bringing the dispute, one by the Party or Parties responding to the dispute, and the third by the two so chosen. The third arbitrator shall be the chairperson. Arbitrators shall be independent, disinterested, knowledgeable and experienced in the issue in dispute. A decision may be made by a majority of the arbitrators;
- (b) if, within sixty (60) days of being notified that a dispute has been referred to arbitration, or such extended time as the disputing parties may agree upon, a Party or Parties who have been so notified fail to appoint an arbitrator, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of an arbitrator; and
- (c) if within thirty (30) days or such extended time as the disputing parties may agree upon, the first two arbitrators appointed under Article 16.3 (a) or (b) above do not agree upon the third arbitrator, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of the third arbitrator.

16.4 Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (Canada) and *Commercial Arbitration Code* annexed thereto, shall apply.

16.5 The Advisory Board shall be entitled to intervene, as appropriate, in the resolution of disputes under this Agreement.

### 16.6 COSTS OF DISPUTE RESOLUTION

Unless the parties agree otherwise, the Parties shall bear their own costs of dispute resolution, and the costs of a mediator or an Arbitrator(s) shall be paid in equal shares by the parties to the dispute.



## 16.7 JURISDICTION OF THE ARBITRATOR(S)

The jurisdiction of the Arbitrator(s) is limited to issuing awards resolving disputes respecting interpretation, application or alleged breach of the terms of this Agreement, awards requiring compliance with this Agreement and awards requiring the performance of work in accordance with this Agreement. An Arbitrator(s) shall not have jurisdiction to issue any monetary awards or damages, penalties, accounting, costs or equitable remedies, except for the issuance of orders requiring the performance of work in accordance with this Agreement.

## 16.8 INTERLOCUTORY RELIEF

- (a) Nothing in this Article prevents a Party from commencing judicial proceedings at any time:
- (i) to prevent a loss of a right to commence proceedings due to the expiration of a limitation period; or
  - (ii) to obtain an interim order for the protection or preservation of property that is the subject matter of the dispute;

where, for any reason, it is impossible or impractical for an Arbitrator(s) to promptly resolve the matter in dispute.

- (b) Neither the resolution of such court application nor the participation therein by any Party shall operate as a bar to arbitration, or as a waiver of any of the rights and obligations of any Party with respect to dispute resolution in accordance with the terms of this Agreement.

## ARTICLE XVII

### GENERAL PROVISIONS

#### 17.1 REMEDIES NOT EXCLUSIVE

The rights and remedies of any Party under this Agreement are cumulative and in addition to, and not in substitution for, any rights, powers or remedies provided at law or in equity including, without limitation, pursuant to applicable environmental legislation. Any single or partial exercise by any Party of any right or remedy for a default or breach of any term, covenant, condition or agreement in this Agreement does not affect that Party's rights and

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March 91

does not waive, alter, affect or prejudice any other right or remedy to which that Party may be entitled for the same default or breach. Any waiver by any Party of the strict observance of, performance of, or compliance with, any term, covenant, condition or agreement of this Agreement must be in writing to be effective and any waiver or indulgence by any Party shall not constitute a waiver of any other provisions, a continuing waiver or a waiver of any subsequent default.

#### 17.2 REVIEW AND AMENDMENT OF AGREEMENT

- (a) After the fifth anniversary of the Effective Date of this Agreement and thereafter at five-year intervals, the Parties may conduct an assessment of this Agreement in Consultation with the Advisory Board.
- (b) This Agreement may be amended at any time by written agreement among the Parties.

#### 17.3 GOVERNING LAW

This Agreement is governed by and is to be construed in accordance with the laws of the Northwest Territories, and the laws of Canada applicable therein.

#### 17.4 FURTHER ASSURANCES

The Parties shall with reasonable diligence do all things and provide such further documents or instruments as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

#### 17.5 SUCCESSORS AND ASSIGNS

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

#### 17.6 ASSIGNMENT

DDMI shall not assign this Agreement or any part of it, nor be released from its obligations or covenants under this Agreement, unless:

- (a) it is determined by Canada and the GNWT that the proposed assignee has the financial capacity and qualifications, and such other capacity and qualifications as may be required, to carry out DDMI's obligations under this Agreement;

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- (b) the proposed assignee enters into an agreement in writing with Canada and the GNWT in which the assignee assumes all of DDMI's obligations and liabilities under this Agreement; and
- (c) the proposed assignee is also the assignee of DDMI's obligations under the Regulatory Instruments and the Participation Agreements.

Provided, however, that if the requirements of Articles 17.6 (a) to (c) above are satisfied, DDMI shall be released from all and any obligations under this Agreement and the Parties shall execute and deliver to DDMI documents of release reasonably requested by DDMI.

#### 17.7 SEVERABILITY

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions hereof, which shall be deemed severable from any such prohibited or unenforceable provision, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### 17.8 MEMBER OF HOUSE OF COMMONS NOT TO BENEFIT

As required by the *Parliament of Canada Act*, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

#### 17.9 NOT A PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement shall be deemed to constitute the Parties or any of them partners, joint venturers or principal and agent.

#### 17.10 LIABILITY

This Agreement in no way limits the obligations of DDMI with respect to any environmental matter relating to the Project including, without limitation, the legal obligation to undertake full mine site reclamation and post closure water treatment in respect of the Project and any other potential development within the bounds of the Project.

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S. J. [unclear]



#### 17.11 DDMI COMMITMENTS

For greater certainty, nothing in this Agreement shall lessen or otherwise remove any of DDMI's Commitments.

#### 17.12 REVIEW OF AGREEMENT

The Parties agree to review, and amend if necessary, this Agreement when the Land Leases are fully executed and the Water Licence is issued to DDMI, to address any conflicts or inconsistencies.

#### 17.13 DDMI AS MANAGER

DDMI represents and warrants that it is the manager of the Project in accordance with the terms of the Joint Venture Agreement and that the terms of the Joint Venture Agreement entitle DDMI to enter into this Agreement and carry out its obligations hereunder.

#### 17.14 FORCE MAJEURE

Except in respect of matters of a serious and imminent threat to the environment in which case this Article 17.14 will not apply, in the event that DDMI is delayed or hindered in or prevented from the performance of its obligations under this Agreement by reason of an event beyond the reasonable control of DDMI, including, without limitation, strikes, inability to procure materials or services, civil commotion, sabotage or act of God, then obligations under this Agreement that are not fulfilled by DDMI as a direct result of such delay or hindrance shall not constitute a default under this Agreement during the period of such delay or hindrance.

#### 17.15 SUSPENSION OF OPERATIONS

DDMI may curtail, suspend or interrupt operations as it sees fit, and during such period of curtailment, suspension or interruption, DDMI shall be excused from the performance of its obligations hereunder to the extent considered reasonable by the Minister in Consultation with the Advisory Board.

*J.P.*  
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## 17.16 NOTICES

Any notices or communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered, during normal business hours, to, or sent by prepaid registered or certified mail, or confirmed facsimile addressed as follows:

- 1) In the case of a notice or communication to the Minister:

**Department of Indian Affairs and Northern Development**

P.O. Box 1500  
Yellowknife, NT  
X1A 2R3

Attention: Regional Director General  
Telephone: (867) 669-2501  
Facsimile: (867) 669-2703

- 2) In the case of a notice or communication to the GNWT:

**Government of the Northwest Territories**

P.O. Box 1320  
Yellowknife, NT  
X1A 2L9

Attention: Deputy Minister  
Resources, Wildlife and Economic Development  
Telephone: (867) 920-8691  
Facsimile: (867) 873-0563

- 3) In the case of a notice or communication to the Government of Nunavut:

**Government of Nunavut**

P.O. Box 1340  
Iqaluit, NU  
X0A 0H0

Attention: Deputy Minister  
Sustainable Development  
Telephone: (867) 979-5900  
Facsimile: (867) 975-5982

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March 21

- 4) In the case of a notice or communication to DDMI:

**Diavik Diamond Mines Inc.**

P.O. Box 2498

Yellowknife, NT

X1A 2P8

Attention:

Vice President - Environmental Affairs

Telephone:

(867) 669-6500

Facsimile:

(867) 669-9058

- 5) In the case of a notice or communication to Dogrib Treaty 11 Council:

**Dogrib Treaty 11 Council**

P.O. Box 412

Rae-Edzo, NT

X0E 0Y0

Attention:

Grand Chief

Telephone:

(867) 392-6381

Facsimile:

(867) 392-6389

- 6) In the case of a notice or communication to Lutsel K'e Dene Band:

**Lutsel K'e Dene Band**

P.O. Box 28

Lutsel K'e, NT

X0E 1A0

Attention:

Chief

Telephone:

(867) 370-3051

Facsimile:

(867) 370-3010

- 7) In the case of a notice or communication to Yellowknives Dene First Nation:

**Yellowknives Dene First Nation**

P.O. Box 2514

Yellowknife, NT

X1A 2P8

Attention:

Chiefs

Telephone:

(867) 873-4307

Facsimile:

(867) 873-5969

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8) In the case of a notice or communication to North Slave Métis Alliance:

**North Slave Métis Alliance**

P.O. Box 340  
Yellowknife, NT  
X1A 2N3

Attention: President  
Telephone: (867) 873-9176  
Facsimile: (867) 669-7442

9) In the case of a notice or communication to Kitikmeot Inuit Association:

**Kitikmeot Inuit Association**

P.O. Box 18  
Cambridge Bay, NU  
X0E 0C0

Attention: President  
Telephone: (867) 983-2458  
Facsimile: (867) 983-2701

10) In the case of a notice or communication with the Advisory Board:

The Advisory Board shall give notice of its address to the Parties and the Government of Nunavut as soon as is practicable.

or at such other address as any Party or the Government of Nunavut may from time to time advise the other Parties, the Government of Nunavut, and the Advisory Board by notice in writing. Any notice given by personal delivery shall be deemed to be received on the date of delivery. Any notice sent by fax shall be deemed to have been received on the next day following receipt by the sender of confirmation of completion or transmission that is not a Saturday, Sunday or statutory holiday in the NWT.

**17.17 COUNTERPARTS**

This Agreement may be executed in counterparts each of which shall be considered an original and all of which taken together shall constitute a single agreement. The Parties may rely upon copies of this Agreement which are delivered by facsimile as if such copies were originals.

*Handwritten signature and date:*  
March 81

## ARTICLE XVIII

## TERM

18.1 TERM

- (a) Subject to Article 18.1 (c), this Agreement shall come into effect upon signing by at least DDMI, GNWT and Canada (the date upon which such a signing occurs being called the "Effective Date").
- (b) This Agreement shall become binding upon and shall enure to the benefit of each of the other Parties if, as and when they sign this Agreement.
- (c) Subject to Article 18.1 (d), the provisions of Articles IV, VI, VII, VIII, XII and XIV shall not come into effect unless and until the Land Leases have been fully executed and the Water Licence and all other Regulatory Instruments to commence construction of the Project have been issued to DDMI and DDMI has given written notice to the Minister of its intention to proceed to construct and operate the Project.
- (d) DDMI may unilaterally waive the condition in Article 18.1 (c).

18.2 This Agreement shall terminate upon full and final reclamation and abandonment of the Project site, in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement and completion of any and all post-closure monitoring and maintenance required in connection with the Project.

18.3 Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

- (a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

*J.P.*  
March 31/18

- (b) set a schedule for winding down and concluding the operation of the Advisory Board.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives

DLAVIK DIAMOND MINES INC.

By: *[Signature]* c/s

By: *[Signature]*

\_\_\_\_\_  
 Minister of Indian Affairs and Northern  
 Development, on behalf of Her Majesty  
 The Queen in right of Canada

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Minister of Resources, Wildlife and Economic  
 Development on behalf of the Government of  
 the Northwest Territories

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Grand Chief  
 Dogrib Treaty 11 Council

\_\_\_\_\_  
 Witness

*[Handwritten signature]*  
 March 10

\_\_\_\_\_  
Chief  
Lutsel K'e Dene Band

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chief  
Yellowknives Dene First Nation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
President  
Kitikmeot Inuit Association

\_\_\_\_\_  
Witness

\_\_\_\_\_  
President  
North Slave Metis Alliance

\_\_\_\_\_  
Witness

*AGP*  
*March 9/01*

**SCHEDULE 1**  
(millions)

	(A)	(B)	(C)
	Life of Project Closure Costs	Amount of Additional Security Deposit	DDMI Projected Cumulative Progressive R&A Expenditures
2000	C\$15	C\$0	C\$0
2001	C\$20	C\$0	C\$0
2002	C\$25	C\$0	C\$0
2003	C\$40	C\$10	C\$0
2004	C\$48	C\$26	C\$2
2005	C\$56	C\$43	C\$4
2006	C\$65	C\$59	C\$6
2007	C\$74	C\$75	C\$8
2008	C\$80	C\$103	C\$12
2009	C\$86	C\$102	C\$18
2010	C\$92	C\$101	C\$21
2011	C\$98	C\$98	C\$23
2012	C\$103	C\$95	C\$26
2013	C\$105	C\$95	C\$28
2014	C\$107	C\$105	C\$37
2015	C\$109	C\$103	C\$39
2016	C\$111	C\$101	C\$41
2017	C\$113	C\$99	C\$43
2018	C\$115	C\$97	C\$45
2019	C\$117	C\$95	C\$47
2020	C\$119	C\$93	C\$49
2021	C\$121	C\$91	C\$53
2022	C\$123	C\$89	C\$57
2023	C\$123	C\$79	C\$87
2024	C\$123	C\$59	C\$111
2025	C\$123	C\$39	C\$116
2026	C\$123	C\$19	C\$117
2027	C\$123	C\$10	C\$118
2028	C\$123	C\$10	C\$119
2029	C\$123	C\$10	C\$120
2030	C\$123	C\$10	C\$121
2031	C\$123	C\$10	C\$122
2032	C\$123	C\$10	C\$123

*JZO*  
*March 2/06*



This is Exhibit "6" referred to in the Affidavit #2 of

Thomas Croese

sworn before me this 28<sup>th</sup> day of May, 2020.

A handwritten signature in blue ink, appearing to read 'K. Quinn', is written over a horizontal line.

A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**

A Notary Public in and for the  
Northwest Territories.

My appointment expires  
March 11, 2021.

# IRREVOCABLE STANDBY LETTER OF CREDIT

**ISSUED BY**

Name: ATB Financial  
Address: Suite 600, 585-8th Avenue SW  
Calgary, AB T2P 1G1

**LETTER OF CREDIT NO.:** 2727724

**DATE OF ISSUE:** March 11, 2020

**Date and Place of Expiry:** October 25th, 2020 at the counters of the Issuing Bank

**BENEFICIARY**

Name: Diavik Diamond Mines (2012) Inc  
Address: Suite 300, 5201-50th Avenue  
Yellowknife, NT Canada X1A 2P8

**APPLICANT**

Name: Dominion Diamond Mines ULC  
Address: 900 - 606 4th Street SW Calgary, AB T2P 1T1 Canada

**AMOUNT:** Aggregate amount not to exceed CAD \$20,700,000.00 (twenty million seven hundred thousand CAD)

At the request and for the account of Dominion Diamond Mines ULC (the 'Applicant'), we, ATB Financial Suite 600, 585 – 8th Avenue SW, Calgary, AB T2P 1G1 (the "Issuing Bank") hereby establish in your favour our Irrevocable Standby Letter of Credit Number 2727724 (the "Credit") for sums not exceeding in the aggregate CAD \$20,700,000.00 (twenty million seven hundred thousand).

This Credit is available with us for drawing at sight, without enquiry as to whether you have a right as between yourself and the Applicant to make such demand and without recognizing any claim of the Applicant, against presentation to us, by you or your duly authorized representative or agent, of the following documents:

A sight draft, payable to Diavik Diamond Mines (2012) Inc. (the "Beneficiary"), drawn on ATB Financial stating Irrevocable Standby Letter of Credit No. 2727724, and; A statement signed by an authorized signer of Diavik Diamond Mines (2012) Inc. certifying:

That the signatory is the CFO of Diavik Diamond Mines (2012) Inc. and has the authority to sign the statement on behalf of Diavik Diamond Mines (2012) Inc. and;

B) Either

That the Beneficiary is entitled to apply the amount drawn, being all or part of the security posted and maintained as security for reclamation obligations arising out of the Diavik Diamond Mine Joint Venture as further set out in the Closure Security Agreement dated December 13, 2019 among the Applicant and the Beneficiary, amended or renewed from time to time, or

That this Credit is due to expire in thirty (30) days or less and that the Applicant has not replaced this Credit by posting with Diavik Diamond Mines (2012) Inc. other security satisfactory to Diavik Diamond Mines (2012) Inc.

Partial drawings are permitted however, the combined drawings cannot exceed the aggregate amount stated in this Credit.

THE PRESENTATION OF DOCUMENTS FOR DRAWING HEREUNDER MAY BE MADE BY PRESENTATION OF ORIGINAL DOCUMENTS specified above at our office located at 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operation.

ALTERNATIVELY, PRESENTATION OF SUCH DRAWING DOCUMENTS MAY BE MADE BY FAX TRANSMISSION TO 1-877-651-0844, OR SUCH OTHER FAX NUMBER IDENTIFIED BY ATB Financial IN A WRITTEN NOTICE TO YOU. TO THE EXTENT A PRESENTATION IS MADE BY FAX TRANSMISSION, YOU SHOULD (I) PROVIDE TELEPHONE NOTIFICATION THEREOF TO ATB Financial TO 1-877-651-0844 PRIOR TO OR SIMULTANEOUSLY WITH THE SENDING OF SUCH FAX TRANSMISSION AND (II) SEND THE ORIGINAL OF SUCH DRAWING DOCUMENT[S] ATB Financial 3699 69 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operation BY OVERNIGHT COURIER, AT THE SAME ADDRESS PROVIDED ABOVE FOR PRESENTATION OF DOCUMENTS, PROVIDED, HOWEVER, THAT ATB Financial'S RECEIPT OF SUCH TELEPHONE NOTICE OR ORIGINAL DOCUMENT[S] SHALL NOT BE A CONDITION TO PAYMENT HEREUNDER.

This Credit is effective from March 11, 2020 and shall expire at our counters at 5 p.m. EST on October 25th, 2020 (the 'Initial Expiration Date'). This Credit shall be extended automatically for an additional one-year period from the initial expiration date, and for an additional one-year period from each future expiration date, unless at least sixty (60) days prior to such expiration date we notify you in writing by registered mail or courier that we elect not to consider this Credit extended for such additional period.

Notices concerning this Credit may be sent to the Beneficiary by registered mail or courier to its respective address set forth herein. If during the validity of this Credit, the Beneficiary changes its address from that stated herein, the Beneficiary must notify us promptly and have this Credit be amended accordingly by the Issuing Bank. Any notice issued by the Issuing Bank shall be effective if sent to the address for the Beneficiary stated above or, if applicable, as last address provided by the Beneficiary to the Issuing Bank.


This Irrevocable Standby Letter of Credit may also be cancelled prior to any expiration date, provided the original Credit and amendments, if any, are returned to us at the above bank's address accompanied by beneficiary's signed letter on its letterhead stating that the attached Irrevocable Standby Letter of Credit is no longer required and is being returned to us for cancellation.

We hereby agree that all drafts and related documents drawn under and in compliance with the terms of this Credit shall be duly honoured by us if presented for payment on or before the expiration date.

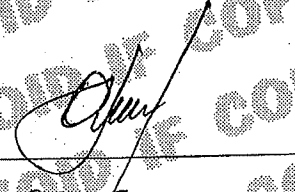
This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified, or incorporated by reference to any document, contract, or agreement referenced herein.

Except so far as is otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600. (UCP600) Notwithstanding article 36 of said publication, if this Credit expires during an interruption of business as described in article 36, we agree to effect payment if this Credit is drawn on us within fifteen (15) days after the resumption of business. With respect to matters not governed by the UCP600, the laws of Alberta shall apply without reference to principles of conflict of laws.

ATB Financial

  
E 25711

Lending Officer with Authorized Limits

  
E 87355

Lending Officer with Authorized Limits

ATB Financial

DATE: MAR. 11, 2020

TO: DIAVIK DIAMOND MINES (2012) INC.  
SUITE 300, 5201-50TH AVENUE  
YELLOWKNIFE, NT  
  
CANADA, X1A 2P8

RE : OUR REF NUM : 5225600126  
L/C REF NUM :  
BY ORDER OF : DOMINION DIAMOND  
MINES ULC  
LC AMOUNT : CAD 17,300,000.00

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5225600126

ISSUING BANK:  
CITIBANK, N.A. CANADIAN BRANCH  
TRADE SERVICES, SECOND FLOOR  
5900 HURONTARIO STREET  
MISSISSAUGA, ONTARIO  
L5R 0B8

BENEFICIARY:  
DIAVIK DIAMOND MINES (2012) INC.  
SUITE 300, 5201-50TH AVENUE  
YELLOWKNIFE, NT X1A 2P8 CANADA

APPLICANT:  
DOMINION DIAMOND MINES ULC  
900 - 606 4TH STREET SW  
CALGARY, AB T2P 1T1 CANADA

DATE OF ISSUE: MARCH 11, 2020

DATE AND PLACE OF EXPIRY: OCTOBER 25, 2020 AT THE COUNTERS OF  
THE ISSUING BANK

AMOUNT: CAD 17,300,000.00 (SEVENTEEN MILLION THREE HUNDRED  
THOUSAND AND 00/100 CAD)

AT THE REQUEST AND FOR THE ACCOUNT OF DOMINION DIAMOND MINES ULC  
(THE 'APPLICANT'), WE, CITIBANK, N.A., CANADIAN BRANCH, TRADE  
SERVICES, SECOND FLOOR, 5900 HURONTARIO STREET, MISSISSAUGA,  
ONTARIO, L5R 0B8, ATTN: TRADE SERVICES DEPT (THE "ISSUING  
BANK") HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY  
LETTER OF CREDIT NUMBER 5225600126 (THE "CREDIT") FOR SUMS NOT  
EXCEEDING IN THE AGGREGATE CAD 17,300,000.00 (SEVENTEEN MILLION  
THREE HUNDRED THOUSAND AND 00/100 CAD)

THIS CREDIT IS AVAILABLE WITH US FOR DRAWING AT SIGHT, WITHOUT  
ENQUIRY AS TO WHETHER YOU HAVE A RIGHT AS BETWEEN YOURSELF AND  
THE APPLICANT TO MAKE SUCH DEMAND AND WITHOUT RECOGNIZING ANY  
CLAIM OF THE APPLICANT, AGAINST PRESENTATION TO US, BY YOU OR

YOUR DULY AUTHORIZED REPRESENTATIVE OR AGENT, OF THE FOLLOWING DOCUMENTS:

1. A SIGHT DRAFT, PAYABLE TO DIAVIK DIAMOND MINES (2012) INC. (THE "BENEFICIARY"), DRAWN ON CITIBANK, N.A., CANADIAN BRANCH STATING IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5225600126, AND:

2. A STATEMENT SIGNED BY AN AUTHORIZED SIGNER OF DIAVIK DIAMOND MINES (2012) INC. CERTIFYING:

A) THAT THE SIGNATORY IS AN . . . . . (INSERT REPRESENTATIVE/OFFICIAL) OF DIAVIK DIAMOND MINES (2012) INC. AND HAS THE AUTHORITY TO SIGN THE STATEMENT ON BEHALF OF DIAVIK DIAMOND MINES (2012) INC. AND:

B) EITHER

(I) THAT THE BENEFICIARY IS ENTITLED TO APPLY THE AMOUNT DRAWN, BEING ALL OR PART OF THE SECURITY POSTED AND MAINTAINED AS SECURITY FOR RECLAMATION OBLIGATIONS ARISING OUT OF THE DIAVIK DIAMOND MINE JOINT VENTURE AS FURTHER SET OUT IN THE CLOSURE SECURITY AGREEMENT DATED DECEMBER 13, 2019 AMONG THE APPLICANT AND THE BENEFICIARY, AMENDED OR RENEWED FROM TIME TO TIME, OR

(II) THAT THIS CREDIT IS DUE TO EXPIRE IN THIRTY (30) DAYS OR LESS AND THAT THE APPLICANT HAS NOT REPLACED THIS CREDIT BY POSTING WITH DIAVIK DIAMOND MINES (2012) INC. OTHER SECURITY SATISFACTORY TO DIAVIK DIAMOND MINES (2012) INC.

PARTIAL DRAWINGS ARE PERMITTED HOWEVER, THE COMBINED DRAWINGS CANNOT EXCEED THE AGGREGATE AMOUNT STATED IN THIS CREDIT.

THE PRESENTATION OF DOCUMENTS FOR DRAWING HEREUNDER MAY BE MADE BY PRESENTATION OF ORIGINAL DOCUMENTS AT CITIBANK, N.A., CANADIAN BRANCH, TRADE SERVICES, SECOND FLOOR, 5900 HURONTARIO STREET, MISSISSAUGA, ONTARIO, L5R 0B8, ATTN: TRADE SERVICES DEPT.

ALTERNATIVELY, PRESENTATION OF SUCH DRAWING DOCUMENTS MAY BE MADE BY FAX TRANSMISSION TO 905-755-3390, OR SUCH OTHER FAX NUMBER IDENTIFIED BY CITIBANK, N.A., CANADIAN BRANCH IN A WRITTEN NOTICE TO YOU. TO THE EXTENT A PRESENTATION IS MADE BY FAX TRANSMISSION, YOU SHOULD (I) PROVIDE TELEPHONE NOTIFICATION THEREOF TO CITIBANK, N.A., CANADIAN BRANCH TO 866-498-8670 PRIOR TO OR SIMULTANEOUSLY WITH THE SENDING OF SUCH FAX TRANSMISSION AND (II) SEND THE ORIGINAL OF SUCH DRAWING DOCUMENT(S) TO CITIBANK, N.A., CANADIAN BRANCH BY OVERNIGHT COURIER, AT THE SAME ADDRESS PROVIDED ABOVE FOR PRESENTATION OF DOCUMENTS, PROVIDED, HOWEVER, THAT CITIBANK, N.A., CANADIAN BRANCH'S RECEIPT OF SUCH TELEPHONE NOTICE OR ORIGINAL DOCUMENT(S) SHALL NOT BE A CONDITION TO PAYMENT HEREUNDER.

THIS CREDIT IS EFFECTIVE FROM MARCH 11, 2020 AND SHALL EXPIRE AT OUR COUNTERS AT 5 P.M. EST ON OCTOBER 25, 2020 (THE "INITIAL

EXPIRATION DATE'). THIS CREDIT SHALL BE EXTENDED AUTOMATICALLY FOR AN ADDITIONAL ONE-YEAR PERIOD FROM THE INITIAL EXPIRATION DATE, AND FOR AN ADDITIONAL ONE-YEAR PERIOD FROM EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR COURIER THAT WE ELECT NOT TO CONSIDER THIS CREDIT EXTENDED FOR SUCH ADDITIONAL PERIOD.

NOTICES CONCERNING THIS CREDIT MAY BE SENT TO THE BENEFICIARY BY REGISTERED MAIL OR COURIER TO ITS RESPECTIVE ADDRESS SET FORTH HEREIN. IF DURING THE VALIDITY OF THIS CREDIT, THE BENEFICIARY CHANGES ITS ADDRESS FROM THAT STATED HEREIN, THE BENEFICIARY MUST NOTIFY US PROMPTLY AND HAVE THIS CREDIT BE AMENDED ACCORDINGLY BY THE ISSUING BANK. ANY NOTICE ISSUED BY THE ISSUING BANK SHALL BE EFFECTIVE IF SENT TO THE ADDRESS FOR THE BENEFICIARY STATED ABOVE OR, IF APPLICABLE, AS LAST ADDRESS PROVIDED BY THE BENEFICIARY TO THE ISSUING BANK.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT MAY ALSO BE CANCELLED PRIOR TO ANY EXPIRATION DATE, PROVIDED THE ORIGINAL CREDIT AND AMENDMENTS, IF ANY, ARE RETURNED TO US AT THE ABOVE BANK'S ADDRESS ACCOMPANIED BY BENEFICIARY'S SIGNED LETTER ON ITS LETTERHEAD STATING THAT THE ATTACHED IRREVOCABLE STANDBY LETTER OF CREDIT IS NO LONGER REQUIRED AND IS BEING RETURNED TO US FOR CANCELLATION.

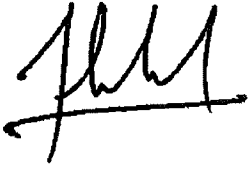
WE HEREBY AGREE THAT ALL DRAFTS AND RELATED DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT SHALL BE DULY HONOURED BY US IF PRESENTED FOR PAYMENT ON OR BEFORE THE EXPIRATION DATE.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT, OR AGREEMENT REFERENCED HEREIN.

EXCEPT SO FAR AS IS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600. (UCP600) NOTWITHSTANDING ARTICLE 36 OF SAID PUBLICATION, IF THIS CREDIT EXPIRES DURING AN INTERRUPTION OF BUSINESS AS DESCRIBED IN ARTICLE 36, WE AGREE TO EFFECT PAYMENT IF THIS CREDIT IS DRAWN ON US WITHIN FIFTEEN (15) DAYS AFTER THE RESUMPTION OF BUSINESS. WITH RESPECT TO MATTERS NOT GOVERNED BY THE UCP600, THE LAWS OF THE PROVINCE OF ONTARIO SHALL APPLY WITHOUT REFERENCE TO PRINCIPLES OF CONFLICT OF LAWS.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. CITIGROUP ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF

APPLICABLE SANCTIONS.

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JHM' or similar, with a long horizontal stroke extending to the left from the bottom of the first letter.

AUTHORISED SIGNATURE(S)  
CITIBANK, N.A., CANADIAN BRANCH



# CREDIT SUISSE

## Trade Finance/Services Department

### Irrevocable Standby Letter of Credit Number TS-07011992

**Beneficiary:**

Diavik Diamond Mines (2012) Inc.  
Suite 300, 5201-50<sup>th</sup> Avenue  
Yellowknife, NT X1A 2P8 Canada

**Applicant:**

Dominion Diamond Mines ULC  
900 – 606 4<sup>th</sup> Street SW  
Calgary, AB-T2P 1T1 Canada

**Date of Issue:**

March 11, 2020

**Date and Place of Expiry:**

October 25, 2020 at the counters of the  
Issuing Bank

**Amount: CAD 15,100,000.00 (Fifteen Million One Hundred Thousand Canadian Dollars)**

At the request and for the account of Dominion Diamond Mines ULC (the 'Applicant'), we, Credit Suisse AG, New York Branch, located at Eleven Madison Avenue, 8<sup>th</sup> floor, New York, NY 10010 (the "Issuing Bank") hereby establish in your favour our Irrevocable Standby Letter of Credit Number TS-07011992 (the "Credit") for sums not exceeding in the aggregate **CAD 15,100,000.00 (Fifteen Million One Hundred Thousand Canadian Dollars)**

This Credit is available with us for drawing at sight, without enquiry as to whether you have a right as between yourself and the Applicant to make such demand and without recognizing any claim of the Applicant, against presentation to us, by you or your duly authorized representative or agent, of the following documents:

1. A sight draft, payable to Diavik Diamond Mines (2012) Inc. (the "Beneficiary"), drawn on Credit Suisse AG, New York Branch Irrevocable Standby Letter of Credit No. TS-07011992, and;
2. A statement signed by an authorized signer of Diavik Diamond Mines (2012) Inc. certifying:
  - A) That the signatory is an *[insert representative/official]* of Diavik Diamond Mines (2012) Inc. and has the authority to sign the statement on behalf of Diavik Diamond Mines (2012) Inc. and;
  - B) Either
    - (i) That the Beneficiary is entitled to apply the amount drawn, being all or part of the security posted and maintained as security for reclamation obligations arising out of the Diavik Diamond Mine Joint Venture as further set out in the Closure Security Agreement dated



December 13, 2019 among the Applicant and the Beneficiary, amended or renewed from time to time, or

- (ii) That this Credit is due to expire in thirty (30) days or less and that the Applicant has not replaced this Credit by posting with Diavik Diamond Mines (2012) Inc. other security satisfactory to Diavik Diamond Mines (2012) Inc.

Partial drawings are permitted however the combined drawings cannot exceed the aggregate amount stated in this Credit.

The presentation of documents for drawing hereunder may be made by presentation of original documents at Credit Suisse AG, Eleven Madison Avenue, 8<sup>th</sup> Floor, New York, NY 10010, Attn: Trade Finance Services Department.

Alternatively, presentation of such drawing documents may be made by fax transmission to, fax no. 212-325-8315, or such other fax number identified by Credit Suisse AG in a written notice to you. To the extent a presentation is made by fax transmission, you should (i) provide telephone notification thereof to Credit Suisse AG to ph. no. 212-325-5397 prior to or simultaneously with the sending of such fax transmission and (ii) send the original of such drawing document(s) to Credit Suisse AG by overnight courier, at the same address provided above for presentation of documents, provided, however, that Credit Suisse AG's receipt of such telephone notice or original document(s) shall not be a condition to payment hereunder.

This Credit is effective from March 11, 2020 and shall expire at our counters at 5 *p.m.* EST on October 25, 2020 (the 'Initial Expiration Date'). This Credit shall be extended automatically for an additional one-year period from the initial expiration date, and for an additional one-year period from each future expiration date, unless at least sixty (60) days prior to such expiration date we notify you in writing by registered mail or courier that we elect not to consider this Credit extended for such additional period.

Notices concerning this Credit may be sent to the Beneficiary by registered mail or courier to its respective address set forth herein. If during the validity of this Credit, the Beneficiary changes its address from that stated herein, the Beneficiary must notify us promptly and have this Credit be amended accordingly by the Issuing Bank. Any notice issued by the Issuing Bank shall be effective if sent to the address for the Beneficiary stated above or, if applicable, as last address provided by the Beneficiary to the Issuing Bank.



**CREDIT SUISSE**

**Trade Finance/Services Department**

This Irrevocable Standby Letter of Credit may also be cancelled prior to any expiration date, provided the original Credit and amendments, if any, are returned to us at the above bank's address accompanied by beneficiary's signed letter on its letterhead stating that the attached Irrevocable Standby Letter of Credit is no longer required and is being returned to us for cancellation.

We hereby agree that all drafts and related documents drawn under and in compliance with the terms of this Credit shall be duly honoured by us if presented for payment on or before the expiration date.

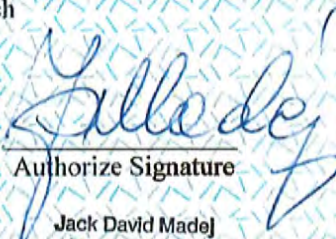
This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified, or incorporated by reference to any document, contract, or agreement referenced herein.

Except so far as is otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600. (UCP600) Notwithstanding article 36 of said publication, if this Credit expires during an interruption of business as described in article 36, we agree to effect payment if this Credit is drawn on us within fifteen (15) days after the resumption of business. With respect to matters not governed by the UCP600, the laws of New York State shall apply without reference to principles of conflict of laws.

Regards,  
Credit Suisse AG, New York Branch

  
\_\_\_\_\_  
Authorize Signature

Emma Artun  
Authorized Signatory

  
\_\_\_\_\_  
Authorize Signature  
Jack David Madej  
Vice President





**中国工商银行 (加拿大)**

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (CANADA)

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (CANADA)  
 中國工商銀行 (加拿大)  
 Unit 38, Dynasty Center, 8 Glen Watford Drive, Scarborough, Ontario M1S 2C1  
 安省士嘉堡市 皇朝中心38室 M1S 2C1  
 Telephone 電話 (416) 298-6883 Hotline 熱線 1-877-779-5588  
 Facsimile 傳真 (416) 298-6880 www.icbc.ca

**Our Standby Letter of Credit No. [insert LC number]**

**Beneficiary:**

Diavik Diamond Mines (2012) Inc.  
 Suite 300, 5201-50<sup>th</sup> Avenue  
 Yellowknife, NT X1A 2P8 Canada

**Applicant:**

Dominion Diamond Mines ULC  
 900 – 606 4<sup>th</sup> Street SW  
 Calgary, AB T2P 1T1 Canada

**Date of Issue:**

\_\_\_\_\_, 2020

**Date and Place of Expiry:**

October 25, 2020 at the  
 counters of the Issuing Bank

**Amount:**

CAD17,300,000.00 ( Seventeen Million Three Hundred Thousand Canadian Dollars)

At the request and for the account of Dominion Diamond Mines ULC (the 'Applicant'), we, Industrial and Commercial Bank of China (Canada), (the "Issuing Bank") hereby establish in your favour our Irrevocable Standby Letter of Credit Number [insert LC number] (the "Credit") for sums not exceeding in the aggregate CAD17,300,000.00 ( Seventeen Million Three Hundred Thousand Canadian Dollars)

This Credit is available with us for drawing at sight, without enquiry as to whether you have a right as between yourself and the Applicant to make such demand and without recognizing any claim of the Applicant, against presentation to us, by you or your duly authorized representative or agent, of the following documents:

1. A sight draft, payable to Diavik Diamond Mines (2012) Inc. (the "Beneficiary"), drawn on Industrial and Commercial Bank of China (Canada) stating Irrevocable Standby Letter of Credit No. [insert LC number], and;
2. A statement signed by an authorized signer of Diavik Diamond Mines (2012) Inc. certifying:
  - A) That the signatory is an [insert representative/official] of Diavik Diamond Mines (2012) Inc. and has the authority to sign the statement on behalf of Diavik Diamond Mines (2012) Inc. and;
  - B) Either
    - (i) That the Beneficiary is entitled to apply the amount drawn, being all or part of the security posted and maintained as security for reclamation obligations arising out of the Diavik Diamond Mine Joint Venture as further set out in the Closure Security Agreement dated December 13, 2019 among the Applicant and the Beneficiary, amended or renewed from time to time, or



**中国工商银行 (加拿大)**

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (CANADA)

- (ii) That this Credit is due to expire in thirty (30) days or less and that the Applicant has not replaced this Credit by posting with Diavik Diamond Mines (2012) Inc. other security satisfactory to Diavik Diamond Mines (2012) Inc.

Partial drawings are permitted however, the combined drawings cannot exceed the aggregate amount stated in this Credit.

The presentation of documents for drawing hereunder may be made by presentation of original documents to Industrial and Commercial Bank of China (Canada), at Unit 38, 8 Glen Watford Drive, Scarborough, Ontario M1S 2C1 Attention Operations Department.

Alternatively, presentation of such drawing documents may be made by fax transmission to fax number (416) 298-6880, or such other fax number identified by Industrial and Commercial Bank of China (Canada) in a written notice to you. To the extent a presentation is made by fax transmission, you should (i) provide telephone notification thereof to our Operations Department, Mr. Andrew Lam at phone number (905)771-5679 or Ms. Pauline Yeung at phone number (905)771-5678 prior to or simultaneously with the sending of such fax transmission and (ii) send the original of such drawing document(s) to Industrial and Commercial Bank of China (Canada) by overnight courier, at the same address provided above for presentation of documents, provided, however, that Industrial and Commercial Bank of China (Canada)'s receipt of such telephone notice or original document(s) shall not be a condition to payment hereunder.

This Credit is effective from [insert date] and shall expire at our counters at 5 p.m. EST on October 25, 2020 (the 'Initial Expiration Date'). This Credit shall be extended automatically for an additional one-year period from the initial expiration date, and for an additional one-year period from each future expiration date, unless at least sixty (60) days prior to such expiration date we notify you in writing by registered mail or courier that we elect not to consider this Credit extended for such additional period.

Notices concerning this Credit may be sent to the Beneficiary by registered mail or courier to its respective address set forth herein. If during the validity of this Credit, the Beneficiary changes its address from that stated herein, the Beneficiary must notify us promptly and have this Credit be amended accordingly by the Issuing Bank. Any notice issued by the Issuing Bank shall be effective if sent to the address for the Beneficiary stated above or, if applicable, as last address provided by the Beneficiary to the Issuing Bank.

This Irrevocable Standby Letter of Credit may also be cancelled prior to any expiration date, provided the original Credit and amendments, if any, are returned to us at the above bank's address accompanied by beneficiary's signed letter on its letterhead stating that the attached Irrevocable Standby Letter of Credit is no longer required and is being returned to us for cancellation.



## 中国工商银行 (加拿大)

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (CANADA)

We hereby agree that all drafts and related documents drawn under and in compliance with the terms of this Credit shall be duly honoured by us if presented for payment on or before the expiration date.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified, or incorporated by reference to any document, contract, or agreement referenced herein.

Except so far as is otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600. (UCP600) Notwithstanding article 36 of said publication, if this Credit expires during an interruption of business as described in article 36, we agree to effect payment if this Credit is drawn on us within fifteen (15) days after the resumption of business. With respect to matters not governed by the UCP600, the laws of the Province of Ontario shall apply without reference to principles of conflict of laws.

For and on behalf of  
Industrial and Commercial Bank of China (Canada)

Authorized Signatures

Draft Sign off:

For Client's use only

Applicant hereby agree with the form and wording of the draft standby letter of credit and request to issue the standby letter of credit with such form and wording.

Sign:

Kristal Kaye, CFO



Letter of Credit Department

**Beneficiary:**

Diavik Diamond Mines (2012) Inc.  
Suite 300, 5201-50<sup>th</sup> Avenue  
Yellowknife, NT X1A 2P8 Canada

**Applicant:**

Dominion Diamond Mines ULC  
900 – 606 4<sup>th</sup> Street SW  
Calgary, AB T2P 1T1 Canada

**Date of Issue:**

March 11, 2020

**Date and Place of Expiry:**

October 25, 2020 at the counters  
of the Issuing Bank

**Amount:**

CAD17,300,000.00

At the request and for the account of Dominion Diamond Mines ULC (the 'Applicant'), we, Natixis, 1251 Avenue of the Americas, 3<sup>rd</sup> Floor, New York, NY 10020, Attn: Letter of Credit Dept. (the "Issuing Bank") hereby establish in your favour our Irrevocable Standby Letter of Credit Number SB -49408 (the "Credit") for sums not exceeding in the aggregate CAD17,300,000.00 (Seventeen Million Three Hundred Thousand and 00/100 CAD)

This Credit is available with us for drawing at sight, without enquiry as to whether you have a right as between yourself and the Applicant to make such demand and without recognizing any claim of the Applicant, against presentation to us, by you or your duly authorized representative or agent, of the following documents:

1. A sight draft, payable to Diavik Diamond Mines (2012) Inc. (the "Beneficiary"), drawn on Natixis stating Irrevocable Standby Letter of Credit No. SB-49408, and;
2. The original of this Irrevocable Standby Letter of Credit No. SB-49408 and any amendments attached thereto for endorsement of payment thereon; and
3. A statement signed by *[insert title authorized signer]* of Diavik Diamond Mines (2012) Inc. certifying:
  - A) That the signatory is an *[insert representative/official]* of Diavik Diamond Mines (2012) Inc. and has the authority to sign the statement on behalf of Diavik Diamond Mines (2012) Inc. and;
  - B) Either
    - (i) That the Beneficiary is entitled to apply the amount drawn, being all or part of the security posted and maintained pursuant to the Diavik Joint Venture Agreement dated March 23, 1995 and the *[insert description of security agreement]* each among the Applicant and the Beneficiary, and each as amended or renewed from time to time, or



Letter of Credit Department

Page 2  
Standby LC SB-49408

- (ii) That this Credit is due to expire in thirty (30) days or less and that the Applicant has not replaced this Credit by posting with Diavik Diamond Mines (2012) Inc. other security satisfactory to Diavik Diamond Mines (2012) Inc.

Partial drawings are permitted however, the combined drawings cannot exceed the aggregate amount stated in this Credit. In case of a partial drawing of this Credit, the original Letter of Credit and any amendments attached thereto will be duly endorsed by the Issuing Bank and returned to the Beneficiary.

This Credit is effective immediately and shall expire at our counters at 5:00 p.m. on October 25, 2020 (the 'Initial Expiration Date'). This Credit shall be extended automatically for an additional one-year period from the initial expiration date, and for an additional one-year period from each future expiration date, unless at least ninety (90) days prior to such expiration date we notify you in writing by registered mail or courier that we elect not to consider this Credit extended for such additional period.

Notices concerning this Credit may be sent to the Beneficiary by registered mail or courier to its respective address set forth herein. If during the validity of this Credit, the Beneficiary changes its address from that stated herein, the Beneficiary must notify us promptly and have this Credit be amended accordingly by the Issuing Bank. Any notice issued by the Issuing Bank shall be effective if sent to the address for the Beneficiary stated above or, if applicable, as last address provided by the Beneficiary to the Issuing Bank.

This Irrevocable Standby Letter of Credit may also be cancelled prior to any expiration date, provided the original Credit and amendments, if any, are returned to us at the above bank's address accompanied by beneficiary's signed letter on its letterhead stating that the attached Irrevocable Standby Letter of Credit is no longer required and is being returned to us for cancellation.

We hereby agree that all drafts and related documents drawn under and in compliance with the terms of this Credit shall be duly honoured by us if presented for payment on or before the expiration date.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified, or incorporated by reference to any document, contract, or agreement referenced herein.





Letter of Credit Department

Page 3  
Standby LC SB-49408

Except so far as is otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600. (UCP600) Notwithstanding article 36 of said publication, if this Credit expires during an interruption of business as described in article 36, we agree to effect payment if this Credit is drawn on us within fifteen (15) days after the resumption of business. With respect to matters not governed by the UCP600, the laws of the State of New York shall apply without reference to principles of conflict of laws.

Regards,  
Natixis  
New York Branch

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

Authorized Signature

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

Authorized Signature





UBS AG  
Stamford, 06901 CT  
Phone +1 212 821 30 00  
SWIFT UBSWUS33XXX

90

Letter of Credit Services

Elba Monroig  
UBS AG ZCVF-MOE  
1285 Ave. of the Americas, 8th Fl.,  
New York, NY 10019  
Phone +1 212 821 6752  
Fax +1 212 821 6707

[www.ubs.com/tef](http://www.ubs.com/tef)

**Courier service**

00149383

DIAVIK DIAMOND MINES (2012) INC.  
P.O. BOX 2498  
5201 50TH AVENUE, SUITE 300  
YELLOWKNIFE, NT X1A 2P8

Attention: THOMAS CROESE

11 March 2020

**Issue of a Standby Letter of Credit**

Our credit no: WALI-A08139-1MON  
Issued on: 11 March 2020  
Standby LC Number: WALI-A08139-1MON  
Amount: CAD 17,300,000.00  
Date and Place of Expiry: 25 October 2020, our counters  
Applicant: DOMINION DIAMOND MINES ULC, CALGARY, AB T2P 1T1

At the request and for the account of Dominion Diamond Mines ULC (the "Applicant"), we, UBS AG Stamford Branch (the "Issuing Bank") hereby establish in your favour our Irrevocable Standby Letter of Credit Number WALI-A08139-1MON (the "Credit") for sums not exceeding in the aggregate CAD 17,300,000.00 (Seventeen Million Three Hundred Thousand and 00/100 Canadian Dollars).

This Credit is available with us for drawing at sight, without enquiry as to whether you have a right as between yourself and the Applicant to make such demand and without recognizing any claim of the Applicant, against presentation to us, by you or your duly authorized representative or agent, of the following documents:

1. A sight draft, payable to Diavik Diamond Mines (2012) Inc. (the "Beneficiary"), drawn on UBS AG Stamford Branch stating Irrevocable Standby Letter of Credit No. WALI-A08139-1MON, and;
2. A statement signed by an authorized signer of Diavik Diamond Mines (2012) Inc. certifying:

A) That the signatory is an [insert representative/official] of Diavik Diamond Mines (2012) Inc. and has the authority to sign the statement on behalf of Diavik Diamond Mines (2012) Inc. and;

B) Either

(i) That the Beneficiary is entitled to apply the amount drawn, being all or part of the security posted and maintained as security for reclamation obligations arising out of the Diavik Diamond Mine Joint Venture as further set out in the Closure Security Agreement dated December 13, 2019 among the Applicant and the Beneficiary, amended or renewed from time to time, or

(ii) That this Credit is due to expire in thirty (30) days or less and that the Applicant has not replaced this Credit by posting with Diavik Diamond Mines (2012) Inc. other security satisfactory to Diavik Diamond Mines (2012) Inc.

Partial drawings are permitted however, the combined drawings cannot exceed the aggregate amount stated in this Credit.

The presentation of documents for drawing hereunder may be made by presentation of original documents at UBS AG Stamford Branch, 1285 Avenue of the Americas, 8th floor, New York, NY 10019, Attn: Letter of Credit Services.

Alternatively, presentation of such drawing documents may be made by fax transmission to 212-821-6707, or such other fax number identified by UBS AG in a written notice to you. To the extent a presentation is made by fax transmission, you should (i) provide telephone notification thereof to UBS AG to 212-821-6752 or 212-821-6764 prior to or simultaneously with the sending of such fax transmission and (ii) send the original of such drawing document(s) to UBS AG by overnight courier, at the same address provided above for presentation of documents, provided, however, that UBS AG's receipt of such telephone notice or original document(s) shall not be a condition to payment hereunder.

This Credit is effective from March 11, 2020 and shall expire at our counters at 5 p.m. EST on October 25, 2020 (the "Initial Expiration Date"). This Credit shall be extended automatically for an additional one-year period from the Initial Expiration Date, and for an additional one-year period from each future expiration date, unless at least sixty (60) days prior to such expiration date we notify you in writing by registered mail or courier that we elect not to consider this Credit extended for such additional period.

Notices concerning this Credit may be sent to the Beneficiary by registered mail or courier to its respective address set forth herein. If during the validity of this Credit, the Beneficiary changes its address from that stated herein, the Beneficiary must notify us promptly and have this Credit be amended accordingly by the Issuing Bank. Any notice issued by the Issuing Bank shall be effective if sent to the address for the Beneficiary stated above or, if applicable, as last address provided by the Beneficiary to the Issuing Bank.

This Irrevocable Standby Letter of Credit may also be cancelled prior to any expiration date, provided the original Credit and amendments, if any, are returned to us at the above bank's address accompanied by beneficiary's signed letter on its letterhead stating that the attached Irrevocable Standby Letter of Credit is no longer required and is being returned to us for cancellation.

We hereby agree that all drafts and related documents drawn under and in compliance with the terms of this Credit shall be duly honoured by us if presented for payment on or before the expiration date.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified, or incorporated by reference to any document, contract, or agreement referenced herein.

Except so far as is otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce, Publication No. 600. (UCP600) Notwithstanding article 36 of said publication, if this Credit expires during an interruption of business as described in article 36, we agree to effect payment if this Credit is drawn on us within fifteen (15) days after the resumption of business. With respect to matters not governed by the UCP600, the laws of the state of New York shall apply without reference to principles of conflict of laws.

Yours faithfully,

UBS AG Stamford Branch

Melissa Reeves  
Associate Director



Authorized Signature

Elba Monroig  
Associate Director



Authorized Signature



**UPS CampusShip: View/Print Label**

- 1. Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- 2. Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
- 3. GETTING YOUR SHIPMENT TO UPS**  
**Customers with a Daily Pickup**  
 Your driver will pickup your shipment(s) as usual.


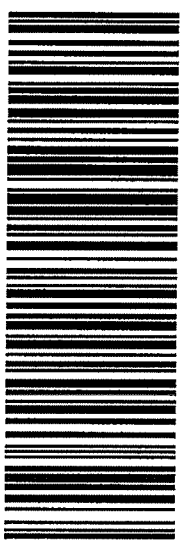

**Customers without a Daily Pickup**

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.

Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

FOLD HERE

<p>JOYCE MIRANDA 212-821-6764 UBS 1285 AVENUE OF THE AMERICAS NEW YORK NY 10019 UNITED STATES</p> <p><b>SHIP TO:</b> THOMAS CROESE 212-821-6752 DIAVIK DIAMOND MINES (2012) INC. SUITE 300 5201 50TH AVENUE YELLOWKNIFE NT X1A2P8 CANADA</p>	<p><b>0.0 LBS LTR 1 OF 1</b></p> <p>SHIP#: A6T4 06TP 30Q SHP WT: 0.0 LBS DATE: 11 MAR 2020</p>	<p><b>CAN 934 5-00</b></p> 	<p><b>UPS SAVER</b></p> <p>TRACKING #: 1Z A6T 406 D9 9421 1957</p> <p><b>1P</b></p> 	<p><b>EDI-DOC</b></p> <p>BILLING: P/P SIGNATURE REQUIRED DESC: Document</p> <p>Cost Centers: 14158 Rep Codes: 8139</p> <p>CS 22.0.13. WNTNVS0 ES.OA.12/2019</p> 
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This is Exhibit "7" referred to in the Affidavit #2 of

Thomas Croese

sworn before me this 28<sup>th</sup> day of May, 2020.



\_\_\_\_\_  
A Commissioner for Oaths in and for the Northwest Territories

**KRISTA QUINN**  
A Notary Public in and for the  
Northwest Territories.  
My appointment expires  
March 11, 2021.

**Key Terms for Stapled Interim Funding (SIF) for Dominion in Support of Dominion DIP***Funding*

- As cash calls on the Diavik JV are made, Rio Tinto Canada or an affiliate (RT Fundco) will provide funding for Dominion's portion of the cash calls
- RT Fundco will also provide funding to:
  - repay DDMI for principal and interest on Cover Payments DDMI made for Dominion's portion of the April 22 (C\$16.0M), May 8 (C\$17.6M) **[and May 22 (C\$12.0M)]** cash calls; and
  - pay interest and expenses associated with SIF

*Interest and Availability*

- Interest on SIF to be charged from applicable dates of funding in accordance with greater of:
  - existing terms of JVA (Prime + 5%); and
  - Dominion DIP terms
- SIF to be available until earliest of (Maturity Date):
  - the effective date of any plan of arrangement sanctioned by the CCAA Court or the emergence of Dominion from insolvency proceedings;
  - closing of sale of Dominion or Dominion's participating interest in the Diavik JV;
  - at the election of RT Fundco, on the occurrence of any event of default under the SIF; and
  - four months following the SIF effective date, provided that RT Fundco may at its election and upon notice to Dominion extend such date by one month at any time and from time to time

*Security*

- RT Fundco will take a first ranking court ordered charge against:
  - Dominion's share of the Diavik diamonds produced since Dominion's CCAA filing;
  - Dominion's participating interest in the Diavik JV and share of the Diavik assets; and
  - all proceeds of and accessions to the foregoing

*Splitting*

- Diavik diamonds produced since Dominion's CCAA filing to the Maturity Date (Dominion's share of such diamonds being referred to as Subject Diamonds) will continue to be split in accordance with the pre-existing splitting protocol
- Subject Diamonds to continue to be held at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories or the Rio Tinto group's cleaning and sorting facility in Antwerp

*Sales*

- DDMI permitted to sell Subject Diamonds through one or more of its affiliates using the same channels and substantially on the same basis that DDMI sells its own diamonds
- Proceeds (after deductions for royalties and any other applicable charges) from sale of Subject Diamonds to be used to reduce balance of SIF with any excess to be returned to Dominion
- If DDMI sells Subject Diamonds, DDMI to be paid:
  - sales agency fee equal to 2.5% of Dominion's allocation of any sale proceeds (before any deductions); and

- any related expenses, including additional insurance costs, reasonably related thereto
- Following the Maturity Date, any remaining Subject Diamonds to be returned to Dominion (at its cost) upon repayment of SIF in full. If such repayment not made within 30 days of the Maturity Date, DDMI permitted to sell any such remaining Subject Diamonds through one or more of its affiliates using the same channels and substantially on the same basis that DDMI sells its own diamonds with the proceeds to be dealt with as indicated above

*Legal Matters*

- Each of Dominion and DDMI to release the other for any outstanding claims under or in connection with the Diavik JVA
- DDMI to forbear from pursuing diamonds held by Dominion affiliates outside of CCAA debtors

*Documentation*

- Usual and customary representations and warranties, covenants, conditions, indemnities, prepayment terms, funding protections, events of default, remedies and other terms satisfactory to Rio Tinto
- Satisfactory Dominion DIP and intercreditor arrangements, including with respect to allocation of SISP proceeds on sale of Dominion
- Information sharing on diamond sales subject to appropriate anti-trust protections
- No change in Diavik JVA and related agreements. SIF shall have no impact on rights of DDMI as a Participant and the Manager under the Diavik JVA