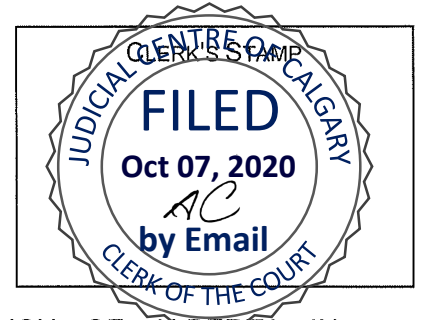


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JS
Oct 14 2020
J. Eidsvik



COURT FILE NUMBER

2001-05630

COURT

COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY

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, DOMINION FINCO INC. and DOMINION
DIAMOND MARKETING CORPORATION**

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /
Claire Hildebrand / Morgan Crilly
Telephone No.: 604.631.3315 / 604.631.4218 /
604.631.3331 / 403.260.9657
Email: peter.rubin@blakes.com /
peter.bychawski@blakes.com /
claire.hildebrand@blakes.com /
morgan.crilly@blakes.com
Fax No.: 604.631.3309

AFFIDAVIT OF JENNIFER ALAMBRE

Sworn on October 4, 2020

I, Jennifer Alambre, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY THAT:


1. I am employed by Blake, Cassels & Graydon LLP ("**Blakes**") as a legal assistant to Peter Rubin, counsel to the Applicants, and as such have personal knowledge of the matters deposed to in this Affidavit.
2. Attached hereto and marked as **Exhibit "A"** is a copy of a Notification titled "Dominion Diamond Mines Obtains Initial Order of Protection under Companies' Creditors Arrangement Act (CCAA)" dated April 22, 2020.
3. Attached hereto and marked as **Exhibit "B"** is a copy of an e-mail sent by Morgan Crilly of Blakes addressed to the Service List for this proceeding dated May 29, 2020 with the subject line "In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al., ABQB Action No. 2001-05630" (with attachment).
4. Attached hereto and marked as **Exhibit "C"** is a copy of an e-mail sent by John Startin to Frederick Vescio and Jason Feintuch dated July 17, 2020 with the subject line "DDM – site visit protocols".
5. Attached hereto and marked as **Exhibit "D"** is a copy of correspondence sent by DDJ Capital Management, LCC, Barings LLC, Brigade Capital Management, LP and Western Asset Management Company, LLC, to Mr. Startin and Deryck Helkaa of FTI Consulting Canada Inc. dated July 20, 2020 with the referenced enclosure.
6. Attached hereto and marked as **Exhibit "E"** is a copy of a letter sent by Mr. Startin to DDJ Capital Management, LLC, Barings LLC, Brigade Capital Management, LP, Western Asset Management Company, LLC, Torys LLP ("**Torys**") and Houlihan Lokey dated July 24, 2020.
7. Attached hereto and marked as **Exhibit "F"** is a copy of an email sent by Nicholas Salzman to Mr. Vescio, Mr. Feintuch, and others dated July 28, 2020 with the subject line "Project Jewel – Subject Matter Expert Discussions".
8. Attached hereto and marked as **Exhibit "G"** is a copy of an e-mail sent by Tony DeMarinis of Torys to Mr. Rubin dated August 20, 2020 with the subject line "Offer Deadline Extension Request – Dominion Diamond Mines SISP" (without attachments).

- 3 -

9. Attached hereto and marked as **Exhibit "H"** is a copy of an email sent by Drew McGeary to Mr. Salzman and others dated August 21, 2020 with the subject line "DDM – Follow-Up Legal Due Diligence" (with attachment).
10. Attached hereto and marked as **Exhibit "I"** is a copy of an email sent by Mr. McGeary to Mr. Salzman dated August 21, 2020 with the subject line "DDM – Follow-Up Legal Due Diligence".
11. Attached hereto and marked as **Exhibit "J"** is a copy of an email sent by Konata Lake of Torys to Susan Tomaine and Geoff Belsher of Blakes dated August 21, 2020 with the subject line "Dominion".
12. Attached hereto and marked as **Exhibit "K"** is a copy of an e-mail sent by Mr. Rubin to Mr. DeMarinis dated August 28, 2020 with the subject line "Dominion – Ad Hoc Group Extension Request".
13. Attached hereto and marked as **Exhibit "L"** is a copy of a letter sent by Erin Kelly, Deputy Minister, Environment and Natural Resources, the Government of the Northwest Territories dated August 28, 2020.
14. Attached hereto and marked as **Exhibit "M"** is a copy of blackline document showing changes from the "Template PSA Provided Pursuant to Section 12 of the Procedures for the Sale and Investment Solicitation Process Relating to Dominion Diamond Mines ULC E.T. A.L." to an Asset Purchase Agreement by and among DDJ Capital Management, LLC, Brigade Capital Management, LP, Western Asset Management Company, LLC, Dominion Diamond Holdings, LLC, Dominion Diamond Mines ULC, Dominion Diamond Delaware Company LLC, Dominion Diamond Marketing Corporation, Dominion Diamond Canada ULC, Dominion Finco Inc. and Washington Diamond Investment, LLC dated August 31, 2020.
15. Attached hereto and marked as **Exhibit "N"** is a copy of an email sent by Mr. Rubin to Mr. DeMarinis dated September 2, 2020 with the subject line "Dominion Diamond".
16. Attached hereto and marked as **Exhibit "O"** is a copy of an email sent by Mr. DeMarinis to Mr. Rubin dated September 3, 2020, with the subject line "Dominion Diamond" (with attachment).

- 17. Attached hereto and marked as **Exhibit "P"** is a copy of an e-mail sent by Andrew Frame to Mr. Feintuch dated September 4, 2020 with the subject line "Mgmt call".
- 18. Attached hereto and marked as **Exhibit "Q"** is a copy of an e-mail sent by Mr. Rubin to Mr. DeMarinis dated September 9, 2020 with the subject line "Dominion Diamond Mines – SISP".
- 19. Attached hereto and marked as **Exhibit "R"** is a copy of an article dated September 14, 2020 entitled "Diamond market faces rough ride as fears of second coronavirus wave mount" accessible online at: <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/diamond-market-faces-rough-ride-as-fears-of-second-coronavirus-wave-mount-60270086>.
- 20. Attached hereto and marked as **Exhibit "S"** is a copy of a Notification titled "Dominion Diamond Mines Provides Update on Sales Process" dated September 16, 2020.

SWORN BEFORE ME at the City of
 Vancouver, in the Province of British
 Columbia this 4th day of October, 2020.



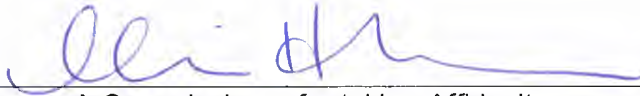
 A Commissioner for Oaths in the Province
 of British Columbia

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Jennifer Alambre

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
 Suite 2600, Three Bentall Centre
 595 Burrard St., P.O. Box 49314
 Vancouver, B.C. V7X 1L3
 (604) 631-3331

This is Exhibit "A" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331



NOTIFICATION

DOMINION DIAMOND MINES OBTAINS INITIAL ORDER OF PROTECTION UNDER COMPANIES' CREDITORS ARRANGEMENT ACT (CCAA)

CALGARY, AB – April 22, 2020 – Dominion Diamond Mines ULC announced today that it and certain of its affiliates (collectively, “Dominion” or the “Company”) have filed for insolvency protection under the Companies’ Creditors Arrangement Act (“CCAA”) and obtained an order from the Alberta Court of Queen’s Bench (the “Court”) granting Dominion protection under the CCAA. Dominion intends to use the CCAA process to engage in discussions with its lenders, creditors, equity owner and other stakeholders and to solicit and evaluate strategic alternatives to restructure the Company financially and operationally, and position it for long-term success when global economic and industry conditions improve.

Dominion has received and is considering a proposal from an affiliate of The Washington Companies, Dominion’s current equity owner, to provide debtor-in-possession (“DIP”) financing, which would help provide sufficient liquidity through the CCAA process. This proposal is conditional upon Dominion agreeing to: (i) a Memorandum of Understanding (MOU) regarding a possible sale of its assets to an affiliate of The Washington Companies, as a stalking horse bidder; and (ii) bidding procedures for the solicitation of competing offers to such asset sale, either to purchase the Company’s assets or to make an investment in the Company. If the Washington proposal is agreed to by Dominion, the DIP financing, MOU for an asset sale and bidding procedures will be subject to approval from the Court with notice to interested parties.

The Washington Companies proposes in the MOU for an asset sale that its affiliate will pay or otherwise satisfy, among other things, all obligations to employees and governmental authorities (including reclamation obligations) and all obligations under the Company’s agreements with the First Nations and aboriginal groups. The proposed asset sale would be a stand-alone bid that would operate as a “floor bid” as part of a competitive process to maximize value for Dominion’s stakeholders. Dominion is reviewing the proposal with its advisors and is engaged in discussions on the terms. The proposal is subject to various contingencies, including due diligence.

Whether or not Dominion agrees to the Washington proposal, it expects as part of the restructuring to obtain new financing, which combined with the Company’s available cash, should provide sufficient liquidity to continue to operate during the CCAA process for the benefit of local communities and other stakeholders.

The CCAA filing was necessitated primarily by the impact of the COVID-19 pandemic. Although the Company has strong diamond inventory, sorting houses and diamond markets are closed. These are key channels to facilitate the sale of the Company’s inventory, so currently there is no ability to generate sufficient revenue to support Dominion’s ongoing financial obligations.

Given the rapidly evolving environment and uncertainty of the scope and duration of the restrictions and health and safety concerns associated with the COVID-19 pandemic, along with market dislocation and the continued capital calls from the Diavik joint venture, the Company believes filing for protection under the CCAA is the most prudent course of action. Dominion has worked consistently to cut costs and optimize the Company’s long-term capital structure. Despite these efforts, and after careful consideration of all other available alternatives, Dominion’s board of directors determined that it is in the best interests of the Company and all its stakeholders to seek protection under the CCAA.

Dominion's commitments to employees and local communities remain a priority for the Company. As the spread of COVID-19 subsides and diamond markets reopen, Dominion plans to resume mining operations at the Ekati Diamond Mine and safely recall its furloughed workers. Dominion continues to believe in the long-term viability of its assets and expects to emerge stronger and better able to deliver value to all stakeholders.

During the CCAA process, it is expected that Dominion's management will continue to be responsible for handling the care and maintenance of the Ekati Diamond Mine and all other necessary day-to-day operations. The Company expects to arrange for sufficient liquidity to meet its post-CCAA filing obligations to current employees and suppliers of goods and services.

Under the terms of the Initial Order, FTI will serve as the Court-appointed Monitor of Dominion to oversee the CCAA proceedings and report to the Court. A copy of the Initial Order and other Court materials and information related to the Company's CCAA proceedings, all as may be updated or amended from time to time, are available on the website maintained by FTI at cfcanda.fticonsulting.com/Dominion.

Blake, Cassels & Graydon LLP is serving as Dominion's legal counsel and McDermott Will & Emery is serving as U.S. counsel. Evercore is serving as financial advisor.

The Company intends to provide further updates on the CCAA proceedings when there are significant developments.

* * * * *

About Dominion Diamond Mines

Dominion Diamond Mines ULC is a Canadian mining company and one of the world's largest producers and suppliers of premium rough diamond assortments to the global market. The company owns a controlling interest in the Ekati Diamond Mine, which it operates, and owns 40% of the Diavik Diamond Mine. The company also holds a controlling interest in the Lac De Gras Diamond Project. The Ekati and Diavik Diamond Mines, and the Lac de Gras Diamond Project are located in the Northwest Territories of Canada. In addition to its mining and exploration operations, Dominion has offices in Canada, Belgium and India.

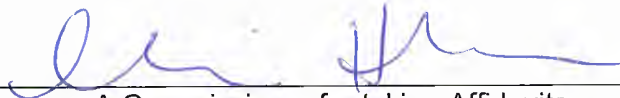
For more information, please visit www.ddmines.com and Dominion's private investor portal, or contact investor@ddcorp.ca.

Media Contacts:

Rebecca Hurl
Rebecca.Hurl@ddcorp.ca
403-797-0486

Sard Verbinnen & Co
Liz Zale/Nikki Ritchie
212-687-8080
DominionDiamond-SVC@sardverb.com

This is Exhibit "B" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Crilly, Morgan
Sent: Friday, May 29, 2020 8:57 AM
To: Rubin, Peter; Rogers, Linc; Bychawski, Peter; Crilly, Morgan; Hildebrand, Claire; Fperلمان@mwe.com; deryck.helkaa@fticonsulting.com; tom.powell@fticonsulting.com; lindsay.shierman@fticonsulting.com; dustin.olver@fticonsulting.com; craig.munro@fticonsulting.com; robert.kleebaum@fticonsulting.com; simardc@bennettjones.com; selnesm@bennettjones.com; mbuttery@cassels.com; mwasserman@osler.com; epaplowski@osler.com; jlevitin@cahill.com; boneill@goodmans.ca; bwiffen@goodmans.ca; mpartridge@goodmans.ca; jcitron@goodmans.ca; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; wmadeod@mccarthy.ca; scollins@mccarthy.ca; ataylor@mccarthy.ca; tdemarinis@torys.com; kkashuba@torys.com; quinlm3@telus.net; JPawlyk@bmlp.ca; Ross.Johnson@ca.ey.com; Neil.Narfason@ca.ey.com; KBarr@blg.com; JVallis@blg.com; jordan.schultz@dentons.com; john.sandrelli@dentons.com; miriam.dominguez@dentons.com; alexandre.larouche@justice.gc.ca; kanderson@millerthomson.com; twarner@millerthomson.com; snorris@millerthomson.com; gunnar.benediktsson@nortonrosefulbright.com; ARaven@ravenlaw.com; AAstritis@ravenlaw.com; cvanasseldonk@ravenlaw.com; EHussein@fieldlaw.com; DNishimura@fieldlaw.com; lwilliams@cassels.com; sdanielisz@cassels.com; MDeLellis@osler.com; nicholsonc@jssbarristers.ca; kathlerd@bennettjones.com; jpringle@mckercher.ca; lan_Blackstock@gov.nt.ca; sam.alberts@dentons.com; john.salmas@dentons.com; jmaclellan@blg.com; swatson@parlee.com; cang@parlee.com; john.regush@dentons.com; tara.berish@osfibsif.gc.ca; Brandi.Swift@fticonsulting.com; chrisjennings66@me.com; ataylor@stikeman.com; navis@stikeman.com; krobinson@parlee.com; jbellissimo@cassels.com; dbudd@cassels.com; MYiu@connectlaw.ca; kurtis.letwin@dentons.com; dean.hitesman@dentons.com; mark.freak@dentons.com; MPaterson@osler.com; MSakamoto@blg.com; zrodgers@ravenlaw.com; sarcher@goldblattpartners.com; EPratt@osler.com; nmaaswinkel@blg.com; dmills@blg.com; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com; tara.berish@osfi-bsif.gc.ca

Subject: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al., ABQB Action No. 2001-05630

Attachments: Ad Hoc Committee of Note Holders - Appendix A .pdf

To the Service List,

Please find attached a revised form of Appendix A – revising the form of Appendix A that was attached to the Bench Brief of Torys LLP (counsel to the Ad Hoc Noteholder Group). This form of revised Appendix A has been agreed to among the Ad Hoc Group, the Applicants, the DIP Lender and SHB, and the First Lien Lenders. This document makes certain changes to the SISP and related documents. Most notably, the SISP deadlines will be extended by approximately two weeks.

We will be referring to this document at this morning's hearing. We apologize for the late deliver but this was just settled this morning.

Kind regards,

Morgan Crilly
 Associate
morgan.crilly@blakes.com

Dir: 403-260-9657

FINAL

Ad Hoc Committee of Note Holders

Proposed Addenda and Changes to Procedures for Sale and Investment Solicitation Process (“SISP”) and Interim Financing Term Sheet (“DIP Term Sheet”)

- (1) The following is added to the SISP as paragraph 41.

Additional Terms

41. In addition to any other requirement of this SISP:
- (a) The SISP Advisor and the Applicants, in consultation with the Monitor, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by the Applicants’ creditors as a high potential bidder.
 - (b) The exercise of any right or discretion given to the Applicants or the SISP Advisor by the SISP shall, in the case of the Applicants, be exercised on their behalf solely by a special committee of DDM’s directors comprised of one or more persons who have confirmed in writing to the Monitor that they do not have any conflict of interest in the subject matter or any material personal or business relationship of any kind with a SISP bidder or a person related to a SISP bidder (including, without limitation, the Stalking Horse Bidder). In addition, the exercise of any right or discretion on the part of the Applicants or the SISP Advisor in respect of any of the following shall require the express consent of the Monitor: the determination of Phase 1 Qualified Bids and Phase 2 Qualified Bids, the selection of Successful Bids, and any discretion afforded by paragraphs 27(e) and 27(h).
 - (c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation which is no less complete and timely than is granted by the Applicants or the SISP Advisor, or their representatives, to the Stalking Horse Bidder or its representatives, pursuant to the SISP. This shall include, without limitation, reasonable access to Rio Tinto plc, The Government of the Northwest Territories and sureties on the basis contemplated by the section titled “Commercially Reasonable Efforts” in the Stalking Horse Bid and reasonable access to the Applicants’ books, records, financial information, management, advisors and business partners. The SISP Advisor and the Monitor shall review all information and materials provided by the Applicants or their representatives to the DIP lenders or their representatives pursuant to the DIP and, to the extent that the SISP Advisor and the Monitor are of the view that any such information or materials are materially relevant to a Potential Bidder or Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, then such information or materials

- 2 -

shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders.

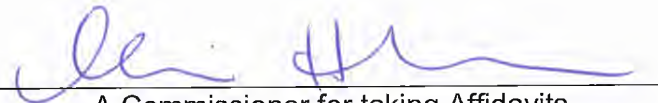
- (d) With respect to the Stalking Horse Bid, the Applicants and the Stalking Horse Bidder shall, by no later than August 7, 2020, enter into a definitive binding purchase and sale agreement on the terms contemplated by the Stalking Horse Bid, copies of which shall be promptly provided in unredacted form to all Phase 2 Qualified Bidders.
 - (e) Nothing in this SISP shall create the presumption or inference that a Successful Bid, Backup Bid or any other bid should or must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP on application of any interested party.
 - (f) Prior to the seeking of Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.
- (2) Paragraph 38 of the SISP is revised as follows.
38. Any other party or parties holding a valid, enforceable, and properly perfected security interest in the Property, including the Agent on behalf of the First Lien Lenders under the Existing Credit Agreement, or any lender party thereto, and, the holders or indenture trustee of the Applicants' 7.125% secured second lien notes, may, subject in all respects to such party's compliance with the SISP and the terms thereof, credit bid the amount of debt secured by such lien as part of any transaction contemplated by the SISP; provided, however, that such transaction shall also provide for the indefeasible and irrevocable repayment in full in cash on the date of closing of any such transaction of any and all obligations secured by a security interest in the Property that is to be acquired under such transaction that is senior to the security interest held in such Property by the party submitting such credit bid unless the holder or indenture trustee or agent of any such senior security interest otherwise agrees (it being understood and agreed that, (a) with respect to the Property the Interim Lender holds a super-priority security interest, senior to all other security interests in the Property, except as expressly set forth in the DIP Term Sheet and with respect to the court-ordered charges created in favour of the Interim Lender under the Second Amended and Restated Initial Order, and (b) any obligations of the Applicants with respect to any cover payments made pursuant to, or reclamation obligations associated with, the Diavik Interest must be either refinanced or collateralized in a manner similar to that contemplated by the Stalking Horse Bid or indefeasibly and irrevocably repaid in full in cash on the date of closing of any such transaction to the extent any credit bid pertains to the Diavik Interest). Any credit bid by the Agent under the Existing Credit Agreement, or any lender party thereto shall provide for the indefensible and irrevocable repayment in full in cash on the date of closing of any such transaction of all Interim Financing Obligations (as defined in the DIP),

- 3 -

including those Interim Financing Obligations attributable to October Advances (as defined in the DIP). Nothing contained herein is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

- (3) The following changes are made to the dates stipulated in the SISP:
- (i) the Phase 1 Bid Deadline in paragraph 13 is changed from June 26, 2020 to July 10, 2020;
 - (ii) the Phase 2 Bid Deadline referred to in paragraph 21 is changed from August 7, 2020 to August 21, 2020;
 - (iii) the date referred to in paragraph 22(j) is changed from September 9, 2020 to September 23, 2020;
 - (iv) the Auction commencement date referred to in paragraph 27(a) is changed from August 10, 2020 to August 24, 2020;
 - (v) the dates for selection and execution of the Successful Bid and Back-up Bid referred to in paragraph 28 are changed, respectively, from August 14, 2020 to August 28, 2020 and from August 18, 2020 to September 1, 2020; and
 - (vi) the Approval Motion hearing date referred to in paragraph 30 is changed from August 31, 2020 to September 14, 2020.
- (4) The Stalking Horse Term Sheet shall be amended to make corresponding changes to the dates set out therein in accordance with (3) above.
- (5) Paragraph 22(f) of the DIP Term Sheet is revised to add the following opening words: “Except as may be otherwise ordered by the Court.”.
- (6) The following be added as a new paragraph 24(e) to the proposed Second Amended and Restated Initial Order:
- “(e) fulfill the role contemplated for the Monitor in the SISP (including, without limitation, in respect of the granting or withholding of the Monitor’s consent to the exercise of certain rights or discretions, the disclosure of certain information and materials to bidders under the SISP, the filing of certain reports to the Court, and the oversight of all SISP activities) and respond to all reasonable enquiries of the Applicants creditors in relation thereto”.

This is Exhibit "C" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Startin, John <John.Startin@evercore.com>
Sent: Friday, July 17, 2020 3:21 PM
To: Frederick Vescio; Jason Feintuch
Cc: ProjectJewel_MMM
Subject: DDM - site visit protocols

Fred, Jason -

Without wishing to pre-judge whether you will be submitting a bid, it's important that we make you aware of some practical restrictions in the Northwest Territories as we contemplate potential site visits. These are in addition to the restrictions placed on US citizens wishing to enter Canada, which we discussed earlier this week.

Due to COVID, the NWT is requiring people entering the territory to monitor their temperatures for 14 days prior, and to record it on a government-provided log. This log is likely to be requested upon entry to the NWT.

We are aware that you may not yet have selected your technical consultant. However, to ensure that your technical team is able to access the site as early in the second round as possible, we would like to ensure that they are undertaking the appropriate monitoring and record keeping. Please let us know once you have retained your technical consultant so that we can coordinate appropriately.

Regards,

John

This is Exhibit "D" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

**DDJ CAPITAL MANAGEMENT, LLC
BARINGS LLC
BRIGADE CAPITAL MANAGEMENT, LP
WESTERN ASSET MANAGEMENT COMPANY, LLC**

July 20, 2020

Evercore
55 East 52nd Street, 42nd floor
New York, NY 10055

Attention: John Startin
John.Startin@evercore.com

FTI Consulting Canada Inc.
520 5th Ave SW
Calgary AB T2P 3R7

Attention: Deryck Helkaa
deryck.helkaa@fticonsulting.com

Dear Sirs/Mesdames:

Re: Procedures for the Sale and Investment Solicitation Process (“SISP”) in the Companies’ Creditors Arrangement Act proceedings (“CCAA Proceedings”) for Dominion Diamond Mines ULC et. al. (the “Companies”)

We are pleased to submit this non-binding letter of intent (“LOI”) pursuant to and in accordance with the Companies’ SISP in the CCAA Proceedings.

This LOI provides for the purchase of all or substantially all of the properties and assets of the Companies on the terms and conditions set out in the Term Sheet attached to this letter (the “Term Sheet”). The Term Sheet forms an integral part of this LOI and should be read together with this letter.

The LOI is being submitted for your consideration by DDJ Capital Management, LLC, Barings LLC, Brigade Capital Management, LP and Western Asset Management Company, LLC, in each case on behalf of certain funds and/or accounts they manage or advise (collectively, the “Bidders”).

The Bidders

The Bidders are large and sophisticated investment managers with well over C\$1 trillion of assets under management. They have a well-established record of completing transactions of the kind contemplated by this LOI, and they can draw from an expansive network of financial and business partners.

DDJ Capital Management, LLC is a Waltham, Massachusetts-based investment adviser registered with the U.S. Securities and Exchange Commission that manages funds and accounts for pension plans, Taft-Hartley plans, and other institutional investors. It was formed in 1996 and currently has more than US\$7 billion of assets under management.

Brigade Capital Management, LP is a well-established global investment advisor founded in 2006 and headquartered in New York, with additional offices in London and Tokyo. It currently has approximately US\$25 billion of assets under management.

Barings LLC is a global financial service firm with more than US\$330 billion of assets under management. It has principal offices in Charlotte, North Carolina and additional offices worldwide.

Western Asset Management Company, LLC is a globally integrated fixed-income manager headquartered in Pasadena, California with offices throughout the world, including in London, Zurich, Sao Paulo, Tokyo, Hong Kong, Singapore, Melbourne and New York. It has more than US\$440 billion of assets under management.

Given the scale of the Bidders and their assets under management, you will find a significant amount of information in the public domain. We would be pleased, however, to provide you with additional information on request.

Transaction Structure

The Bidders are proposing the acquisition of all or substantially all of the Companies' properties and assets free and clear of any and all claims, debts and charges other than specifically assumed liabilities. The transaction will take place in the CCAA Proceedings and pursuant to the SISF. It will require approval of the presiding Court.

The Purchaser will be one or more entities designated by the Bidders, which will as of the closing of the proposed transaction be owned by holders of the Companies' 7.125% secured second lien notes (the "**Second Lien Notes**").

Following completion of due diligence and discussions with financing partners, the Companies, the court-appointed monitor and key stakeholders, the Bidders may consider an alternative structure whereby substantially the same transaction is achieved by way of a plan of arrangement or compromise in the CCAA Proceedings.

Diavik Interest

It is our intention that the Companies' interests in respect of the Diavik Mine and the related joint venture agreement be included as purchased assets in the proposed transaction, subject to satisfaction of conditions specified in the Term Sheet that are substantially the same as those contained in the Stalking Horse Bid referred to in the SISP.

The Bidders intend to diligently pursue efforts to reach mutually acceptable arrangements regarding all matters relating to the Diavik Interest, and they will be seeking facilitation and cooperation from the Companies and the court-appointed monitor.

Credit Bid

The Bidders manage funds and accounts that in the aggregate are holders of US\$333,921,000 in principal amount of the Second Lien Notes. This accounts for more than sixty percent (60%) of the aggregate of all outstanding Second Lien Notes.

In reliance on these Second Lien Note holdings, the Bidders are making a credit bid in accordance with their rights under the SISP and at law. This LOI contemplates a partial credit bid of US\$130,000,000 of the Bidders' total holdings of Second Lien Notes. Following additional due diligence, tax analysis, and discussions with all interested parties, the amount of the credit bid may be adjusted.

Purchase Price

The purchase price proposed by this LOI is comprised of a cash component, assumed liabilities and the Bidders' credit bid. It quite significantly exceeds the purchase price contained in the Stalking Horse Bid, and it satisfies the Minimum Purchase Price requirement provided for in the SISP.

Assumed Liabilities/Employees

This LOI contemplates the Purchaser's assumption of substantially all of the Companies' trade liabilities incurred following the commencement of the CCAA Proceedings which remain unpaid at closing, together with obligations under essential and other designated contracts up to a mutually acceptable amount.

This LOI also contemplates the Purchaser's assumption of existing obligations and agreements with and relating to the Government of the Northwest Territories, sureties, environmental agreements, employee pension and benefit plans, First Nations, and transferred employees – all as more specifically described in the Term Sheet.

Obligations for the Companies' borrowed indebtedness, including with respect to their senior secured first lien facility, the interim facility approved in the CCAA Proceedings, and the Second Lien Notes, will not be assumed.

Capital

The Bidders are in active discussions with multiple prospective debt and equity financing partners, some of whom have already executed non-disclosure agreements with the Companies and are therefore known to them. Financing arrangements will be settled prior to the Bidders making a binding offer in Phase 2 of the SISP, and further details will be provided at that time. The proposed definitive Asset Purchase Agreement that will be presented by the Bidders in Phase 2 of the SISP will not contain a financing condition.

We intend to conservatively capitalize the Purchaser with debt and/or equity capital, details of which will be confirmed upon completion of due diligence and discussions with prospective financing partners and other parties. It is currently anticipated that the cash component of the purchase price will be paid with debt financing to be provided directly from one or more of the Bidders' managed funds and accounts and/or additional third-party sources.

Additional Due Diligence/Next Steps

Attached to the Term Sheet is an outline of additional due diligence currently proposed by the Bidders. As our due diligence work and negotiations continue, other requirements may arise.

The Bidders will be seeking access to the Companies' material stakeholders and business partners in order to advance our bid and enter into mutually satisfactory closing arrangements. Key persons with whom we intend to engage in extensive discussions include Diavik Diamond Mines (2012) Inc. and its controlling shareholder, the Government of the Northwest Territories, sureties, First Nations, key employees and employee representatives.

As noted above, the Bidders intend to submit a definitive Asset Purchase Agreement in Phase 2 of the SISP as provided for therein.

Other Terms/Conditions

Material terms and conditions for the proposed transaction are contained in the Term Sheet and are substantially similar to those contained in the Stalking Horse Bid referred to in the SISP.

Timing

The Bidders' proposed transaction will be advanced in accordance with the timelines contemplated by the SISP, and it will in any case be completed by no later than October 31, 2020.

Advisors

The Bidders are represented by the law firm of Torys LLP and the financial advisory firm of Houlihan Lokey.

Contacts

The following persons are the Bidders' principal contacts for purposes of this LOI and the proposed transaction:

DDJ Capital Management, LLC
Eric Hoff
ehoff@ddjcap.com
(617) 834-3053

Barings LLC
Tom Murphy
tom.murphy@barings.com
(980) 417-5455

Brigade Capital Management, LP
Andrew Petitjean
apetitjean@brigadecapital.com
(917) 592-1253

Western Asset Management Company, LLC
Christopher Jacobs
christopher.jacobs@westernasset.com
(310) 877-5068

Torys LLP
Tony DeMarinis
tdemarinis@torys.com
(416) 865-8162

Houlihan Lokey
Fred Vescio and Jason Feintuch
fvescio@hl.com and jfeintuch@hl.com
(612) 210-4840 and (914) 261-2333

Confidentiality

This LOI, its contents and the Bidders' interest in the proposed transaction are strictly confidential and should not be disclosed without the Bidders' prior written consent, except as is contemplated by the SISF

Definitive Asset Purchase Agreement

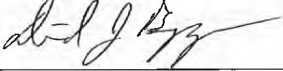
This LOI does not constitute a legally binding obligation of any of the Bidders or any other persons, and it shall be subject to the qualifications set out on the first page of the Term Sheet. Nothing relating to this LOI and the transaction proposed in it shall be binding until such time as

the parties might execute and deliver a definitive Asset Purchase Agreement and other definitive documents.

We look forward to advancing the transaction proposed in this LOI and to responding to any enquiries you may have in relation thereto.

Yours truly,

DDJ CAPITAL MANAGEMENT, LLC
on behalf of certain funds and/or
accounts that it manages and/or advises

By: 
Name: David J. Breazzano
Title: President

BRIGADE CAPITAL MANAGEMENT, LP
acting as investment adviser on behalf of
certain managed funds and accounts

By: _____
Name:
Title:

BARINGS, LLC
on behalf of certain of its managed funds and
advisory accounts

By: _____
Name:
Title:

WESTERN ASSET MANAGEMENT
COMPANY, LLC
acting as investment manager on behalf of
certain managed funds and/or accounts

By: _____
Name:
Title:

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the parties might execute and deliver a definitive Asset Purchase Agreement and other definitive documents.

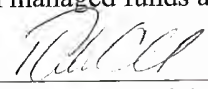
We look forward to advancing the transaction proposed in this LOI and to responding to any enquiries you may have in relation thereto.

Yours truly,

DDJ CAPITAL MANAGEMENT, LLC
on behalf of certain funds and/or
accounts that it manages and/or advises

By: _____
Name:
Title:

BRIGADE CAPITAL MANAGEMENT, LP
acting as investment adviser on behalf of
certain managed funds and accounts

By:  _____
Name: Patrick Criscillo
Title: Chief Financial Officer

BARINGS, LLC
on behalf of certain of its managed funds and
advisory accounts

By: _____
Name:
Title:

WESTERN ASSET MANAGEMENT
COMPANY, LLC
acting as investment manager on behalf of
certain managed funds and/or accounts

By: _____
Name:
Title:

- 6 -

the parties might execute and deliver a definitive Asset Purchase Agreement and other definitive documents.

We look forward to advancing the transaction proposed in this LOI and to responding to any enquiries you may have in relation thereto.

Yours truly,

DDJ CAPITAL MANAGEMENT, LLC
on behalf of certain funds and/or
accounts that it manages and/or advises

By: _____
Name:
Title:

BRIGADE CAPITAL MANAGEMENT, LP
acting as investment adviser on behalf of
certain managed funds and accounts

By: _____
Name:
Title:

BARINGS, LLC
on behalf of certain of its managed funds and
advisory accounts

By: BH
Name: Bryan High
Title: Managing Director

WESTERN ASSET MANAGEMENT
COMPANY, LLC
acting as investment manager on behalf of
certain managed funds and/or accounts

By: _____
Name:
Title:

the parties might execute and deliver a definitive Asset Purchase Agreement and other definitive documents.

We look forward to advancing the transaction proposed in this LOI and to responding to any enquiries you may have in relation thereto.

Yours truly,

DDJ CAPITAL MANAGEMENT, LLC
on behalf of certain funds and/or
accounts that it manages and/or advises

By: _____
Name:
Title:


BRIGADE CAPITAL MANAGEMENT, LP
acting as investment adviser on behalf of
certain managed funds and accounts

By: _____
Name:
Title:

BARINGS, LLC
on behalf of certain of its managed funds and
advisory accounts

By: _____
Name:
Title:

WESTERN ASSET MANAGEMENT
COMPANY, LLC
acting as investment manager on behalf of
certain managed funds and/or accounts

By: 
Name: Adam Wright
Title: Manager, U.S. Legal Affairs

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Cc:

Andrew Frame, Evercore
Andrew.Frame@evercore.com

Nicholas Salzman, Evercore
Nicholas.Salzman@evercore.com

Chris Simard, Bennett Jones LLP
simardc@bennettjones.com

Tony DeMarinis, Torys LLP
tdemarinis@torys.com

Fred Vescio and Jason Feintuch, Houlihan Lokey
fvescio@hl.com and jfeintuch@hl.com

Term Sheet
Purchase of the Properties and Assets of
Dominion Diamond Mines ULC et. al.

The following term sheet (the “**Term Sheet**”) sets forth a summary of certain terms for a proposed definitive binding asset purchase agreement (the “**Definitive APA**”) to be entered into among the Vendors and the Bidders, as respectively defined below, with respect to the proposed acquisition of all or substantially all of the Vendors’ properties and assets by the Purchaser, as defined below. This Term Sheet is not intended to, and does not, create any binding legal obligation on the part of the Bidders, the Purchaser or the Vendors. No legal obligation to negotiate, enter into or consummate any transaction will exist, unless and until definitive and binding transaction documentation regarding the proposed transaction (the “**Transaction**”) has been entered into by the parties, which is subject to internal approvals by the Bidders, satisfactory completion of confirmatory due diligence, and negotiation of final documentation. The terms and conditions set forth in this Term Sheet are not intended to be comprehensive and if, in the course of the Bidders’ due diligence review or development of the proposed acquisition structure, or in the course of negotiations, the Bidders determine that additional terms and conditions or modifications to the terms and conditions set out herein are necessary, then the Bidders reserve the right to address such matters.

Transaction	Acquisition by the Purchaser of all or substantially all of the properties and assets 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. (collectively, the “ Companies ”) and their respective subsidiaries pursuant to the Procedures for the Sale and Investment Solicitation Process (the “ SISP ”) approved by the Court of Queen’s Bench of Alberta (the “ Court ”) in the Companies’ proceedings (the “ CCAA Proceedings ”) under the <i>Companies’ Creditors Arrangement Act</i> (the “ CCAA ”).
Purchaser	One or more entities to be designated by DDJ Capital Management, LLC, Brigade Capital Management, LP, Barings LLC and Western Asset Management Company, LLC (collectively, the “ Bidders ”). The Purchaser shall be a newly created entity or entities owned by holders of the Vendors’ issued and outstanding 7.125% secured second lien notes (the “ Second Lien Notes ”), subject to any debt and/or equity financing to be implemented in connection with the Transaction and definitive terms and conditions to be contained in the Definitive APA. At closing (the “ Closing ”) of the Transaction,

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	<p>arrangements will be put in place regarding governance, shareholder and related matters.</p> <p>Information regarding the Bidders and their principal contacts for purposes of the proposed Transaction has been included in a letter accompanying this Term Sheet. Additional and further information can be provided on request.</p> <p>The Bidders are represented on this matter and the CCAA Proceedings by the law firm of Torys LLP and by the financial advisory firm of Houlihan Lokey.</p>
Vendors	The Companies and, if and to the extent set out in the Definitive APA, its subsidiaries (the “ Vendors ”).
Purchased Assets	<p>All or substantially all of the Vendors’ properties and assets of any kind whatsoever except only the Excluded Assets and including, without limitation, any and all of the Vendors’:</p> <p>(a) equity, debt, and other interests in any subsidiaries or other entities that are not Vendors including, without limitation and to the extent applicable, Dominion Diamond Marketing Corporation, Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V.;</p> <p>(b) rights and interests in relation to the Diavik Diamond Mine and the Diavik Interest (as such terms are defined in the SISP) (collectively, the “Diavik Assets”);</p> <p>(c) rights and interests in relation to the Non-Diavik Assets (as such term is defined in the SISP);</p> <p>(d) mines, mining facilities, ore bodies, and other mining interests of any kind whatsoever;</p> <p>(e) mineral rights, including without limitation in respect of the Ekati core zone, the Ekati buffer zone, Lac de Gras and the Glowworm Lake Property;</p> <p>(f) cash and cash equivalents of any kind whatsoever including, without limitation, all cash collateral and deposits posted by or for the benefit of the Vendors as security for any letter of credit, surety or other bond, rent, utilities, contractual obligations or</p>

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	<p>otherwise (but excluding retainers subject to the Administrative Charge in the CCAA Proceedings);</p> <p>(g) trade and non-trade accounts receivable, notes receivable and negotiable instruments including, without limitation, all intercompany receivables, notes, rights and claims from any subsidiary or other affiliate payable to or in favor of a Vendor;</p> <p>(h) prepaid charges and expenses including, without limitation, all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;</p> <p>(i) equipment and other tangible assets of any kind whatsoever including, without limitation, all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Vendor related thereto;</p> <p>(j) inventory of any kind whatsoever and wheresoever situated;</p> <p>(k) Assigned Contracts (as defined below) and all of the Vendors' rights thereunder and in respect thereof including, without limitation, contracts with affiliates;</p> <p>(l) rights, permits, licenses and authorizations of any kind whatsoever, and all pending applications therefor, in each case to the extent transferrable;</p> <p>(m) rights, options, claims or causes of action of any kind whatsoever against any person arising out of events occurring prior to the Closing and including, without limitation, (i) any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to the Vendors, and (ii) any and all causes of action under applicable laws;</p> <p>(n) right, title and interest of any kind whatsoever in real property (including all fixtures, improvements and appurtenances thereto); and</p> <p>(o) other property and assets of any kind whatsoever including, without limitation, in relation to employee benefit and pension plans and related funding arrangements, employment agreements</p>
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	<p>for Transferred Employees (as defined below), employee personnel files, chattel paper, lock boxes to which account debtors remit payment, intellectual property, goodwill, intangibles, books and records, insurance policies, rights under non-disclosure or confidentiality or noncompetition or non-solicitation and similar agreements, telephone or fax numbers, email addresses, the right to receive mail and other communications addressed to the Vendors, claims or rights or interests in or to any tax refund or rebate or credit or abatement or recovery, prepaid taxes, tax credits, bank accounts, and all other privileges and rights and interests in any way relating to the Vendors' businesses or to the Assumed Liabilities or the Purchased Assets (whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to herein or not);</p> <p>(collectively, the "Purchased Assets").</p>
Excluded Assets	<p>Properties and assets of the Vendors which the Bidders or the Purchaser designate, subject to the terms of this Term Sheet, as not constituting Purchased Assets at least 5 business days prior to the Closing (the "Excluded Assets").</p> <p>Inclusion of the Diavik Assets in the Purchased Assets is subject to satisfaction of the conditions relating thereto in this Term Sheet including, without limitation, conditions (k) and (l) of the Conditions to Closing section herein. If such conditions are not satisfied, the Diavik Assets shall constitute Excluded Assets.</p>
Assumption of Liabilities	<p>On Closing, the Purchaser will assume (the "Assumed Liabilities"):</p> <p>(a) all of the Vendors' ordinary course trade payables arising on or after the commencement date of the CCAA Proceedings (the "CCAA Commencement Date") and that are not yet due and payable as of the Closing in the ordinary course;</p> <p>(b) the Vendors' liabilities and obligations under executory contracts which are Assigned Contracts, whether incurred or arising before or after the CCAA Commencement Date;</p> <p>(c) all of the Vendors' obligations with respect to Transferred Employees (as defined below) under the terms of existing benefit and pension plans;</p>

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	<p>(d) all payroll liabilities with respect to Transferred Employees for the payroll period from and after the Closing; and</p> <p>(e) all of the Vendors' obligations to governmental authorities and First Nations, subject to the terms and conditions of this Term Sheet.</p> <p>For greater certainty, any and all liabilities and obligations in respect of the following shall not constitute Assumed Liabilities: (i) borrowed indebtedness of the Vendors or their affiliates including, without limitation, in relation to the Second Lien Notes, the interim financing approved by the Court in the CCAA Proceedings (the "Interim Facility") and the Vendors' senior secured credit facility (the "First Lien Debt"); (ii) executory contracts and agreements that are not Assigned Contracts; (iii) Excluded Assets; (iv) matters arising out of, relating to or otherwise in respect of the Purchased Assets and/or the Vendors' business (the "Business") arising prior to Closing (unless specifically otherwise provided for in this Term Sheet); (v) any obligations or liabilities to the Vendors' owners or shareholders or persons affiliated therewith; (vi) taxes of the Vendors incurred or arising prior to the Closing; and (vii) employees who are not Transferred Employees.</p>
Assigned Contracts	<p>On Closing, the Vendors shall assign to the Purchaser, and the Purchaser shall assume, any and all contracts and agreements which are essential to the Business or the Purchased Assets, together with such other contracts and agreements as the Purchaser may specifically designate (the "Assigned Contracts"). The Bidders and the Vendors will negotiate mutually acceptable arrangements regarding the Purchaser's assumption of accrued and unpaid obligations under Assigned Contracts up to a specified amount.</p>
Purchase Price	<p>In consideration for the Purchased Assets, on Closing the Purchaser shall pay a purchase price in excess of the Minimum Purchase Price, as such term is defined in the SISP.</p> <p>The Purchase Price shall comprise:</p> <ul style="list-style-type: none"> (a) the Cash Component; (b) the Assumed Liabilities; and (c) pursuant to the Bidders' rights under the SISP and at law, a credit bid in the amount of One Hundred Thirty Million U.S.

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	<p>Dollars (US\$130,000,000) in respect of Second Lien Notes held by the Bidders.</p> <p>The Cash Component will be equal to:</p> <p>(i) One Hundred Twenty-Six Million One Hundred Seven Thousand U.S. Dollars (US\$126,107,000); less</p> <p>(ii) the amount (if any) by which the principal and accrued interest on the Vendors' Interim Facility outstanding at Closing is less than Fifty-Five Million U.S. Dollars (US\$55,000,000); plus</p> <p>(iii) if the Closing is after September 30, 2020, the amount (if any) by which the principal and accrued interest on the Interim Facility outstanding at Closing with respect to Advances (as defined in the Interim Facility) and accrued and unpaid interest after September 30, 2020 is more than Fifty-Five Million U.S. Dollars (US\$55,000,000) up to a maximum of Five Million U.S. Dollars (US\$5,000,000); plus</p> <p>(iv) the amount of the expense reimbursement and break fee (if any) payable to the Stalking Horse Bidder (as defined in the SISP); plus</p> <p>(v) an overbid in the amount of One Million U.S. Dollars (US\$1,000,000).</p> <p>The Cash Component is currently anticipated to be sufficient to: (a) cash collateralize super priority charges approved pursuant to Court orders made in the CCAA Proceedings; (b) satisfy the Interim Facility obligations; and (c) satisfy the portion of the First Lien Debt relating to Dominion Diamond Mines ULC's revolving credit facility; assuming in each case that the Closing occurs on or before October 31, 2020. The Purchase Price and the Cash Component may be adjusted to the extent necessary to ensure satisfaction of the requirements of the SISP.</p>
Capital	<p>The Bidders are holders of Second Lien Notes in the principal amount of U.S.\$333,921,000. They have the power and authority to credit bid up to the full amount of the Second Lien Notes held by them. This credit bid is an essential term of the proposed Transaction and is being made in accordance with the Bidders' rights under the SISP and at law. The Bidders may also make arrangements with other Second Lien Note holders and/or the</p>

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	<p>Second Lien Note indenture trustee in connection with the credit bid portion of the Purchase Price and the proposed Transaction.</p> <p>The Bidders are large, sophisticated and reputable investment companies with well over C\$1 trillion assets under management. They have the proven and demonstrated means and capability to complete transactions of the kind contemplated herein.</p> <p>The Bidders are in currently in discussions with multiple prospective debt and equity financing partners, certain of whom have already executed non-disclosure agreements with the Vendors. Financing arrangements will be settled prior to the Bidders making a binding offer in Phase 2 of the SISP. Information relating thereto will be provided to the Vendors and the Court-appointed monitor concurrently with the submission of such binding offer. The Definitive APA will not be subject to any financing conditionality.</p> <p>The Purchaser will be conservatively capitalized with debt and/or equity capital, with the details to be confirmed upon completion of due diligence and discussions with prospective financing partners and other key persons. It is currently anticipated that the Cash Component will be paid with debt financing to be provided either directly from one or more of the Bidders and/or third-party sources.</p>
Representations and Warranties	<p>The Definitive APA will contain usual and customary representations and warranties by both the Vendors and the Bidders including, without limitation, in relation to valid existence, due authorization, title to assets, validity of permits and, in the case of the Vendors, the absence of a material adverse change, the absence of a material breach or default under material contracts, and usual and customary operating and other representations and warranties.</p> <p>Notwithstanding the foregoing, the purchase of the Purchased Assets will otherwise be on an “as is, where is” basis.</p>
Operation of the Business Prior to Closing	<p>The Definitive APA will provide:</p> <p>(a) for customary operating covenants by the Vendors, including an agreement to continue operations at the Ekati Mine on care and maintenance only and not to conduct activities on any other properties;</p>

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	<p>(b) the Vendors' agreement not to re-start operations at the Ekati Mine without the prior written consent of the Bidders, not to be unreasonably withheld;</p> <p>(c) the Vendors' agreement not to terminate employee furloughs or sell diamonds without the prior written consent of the Bidders, not to be unreasonably withheld;</p> <p>(d) the Vendors' agreement not to enter into, amend or terminate any material contracts; and</p> <p>(e) other customary restrictive and positive covenants subject to the Bidders' prior written consent, not to be unreasonably withheld.</p>
Commercially Reasonable Efforts	The Vendors shall cooperate in a timely and commercially reasonable manner with the Bidders in their efforts to satisfy the conditions to Closing.
Employees	<p>The Definitive APA will provide for the requirement of the Bidders' approval, not to be unreasonably withheld, for decisions prior to Closing relating to employees that are material to the Business, including dealing with furloughed employees, unions and collective bargaining arrangements, and any changes to employee compensation arrangements (including changes approved by the Court in the CCAA Proceedings).</p> <p>Subject to the foregoing, the Bidders anticipate that employment will be offered to substantially all employees of the Vendors (the "Transferred Employees") and that the Purchaser will assume all employee benefit plans, pension plans, union and collective bargaining arrangements, and other employee arrangements on their existing terms so long as there have not been any changes to the foregoing between the date of the Definitive APA and the Closing, unless otherwise consented to by the Bidders.</p>
Conditions to Closing	<p>The parties' obligations to complete the Transaction under the Definitive APA will be subject to fulfillment of, among others, the following conditions precedent:</p> <p>(a) the Bidders shall have been chosen as the Successful Bidders under the SISP, and the Bidders' offer in the Auction contemplated by the SISP shall have been selected as the final</p>

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	<p>Successful Bid (or the Backup Bid, as the case may be) thereunder;</p> <p>(b) an order or orders of the Court (and such other court as may have jurisdiction) shall have been made authorizing and approving the Transaction, the Definitive APA, and all related definitive documentation and matters, in form and content reasonably satisfactory to the Bidders, and such Order or Orders shall have become a final non-appealable Order;</p> <p>(c) all approvals required to complete the transfer of the Purchased Assets to the Purchaser shall have been received under applicable competition, foreign investment, and other laws, all in form and content reasonably satisfactory to the Bidders;</p> <p>(d) there shall not be any laws or court orders restricting or prohibiting the Transaction;</p> <p>(e) all of the Vendors' representations and warranties shall be true and correct at all times up to and including Closing, and the Vendors shall have complied with all of their covenants in the Definitive APA;</p> <p>(f) there shall not have occurred a material adverse change to the Vendors, their subsidiaries, the Business, or the Purchased Assets from the date of the Definitive APA up to and including the Closing;</p> <p>(g) all consents and other approvals required to effect the sale of the Purchased Assets and the other transactions contemplated herein shall have been received;</p> <p>(h) all permits and approvals required to operate the Business after the Closing shall have been received including, without limitation, in respect of the transfer and assignment of (or the issuance of new or replacement) licenses, permits, surface leases and environmental agreements;</p> <p>(i) the Purchaser shall have entered into an agreement or agreements, in form and substance satisfactory to the Bidders, in their sole discretion, with issuers of any surety bond supporting the obligations of the Vendors and the Government of the Northwest Territories (the "GNWT") with respect to collateralization of reclamation obligations of the Purchaser</p>
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	<p>under environmental agreements, authorizations, licenses and subleases to be transferred;</p> <p>(j) the Purchaser shall not be subject to any mandatory governmental regulations, advisories or restrictions related to COVID-19 which would prevent or materially restrict the Purchaser from conducting operations at the Ekati Mine or the Purchaser's ability to reasonably transport, sort and conduct diamond tenders (with the precise standard to be negotiated and included in the Definitive APA);</p> <p>(k) the Purchaser shall have reached an agreement acceptable to the Purchaser with Diavik Diamond Mines (2012) Inc. ("DDMI") and GNWT, in form and substance satisfactory to the Purchaser in its sole discretion, in relation to the timing and quantum of capital calls and reclamation liabilities with respect to the Diavik Assets;</p> <p>(l) the Bidders shall have determined, acting reasonably, that upon payment of any outstanding cash calls with interest and the posting of cash collateral in respect of the Purchaser's portion of the reclamation liability in accordance with the existing closure security agreement or pursuant to other arrangements to be agreed that (i) the Purchaser will be in full compliance with its obligations under the joint venture agreement relating to the Diavik Assets when assigned to the Purchaser, (ii) the Purchaser shall hold a 40% participating interest in the joint venture relating to the Diavik Assets free and clear of any encumbrance other than as imposed by DDMI under the applicable joint venture agreement, and (iii) DDMI shall agree to deliver any diamond inventory which accrued to the account of the Vendors under the applicable joint venture agreement which had not yet been delivered;</p> <p>(m) the Court order or orders approving the Transaction shall provide for the release of any and all encumbrances on the Purchased Assets other than permitted encumbrances to be specified in the Definitive APA and for the vesting of all right, title and interest in the Purchased Assets in the Purchaser as of and following Closing, and the Purchaser shall have received such documents or instruments as may be required, in the Purchaser's reasonable discretion, to demonstrate that, effective as of the Closing, the assets of the Vendors' subsidiaries are released from any and all encumbrances other than permitted encumbrances to be specified in the Definitive APA;</p>
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	<p>(n) the Vendors shall have paid all trade payables arising from the provision of goods and services on or after the CCAA Commencement Date that are due and payable at or before the Closing, other than such amounts which are disputed by the Vendors in good faith for which adequate reserves have been created in a manner satisfactory to the Bidders; and</p> <p>(o) the Vendors shall have materially complied with the budget filed by them in the CCAA Proceedings in connection with the Court approval of the Interim Facility, as it may be updated and provided to the Bidders prior to the Bidders' submission of a binding offer in Phase 2 of the SISP.</p>
Closing	<p>The Closing shall take place as soon as reasonably practicable after all conditions precedent to the Transaction are fulfilled and, in any case, no later than October 31, 2020 unless otherwise agreed by the parties.</p>
Termination Rights	<p>Each of the parties will be entitled to terminate the Definitive APA if:</p> <ul style="list-style-type: none"> (a) the Closing does not occur on or before October 31, 2020; (b) the Court in the CCAA Proceedings, or any other court or governmental authority, takes action to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets to the Purchaser which is not capable of appeal; and (c) the Court does not approve the sale of the Purchased Assets to the Purchaser on the terms set out herein and the Definitive APA. <p>The Bidders shall also be entitled to terminate the Definitive APA if:</p> <ul style="list-style-type: none"> (i) certain milestones to be agreed in the Definitive APA with respect to the CCAA Proceedings and the Transaction are not achieved; (ii) the Vendors default in any of their obligations under or in respect of the Interim Facility; (iii) the CCAA Proceedings are terminated or a trustee in bankruptcy or a receiver is appointed, and such trustee in

- 12 -

	<p>bankruptcy or receiver refuses to proceed with the Transaction; or</p> <p>(iv) the Vendors breach or default in the performance of any of their obligations under the Definitive APA.</p>
Deposit	The Definitive APA will provide for the payment of a deposit in the manner contemplated by the SISP (the “ Deposit ”).
Limitation of Liability	If the Definitive APA is terminated by reason of breach on the part of the Bidders, the Vendors’ sole remedy shall be limited to retention of the Deposit.
Backup Bid	The Definitive APA will provide that it can stand as a Backup Bid in the manner contemplated by the SISP.
Confirmatory Due Diligence	The entering into of the Definitive APA shall be subject to the Bidders’ completion of confirmatory due diligence. Attached as Schedule “A” is an outline of additional due diligence currently contemplated as necessary to the Bidders’ submission of a binding offer in Phase 2 of the SISP.
Expense Reimbursement	The Definitive APA will provide for payment and reimbursement of the Bidders’ costs and expenses in relation to the Transaction and the CCAA proceedings.
Alternative Transaction Structure	In consultation with the Vendors, the Court-appointed monitor in the CCAA Proceedings, and the Vendors’ stakeholders, the Bidders will consider alternative transaction structures whereby substantially the same Transaction as is contemplated herein is achieved by way of a CCAA plan of arrangement or compromise of the Vendors or a similar transaction.
Governing Law	Alberta
Dispute Resolution	Court of Queen’s Bench of Alberta

**Schedule “A”
Outline of Additional Due Diligence**

Additional information, documents, investigations, assessments and access regarding the Companies’ properties, assets and business including, without limitation, with respect to:

The Diavik Mine and the Companies’ joint venture interests in it, including:

- Accounting and assessment of the quality and value of the Companies’ share of cumulative production held back by DDMI
- Budgets, forecasts and other forward-looking information (including capital expenditure plans/requirements)
- Resource studies, mining plans, and similar information and materials
- Reclamation liabilities and related agreements and obligations
- Accounting of the Companies’ cash call obligations and budget forecasts
- Governance and management information review
- Site inspections
- Access to and discussions with DDMI regarding pro forma arrangements

The Ekati Mine, including:

- Mining resumption plan
- Budgets, forecasts and other forward-looking information (including capital expenditure plan/requirements)
- Further review of key assumptions used in developing the Companies’ model
- Resource studies, mining plans, and similar information and materials
- Appraisal documents of material assets of the Companies, as available
- Reclamation liabilities and related agreements and obligations
- Management/personnel information
- Site inspections

Agreements with GNWT and surety providers, including:

- Reclamation cost collateral arrangements (including those involving third parties)
- Access to the GNWT in relation to pro forma arrangements
- Access to surety providers in relation to pro forma arrangements

Environmental agreements, including:

- Assessment of current environmental agreements
- Access to environmental officials in relation to pro forma arrangements

Inventory information, including:

- Updated Canadian and foreign diamond inventory lists and data
- Information on foreign sorting/sale operations and intercompany agreements
- Additional information on inventory security and insurance policies

Comprehensive review of material contracts and relationships, including:

- Interviews with management regarding essential contracts and relationships
- Further review of management's expectations for customer and vendor payment terms
- Access to key counterparties regarding pro forma relationships
- Assessment of consent issues
- Review of suppliers' lien filings and consideration of related issues

Tax review, assessment and analysis, including:

- Detailed information on tax attributes of properties and assets
- Income tax information and issues (including for subsidiaries)
- Tax planning & analysis for proposed transaction

Key employees, including:

- Interviews with key employees
- Discussions regarding pro forma arrangements

Employee pension and benefit plans, including:

- Updated actuarial and related information
- Funding forecasts and projections

Permits, operating licenses, authorizations and related matters, including:

- Assessment of permits, licenses, authorizations deemed essential pro forma
- Transferability review and information
- Access to regulatory authorities in relation to same

CCAA financial information, including:

- Updated CCAA/DIP budget
- Detailed accounting of expenditures & receipts

Royalty and joint venture agreements, including:

- Access to royalty and joint venture partners
- Determination of pro forma arrangements

Aboriginal agreements, including:

- Access to aboriginal representatives on pro forma commitments

Transaction regulatory approvals, including:

- Assessment of regulatory approval requirements for transaction

This is Exhibit "E" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

EVERCORE

July 24, 2020

Strictly Private & Confidential

DDJ Capital Management, LLC
Eric Hoff
ehoff@ddjcap.com
(617) 834-3053

Barings LLC
Tom Murphy
tom.murphy@barings.com
(980) 417-5455

Brigade Capital Management, LP
Andrew Petitjean
apetitjean@brigadecapital.com
(917) 592-1253

Western Asset Management Company, LLC
Christopher Jacobs
christopher.jacobs@westernasset.com
(310) 877-5068

Torys LLP
Tony DeMarinis
tdemarinis@torys.com
(416) 865-8162

Houlihan Lokey
Fred Vescio and Jason Feintuch
fvescio@hl.com and jfeintuch@hl.com
(612) 210-4840 and (914) 261-2333

Dear Sirs/Mesdames:

On behalf of Dominion Diamond Mines ULC (“Dominion” or the “Company”), thank you for submitting your non-binding letter of intent (an “LOI”). This letter is to notify you that, under the terms of the Sale and Investment Solicitation Process (the “SISP”), your LOI has been considered to be a Phase 1 Qualified Bid and that, as a result, you have been deemed to be a Phase 2 Qualified Bidder. As outlined in the SISP, we invite you to submit a **binding Phase 2 Qualified Bid (“Binding Offer”)** by 5:00pm (Mountain Standard Time) on August 31, 2020 (the “Phase 2 Bid Deadline”).

I. PHASE 2 OF SALE AND INVESTMENT SOLICITATION PROCESS

Page 2

Phase 2 will be conducted in accordance with the procedures outlined in the SISP which has been provided to you via the virtual data room and which was approved by the Alberta Court of Queen's Bench (the "Court") on June 19, 2020 as part of the Dominion's CCAA proceedings (the "CCAA Proceedings"). The SISP sets forth the process by which Dominion is authorized to solicit the highest or otherwise best bids for the Dominion Property including the Diavik Interest, culminating in an auction (the "Auction") if competing Binding Offers are received. If two or more Binding Offers (which may include the Stalking Horse Bid) are received by the Phase 2 Bid Deadline, Dominion will commence the Auction on September 3, 2020.

II. BINDING BIDS

Your Binding Offer will only be considered as a "Phase 2 Qualified Bid" by the Company if the binding offer meets the conditions outlined in Paragraph 22 of the SISP. Your Binding Offer should be addressed to the SISP Advisor, with a copy provided to the Monitor and Counsel to the Monitor:

SISP Advisor: Evercore Group LLC	Monitor: FTI Consulting Canada Inc.
55 East 52nd Street New York, NY 10055	520 5th Ave SW Calgary AB T2P 3R7
John Startin E-Mail: John.Startin@evercore.com	Deryck Helkaa E-Mail: deryck.helkaa@fticonsulting.com
WITH A COPY TO: Andrew Frame E-Mail: Andrew.Frame@evercore.com	Counsel to the Monitor: Bennett Jones LLP
Nicholas Salzman E-Mail: Nicholas.Salzman@evercore.com	4500 Bankers Hall East 855 2nd Street SW Calgary AB T2P 4K7 Chris Simard E-mail: simardc@bennettjones.com

In order to assist you with the preparation of your Binding Offer, you will be provided with and given the opportunity to participate in:

- (i) **Site Visits:** You will be permitted to access the Ekati mine site, with advance notice, for a site visit to be scheduled during the weeks of **August 3rd and August 10th**, subject to the quarantine protocols and other restrictions described in the Site Visits section below.
- (ii) **Company Subject Matter Expert Discussions:** You will have the opportunity to schedule discussions with Subject Matter Experts ("SMEs") at the Company prior to August 21st. We ask that you submit written requests to Evercore reasonably in advance of any such discussion, and request that the Company be given no less than five (5) days' notice of any

Page 3

requested SME discussions so that the Company has adequate time to arrange the schedules of the relevant SMEs and prepare for each discussion. In your requests please include specific questions and topics that you would like to cover during the SME discussions.

- (iii) **Template APA:** A template proposed Asset Purchase Agreement will be provided in the VDR which we request you revise to reflect the terms of your Binding Offer.

III. SITE VISITS

On July 17, 2020, the Government of Canada issued an order to close the US/Canada border until August 21, 2020. As of the date of this letter, the Northwest Territories (NWT) Chief Public Health Officer (CPHO) has issued public health orders applicable to mineral and petroleum remote work camps and requires social distancing prior to visiting such camps. Under these orders, workers and visitors to all remote sites in the NWT, including those visiting Ekati, must (a) practice social distancing for 14 days prior to travelling and (b) monitor themselves for 14 days prior to their visit using a daily self monitoring form issued by the Government of the Northwest Territories. These forms may be requested at ports of entry into the NWT and visitors will be required to provide these forms to the Occupational Health Supervisor upon arrival at any remote site.

Consequently, Phase 2 Qualified Bidders that request a site visit should consider:

- a) utilizing Canadian technical consultants, as needed, to avoid US/Canada border and transit issues;
- b) requiring any representatives planning to travel to the Ekati mine to begin social distancing and self-monitoring procedures in accordance with NWT CPHO public health orders as soon as possible in order to facilitate site visits the week of August 3rd or August 10th in compliance with current regulations and recommendations;
- c) limiting the number of representatives travelling to the Ekati site **to no more than 10 people**; and
- d) preparing for site visits at the Ekati mine to be completed in a single day to limit the exposure of the Ekati workforce to visiting representatives of Phase 2 Qualified Bidders. In order to facilitate complete site visits in a single day, representatives will be divided into three (3) groups, with each group visiting one of the underground, the processing plant areas or the camp.

You may direct all questions and other requests regarding due diligence or Phase 2 of the SISP to Andrew Frame (+1-646-512-1232; andrew.frame@evercore.com) and Nicholas Salzman (+1-646-942-4016; nicholas.salzman@evercore.com) at Evercore.

The contents of this letter, as well as the existence, content and status of any Binding Offer you may or may not submit, are all subject to the confidentiality agreement (“Confidentiality Agreement”) into which you entered with the Company in connection with the CCAA Proceedings and the SISP.

None of Dominion, its advisors, their respective subsidiaries or affiliated corporations, their respective directors, officers, employees, shareholders, affiliates, agents, or representatives, will have any liability to

Page 4

you or any other person, in contract, tort, or otherwise, arising out of or relating to the Confidential Information (as defined in the Confidentiality Agreement).

No representations or warranties, expressed or implied, are being made by Dominion or its advisors, or any of their respective affiliates, to any prospective purchaser with respect to any information furnished, regardless of the manner or medium in which it is furnished, in connection with the sale of Dominion's Property including the Diavik Interest, other than those representations or warranties that are made to the purchaser in a definitive agreement between the parties. You agree that neither Dominion nor any of its affiliates or Representatives shall have any liability to you nor any of your affiliates or representatives as a result of the use of the Confidential Information concerning Dominion by you or your affiliates or Representatives except as otherwise provided in a definitive agreement between the parties which provides specific representations or warranties and only to the extent of such specific representations or warranties.

Under no circumstances should you or any of your representatives contact Dominion or any of its affiliates, or any of Dominion's or its affiliates' directors, officers, employees or consultants, directly or indirectly, without the prior written consent of Evercore. Should you wish to discuss any matter relating to the SISP, please contact an Evercore representative (as detailed above).

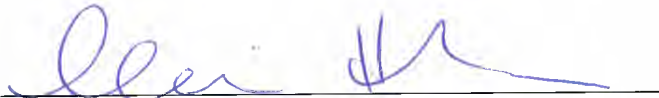
Without limiting any of the terms set forth in your Confidentiality Agreement, there must be no communications regarding the SISP between you and any other Potential Bidder who has executed a Confidentiality Agreement including, for the avoidance of doubt, the Stalking Horse Bidder), unless Dominion or its advisors have previously expressly authorized such communication in writing.

On behalf of Dominion, we would like to thank you for your continuing interest in evaluating the Property and the Diavik Interest.

Sincerely,

John Startin
Senior Managing Director
Evercore

This is Exhibit "F" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Salzman, Nicholas <Nicholas.Salzman@Evercore.com>
Sent: Tuesday, July 28, 2020 9:32 AM
To: Vescio, Fredrick; Feintuch, Jason; Cumming, David; Hartigan, John; Gendler, Danny; McGear, Drew
Cc: Startin, John; Frame, Andrew; Neuhoff, Charlotte
Subject: Project Jewel - Subject Matter Expert Discussions

HL Team,

As you saw in the process letter, we would like to understand what Subject Matter Expert (SME) discussions with Management you would like to have. Based on the diligence list in your Phase 1 LOI, we are starting to organize several of these discussions for you (initial list with draft attendees below). With respect to the Key Employee calls, can you let us know who specifically you would like to speak with?

- Financial Model Call: Andrew Petch and Kristal Kaye
- Sureties Call - Aviva: Kristal Kaye, Barry and Aviva
- Sureties Call – Zurich: Kristal Kaye, Barry and Zurich
- Marketing Call: Kristal Kaye, Harsh Dalal
- Supply Chain Call: Charlene Lees, Kristal Kaye, Malinda Kellett
- Ekati JV Call: Rory Moore, Malinda Kellett, Stu Blusson
- IBA Call: Claudine Lee, Kristal Kaye, Malinda Kellett
- Alternative Mining Call: Rory Moore, Mike Welsh
- Key Employee Calls

Also, to the extent that you have specific questions you would like us to address, we would appreciate if you could please provide agendas/question lists for each call. We will circle back with potential times for each call to get things on the calendar.

Regards,
Nick

Nicholas Salzman
Evercore
55 East 52nd Street
New York, NY 10055
Tel: +1 646 259-7783
Cell: +1 646 942-4016
Nicholas.Salzman@Evercore.com

This is Exhibit "G" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: DeMarinis, Tony <tdemarinis@torys.com>
Sent: Thursday, August 20, 2020 7:50 PM
To: Rubin, Peter
Cc: Tomaine, Susan; Belsher, Geoff; Chris Simard; Thomas Powell CPA (Tom.Powell@fticonsulting.com); Helkaa, Deryck (Deryck.Helkaa@fticonsulting.com); Kashuba, Kyle; Emanoilidis, John; Lake, Konata
Subject: Offer Deadline Extension Request - Dominion Diamond Mines SISP
Attachments: (2020.08.13) DDM - Rio Term Sheet_DRAFT.pdf; (2020.08.14) DDM - 1L_Term_Sheet_vSent.pdf; (2020.08.11) DDM - Sureties Deck - Zurich vS.pdf; (2020.08.11) DDM - Sureties Deck - Aviva-Argo vS.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

External Email | Courrier électronique externe

Peter,

Thank you for your and your colleagues' time earlier today. I am following-up to formally request an extension to the deadline for submitting our clients' proposed binding offer under the Procedures for the Sale and Investment Solicitation Process ("SISP") in Dominion Diamond Mines' CCAA proceedings.

As contemplated by paragraph 21 of the SISP, please accept this as our request for the Company's agreement to an extension of the August 31, 2020 deadline. By copy of this email I am also requesting that the Monitor consent to such requested extension, again as contemplated by paragraph 21 of the SISP.

As we discussed in our call, our clients' have been working diligently towards settling their proposed offer. In this regard, they have conducted extensive due diligence, expended considerable resources, and engaged in multiple negotiations with key stakeholders. They have also introduced numerous prospective equity and debt financing partners to this opportunity, and they have coordinated the execution of NDAs between those parties and the Company and the conduct of independent due diligence by those parties. The stature and credibility of our clients' prospective financing partners is known to the Company.

Our request for an extension is driven by the corresponding requests of the prospective financing partners. Additional time is sought for completion of their due diligence, internal approval and other activities, and for the negotiation and documentation of the proposed financing terms. Matters have been greatly advanced, but a variety of factors ranging from seasonal impediments to late-arriving information and documents has led to the requests for more time.

Our clients intend to submit a binding offer that is clearly superior to the current stalking horse bid under the SISP. The proposed offer will meet all qualifying requirements under the SISP, including as to cash consideration, and it will provide for a far superior aggregate purchase price. Importantly, it will also offer a holistic solution insofar as it will include the Company's joint venture interests in the Diavik mine and address related issues regarding reclamation liabilities for that mine.

We have sought the support of the Company's key stakeholders, including the Diavik joint venture partner, the Company's surety bond providers, and the 1st lien lenders in relation to their Diavik letters of credit. Our clients continue to be engaged in discussions with these parties. As you requested, I am attaching for your information and review copies of proposals which have been exchanged with these parties.

If their bid is successful, we believe that any issues regarding post-auction funding requirements and deadlines can be adequately addressed through appropriate arrangements for bridge funding to closing.

We have requested a 30-day extension to the August 31 deadline. In response to a question raised during our call, we confirm that even a lesser period of time might prove pivotal in enabling our clients to put forward a superior offer in the SISP.

Please let me know if you have any additional questions or requests. Thank you in advance.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com



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This is Exhibit "H" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: McGeary, Drew <DMcGeary@HL.com>
Sent: Friday, August 21, 2020 9:54 AM
To: Salzman, Nicholas; ProjectJewel_EVR
Cc: Feintuch, Jason; Vescio, Fredrick; Cumming, David; Hartigan, John; Shah, Vaidehi
Subject: [EXTERNAL] DDM - Follow-Up Legal Due Diligence
Attachments: Jewel - Due Diligence Request List.DOC

CAUTION: This email originated from outside of Evercore. Do not click links or open attachments unless you recognize the sender and are expecting the attachment or link.

Hi Nick,

Please find attached a follow-up due diligence request list from our group's legal counsel. Also, please note that the environmental issues contained herein are the priority.

Much appreciated,
Drew

Drew McGeary
Financial Analyst



HOULIHAN LOKEY

245 Park Avenue
New York, NY 10167
+1.212.497.4191 **Direct**
+1.508.505.1885 **Mobile**
DMcGeary@HL.com
HL.com

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Dominion Diamond Mines ULC

FOLLOW-UP DUE DILIGENCE REQUEST LIST – AUGUST 11, 2020

The following is an initial list of additional documents and information requested on behalf of DDJ Capital Management, LLC, Barings LLC, Brigade Capital Management, LP and Western Asset Management Company, LLC (collectively, the “Bidders”) in connection with the Bidders’ proposed transaction involving Dominion Diamond Mines ULC and related entities (collectively, “Dominion”), as such transaction is described in the letter of intent dated July 20, 2020, delivered by the Bidders to Evercore Group LLC, as SISP advisor, and FTI Consulting Canada Inc., as monitor, in relation to the sale and investment solicitation process commenced within the proceedings under the *Companies’ Creditors Arrangement Act* (Canada) in respect of Dominion. This is an initial follow-up due diligence request list and will be updated or supplemented as the transaction progresses.

In each instance, requests for documents and information regarding Dominion extend to documents and information regarding any subsidiaries of Dominion (“Subsidiaries”), including Subsidiaries in existence today, as well as any joint ventures or partnerships to which Dominion or any of its Subsidiaries is a party.

Unless otherwise indicated, documents requested in this list include all amendments, supplements or other ancillary documents or information related to the documents requested.

If a requested item in this list does not apply to Dominion, please mark an “X” in the column entitled “None”. Otherwise, please mark an “X” in the column entitled “Provided” and indicate the location of the relevant documents in the virtual data room or the manner in which the documents were otherwise made available (e.g., by e-mail). Please also add any comments, as appropriate, in the space provided.

In addition to the requested documents and information, the Bidders and their advisors will depend on Dominion and their advisors to bring to our attention information or documents that are not on this list, but which are relevant to the proposed transaction and which should be the subject of due diligence in that context. In addition, we would ask that you please advise us of and provide any new documents or information, or changes to documents or information that have been provided, that would be covered by this list and also make those materials available for review.

We are happy to discuss any questions or concerns you may have. Should you have any questions or comments regarding any of the items set out below, please do not hesitate to contact Mike Noel by phone at 416-865-7378 or email at mnoel@torys.com.

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
1.	Transaction			
1.1	Please provide a copy of the Template Purchase and Sale Agreement referred to in s. 2.1 of the <i>Procedures for the Sale and Investment Solicitation Process</i>			
1.2	Corporate Records and Corporate Governance			
1.3	Please confirm that the draft Diavik Joint Venture Agreement – Closure Security Agreement dated October 25, 2019 is the most recent version addressing the matters contained therein. Otherwise, please provide the executed agreement or if the agreement has not been executed, the most recent draft of the agreement.			
1.4	We see a Rough Diamond Supply Agreement dated March 17, 2014 between Dominion Diamond Ekati Corporation (“DDEC”) and Dominion Diamond Marketing N.V., but DDEC is not found on the corporate org chart. Please explain how this entity fits within the corporate group.			
1.5	Please provide the following the following documentation as it relates to the Ekati Mine joint venture:			
	(a) We understand that Dominion Diamond Mines ULC (“Dominion”) acquired its interest in the Ekati Mine from BHP Diamonds Inc. (“BHP”) in 2013. Please provide the agreement pursuant to which this interest was acquired.			
	(b) We understand that Dominion currently controls 88.9% of the Core Zone of the Ekati Mine. Please provide any documentation pursuant to which Dominion acquired any of the interests of the original Parties other than the former BHP interest (51%).			
	(c) We have only received the Joint Venture Agreement for the Core Zone of the Ekati Mine, and not for the Buffer Zone. Please provide a copy of this Joint Venture Agreement for the Buffer Zone.			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	We note that according to the Confidential Information Memorandum, Dominion has a 100% interest in the Buffer Zone. Therefore, please confirm whether the joint venture agreement for the Buffer Zone is still in force or if it has been terminated.			
1.6	Please provide a copy of the original lease for office space at the Precambrian Building, 4920-52 Street, Yellowknife, NWT, between Dundead Canada West (GP) Inc. (as landlord) and BHB Billiton Diamonds Inc. (as the original tenant), dated December 1, 2006, the interests in which were assigned from the original tenant to Dominion Diamond Ekati Corporation on March 28, 2013.			
1.7	Please provide an executed copy of the Tariffed Services Agreement dated May 31, 2017 between Dominion Diamond Ekati Corporation and NorthwesTel Inc. We note that the copy on the datasite is not executed by NorthwesTel.			
1.8	Please provide us with a legible copy of the pricing terms found in Schedule D of the Master Goods and Services Agreement dated March 2, 2020 between Dominion Diamond Mines ULC and Tli Cho Domco Inc. The version of this Schedule D on the datasite is illegible.			
1.9	Please provide an executed copy of the Letter of Agreement dated November 21, 2018 between Dominion Diamond Ekati ULC and Denesoline Corp Ltd. We note that the copy on the datasite is not executed by Dominion.			
1.10	Please provide an update as to the status of the following agreements, whose initial terms have all expired. If an agreement has been renewed, please provide us with a copy of the extension agreement/notice:			
	(a) Master Services Agreement dated August 1, 2015 between Dominion Diamond Ekati Corporation and Kituna BBE Expediting Ltd.			
	(b) Bulk Satellite Television Service Order Form between Dominion Diamond Ekati Corporation and Shaw Satellite G.P., dated May 1, 2017.			
	(d) Supply of Goods Agreement between Dominion Diamond Ekati Corporation and Weir Canada Inc., dated May 15, 2017.			
	(f) Master Goods and Services Agreement between Dominion Diamond Resources Corporation and SMS Equipment Inc., dated August 1, 2015.			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	(g) Loaned Equipment Contract between Dominion Diamond Ekati ULC and Petro-Canada Lubricants Inc., dated January 1, 2019.			
	(h) Master Goods and Services Agreement between Dominion Diamond Ekati ULC and 121352 Canada Inc. / Technosub, dated October 1, 2018.			
	(i) Goods and Services Alliance Agreement among Dominion Diamond Ekati ULC and Finning (Canada), a division of Finning International Inc. dated October 1, 2018. Please also provide us with copies of each of the schedules to this agreement.			
	(k) Fuel Storage and Handling Services Agreement between Dominion Diamond Ekati Corporation and Westcan Bulk Transport Limited.			
1.11	The Bulk Satellite Television Service Order Form between Dominion Diamond Ekati Corporation and Shaw Satellite G.P., dated May 1, 2017, refers to an original order form for this service. Please provide us with a copy of this original order form.			
1.12	Please confirm whether each the following agreements relate to the Ekati Mine, the Diavik Mine or both: (a) Master Coverage Enhanced Agreement dated September 17, 2018 between thyssenkrupp Elevator (Canada) Limited and Dominion Diamond Ekati ULC. (b) Master Goods and Services Agreement between Dominion Diamond Ekati ULC and Maxxam Analytics International Corporation, dated August 15, 2018. (c) Consignment of Goods Agreement between Dominion Diamond Ekati ULC and 507170 N.W.T Ltd., dated March 21, 2018. (d) Fuel Storage and Handling Services Agreement between Dominion Diamond Ekati Corporation and Westcan Bulk Transport Limited.			
1.13	Please provide us with the change order dated June 25, 2018 relating to the Master Professional Services Agreement dated November 15, 2015 between Dominion Diamond Ekati Corporation and Morneau Shepell Inc.			
1.14	Please provide us with a copy of the Sale Contract between Dominion Diamond Mines ULC and Petro-Canada Lubricants Inc., dated December 1, 2019, along with any extensions of the term thereof. We note that the datasite contains an amendment to this agreement which extends its term to June 15, 2020.			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS							
1.15	Please provide us with a clean copy of the Master Goods and Services Agreement between Dominion Diamond Mines ULC and Aurora Geosciences Limited, dated January 29th, 2019. We note that the version of this agreement in the datasite is a blackline version and not a clean, executed copy.										
1.16	In relation to the Services Contract between Dominion Diamond Ekati ULC and Northcan Freighters Ltd, please provide: (i) an executed and dated copy of this services contract, as the copy on the datasite is unexecuted and undated. (ii) an executed and dated copy of the extension notice dated December 5, 2015 extending that agreement to May 31, 2021, as the copy on the datasite is also unexecuted and undated.										
1.17	The Asset Purchase Agreement references an entity named "Dominion Diamond (Luxembourg) S.a.r.l.". Please provide us with details of how this entity is related to those entities in the corporate structure chart and provide us with an up-to-date corporate structure chart including such entity.										
2.	Community Engagement										
2.1	Please provide the participation agreements with the Tli Cho Government, the Yellowknives Dene First Nation, the Lutsel K'e Dene First Nation, the Kitikmeot Inuit Association and the North Slave Metis Alliance, as well as any amendment or assignment related to any of the foregoing agreements.										
2.2	Please provide any other agreements or documents with any Aboriginal or Indigenous groups related to Indigenous matters at the Diavik Mine including all impact and benefits agreements.										
2.3	For each of the payments listed below, please confirm which have been paid to date in 2020 and which are still outstanding:										
	<table border="1"> <thead> <tr> <th data-bbox="1117 1041 1197 1377">Indigenous Counterparty</th> <th data-bbox="1117 1377 1197 1646">Heritage Fund</th> <th data-bbox="1117 1646 1197 1870">Community Fund</th> <th data-bbox="1117 1870 1197 2027">Scholarships</th> </tr> </thead> <tbody> <tr> <td data-bbox="1197 1041 1332 1377">Tlcho</td> <td data-bbox="1197 1377 1332 1646">\$1,300,000^a annually</td> <td data-bbox="1197 1646 1332 1870">\$60,000^a</td> <td data-bbox="1197 1870 1332 2027">\$5,500^b annually</td> </tr> </tbody> </table>	Indigenous Counterparty	Heritage Fund	Community Fund	Scholarships	Tlcho	\$1,300,000 ^a annually	\$60,000 ^a	\$5,500 ^b annually		
Indigenous Counterparty	Heritage Fund	Community Fund	Scholarships								
Tlcho	\$1,300,000 ^a annually	\$60,000 ^a	\$5,500 ^b annually								

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS															
	<table border="1"> <tr> <td data-bbox="288 488 347 607"></td> <td data-bbox="288 607 347 770">annually</td> <td data-bbox="288 770 347 889"></td> <td data-bbox="288 889 347 1052"></td> </tr> <tr> <td data-bbox="347 488 432 607">The Akaitcho Treaty 8</td> <td data-bbox="347 607 432 770">\$1,000,000^{a,b} annually</td> <td data-bbox="347 770 432 889">\$45,000^a annually</td> <td data-bbox="347 889 432 1052">\$15,000^a annually</td> </tr> <tr> <td data-bbox="432 488 491 607">The Inuit</td> <td data-bbox="432 607 491 770">\$300,000^a annually</td> <td data-bbox="432 770 491 889">None</td> <td data-bbox="432 889 491 1052">\$15,000^a annually</td> </tr> <tr> <td data-bbox="491 488 549 607">The Alliance</td> <td data-bbox="491 607 549 770">\$300,000^a annually</td> <td data-bbox="491 770 549 889">None</td> <td data-bbox="491 889 549 1052">\$15,000^a annually</td> </tr> </table> <p data-bbox="288 1052 549 1093">a signifies indexed to inflation.</p> <p data-bbox="288 1093 549 1133">b signifies that the amount may have been modified based on the terms of the IBA.</p>		annually			The Akaitcho Treaty 8	\$1,000,000 ^{a,b} annually	\$45,000 ^a annually	\$15,000 ^a annually	The Inuit	\$300,000 ^a annually	None	\$15,000 ^a annually	The Alliance	\$300,000 ^a annually	None	\$15,000 ^a annually		
	annually																		
The Akaitcho Treaty 8	\$1,000,000 ^{a,b} annually	\$45,000 ^a annually	\$15,000 ^a annually																
The Inuit	\$300,000 ^a annually	None	\$15,000 ^a annually																
The Alliance	\$300,000 ^a annually	None	\$15,000 ^a annually																
3.	Environmental Matters																		
3.1	Please provide the Ekati Mine Environmental Agreement, dated January 1997 and amended April 2003, between Dominion, the Government of Canada and the Government of Northwest Territories, and all amendments thereto (we are aware of amendments in 2003, 2013 and 2018).																		
3.2	<p>Please provide the surface leases, land use permits and license of occupations for the Ekati Mine (including all of its actual or proposed expansions), including the following:</p> <ul style="list-style-type: none"> • Surface leases: <ul style="list-style-type: none"> ○ 76D/9-3-2; ○ 76D/9-4-2; ○ 76D/10-2-2; ○ 76D/10-3-2; ○ 76D/10-4-2; ○ 76D/15-4-2; ○ 76D/10-5-2; 																		

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	<ul style="list-style-type: none"> o 76D/10-7-2; o 76D/9-11-2; o 76D/9-10-2; and • Type A Land Use Permits: <ul style="list-style-type: none"> o W2016F0006; o W2016D0003; o W2016F0005; o W2013C0005; o W2013D0006; o W2015D0005; o W2014I0001; o W2016F0007; and • Jointly-held surface leases; • License of occupation and land use permit for the winter road; and • Land use permit(s) and surface lease(s) for Jay pipe. 			
3.3	Please provide Water Licence for the Ekati Mine, which is described as Type A Water Licence (W2012L2-0001) and its amendments.			
3.4	Please provide the Fisheries Act authorizations and compensation agreements for the Ekati Mine, including the following: <ul style="list-style-type: none"> • Compensation agreements relating to: <ul style="list-style-type: none"> o Panda Diversion; and o Nero-Nema Stream Monitoring Program; • Authorizations: <ul style="list-style-type: none"> • SCA96021 (with compensation agreement): covers all areas except 			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	<p>Sable, Pigeon, Beartooth, and Misery;</p> <ul style="list-style-type: none"> • SCO1111: covers the Desperation and Carrie Ponds (Misery area); • SC00028: covers King Pond (Misery area); • SC99037: covers the Sable, Pigeon and Beartooth areas; • 15-HCAA-00266 covers the Lynx Lake (with compensation agreement [referred to as offsetting in the 2013 Fisheries Act]); and • The authorization for the proposed Jay operation pertaining to the effects on fish and fish habitat from construction of the dike in Lac du Sauvage, and from dewatering and fish-out within the diked area. 			
3.5	<p>Please provide the Navigable Waters Protection Act authorizations and exemptions for the Ekati Mine, including:</p> <ul style="list-style-type: none"> • Ekati water works: bridges, crossings, dikes, intakes, disposal: expires 16 December 2021; • Sable, Pigeon, Beartooth water works: intakes, dewatering, dams, jetty, diversions, habitat structure, processed kimberlite containment: expires 17 July 2027; • Lynx pit exemption; and • Jay project exemption re dewatering activities within Lac du Sauvage. 			
3.6	<p>Please provide the waste management plan and the associated approvals for the Ekati Mine, including the:</p> <ul style="list-style-type: none"> • Hydrocarbon management plan; • Solid landfill waste management plan; • Hazardous waste management plan; • Composter management plan; • Incinerator management plan; • Waste rock and ore storage management plan (referenced in the waste 			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	<p>management plan and which includes the acid/alkaline rock drainage (ARD) and geochemical characterization and management plan);</p> <ul style="list-style-type: none"> • Wastewater and processed kimberlite management plan (referenced in the waste management plan); and • The most recent annual reports on the ongoing waste rock sampling program reported to the Wek'èzhii Land and Water Board. 			
3.7	Please provide Version 2.4 of Interim Closure and Reclamation Plan for the Ekati Mine, if Version 3.0 has not yet been fully approved.			
3.8	Please provide the Environment Agreement for the Diavik Mine.			
3.9	Please provide the land leases, surface leases, land use permits and license of occupations for the Diavik Mine (including all of its actual or proposed expansions), including the set of five Land Leases covering the mine footprint area on East Island.			
3.10	Please provide Water Licence for the Diavik Mine, which is described as Class "A" Water Licence (W2007L2-0003), its renewals and any amendment.			
3.11	Please provide the Fisheries Act authorizations and any compensation agreements for the Diavik Mine, which is described as the Authorization for Works or Undertakings Affecting Fish Habitat File No. SC98001.			
3.12	Please provide the Transport Canada permits for the Diavik Mine, including the three permits for each of the three dikes described on p. 88 of the Diavik NI 43-101 Technical Report.			
3.13	Please provide copies of all federal explosives permits, including the one which approves and regulates the operation of the bulk explosives manufacturing facility at the Diavik Mine described on p. 88 of the Diavik NI 43-101 Technical Report.			
3.14	Please provide confirmation and clarification for the following issues:			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	<p>(a) Confirm that the permits and other authorizations listed in items 3.1 to 3.13 above are the only legal instruments or agreements required by the Ekati and Diavik Mines to operate as they currently do (or did before suspending operations) and to operate in the future as described in any projections provided in the data, except for any permit or other authorization that both (i) is routinely issued without significant application preparation, review and cost, and (ii) would not trigger the duty to consult.</p> <p>Otherwise, please list any other required permits or other authorizations required by the Ekati and Diavik Mines to operate as they currently do (or did before suspending operations) and to operate in the future as described in any projections provided in the data site.</p>			
	<p>(b) Except for the original Environment Agreement for the Ekati Mine (which is provided in the data site), provide the permits and other authorizations listed above or that should be listed in response to 3.14(a) (immediately above), as well as any amendment, revision and renewal related to all of the foregoing, including to the Environment Agreement for the Ekati Mine.</p>			
	<p>(c) Confirm that all of permits and other authorizations can be transferred in the context of an asset or share purchase and provide the analysis confirming same.</p>			
3.15	<p>Please describe the administration of, and compliance with, the Environmental Agreement dated January 6, 1997 among the Government of Canada ("GC"), Government of NWT and BHP Billiton Diamonds Inc. (formerly BHP Diamonds Inc.), as amended on April 14, 2003 (the "Ekati Environmental Agreement") prior to the CCAA process.</p>			
3.16	<p>In relation to the Ekati Environmental Agreement, please confirm whether the GC has declared a default related to the CCAA process.</p>			
3.17	<p>The Ekati Environmental Agreement indicates that Dominion's obligations must be secured (i) in a satisfactory manner and by approximately \$8.5 million (and subject to adjustment for increased reclamation costs), and (ii) by a \$20 million guarantee, in addition to the security under the Water Licence. However, based on information provided in the data room, we understand that there is a \$5.9 million letter of credit to support government authorizations. Does this mean the parties have determined that</p>			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	less security is required than the security provided for in the Ekati Environmental Agreement? If not, please explain these different amounts.			
3.18	To the extent not already provided, please indicate the status of each of the permits required for the possible mine extensions at the Ekati Mine and a copy of all permits and licences related thereto including for the Point Lake, Jay and Fox mine expansions.			
3.19	Beyond the materials in the data site, please provide all supporting documents for the current and any future reclamation projections and related security for the Ekati Mine and Diavik Mine, including any reports by consultants used to determine or peer review such projections.			
3.20	Please provide us with copies of the Participation Agreements with any Aboriginal Group or Business for the Diavik mine.			
3.21	Please provide us with copies of the "Authorizations" (as such term is defined in the Asset Purchase Agreement)			
3.22	In Schedule 4.16 of the disclosure letter, reference is made to two separate verbal requests for legacy funds by two Aboriginal groups in connection with the Ekati Mine. The disclosure indicates that the amount of the funds will be \$1,000,000 in each case. Please clarify who is suggesting this amount. Please also provide information regarding the basis for the legacy funds being provided and the quantum, and when the first payments are expected to be made.			
4.	Pension and Employment			
4.1	Please provide details on the status of the collective agreement negotiations with respect to the collective agreement that expired in May, 2019.			
4.2	Please provide the most up-to-date information relating to the grievance filed on April 3, 2020 by the union alleging non-compliance with the collective agreement with respect to the layoff of the unionized workforce at the Ekati mine.			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
4.3	Please confirm that the Company does not provide any post-retirement benefits to its employees or retirees.			
4.4	Please provide the aggregate cost to the Company of the self-insured health and dental benefit plan with Manulife for the past three (3) years. Does the Company have a stop-loss insurance policy in respect of this benefit plan? If yes, please provide said policy.			
4.5	Please confirm whether the \$1,250,000 settlement payment to the unnamed executive that was scheduled to be paid by April 24, 2020 was paid.			
4.6	Please provide the executive employment agreement with the Chief Executive Officer.			
4.7	Please provide financial documentation in respect of the defined contribution pension plan, including confirmation that all required contributions have been made.			
4.8	Please provide the actuarial valuation report for the defined benefit plan for 2020.			
4.9	Please provide a copy of the employment agreement with the CEO, who should be in the top 5 compensated employees.			
4.10	Please provide any written documentation related to the two employee incentive plans, or describe how the plans function. If none exist, please provide a written summary of how these plans function.			
4.11	Please provide the relevant policies described in Section 4.19(4) of the Disclosure Letter or clarify that these are contained in the collective agreements. We have not reviewed these stand-alone policies.			
5.	Regulatory			
5.1	With regard to the "Reclamation Provisions" line item in the non-current liabilities section (outlined on page 57 of the CIM), please provide the following information: <ul style="list-style-type: none"> • Are they intrinsically associated with a specific operation or operations or 			

NO.	ITEM DESCRIPTION	PROVIDED	NONE	COMMENTS
	operating asset(s)? <ul style="list-style-type: none"> • Are these liabilities interest bearing in any way? And if so, to whom? 			

This is Exhibit "I" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: McGeary, Drew <DMcGeary@HL.com>
Sent: Friday, August 21, 2020 10:10 AM
To: Salzman, Nicholas
Cc: ProjectJewel_EVR
Subject: RE: [EXTERNAL] DDM - Follow-Up Legal Due Diligence

Sorry about that Nick – it is meant to be the 21st.

Thank you,
Drew

Drew McGeary
Financial Analyst

HOULIHAN LOKEY
+1.212.497.4191 **Direct**
+1.508.505.1885 **Mobile**
DMcGeary@HL.com

From: Salzman, Nicholas <Nicholas.Salzman@Evercore.com>
Sent: Friday, August 21, 2020 12:06 PM
To: McGeary, Drew <DMcGeary@HL.com>
Cc: ProjectJewel_EVR <ProjectJewel_EVR@Evercore.com>
Subject: RE: [EXTERNAL] DDM - Follow-Up Legal Due Diligence

This message is from an external sender.

Thanks Drew – just to confirm, I notice this request form says August 11th. I do not believe I received any original request from Torys on August 11th. I assume this is meant to say August 21st, right?

Just want to make sure there isn't a miscommunication about a prior set of requests.

From: McGeary, Drew <DMcGeary@HL.com>
Sent: Friday, August 21, 2020 11:54 AM
To: Salzman, Nicholas <Nicholas.Salzman@Evercore.com>; ProjectJewel_EVR <ProjectJewel_EVR@Evercore.com>
Cc: Feintuch, Jason <JFeintuch@HL.com>; Vescio, Fredrick <FVescio@HL.com>; Cumming, David <DCumming@HL.com>; Hartigan, John <JHartigan@HL.com>; Shah, Vaidehi <VShah@HL.com>
Subject: [EXTERNAL] DDM - Follow-Up Legal Due Diligence

CAUTION: This email originated from outside of Evercore. Do not click links or open attachments unless you recognize the sender and are expecting the attachment or link.

Hi Nick,

Please find attached a follow-up due diligence request list from our group's legal counsel. Also, please note that the environmental issues contained herein are the priority.

Much appreciated,
Drew

Drew McGeary
Financial Analyst



HOULIHAN LOKEY

245 Park Avenue
New York, NY 10167
+1.212.497.4191 **Direct**
+1.508.505.1885 **Mobile**
DMcGeary@HL.com

HL.com


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This is Exhibit "3" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Lake, Konata <klake@torys.com>
Sent: Friday, August 21, 2020 4:54 PM
To: Tomaine, Susan; Belsher, Geoff
Cc: Emanoilidis, John
Subject: RE: Dominion

External Email | Courrier électronique externe

Thanks. I have passed this on and we will come back to you.

Konata T. Lake

P. 416.865.7677 | F. 416.865.7380 | 1.800.505.8679

From: Tomaine, Susan <susan.tomaine@blakes.com>
Sent: Friday, August 21, 2020 6:41 PM
To: Lake, Konata <klake@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>
Cc: Emanoilidis, John <jemanoilidis@torys.com>; Tomaine, Susan <susan.tomaine@blakes.com>
Subject: RE: Dominion

Hi Konata,

The materials are in folder 10.2 of the data room.

Kind regards,
Susan

Susan Tomaine
Partner
susan.tomaine@blakes.com
Dir: (604) 631-3384
Cell: (604) 762-0844

From: Lake, Konata <klake@torys.com>
Sent: Friday, August 21, 2020 12:56 PM
To: Tomaine, Susan <susan.tomaine@blakes.com>; Belsher, Geoff <geoff.belsher@blakes.com>
Cc: Emanoilidis, John <jemanoilidis@torys.com>
Subject: RE: Dominion

External Email | Courrier électronique externe

Thank you Susan. We have not been able to locate the document you referenced. Would you be able to identify exactly where in the data room it is? Thx.

Konata T. Lake

P. 416.865.7677 | F. 416.865.7380 | 1.800.505.8679

From: Tomaine, Susan <susan.tomaine@blakes.com>
Sent: Friday, August 21, 2020 3:06 PM

To: Lake, Konata <klake@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>
Cc: Emanoilidis, John <jemanoilidis@torys.com>; Tomaine, Susan <susan.tomaine@blakes.com>
Subject: RE: Dominion

Hi Konata,

Thanks for your email. Can you confirm you have reviewed the "Authorization Transfer Roadmap" that is in the data room? Once you confirm you have reviewed the relevant detail, we're happy to facilitate a call with the Dominion permitting team to discuss.

Kind regards,
Susan

Susan Tomaine
Partner
susan.tomaine@blakes.com
Dir: (604) 631-3384
Cell: (604) 762-0844



Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3
Tel: 604-631-3300 Fax: 604-631-3309
blakes.com | [LinkedIn](#)

For the latest legal and business updates regarding COVID-19, visit our [Resource Centre](#)

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From: Lake, Konata <klake@torys.com>
Sent: Friday, August 21, 2020 10:59 AM
To: Belsher, Geoff <geoff.belsher@blakes.com>; Tomaine, Susan <susan.tomaine@blakes.com>
Cc: Emanoilidis, John <jemanoilidis@torys.com>
Subject: Dominion

External Email | [Courrier électronique externe](#)

Susan and Geoff:

Hope all is well. I am working with Tony on the Dominion transaction and was on the call with the Monitor yesterday. I am emailing to follow-up on the discussion from that call around transfer requirements for authorizations and permits. Could we schedule a call to connect our respective experts to talk through those transfer requirements?

Thank you,

Konata T. Lake

P. 416.865.7677 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torlys.com



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This is Exhibit "K" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Rubin, Peter
Sent: Friday, August 28, 2020 4:25 PM
To: DeMarinis, Tony
Cc: Kyle D. Kashuba (kkashuba@torys.com); Chris Simard (simardc@bennettjones.com); Belsher, Geoff; Tomaine, Susan
Subject: Dominion - Ad Hoc Group Extension Request

Follow Up Flag: Follow up
Flag Status: Flagged

Tony,

We write further to your email of August 20, 2020, our discussions both prior to and subsequent to your August 20th email, and the request by the Ad Hoc Group to an extension of the SISP deadlines.

Dominion sought creditor protection under the CCAA on April 22, 2020, which is over four months ago, and one member of the Ad Hoc Group entered into a Non-Disclosure Agreement with Dominion prior to the commencement of the CCAA proceedings. On May 2, 2020, two other members of the Ad Hoc Group executed their Non-Disclosure Agreements and Dominion provided access to a data room to Houlihan Lokey, as financial advisor to the Ad Hoc Group, at that time.

Since the April 22, 2020 court hearing, various court materials have been filed and on May 21, 2020 Dominion served an Application seeking approval of a SISP that would commence on May 29 and require Phase 2 Binding Bids by August 7, 2020. The SISP, as amended, was approved by the Court on June 19, 2020 and the Phase 2 Bid Deadline was moved back to August 31, 2020. The various dates and deadlines in the SISP were established after extensive negotiation and review among the various stakeholders and consideration by the Court. As noted in the material filed with the Court, Evercore commenced the sales process well before final court approval of the SISP was obtained.

During one of our recent calls, it was suggested that Dominion should be prepared to take actions to extend the dates required by the SISP, regardless of whether Dominion had the consent of the Stalking Horse Bidder or the First Lien Lenders, on the basis of the representation that the Ad Hoc Group expects to be able to arrange debt and equity financing in the near future to be able to make a binding bid that would be superior to the Stalking Horse Bid. Taking such a step would give the Stalking Horse bidder the right to terminate the Stalking Horse bid and would result in a breach of the DIP Facility. After careful consideration and discussions with the First Lien Lenders and the Monitor, Dominion has determined it is not in the best interests of Dominion or its collective stakeholders, including employees, suppliers, contractors, and the Northwest Territories, to jeopardize the certainty of the Stalking Horse Bid on the basis of the Ad Hoc Group's representation that it expects to be able to arrange debt and equity financing in the near future. In short, Dominion is unable to take that risk and jeopardize both the Stalking Horse bid and its CCAA financing. The Ad Hoc Group is comprised of multi-billion dollar funds and are longtime holders of Dominion debt. The Ad Hoc Group's request proposes to shift significant risk to Dominion by potentially eliminating the protection of the Stalking Horse Bid and defaulting on its DIP financing, without a binding commitment from the Ad Hoc Group.

All of that being said, it is in the interests of Dominion and its stakeholders to facilitate the best bid possible from the Ad Hoc Group. Dominion wishes to work with your client and has been working to try and find a solution and some accommodation.

In an effort to find a way to grant your client extra time, Dominion has asked both the Washington Group and the First Lien Lenders if they would be prepared to consider a form of extension which would provide the Ad Hoc Group

additional time to (a) arrange its financing, (b) come to an arrangement with the sureties, and (c) determine if it is purchasing the 40% interest in the Diavik mine.

After discussions with the First Lien Lenders and the Monitor, The Washington Group and Dominion have agreed to the following:

1. Binding Phase 2 Binding Bids remain due on August 31. The Ad Hoc Group is required to submit its Phase 2 Binding Bid in accordance with the terms of the SISP (subject to that below).
2. Dominion and the Monitor will waive the requirement that the Ad Hoc's Binding Phase 2 bid identify whether it is purchasing the Diavik interest and waive the requirement that the bid not contain financing conditionality (the "Limited Waiver").
3. This Limited Waiver will expire at 3 pm EST on September 8, 2020 – meaning that the Ad Hoc Group must confirm whether it is purchasing the Diavik Interest and remove the financing condition by this time.
4. The Ad Hoc Group will receive its deposit back if it withdraws its bid by 3 pm EST on September 8, 2020.
5. The auction will commence on September 9 (rather than September 3) and will be concluded by September 11 (rather than September 7).
6. Transfer documents related to all leases and licenses and other matters that require governmental approval will be worked on by the Ad Hoc Group with Dominion during the period from September 1 through September 8th (i.e. before it is determined who will be the winning bidder) so that these documents will be finalized and in a form able to be submitted to the applicable governments and governmental agencies by no later than September 14.
7. The Outside Date for the purposes of the DIP and Stalking Horse Bid will be moved to November 7.

The intent and effect of this plan is to provide the Ad Hoc Group with an additional eight days to complete its financing, to come to an agreement with the sureties and to come to an agreement with Rio - but to attempt to preserve the ability of the parties to still close by October 31, so that the new owner can make timely and important decisions regarding, among other things, the restart of the Ekati Mine for the benefit of all stakeholders.

This plan will extend certain of the deadlines in the SISP, APA and DIP to accommodate the Ad Hoc Groups request. There are other dates in the SISP, etc. that will have to be adjusted but these are the key dates – all from the SISP (except for the row in Blue)

Current Date	Proposed New Date	Description
Aug 31 (Monday)	Aug 31 (Monday)* *Non-Stalking Horse Bids can have certain stipulated conditions as noted above	Binding Bids to be submitted
Sept 3 (Thursday)	Sept 9 (Wednesday) * *Non-Stalking Horse Bids must remove the permitted conditions by 3 pm EST on Sept 8th	Auction Start Date
Sept 7 (Monday)	Sept 11 (Friday)	Selection date for winning Bidder
Sept 11 (Friday)	Sept 18 (Friday)	Definitive Documents complete
Sept 14 (Monday)	Sept 21 (Monday) – but the intention is still to submit by Sept 14	45 day deadline for submission of transfer documentation to close by Outside Date
Sept 28 (Monday)	October 5 (Monday)	Court Approval
October 31 (Saturday)	November 7 (Saturday) – but the intention is still to close by October 31 if possible	Outside Date

Please confirm by return email this is acceptable to your clients.

We may need to document the changes to the SISP, Stalking Horse APA and DIP but in the interests of time email will have to suffice for the time being.

Please let me know if you would like to discuss.

Peter

Peter Rubin*
Partner
peter.rubin@blakes.com
604-631-3315
**Law Corporation*

This is Exhibit "L" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

August 28, 2020

DISTRIBUTION LIST

Assignment of the Ekati Environmental Agreement

The Ekati Environmental Agreement (“Agreement”) is a legally binding agreement dated January 6, 1997 which addresses environmental concerns that were not covered by existing legislation and regulations at the time the Agreement was executed, and provides for the establishment of the Independent Environmental Monitoring Agency (IEMA). Dominion Diamond Ekati ULC (“Dominion”), the Government of the Northwest Territories (“GNWT”) and the Government of Canada (“Canada”) are signatories to the Agreement.

Pursuant to Section 15.5 of the Agreement, Dominion cannot assign the Agreement or be released from its obligations or covenants under the Agreement, unless:

- (a) It is determined by the GNWT and Canada that the proposed assignee has the financial capacity and qualifications and such other capacity and qualifications as may be required to carry out Dominion’s obligations under the Agreement;
- (b) The proposed assignee enters into an agreement with the GNWT and Canada pursuant to which the assignee assumes all of Dominion’s obligations and liabilities under the Agreement; and
- (c) The proposed assignee is also the assignee of Dominion’s obligations under the Regulatory Instruments, and the Impact and Benefits Agreements (each as defined in the Agreement).

To determine if the proposed assignee has the required capacity and qualifications to carry out Dominion’s obligations under the Agreement, the GNWT will assess the following criteria as it relates to the proposed assignee, which is not intended to be exhaustive, but merely instructive:

Financial Capacity and Qualifications

- Financial practices, systems, policies and procedures
- Ability to post the required security
- The form of security provided
- The creditworthiness of the banks and/or insurance companies backing the securities

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- The creditworthiness of the company providing the Ekati Environmental Agreement Guarantee
- Ability to fund the Independent Environmental Monitoring Agency
- Liquidity ratios, debt ratios, profitability ratios
- Diamond market forecast

Other Relevant Criteria

- Ability to obtain the appropriate regulatory permits and licences for the Ekati mine to continue its operations
- Management practices, systems, policies and procedures
- Personnel capacity
- Northern business experience, background of the company in diamond mining/resource extraction
- Life of mine plan
- Past compliance record
- ISO certifications
- Industry certifications

The GNWT may request the successful bidder to provide information related to the criteria listed above in order to complete the assessment required under Section 15.5(a) of the Agreement.

The GNWT and Canada will coordinate their assessment of capacity and qualifications. Canada may notify the successful bidder of any information Canada requires additional to the criteria above.

Please contact Mr. Julian Kanigan, Director, Environmental Stewardship and Climate Change, at (867) 767-9233 ext. 53080 or Julian_Kanigan@gov.nt.ca, with any questions.

Sincerely,



Erin Kelly, Ph.D
Deputy Minister
Environment and Natural Resources

.../3

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c. Ms. Jaida Ohokannoak, Chairperson
Independent Environmental Monitoring Agency

Mr. Marc Casas, Executive Director
Independent Environmental Monitoring Agency

Mr. Julian Kanigan, Director
Environment and Natural Resources

DISTRUBUTION LIST

Ms. Claudine Lee, Head of Health, Safety, Environment, Communities and Training
Dominion Diamond Mines ULC

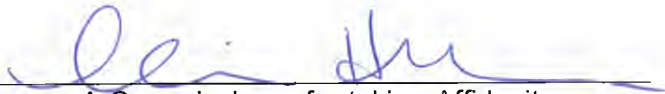
Mr. Geoff Belsher, Legal Counsel
Blake, Cassels & Graydon LLP

Mr. John Startin, Sales and Investment Solicitation Process Advisor
Evercore Group

Mr. Craig Munro, Monitor
FTI Consulting

Mr. Larry Simkins, President and CEO
Washington Corporations

This is Exhibit "M" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

EXECUTION VERSION

~~{TEMPLATE PSA PROVIDED PURSUANT TO SECTION 12 OF THE PROCEDURES FOR THE SALE AND INVESTMENT SOLICITATION PROCESS RELATING TO DOMINION DIAMOND MINES ULC E.T. A.L.}~~

ASSET PURCHASE AGREEMENT

BY AND AMONG

DDJ CAPITAL MANAGEMENT, LLC,

BRIGADE CAPITAL MANAGEMENT, LP,

~~{PURCHASER}~~, WESTERN ASSET MANAGEMENT COMPANY, LLC,

DOMINION DIAMOND HOLDINGS, LLC,

DOMINION DIAMOND MINES ULC,

DOMINION DIAMOND DELAWARE COMPANY LLC,

DOMINION DIAMOND MARKETING CORPORATION,

DOMINION DIAMOND CANADA ULC,

DOMINION FINCO INC.

AND

~~DOMINION~~WASHINGTON DIAMOND MINES ULC~~INVESTMENTS, LLC~~

Dated as of ~~{•}~~, August 31, 2020

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ~~(this “Agreement”)~~ is dated as of ~~[•]~~, August 31, 2020 (the “Effective Date”), by and among ~~[•]~~ (“Purchaser” DDJ Capital Management, LLC (“DDJ”), Brigade Capital Management, LP (“Brigade”) and Western Asset Management Company, LLC (“Western” and together with DDJ and Brigade, the “Bidders” and each individually, a “Bidder”), Dominion Diamond Holdings, LLC, a Delaware limited liability company (“Dominion Holdings”), Dominion Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Dominion Holdings (“DDM”, ~~and together with Dominion Holdings, the “Sellers”~~), Dominion Diamond Delaware Company LLC, a Delaware limited liability company and a wholly owned subsidiary of DDM (“DDC”), Dominion Diamond Marketing Corporation, a wholly owned subsidiary of Dominion Holdings (“Dominion Marketing”), Dominion Diamond Canada ULC, a wholly owned subsidiary of DDC (“DDCU”), Dominion Finco Inc. (“Finco”) and Washington Diamond Investments, LLC, a Delaware limited liability company (“Parent”, and together with Dominion Holdings, DDM, DDC, Dominion Marketing, DDCU and Finco, the “Sellers”). ~~[NTD: If the Purchaser is not a credit worthy entity, evidence of financial support to be provided or financial guarantee to be included.]~~

WHEREAS, DDM is a diamond producer with ownership interests in diamond projects in the Northwest Territories and Sellers are engaged, directly and indirectly through the Acquired Subsidiaries, in the business of mining and selling rough diamonds to the global market (the “Business”);

WHEREAS, on April 22, 2020 (the “Filing Date”), ~~the Sellers, Parent, Dominion Finco Inc., Dominion Diamond Delaware Company LLC and Dominion Diamond Canada ULC (collectively, the “Applicants”)~~ obtained an Initial Order (the “Initial Order”) under the Companies’ Creditors Arrangement Act (Canada) (“CCAA”) from the Alberta Court of Queen’s Bench (the “CCAA Court”) that, among other things, commenced the CCAA proceedings (the “CCAA Proceedings”) and granted an initial stay of proceedings in respect of the ~~Applicants~~ Sellers (the “Stay”). On May 1, 2020, the ~~Applicants~~ Sellers obtained an amended and restated version of the Initial Order from the CCAA Court (as further amended and restated from time to time, the “Amended and Restated Initial Order”) that, among other things, extended the Stay.

WHEREAS, the ~~Applicants~~ Sellers have obtained approval of the SISP Order from the CCAA Court which, among other things, approved the sale investor and solicitation process (the “SISP”) for the Business and Property (as defined in the Amended and Restated Initial Order);

WHEREAS, the Sellers conducted the SISP in consultation with its financial advisor and the Monitor, and the ~~Purchaser’s~~ Bidders’ bid was selected as the “Successful Bid” as defined in the SISP;

WHEREAS, the ~~Purchaser has~~ Bidders intend and have agreed to constitute one or more special purpose acquisition vehicles (the “Purchaser”) to purchase the Sellers’ right,

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title and interest in and to the Acquired Assets (as defined below) and assume the Assumed Liabilities (as defined below) on the terms and subject to the conditions set forth in this Agreement, in accordance with the SISP and subject to obtaining the Sale Order (as defined below) (the “Acquisition”); ~~and~~

WHEREAS, the Sellers and Bidders have agreed that, pending the constitution of the Purchaser, the Bidders shall have executed this Agreement on behalf of the Purchaser, who shall upon constitution, become a Party to and accept the terms and conditions of this Agreement and undertake to perform all of the obligations of and exercise all of the rights of the Purchaser under this Agreement; and

WHEREAS, the Parties desire to consummate the Acquisition as promptly as practicable following the satisfaction of the conditions precedent set out herein, including the issuance ~~by the CCAA Court~~ of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 Specific Definitions. Capitalized terms used herein shall have the meanings set forth below:

“Aboriginal Agreements” shall have the meaning ascribed thereto in Section 4-165.16(a).

“Aboriginal Claims” means any and all claims (whether or not proven) by any Person, pursuant to section 35 of the *Constitution Act, 1982 Schedule B to the Canada Act, 1982 (U.K.)* or otherwise, to or in respect of: (1) rights, title or interests of any Aboriginal Group by virtue of its status as an Aboriginal Group; (2) treaty rights; (3) Métis rights, title or interests; or (4) rights under land claims and agreements; or (5) specific or comprehensive claims being considered by the Government of Canada; and includes any alleged or proven failure of the Crown to have satisfied, prior to the date hereof, any of its duties to any claimant of any of the foregoing.

“Aboriginal Group” means any band (as defined in the *Indian Act (Canada)*), First Nation, Métis community, Inuit group, tribal council, band council or other aboriginal organization in Canada.

“Acquired Assets” shall have the meaning ascribed thereto in Section 2-13.1.

“Acquired Subsidiaries” shall have the meaning ascribed thereto in Section 2-13.1(a).

“Acquisition” shall have the meaning ascribed thereto in the Recitals of this Agreement.

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“Action” means any litigation (in Law or in equity), arbitration, mediation, action, lawsuit, proceeding, written complaint, written charge, written claim, written demand, hearing, investigation or like matter (whether public or private) commenced, brought, conducted, or heard before or otherwise involving any Governmental Body, whether administrative, judicial or arbitral in nature.

“Advance Ruling Certificate” means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the Competition Act with respect to the transactions contemplated by this Agreement.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, none of the Bidders are, nor will the Purchaser ~~is not~~ be, an Affiliate of Sellers for purposes of this Agreement or otherwise.

“Agreement” means this Asset Purchase Agreement, including all Schedules hereto and the Seller Disclosure Letter, as it may be further amended from time to time in accordance with its terms.

“Allocation” shall have the meaning ascribed thereto in ~~Section 12.12~~ Section 13.14(e).

“Amended and Restated Initial Order” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“Ancillary Documents” means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated by this Agreement.

“Antitrust Approvals” means the Competition Act Approval, if required, and each of the other Mandatory Antitrust Approvals (if any).

“Antitrust Laws” means the Competition Act and any competition, merger control and antitrust Law of any other applicable supranational, national, federal, state, provincial or local Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the transactions contemplated by this Agreement.

~~“Applicants” shall have the meaning ascribed thereto in the Recitals of this Agreement.~~

“Arbitrating Accountant” means an internationally recognized certified public accounting firm jointly selected by Purchaser and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchaser.

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“Assigned Contracts” shall have the meaning ascribed thereto in Section 2.13.1(l).

“Assignment and Assumption Agreement” shall have the meaning ascribed thereto in Section 10.211.2(b).

“Assignment and Assumption of Leases” shall have the meaning ascribed thereto in Section 10.211.2(f).

“Assignment Order” means an Order of the CCAA Court made in the CCAA Proceedings, in form and substance acceptable to Parties, acting reasonably, assigning to the Purchaser the rights and obligations of Sellers under an Assigned Contract for which a consent, approval or waiver necessary for the assignment of such Assigned Contract has not been obtained.

“Assumed Liabilities” shall have the meaning ascribed thereto in Section 2.33.3.

“Assumed Plans” shall have the meaning ascribed thereto in Section 7.28.2(a).

“Authorization” means with respect to any Person, any order, permit, approval, consent, waiver, license, registration, qualification, certification or similar authorization of any Governmental Body having jurisdiction over the Person, and shall include all environmental permits, licenses and other Authorizations, and all surface leases and water or riparian rights.

“Bidder Parties” means the Bidders and the Purchaser, collectively, and a “Bidder Party” refers to any of them.

“Bidder Related Party” means any former, current or future direct or indirect director, manager, officer, employee, agent or Affiliate of any of the Bidder Parties; any former, current or future, direct or indirect holder of any equity interests or securities of any of the Bidder Parties (whether such holder is a limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of any of the Bidder Parties; any equity or debt financing source of any of the Bidder Parties; any former, current or future direct or indirect funds or accounts managed or advised by any of the Bidder Parties; or any former, current or future director, officer, trustee, beneficiary, employee, agent, Representative, Affiliate, advisor, general or limited partner, manager, member, stockholder, or assignee of any of the foregoing.

“Bidders” shall have the meaning ascribed thereto in the Preamble hereof.

“Brigade” shall have the meaning ascribed thereto in the Preamble hereof.

“Business” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a statutory holiday in New York City, New York, U.S.A. or Calgary, Alberta, Canada.

“Canadian Assets” means all Acquired Assets other than the Purchaser Acquired Interests.

“Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

“Cash Component” shall have the meaning ascribed thereto in Section 3.14.1(b).

“CCAA” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“CCAA Court” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“CCAA Proceedings” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“Claims” means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

“Closing” shall have the meaning ascribed thereto in Section 10.11.1.

“Closing Date” means the date on which the Closing shall occur.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collective Agreement” means any collective agreement, letter of understanding, letter of intent or any other similar Contract with or commitment to any trade union, employee association, labour organization or similar entity.

“Commissioner” means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

“Competition Act” means the *Competition Act* (Canada), as amended.

“Competition Act Approval” means: (i) the issuance of an Advance Ruling Certificate and such Advance Ruling Certificate has not been rescinded prior to Closing; or (ii) the Purchaser and the Sellers have given the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act has expired or has been terminated in accordance with the Competition Act; or (iii) the obligation to give the requisite notice has been waived pursuant to paragraph 113(c) of the Competition Act, and, in the case of (ii) or (iii), the

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Purchaser has been advised in writing by the Commissioner that, in effect, such person is of the view that sufficient grounds at that time do not exist to initiate proceedings before the Competition Tribunal under section 92 of the Competition Act with respect to the transactions contemplated by this Agreement and therefore the Commissioner, at that time, does not intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement (“no-action letter”), and the form of and any terms and conditions attached to any such advice are acceptable to the Purchaser, acting reasonably, and such advice has not been rescinded prior to Closing.

“Competition Tribunal” means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

“Conditions Certificate” shall have the meaning ascribed thereto in Section 10.411.4.

“Confidentiality Agreement” shall have the meaning ascribed thereto in Section 6.37.3.

“Contaminants” means any noise, heat, vibration or Hazardous Materials that can be discharged into or be present in the Environment.

“Contract” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment, whether express or implied.

“Credit Bid” means a credit bid of Second Lien Notes controlled by the Bidders in the aggregate amount of US\$130,000,000 or such larger amount as the Bidders may determine, and which forms part of the Purchase Price set out in Section 4.1.

“Cure Amount” means (i) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Sellers’ monetary defaults existing as at the Closing Date under such Assigned Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Sellers to the Purchaser (which amount shall be set out on the form of contractual consent agreed to by the Purchaser and the counterparty to such Assigned Contract).

“Cure Funding Amount” means US\$~~1~~20,000,000, less any amount that the ~~Applicants~~Sellers are authorized to pay (and have not paid as of the date of this Agreement) under the DIP Budget and an Order of the CCAA Court in respect of the Cure Amount, which for greater certainty shall include US\$2,200,000 available to the ~~Applicants~~Sellers to pay critical suppliers in accordance with paragraph 5(c) of the Amended and Restated Initial Order.

“Data Room” means the material contained in the virtual data room established by Sellers in connection with the SISP as of 5:00 p.m. (Eastern time) on ~~[•]~~August 31, 2020.

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“Deposit DDC” shall have the meaning ascribed thereto in Section 3.2(a) the Preamble hereof.

“DDCU” shall have the meaning ascribed thereto in the Preamble hereof.

“DDJ” shall have the meaning ascribed thereto in the Preamble hereof.

“DDM” shall have the meaning ascribed thereto in the Preamble hereof.

“DDMI” means Diavik Diamond Mines (2012), Inc., a company incorporated under the laws of Canada, as the manager of the Diavik Joint Venture.

“Deposit” shall have the meaning ascribed thereto in Section 4.2(a).

“Designated Purchaser” shall have the meaning ascribed thereto in Section 13.11.

“Diavik Diamond Mine” means the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the “Diavik Diamond Mine.”

“Diavik Joint Venture” means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the Diavik Diamond Mine.

“Diavik Joint Venture Agreement” means the joint venture agreement dated March 23, 1995 between DDM and DDMI originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and DDMI.

“Diavik Joint Venture Interest” means the undivided 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik Joint Venture held by DDM pursuant to the Diavik Joint Venture Agreement.

“Diavik Leases” means the surface and mining leases constituting the Diavik Diamond Mine and subject to the Diavik Joint Venture Agreement.

“DIP Budget” shall have the meaning ascribed to it in the Interim Facility Credit Agreement.

“Documents” means all of Sellers’ books, records and other information in any form relating to the Business or the Acquired Assets, including accounting books and records, sales and purchase records, lists of suppliers and customers, lists of potential customers, credit and pricing information, personnel and payroll records of Employees, Tax records, business reports, plans and projections, production reports and records, inventory reports and records, business, engineering and consulting reports, marketing and advertising materials, research and development reports and records, maps, all plans, surveys, specifications, and as-built drawings relating to the Mine Properties, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Ekati Diamond Mine, the Diavik Diamond Mine

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and any other real property interests included in the Acquired Assets, including all such electrical, mechanical and structural drawings related thereto, environmental reports, soil and substratum studies, inspection records, financial records, and all other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Acquired Assets or the Employees, and other similar materials, in each case, whether in electronic, paper or other form, but excluding Sellers' corporate charter, minute and stock record books, and corporate seal.

"Dominion Holdings" shall have the meaning ascribed thereto in the Preamble hereof.

"Dominion Marketing" shall have the meaning ascribed thereto in the Preamble hereof.

"Effective Date" shall have the meaning ascribed thereto in the Preamble hereof.

"Ekati Buffer Zone" means the property and assets (including products derived from such property) comprising the Ekati Buffer Zone as described in the technical report entitled "Ekati Diamond Mine, Northwest Territories, Canada, NI-43-101 Technical Report" dated July 31, 2016.

"Ekati Buffer Zone Leases" means the surface and mining leases constituting the Ekati Buffer Zone.

"Ekati Core Zone" means the property and assets (including products derived from such property) that are the subject of the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Ekati Core Zone Joint Venture Agreement in relation to the Ekati Core Zone.

"Ekati Core Zone Joint Venture Agreement" means the joint venture agreement titled 'Northwest Territories Diamonds Joint Venture Agreement – Core Zone Property' dated April 17, 1997 originally entered into among BHP Diamonds Inc., Dia Met Minerals Ltd., Charles E. Fipke and Dr. Stewart L. Blusson, as amended from time to time, with the current parties thereto being DDM and 1012986 B.C. Ltd.

"Ekati Core Zone Joint Venture Interest" means an undivided 88.889% beneficial interest in the Ekati Core Zone Joint Venture, held by DDM pursuant to the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Leases" means the surface and mining leases constituting the Ekati Core Zone and subject to the Ekati Core Zone Joint Venture Agreement.

"Ekati Diamond Mine" means the diamond mine located approximately 310 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Ekati Diamond Mine."

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“Employee” means an individual who, as of the applicable date, is employed by Sellers or their Subsidiaries in connection with the Business.

“Employee Plan” means all employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, vacation pay, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, agreement or arrangement, including post-retirement health and life insurance benefit plans, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Sellers or any of their Subsidiaries for the benefit of the Employees or former Employees and their dependents or beneficiaries by which the Sellers or any of their Subsidiaries are bound or with respect to which the Sellers or any of their Subsidiaries participate or have any actual or potential Liability (excluding, for greater certainty, any statutory benefits plan).

“Encumbrance” means any caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgements, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other Claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

“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 Agreement” means the Environmental Agreement, dated as of January 6, 1997 as amended on April 14, 2003, on April 10, 2013 and on November 21, 2018 between Her Majesty The Queen in Right of Canada and the Government of the Northwest Territories and Dominion Diamond Ekati ULC.

“Environmental Law” means the Environmental Agreement and any Regulation which is related to or which regulates or otherwise imposes obligations, liability or standards of conduct concerning the Environment, health and safety, mineral resources, discharges, Contaminants, reclamation and restoration, Releases or threatened Releases of Contaminants, including Hazardous Materials, into the Environment or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Materials.

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“Environmental Liabilities and Obligations” means all Liabilities arising from or relating to the Environment, mineral resources, health or safety, Contaminants, reclamation and restoration or arising under any, or arising from any Environmental Law, including Liabilities related to: (a) the manufacture, processing, handling, generation, treatment, distribution, recycling, transportation, storage, use, cleanup, arrangement for disposal or disposal of, or exposure to, Hazardous Materials and/or Contaminants; (b) the Release of Hazardous Materials and/or Contaminants, including migration onto or from the real property included in the Acquired Assets; (c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (d) any other obligations imposed under Environmental Law including pursuant to any applicable Authorizations issued pursuant to or under any Environmental Law; (e) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports with respect to any Liabilities pursuant to Environmental Law; and (f) all obligations with respect to personal injury, property damage, environmental damage, wrongful death, endangerment to the health or animal life, damage to plant life and other damages and losses arising under applicable Environmental Law.

“Essential Contracts” means, collectively, those Contracts to which a Seller is a party or beneficiary which are Material Contracts and specified as “Essential Contracts” on Schedule FA, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.3.6.

“Excluded Assets” shall have the meaning ascribed thereto in Section 2.23.2.

“Excluded Contracts” means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as “Excluded Contracts” on Schedule FA, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.3.6.

“Excluded Liabilities” shall have the meaning ascribed thereto in Section 2.43.4.

“Filing Date” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“Final Order” means an action taken or order issued by the CCAA Court or other applicable Governmental Body as to which: (i) no request or motion for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request or motion is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition or motion for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Body and the time for filing any such petition or motion is passed; (iii) the Governmental Body does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is not then under judicial review or appeal, there is no notice of leave to appeal, appeal or other motion or application for judicial review pending, and the deadline for filing such notice of appeal or other motion or application for judicial review has passed, including any extensions thereof.

“Finco” shall have the meaning ascribed thereto in the Preamble hereof.

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“Glowworm Lake Property” means the mineral leases held by DDM covering an area of 132,560 hectares bordering the eastern side of the Diavik Diamond Mine.

“GNWT” shall have the meaning ascribed thereto in [Section 8.99.9](#).

“Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, board, commission, tribunal, agency or political subdivision thereof of any nature, whether national, international, multi-national, supra-national, foreign, federal, state, provincial, territorial, Aboriginal or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

“GST” means goods and services tax, including harmonized sales tax, payable under the GST Legislation.

“GST Legislation” means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.

“Guarantee” means any guarantee or other contingent liability, direct or indirect, with respect to any Indebtedness or obligations of another Person, through a Contract or otherwise.

“Hazardous Material” means any substance, material, emission or waste which is defined, regulated, listed or prohibited by any Governmental Body, including petroleum and its by-products, asbestos, polychlorinated biphenyls and any material, waste or substance which is defined or identified as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “dangerous good,” “deleterious substance,” “greenhouse gas emission,” “pollutant,” “toxic waste” or “toxic substance” or words of similar import or otherwise regulated under or subject to any provision of Environmental Law.

“IFRS” means generally accepted accounting principles as set out in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards as applied by the International Accounting Standards Board, at the relevant time, applied on a consistent basis.

“Indebtedness” means, with respect to any Person, (a) all liabilities of such Person for borrowed money, whether secured or unsecured, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment of such borrowed money), (b) all liabilities of such Person evidenced by notes, debentures, bonds or similar instruments, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment thereof), for the payment of which such Person is responsible, (c) all obligations of such Person for the deferred purchase price of property or services (including “earn out” payments), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s

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acceptance or similar credit transaction, but excluding any obligations that are fully discharged at the Closing, (e) obligations under any interest rate, currency or other hedging arrangement or derivatives transaction, (f) all obligations of such Person with respect to the posting of collateral and similar obligations or as obligor, guarantor, surety or otherwise, including pursuant to “keep well” agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements, but excluding any such obligations that are fully discharged at the Closing, and (g) any change of control payments or prepayment premiums, penalties, charges or equivalents thereof with respect to any obligations of the type referred to in clauses (a) through (f) that are required to be paid at the time of, or the payment of which would become due and payable solely as a result of, the execution of this Agreement or the consummation of the transactions contemplated hereby.

“Initial Allocation” shall have the meaning ascribed thereto in ~~Section 12.12~~ Section 13.14(e).

“Initial Order” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“Intellectual Property” means all intellectual property and proprietary rights of any kind, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a’s or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b) copyrights and copyrightable subject matter (including works and any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies, in each case whether patentable or not; (d) computer software, computer programs, and databases (whether in source code, object code or other form); ~~and~~ (e) patents, industrial designs and inventions, together with all registrations and applications related to the foregoing; and (f) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

“Interim Facility” means the interim financing facility evidenced by the Interim Facility Credit Agreement, entered into to provide financing during the pendency of the CCAA Proceedings, as the same may be amended, restated or supplemented from time to time.

“Interim Facility Credit Agreement” means that certain Amended and Restated Interim Facility Financing Term Sheet dated as of June 15, 2020 among Washington Diamond Lending, LLC, the other Interim Lenders party thereto, DDM, as the Borrower (as defined therein) thereunder, and the Guarantors (as defined therein), evidencing the Interim Facility to be provided by the Interim Lenders to DDM, as Borrower, as the same may be amended, modified or supplemented from time to time.

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“Interim Lenders” means Washington Diamond Lending, LLC and the other Interim Lenders (as defined in the Interim Facility Credit Agreement), as interim lenders under the Interim Facility Credit Agreement and the Interim Facility and any assignee(s) thereof.

“Inventory” means all diamonds and other inventory of any kind or nature, including stockpiles and goods, maintained, held or stored by or for any Seller, whether or not prepaid, and wherever located or held, including any goods in transit, and any prepaid deposits for any of the same, including all diamonds no longer held by DDMI prior to Closing in respect of the Diavik Joint Venture Interests and whose title has transferred to Sellers.

“Investment Canada Act” means the *Investment Canada Act*, as amended.

“IP Assignment and Assumption Agreement” shall have the meaning ascribed thereto in Section 10.211.2(g).

“Joint Venture” means each of the Diavik Joint Venture, the Ekati Core Zone Joint Venture and the Lac de Gras Joint Venture.

“Joint Venture Agreements” means, collectively, the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement and the Lac de Gras Joint Venture Agreement, and “Joint Venture Agreement” means any one of them as applicable.

“Knowledge of Sellers” or “Sellers’ Knowledge” means, with respect to any matter, the actual knowledge, after due inquiry, of each of the individuals set forth on Section 1.1(a) of the Seller Disclosure Letter.

“Lac de Gras” means the exploration property and assets (including products derived from such property) that is the subject of the Lac de Gras Joint Venture Agreement.

“Lac de Gras Joint Venture” means the unincorporated joint venture arrangement established pursuant to the Lac de Gras Joint Venture Agreement in relation to Lac de Gras.

“Lac de Gras Joint Venture Agreement” means the joint venture agreement dated June 30, 2015 entered into among Dominion Diamond Holdings Ltd., 6355137 Canada Inc. and North Arrow Minerals Inc.

“Lac de Gras Joint Venture Interest” means an undivided 77.31% beneficial interest in Lac de Gras Joint Venture held by DDM pursuant to the Lac de Gras Joint Venture Agreement.

“Lac de Gras Leases” means the surface and mining leases constituting Lac de Gras.

“Law” means any federal, territorial, state, provincial, local, municipal, foreign or international, multinational or other law, treaty, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

“Liability” means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

“Mandatory Antitrust Approvals” means each of the approvals or consents of any Governmental Body, or the expiration of the applicable notice or waiting period, in each case required to consummate the Acquisition and the other transactions contemplated by this Agreement under applicable Antitrust Laws, including by means of a decision, in whatever form (including a declaration of lack of jurisdiction or a mere filing or notification, if the Closing can take place, pursuant to the applicable Antitrust Law, without a decision or the expiry of any waiting period) by any Governmental Body under the Antitrust Laws of any of any jurisdiction, authorizing or not objecting to the transactions contemplated by this Agreement, provided that any terms or conditions attached to such decision are acceptable to the Purchaser.

“Material Adverse Effect” means any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the Business, results of operations, condition (financial or otherwise), Acquired Assets or Assumed Liabilities of Sellers and their respective Subsidiaries, taken as a whole; or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that, for the purposes of clause (a), a Material Adverse Effect shall not be deemed to include events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy or credit, financial, or securities markets; (ii) any outbreak or escalation of war or any act of terrorism; (iii) changes in applicable Law; (iv) changes in IFRS; (v) Sellers’ failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period (but, for the avoidance of doubt, not the underlying cause(s) of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (vi) changes in political conditions; (vii) general conditions in the industry in which Sellers and their respective Subsidiaries operate; (viii) the announcement of the transactions contemplated by this Agreement; or (ix) the commencement or pendency of the CCAA Proceedings; provided further, however, that any event, change, and effect referred to in clauses (i), (ii), (iii), (iv), (vi) and (vii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on Sellers and their respective Subsidiaries, taken as a whole, compared to other participants in the industries in which Sellers and their respective Subsidiaries conduct their businesses.

“Material Contract” means any Contract:

(a) that if terminated or modified or if it ceased to be in effect, would reasonably be expected to have a Material Adverse Effect;

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(b) that is a partnership agreement, limited liability company agreement, joint venture agreement or similar agreement or arrangement, including the Joint Venture Agreements, relating to the formation, creation or operation of any partnership, limited liability company or joint venture in which Sellers or any of their Subsidiaries is a partner, member or joint venturer (or other participant) that is material to Sellers, their Subsidiaries or the Business, or the ability of Sellers and their Subsidiaries to develop any of their material projects, but excluding any such partnership, limited liability company or joint venture which is a wholly-owned Subsidiary of Sellers;

(c) under which Indebtedness for borrowed money in excess of \$7,500,000 is or may become outstanding or pursuant to which any property or asset of Sellers or their Subsidiaries is mortgaged, pledged or otherwise subject to an Encumbrance securing Indebtedness for borrowed money in excess of \$7,500,000 or under which Sellers or any of their Subsidiaries has guaranteed any liabilities or obligations of a third party in excess of \$7,500,000, in each case, other than any such Contract between two or more wholly-owned Subsidiaries of Sellers or between Sellers and/or one or more of their wholly-owned Subsidiaries;

(d) under which Sellers or any of its Subsidiaries is obligated to make or expects to receive payments in excess of \$7,500,000 over the remaining term;

(e) that creates an exclusive dealing arrangement or right of first offer or refusal;

(f) providing for the purchase, sale or exchange of, or option to purchase, sell or exchange, any property or asset where the purchase or sale price or agreed value or fair market value of such property or asset exceeds \$15,000,000;

(g) that is a Collective Agreement;

(h) that limits or restricts in any material respect (a) the ability of Sellers or any of their Subsidiaries to incur Indebtedness, to engage in any line of business or carry on business in any geographic area, to compete with any Person, or to engage in any merger, consolidation or other business combination, or (b) the scope of Persons to whom Sellers or any of their Subsidiaries may sell products;

(i) between Sellers or any of their Subsidiaries, on the one hand, and any director or executive officer of the Sellers or any of their Subsidiaries, on the other hand;

(j) with any Aboriginal ~~Groups~~Group or Aboriginal business, including a joint venture in which an Aboriginal Group is a joint venture party;

(k) providing for the sale of diamonds representing more than 1% of annual production of Sellers and their Subsidiaries or pursuant to which Sellers and their Subsidiaries received during calendar year 2019 or could reasonably be expected to receive in calendar year 2020 or thereafter revenues in excess of \$15,000,000;

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(l) providing for indemnification by Sellers or their Subsidiaries of another Person, other than Contracts for goods or services, Contracts with directors or officers of Sellers or their Subsidiaries in their capacity as such or Contracts which provide for indemnification obligations of less than \$15,000,000;

(m) providing for a royalty, streaming or similar arrangement or economically equivalent arrangement in respect of any of the Mine Properties; or

(n) that is or would reasonably be expected to be material to Sellers and their Subsidiaries, the Business or the Acquired Assets, taken as a whole.

“Mine Properties” means, collectively, the Diavik Diamond Mine and the Ekati Diamond Mine and “Mine Property” means any one of them as applicable.

“Mineral Rights” has the meaning ascribed thereto in Section 4.135.13(a).

“Monitor” means FTI Consulting Canada Inc., in its capacity as the CCAA Court-appointed Monitor in connection with the CCAA Proceedings.

“Monitor’s Certificate” means the certificate, substantially in the form attached as Schedule “A” to the Sale Order, to be delivered by the Monitor to the Sellers and the Purchaser Bidder Parties on Closing and thereafter filed by the Monitor with the CCAA Court, certifying that the Monitor has received the Conditions Certificates.

“Objection Notice” shall have the meaning ascribed thereto in Section 12.1213.14(e).

“Order” means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any court or Governmental Body.

“Ordinary Course of Business” means, with respect to any Person, actions that (i) are taken in the ordinary and usual course of operations of the Business consistent with past practice in effect prior to filing of the CCAA Proceedings and prior to the enactment of measures taken in response to the COVID-19 pandemic, (ii) are taken in accordance with all applicable Laws and (iii) do not result from or arise out of and were not caused by, any breach of Contract, breach of warranty, tort, infringement or violation of Law by such Person or any Affiliate of such Person.

“Organizational Documents” means, with respect to a particular entity Person, (a) if a corporation, the articles or certificate of incorporation and bylaws, (b) if a general partnership, the partnership agreement and any statement of partnership, (c) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (d) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (e) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (f) all amendments or supplements to any of the foregoing.

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“Other Contracts” means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as “Other Contracts” on Schedule FA, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.3.6.

“Outside Date” shall have the meaning ascribed thereto in Section 11.12.1(b)(i).

“Parent” shall have the meaning ascribed thereto in the Preamble hereof.

“Parties” means ~~the Purchaser and Sellers~~ at a given time, the parties to this Agreement, collectively and a “Party” refers to any of them.

“Permitted Encumbrances” means, as of any particular time and in respect of any Person, each of the following Encumbrances: (1) any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grant from the Crown or a Governmental Body and any statutory limitations, exceptions, reservations and qualifications to title or Encumbrances imposed by Law; (2) any claim by any Aboriginal Group based on treaty rights, traditional territory, land claims or otherwise; (3) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (4) permits, reservations, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements (including, without in any way limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) in favor of any Governmental Body or utility company in connection with the development, servicing, use or operation of any property which (y) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (z) have been complied with to date in all material respects; (5) each of the following Encumbrances: (a) permits, reservations, covenants, servitudes, rights of access or user licenses, easements, rights of way and rights in the nature of easements in favor of any Person (other than those in (4) above); (b) any encroachments, title defects or irregularities existing; (c) any instrument, easement, charge, caveat, lease, agreement or other document registered or recorded against title to any property so long as same have been complied with in all material respects; (d) agreements with any Governmental Body and any public utilities or private suppliers of services; and (e) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (a), (b), (c), (d) and (e), which (I) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (II) have been complied with to date in all material respects; (6) Encumbrances granted or arising pursuant to the Joint Venture Agreements included in the Acquired Assets; (7) Encumbrances to which the Purchaser consents in writing; and (8) for purposes of the representations and warranties given by Sellers on the Effective Date under Article IV hereof and Section 6.1.7.1(b)(v) only, all “Permitted Encumbrances” as defined in the Interim Credit Agreement.

“Person” means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority or natural person.

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“Pre-Closing Period” means the period commencing on the Effective Date and ending on the earlier of the date upon which this Agreement is validly terminated pursuant to Article XIX or the Closing Date.

“Pre-Closing Tax Period” means any taxable period (or portion thereof) ending on or before the Closing Date and any portion of any Straddle Period ending on the Closing Date.

“Pre-filing Credit Agreement” means the Revolving Credit Agreement, dated as of November 1, 2017 (as amended by the First Amendment and Waiver to Credit Agreement, dated as of July 30, 2019, the Second Amendment, dated as of March 4, 2020, and as further amended from time to time), among DDM, Parent, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

“Pre-filing Indenture” means the Indenture, dated as of October 23, 2017, by and among Northwest Acquisitions ULC, Dominion Finco, Inc. and Wilmington Trust, National Association, as trustee (the “Indenture Trustee”), as supplemented by (i) the First Supplemental Indenture, dated as of November 1, 2017, by and among the Northwest Acquisitions ULC, Dominion Finco, Inc., the guarantors party thereto and the Indenture Trustee, (ii) the Second Supplemental Indenture, dated as of December 21, 2017, by and among Northwest Acquisitions ULC, as successor of Northwest Acquisitions ULC, Dominion Finco, Inc. and the Indenture Trustee, (iii) the Third Supplemental Indenture, dated as of December 21, 2017, by and among DDM, as successor of Northwest Acquisitions ULC, Dominion Finco, Inc. and the Indenture Trustee, (iv) the Fourth Supplemental Indenture, dated as of January 1, 2019, by and among the Indenture Trustee, Dominion Finco, Inc., DDM, and the guarantors party thereto, and (v) the Fifth Supplemental Indenture, dated as of December 13, 2019, by and among DDM, Dominion Finco, Inc., Washington Diamond Investments LLC, Dominion Diamond Holdings, LLC, and the Indenture Trustee.

“Previously Omitted Contract” shall have the meaning ascribed thereto in Section 2.63.6(b)(i).

“Previously Omitted Contract Designation” shall have the meaning ascribed thereto in Section 2.63.6(b)(i).

“Previously Omitted Contract Notice” shall have the meaning ascribed thereto in Section 2.63.6(b)(ii).

“Purchase Price” shall have the meaning ascribed thereto in Section 3.14.1(a).

“Purchaser” shall have the meaning ascribed thereto in the Preamble to this Agreement.

“Purchaser Acquired Interests” means shares of, or other equity interests in, the Acquired Subsidiaries.

~~“Purchaser Related Party” means any former, current or future direct or indirect director, manager, officer, employee, agent or Affiliate of Purchaser; any former, current or future, direct or indirect holder of any equity interests or securities of Purchaser (whether such holder is a~~

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~~limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of Purchaser; any equity or debt financing source of Purchaser; or any former, current or future director, officer, trustee, beneficiary, employee, agent, Representative, Affiliate, advisor, general or limited partner, manager, member, stockholder, or assignee of any of the foregoing.~~

~~“Purchaser Termination Fee” shall have the meaning ascribed thereto in Section 11.3.~~

~~“Purchaser” shall have the meaning ascribed thereto in the Preamble to this Agreement.~~

~~“Purchaser’s Conditions Certificate” shall have the meaning ascribed thereto in Section 10.4~~11.4.

“Regulation” means any Law, statute, regulation, code, guideline, protocol, policy, ruling, rule or Order of, administered or enforced by or on behalf of any Governmental Body and all judgments, orders, writs, injunctions, decisions and mandate of any Governmental Body which, although not actually having the force of law, are considered by such Governmental Body as requiring compliance as if having the force of law or which establish the interpretative position of the Law by such Governmental Body.

“Release” means any release, spill, deposit, emission, leaking, pumping, escape, emptying, leaching, seeping, disposal, discharge, dispersal or migration into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller as at the Closing Date, including the movement of Contaminants, including Hazardous Materials, through or in the air, soil, ground, surface water, groundwater or property.

“Representatives” means the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of any Person.

~~“Retained Subsidiaries~~Subsidiary” shall have the meaning ascribed thereto in Section 2.23.2(ba).

“Sale Advisor” means Evercore Group LLC.

“Sale Order” means an Order of the CCAA Court, ~~substantially in the form of Schedule F hereto, with such changes as may be agreed by the Purchaser~~form and content satisfactory to the Sellers and the Bidders, each acting reasonably, approving the transactions contemplated by this Agreement ~~and, vesting the Acquired Assets in the Purchaser, free and clear of all Encumbrances, other than the Permitted Encumbrances~~and containing such other provisions as the Sellers or the Bidders may reasonably require.

“Second Lien Notes” means the secured second lien notes issued under and pursuant to the Pre-Filing Indenture.

“Seller Disclosure Letter” means the disclosure letter delivered by Sellers to Purchaser concurrently with the execution and delivery of this Agreement.

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“Sellers” shall have the meaning ascribed thereto in the Preamble hereof.

“Sellers’ Conditions Certificate” shall have the meaning ascribed thereto in Section 10.4~~10.4~~11.4.

“SISP” shall have the meaning ascribed thereto in the Recitals to this Agreement.

“SISP Order” means the Second and Amended Restated Initial Order of the CCAA Court granted on June 19, 2020, which, among other things, approves the SISP.

“Stay” shall have the meaning ascribed thereto in the Recitals of this Agreement.

“Straddle Period” shall have the meaning ascribed thereto in Section 12.12~~12.12~~13.14(b).

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, unlimited liability company, public liability company, private limited company, joint venture, partnership or other entity of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

“Surety Condition” shall have the meaning ascribed thereto in Section 8.9~~8.9~~9.9.

“Tax Act” means the Income Tax Act (Canada) and the regulations promulgated thereunder, as amended from time to time.

“Tax Return” means any report, return, information return, election, agreement, declaration, designation, filing or other document of any nature or kind required to be filed with any applicable Governmental Body in respect of Taxes, including any amendment, schedule, attachment or supplement thereto and whether in tangible or electronic form.

“Taxes” means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, ~~GST~~, franchise, excise, value added (including GST), capital, license, payroll, employment, employer health, unemployment, pension, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer (including land registration or transfer), fuel, excess profits, occupational and interest equalization, windfall profits, severance and withholding and social security taxes imposed by Canada, the United States or any other country or by any state, province, territory, municipality, subdivision or instrumentality of Canada or the United States or of any other country or by any other Governmental Body, and employment or unemployment insurance premiums, Canada Pension Plan or Quebec Pension Plan contributions, together with all applicable penalties and interest, and such term shall include any interest, penalties or additions to tax attributable to such Taxes.

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A “third party” means any Person other than any Seller, ~~Purchaser~~Bidder Party or any of their respective Affiliates.

“Transfer Taxes” shall have the meaning ascribed thereto in ~~Section 12.12~~Section 13.14(a).

“Transferred Employees” shall have the meaning ascribed thereto in ~~Section 7.1~~Section 8.1(a).

“Treasury Regulations” means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

“US\$” means the currency of the United States, and all references to monetary amounts herein shall be in Dollars unless otherwise specified herein.

“Western” shall have the meaning ascribed thereto in the Preamble hereof.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning through this Agreement.

1.3 Other Definitional Provisions.

(a) The words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement, unless the express context otherwise requires.

(d) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under IFRS consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under IFRS, the definition set forth in this Agreement will control.

(e) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(f) Any provision of this Agreement that requires ~~Purchaser~~the Bidder Parties to act reasonably shall not be deemed to require ~~Purchaser~~the Bidder Parties to accept, agree or consent to any Order or supplement, amendment or modification thereto, or any other matter that adversely affects ~~Purchaser~~such Bidder Parties or is inconsistent with the terms of this Agreement, in each case, other than in any de minimis respect.

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(g) Any provision of this Agreement that requires any Party to use commercially reasonable efforts to satisfy conditions to Closing having a sole discretion standard do not require such Party to accept any term or agreement not acceptable to such Party in its sole discretion.

(h) Wherever the word “include,” or “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation.”

ARTICLE II

FORMATION OF PURCHASER AND EFFECTIVENESS OF THIS AGREEMENT

2.1 Formation. The Bidders shall use commercially reasonable efforts to take all steps, deliver all documents and comply with all requirements, as soon as reasonably practicable, to ensure that Purchaser is formed in accordance with applicable Law and pursuant to the terms and conditions of this Agreement. The Bidders shall cause the Purchaser to enter into and accept the terms and conditions under this Agreement.

2.2 Purpose of Purchaser. Purchaser shall be formed with the purpose and objects as would facilitate the due exercise and performance by Purchaser of the rights and obligations under this Agreement set out in respect of the “Purchaser” and for undertaking such other activities as are necessary for or incidental to the transactions contemplated by this Agreement.

ARTICLE III~~ARTICLE II~~

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

~~[NTD:—This draft assumes the acquisition of substantially all of the assets of Dominion’s existing business, i.e., its interests in both the Ekati Diamond Mine and Divaik Diamond Mine. Purchaser to revise if it proposes to excluded, and not acquire, any assets.]~~

3.1 ~~2.1~~ Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, all of the Sellers’ right, title and interest in the assets and properties of Sellers other than the Excluded Assets (the “Acquired Assets”) subject to ~~Section 2.6~~3.6, free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances), including the following:

(a) all of the issued and outstanding equity interests held by any Seller in Dominion Diamond ~~Marketing Corporation, Dominion Diamond~~ (India) Private Limited ~~and~~, Dominion Diamond Marketing N.V., Dominion Diamond (Cyprus) Limited ~~and, if and to the extent elected by the Bidders before Closing, in another Seller~~ (collectively, the “Acquired Subsidiaries”);

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(b) the Diavik Joint Venture Interest, all rights and interests of any Seller under the Diavik Joint Venture Agreement, and all other rights, title and interests of any Seller in the Diavik Diamond Mine and the Diavik Joint Venture, all provided that the Bidders enter into arrangements satisfactory to them, in their sole discretion, regarding reclamation liabilities, cover payments, cash calls and other matters relating to the Diavik Joint Venture Interest, the Diavik Diamond Mine and the Diavik Joint Venture, failing which the Bidders may elect to deem all or part of the rights, interests, or assets set out in this Section 3.1(b) to be Excluded Assets;

(c) the Ekati Core Zone Joint Venture Interest, all rights and interests of any Seller under the Ekati Core Zone Joint Venture Agreement, and all other rights, title and interests of any Seller in the Ekati Diamond Mine, the Ekati Core Zone, the Ekati Core Zone Leases and the Ekati Core Zone Joint Venture;

(d) all rights, title and interests of any Seller in the Ekati Buffer Zone and the Ekati Buffer Zone Leases;

(e) the Lac de Gras Joint Venture Interest, all rights and interests of any Seller under the Lac de Gras Joint Venture Agreement, and all other rights, title and interests of any Seller in the Lac de Gras Leases and the Lac de Gras Joint Venture;

(f) all mineral rights held by DDM, including all mineral rights included in the Ekati Core Zone, Ekati Buffer Zone, Lac de Gras and the Glowworm Lake Property;

(g) all of Sellers' Cash and Cash Equivalents (except to the extent of the Cash Component), including all cash collateral and deposits posted by or for the benefit of Sellers as security for any letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise (except for retainers held by any professional in the CCAA Proceedings);

(h) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller;

(i) all prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(j) all equipment and other tangible assets of Sellers, including all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Seller related thereto;

(k) all Inventory;

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(l) subject to Section 2.63.6, all of the Essential Contracts and Other Contracts set forth on Schedule FA hereto (the “Assigned Contracts”) and all rights thereunder;

(m) all Authorizations and all pending applications therefor, in each case, to the extent such Authorizations and pending applications therefor are transferrable;

(n) all rights, options, Claims or causes of action of any Seller or other Applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law;

(o) all other right, title and interest of any Seller in real property (including and all fixtures, improvements and appurtenances thereto);

(p) all Assumed Plans, together with all funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto), and all rights and obligations thereunder;

(q) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers’ expense to the extent required by Law;

(r) any chattel paper owned or held by Sellers;

(s) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(t) the Intellectual Property owned or purported to be owned by any Seller;

(u) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(v) to the extent permitted by Law, Sellers’ Documents; provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers’ expense to the extent required by Law or as is necessary to wind-down Sellers;

(w) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(x) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or

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current employees and agents of Sellers or with third parties (including any non-disclosure, confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the CCAA Proceedings or pursuant to the SISP);

(y) telephone, fax numbers (if any) and email addresses, as well as the right to receive mail and other communications addressed to Sellers;

(z) ~~to the extent transferable,~~ any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchaser and will pay such amounts to the Purchaser forthwith following receipt thereof);

(aa) ~~to the extent transferable,~~ all prepaid Taxes and Tax credits of Sellers (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchaser and will pay such amounts to the Purchaser forthwith following receipt thereof);

(bb) all of Sellers' bank accounts (excluding an account established solely for the purpose of receiving payment of the Cash Component and winding-up the affairs of the Sellers therefrom); and

(cc) all other or additional assets, properties, privileges, rights and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement.

3.2 ~~2.2~~ Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets");

(a) all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in ~~DDM or Dominion Holdings;~~ ~~(b) all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in, Dominion Fineo, Inc., Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Dominion Diamond (Cyprus) Limited or Dominion Diamond (Luxembourg) S.a.r.l. (the "Retained Subsidiaries Subsidiary");~~

~~(b)~~ ~~(e)~~ all Excluded Contracts;

~~(c)~~ ~~(d)~~ Sellers' rights under this Agreement, including the right to the Cash Component, and under any Ancillary Documents;

~~(d)~~ ~~(e)~~ all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto running in favor of any Seller, including

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all insurance recoveries thereunder and rights to assert Claims with respect to any such insurance recoveries, in each case, as the same may run in favor of any Seller and arising out of actions taking place prior to the Closing Date;

(c) ~~(f)~~ all assets that are removed from the Acquired Assets pursuant to Section 2.63.6 or by designation of Bidders or Purchaser prior to Closing; and

(f) ~~(g)~~ Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchaser shall have the right to reasonably request, and Sellers shall reasonably cooperate to provide, copies of any portions of such documents solely as they relate to the Acquired Assets.

3.3 ~~2.3~~ Assumed Liabilities. At the Closing, except as provided in Section 2.23.2 and/or in Section 2.43.4 hereof, and subject to Section 2.63.6, Purchaser shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the following Liabilities) (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of any Seller under the Assigned Contracts, including by making available the Cure Funding Amount to satisfy the Cure Amount in connection with the assumption and assignment of the Assigned Contracts, but excluding (i) trade payables arising on or after the Filing Date that are due and payable as of or prior to the Closing in the ordinary course, and (ii) any other Liabilities related to or arising out of a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing;

(b) all trade payables arising on or after the Filing Date that are not yet due and payable as of the Closing in the ordinary course;

(c) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(d) all payroll liabilities with respect to Transferred Employees for the payroll period which includes the Closing Date;

(e) any and all Liabilities relating to Claims, Actions, suits, arbitrations, litigation matters, proceedings, investigations or other Actions (in each case, whether involving private parties, Governmental Bodies, or otherwise) ~~involving, against, or affecting the Acquired Assets or arising from~~ the operation of the Business and the Acquired Assets from and after the Closing, ~~whether commenced, filed, initiated, or threatened before or after the Closing and whether relating to facts, events, or circumstances arising or occurring before or after the Closing~~, but excluding, for the avoidance of doubt, any such Liabilities (i) arising in the CCAA Proceedings unrelated to the go-forward operations of the Business, (ii) insured under insurance policies that are not transferable to Purchaser; (iii) with respect to Excluded Contracts or any other Excluded Assets, (iv) to Employees or former Employees who are not Transferred Employees, or (v) expressly excluded pursuant to Section 2.43.4;

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(f) solely with respect to the Acquired Assets, and subject to such agreements and arrangements as Purchaser may enter into in satisfaction of the Surety Condition, or otherwise in connection with the transactions contemplated hereby, any and all Environmental Liabilities and Obligations; and

(g) all intercompany Indebtedness among Sellers and the Acquired Subsidiaries; and

(h) all Liabilities under Authorizations included in the Acquired Assets, in each case solely in respect of the period commencing at the Closing Date and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing, subject to such agreements and arrangements as Purchaser may enter into in satisfaction of the Surety Condition.

3.4 ~~2.4~~ Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchaser is not assuming, and shall not be obligated to pay, perform or otherwise discharge any Liability that is not an Assumed Liability (collectively, the “Excluded Liabilities”), including the following:

(a) any and all Liabilities arising out of, relating to or otherwise in respect of the Acquired Assets and/or Business arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities of any Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of ~~any~~the Retained Subsidiary;

(d) any and all Liabilities of any Seller for Indebtedness, including (i) all Liabilities with respect to the Pre-filing Credit Agreement ~~and~~ the Pre-filing Indenture ~~and the~~ Interim Facility, (ii) all intercompany Indebtedness between any Seller, on the one hand, and ~~Parent or any~~the Retained Subsidiary, on the other hand, and (iii) all Guarantees by Sellers, but excluding any intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(e) except as set forth in ~~Section 12.12~~13.14(a), any and all (i) Liabilities of any Seller for any Taxes (including, without limitation, Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to ~~Section~~section 160 of the Tax Act, Treasury Regulation Section 1502-6 (or any similar provision of any other Law) or otherwise and any Taxes owed by any Seller and arising in connection with the consummation of the transactions contemplated by this Agreement) arising or related to any period(s) on or prior to the Closing Date, and (ii) Taxes arising from or in connection with an Excluded Asset;

(f) any and all Liabilities of any Seller in respect of the Excluded Contracts and any other Contracts to which such Seller is party or is otherwise bound that are not Assigned Contracts;

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(g) all Liabilities and obligations of any Seller under the Assigned Contracts in respect of (i) a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing, and (ii) trade payables arising on or after the Filing Date that are due and payable as of or prior to the Closing in the ordinary course;

(h) any and all Liabilities arising out of or relating to any business or property formerly owned or operated by any Seller, any Affiliate or predecessor thereof, but not ~~presently~~ owned and operated by such Seller immediately prior to Closing;

(i) any and all Liabilities of any Seller or its predecessors arising out of any Contract, Authorization, franchise or claim that is not transferred to Purchaser as part of the Acquired Assets;

(j) any and all Liability for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the CCAA Proceedings (including the Monitor's fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Sellers or the Monitor, and the fees and expenses of the post-filing lenders or the pre-filing lenders incurred or owed in connection with the administration of the CCAA Proceedings); ~~and~~ (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement; and (iii) all other Sellers' legal, financial, advisory, consulting or similar costs and expenses incurred or arising prior to the Closing;

(k) any and all Liabilities in respect of Employees other than the Liabilities relating to Transferred Employees that are expressly assumed under Section 2.33.3;

(l) any and all Liabilities with respect to change of control, severance, termination or similar arrangements with any officer, employee or contractor of any Seller;

(m) any and all Liabilities arising out of, relating to or otherwise in respect of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assigned Contracts occurring prior to the Closing;

(n) any and all Liabilities of Sellers under this Agreement;

(o) any and all Liabilities to any broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement or otherwise;

(p) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Business (as currently or formerly conducted) or the ownership of the Acquired Assets for any Pre-Closing Tax Period, including any and all property Taxes with respect to any Pre-Closing Tax Period;

(q) any Liability for any Tax or Taxes of Sellers or their Affiliates (other than the Acquired Subsidiaries) for any taxable period, other than Transfer Taxes; and

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(r) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement.

3.5 ~~2.5 Allocation of Acquired Assets and Assumed Liabilities~~ Conveyance and Consideration. Further to Sections 2.13.1 and 2.33.3, above, (i) the Canadian Assets shall be conveyed to ~~the~~ Purchaser from ~~DDM~~ Sellers in consideration of the assumption of the Assumed Liabilities and the portion of the Cash Component allocated to the Canadian Assets in accordance with Section 12.1213.14(e); and the Purchaser Acquired Interests shall be conveyed to Purchaser from ~~Dominion Holdings~~ Sellers in consideration of the remaining portion of the Cash Component so allocated to the Purchaser Acquired Interests in accordance with Section 12.1213.14(e).

3.6 ~~2.6 Assigned Contracts/Previously Omitted Contracts~~.

(a) Assignment and Assumption at Closing.

(i) Schedule FA sets forth, to the Sellers' Knowledge, (A) a list of all Contracts to which any Seller is party, including all Contracts that, to the Sellers' Knowledge, were entered into by a Seller following the Filing Date and, (B) with respect to each Contract listed therein, Sellers' good-faith estimate of the Cure Amount. ~~Purchaser shall, in its sole discretion following consultation with Sellers, determine which Contracts are Assigned Contracts. If such Contract were an Assigned Contract, Subject to Section 3.6(f), the "Assigned Contracts" shall be the Essential Contracts and Other Contracts designated on such Schedule A.~~

(ii) From and after the date hereof until the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, ~~the Purchaser~~ Bidders, without any adjustment to the Cash Component, shall be entitled to make additions, deletions and modifications to the Contracts classified as an "Essential Contract," "Other Contract" or "Excluded Contract" on Schedule FA in ~~its~~ their sole discretion following consultation with Sellers by delivery of written notice to Sellers. For greater certainty, (A) any Contract designated by ~~Purchaser~~ Bidders as an Excluded Contract on Schedule FA after the date of this Agreement shall be deemed to no longer be an Assigned Contract and to be an Excluded Contract, (B) any Contract designated by ~~Purchaser~~ Bidders as an Essential Contract on Schedule FA after the date of this Agreement shall be deemed an Essential Contract for the purposes of this Agreement, and (C) any Contract designated by ~~Purchaser~~ Bidders as an Other Contract on Schedule FA after the date of this Agreement shall be deemed an Other Contract for the purposes of this Agreement.

(iii) Sellers shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchaser. ~~Purchaser~~ The Bidder Parties may request, in ~~its~~ their reasonable commercial judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assigned Contract, and Sellers shall cooperate with all reasonable requests of ~~Purchaser~~ the Bidder Parties to seek to obtain such modifications or amendments or to

assist ~~Purchaser~~the Bidder Parties in obtaining such modifications or amendments; provided that Purchaser shall make available the Cure Funding Amount to satisfy the Cure Amount. If ~~Purchaser~~the Bidder Parties and Sellers are unable to obtain such modifications or amendments, ~~Purchaser~~the Bidder Parties may, in ~~its~~their sole discretion following consultation with Sellers, designate any Contract as an Excluded Contract. For the avoidance of doubt, the failure to obtain modifications or amendments to an Essential Contract requested by ~~Purchaser~~the Bidder Parties shall not result in a failure to satisfy the condition to closing set out in Section ~~8.7.9.7~~, unless the aggregate Cure Amount exceeds the Cure Funding Amount.

(iv) To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (A) the Sellers' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order, (B) the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date, and (C) if an Assignment Order is obtained in respect of such Assigned Contract, the Purchaser shall accept the assignment of such Assigned Contract on such terms.

(v) Unless the Parties otherwise agree, to the extent that any Cure Amount is payable with respect to any Assigned Contract, Sellers shall (A) where such Assigned Contract is assigned pursuant to an Assignment Order, pay such Cure Amount in accordance with such Assignment Order, and (B) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay such Cure Amount in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty.

(b) Previously Omitted Contracts.

(i) If prior to Closing, (A) it is discovered that a Contract should have been listed but was not listed on Schedule F, or (B) a Contract is entered into after the Effective Date that would have been listed on Schedule F if any Seller had entered into such Contract on or before the Effective Date (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof or entry into such Contract (but in no event later than five (5) Business Days thereafter), notify ~~Purchaser~~the Bidder Parties in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. ~~Purchaser~~The Bidder Parties shall thereafter deliver written notice to Sellers, promptly following notification of such Previously Omitted Contract from Sellers and in any event prior to the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, designating such Previously Omitted Contract as an "Essential Contract", "Other Contract" or "Excluded Contract" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 2.63.6 as an "Excluded Contract" or with respect to which ~~Purchaser fails~~the Bidder Parties fail to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract. There shall be no adjustment to the

Cash Component in respect of any Previously Omitted Contract or any Previously Omitted Contract Designation.

(ii) If ~~Purchaser designates~~ the Bidder Parties designate a Previously Omitted Contract as an "Essential Contract" or "Other Contract" in accordance with Section 2.63.6, Schedule FA shall be amended to include such Previously Omitted Contract and Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amount with respect to such Previously Omitted Contract and Sellers' intention to assign such Previously Omitted Contract in accordance with this Section 2.63.6. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with seven (7) days to object, in writing to Sellers and the ~~Purchaser~~ Bidder Parties, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and the ~~Purchaser~~ Bidder Parties are unable to reach a consensual resolution with respect to an objection relating to a Previously Omitted Contract that has been designated as an "Essential Contract" in accordance with Section 2.63.6, Sellers will seek an expedited hearing before the CCAA Court for an Assignment Order in respect of such Essential Contract.

(c) Disclaimer of Assigned Contracts. Sellers shall not disclaim or seek to disclaim any Assigned Contract in the CCAA Proceedings or any other proceeding following the Effective Date and prior to any termination of this Agreement without the prior written consent of ~~Purchaser~~ the Bidder Parties, which ~~Purchaser~~ the Bidder Parties may withhold, condition or delay, in their sole discretion. For greater certainty, (i) all Contracts that have not been designated as "Assigned Contracts" as at the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court shall be deemed to be Excluded Contracts, and (ii) the Sellers shall be entitled, at any time from and after the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, to disclaim or seek to disclaim any Excluded Contracts.

3.7 ~~2.7~~ Assets Held by ~~Parent or the~~ Retained ~~Subsidiaries~~ Subsidiary. If it is determined at any time before or after the Closing that ~~Parent or any~~ the Retained Subsidiary holds any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller, then Sellers ~~and Parent~~ shall, and shall cause ~~such~~ the Retained Subsidiary to transfer and assign such assets to Purchaser or to one or more Designated Purchasers, as directed by Purchaser, subject to the terms of this Agreement. Without limiting the foregoing, ~~Parent shall, and Parent and~~ Sellers shall cause ~~each of~~ the Retained ~~Subsidiaries~~ Subsidiary to transfer and assign to Purchaser or to one or more Designated Purchasers, as directed by Purchaser, all rights, options, Claims or causes of action of ~~Parent or any such~~ the Retained Subsidiary against any party arising out of events occurring prior to the Closing, to the extent permitted under applicable Law. All assets, properties, rights, options, Claims or causes of action transferred to Purchaser or a Designated Purchaser pursuant to this Section 2.73.7 shall constitute Acquired Assets for the purposes of this Agreement.

ARTICLE IV~~ARTICLE III~~PURCHASE PRICE AND PAYMENT4.1 ~~3.1~~ Purchase Price.

(a) The purchase price for the Acquired Assets shall be the aggregate of ~~the:~~ (i) the Cash Component ~~and;~~ (ii) the Assumed Liabilities; and (iii) the Credit Bid (the "Purchase Price").

(b) The "Cash Component" shall be equal to ~~[•]~~ One Hundred and Thirty-One Million, Eight Hundred and Seventy-Nine Thousand, and One Hundred and Forty U.S. Dollars (US\$~~[•]~~ 131,879,140) (the "Cash Component") ~~[NTD: Cash Component to be equal to or greater than the "Minimum Purchase Price" as defined in the SISP and to be confirmed by the Sale Advisor]~~:

(i) *minus* the amount (if any) by which Fifty-Five Million U.S. Dollars (US\$55,000,000) exceeds the aggregate of the principal and accrued interest on the Interim Facility outstanding at Closing ~~is less than Fifty-Five Million U.S. Dollars (US\$55,000,000);~~ or

(ii) *plus*, if the Closing is after September 30, 2020, the amount (if any) by which the principal and accrued interest on the Interim Facility outstanding at Closing with respect to Advances (as defined in the Interim Facility) and accrued and unpaid interest after September 30, 2020 ~~is more than~~ exceeds Fifty-Five Million U.S. Dollars (US\$55,000,000) up to a maximum of Five Million U.S. Dollars (US\$5,000,000).

4.2 ~~3.2~~ Satisfaction of Purchase Price.

(a) ~~The Cash Component shall be satisfied in cash by (i) the~~ This Agreement and the transactions contemplated thereby are conditional on a deposit in the amount of ~~[US \$ AMOUNT]~~ Thirteen Million, One Hundred and Eighty-Seven Thousand and Nine Hundred and Fourteen U.S. Dollars (US\$13,187,914) (the "Deposit") being ~~applied against the Purchase Price, and (ii) the~~ paid by or on behalf of the Purchaser by wire transfer of immediately available funds to a bank account of the Monitor in accordance with the SISP, which Deposit shall be applied to the Purchase Price in the manner contemplated by the SISP. The balance of the Cash Component ~~being~~ shall be paid by ~~or on behalf of~~ the Purchaser by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Sellers at least two (2) Business Days prior to the Closing Date ~~[NTD: In accordance with the SISP, the Deposit is to be no less than 10% of the Cash Component].~~

(b) The Assumed Liabilities will be assumed by the Purchaser pursuant to the Assignment and Assumption Agreement, the Assignment and Assumption of Leases and the IP Assignment and Assumption Agreement.

(c) The Credit Bid shall automatically result on Closing in the release and discharge of the indebtedness of the Sellers under the Second Lien Notes in the aggregate principal and interest amount included in the Credit Bid but, for greater certainty, shall not result in the release or discharge of any and all other rights, claims or interests relating to, arising from or associated with such Second Lien Notes.

4.3 ~~3.3~~ Further Assurances. From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchaser shall use commercially reasonable efforts to execute and deliver such documents and instruments of conveyance and transfer as Purchaser may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchaser title to the Acquired Assets transferred hereunder, and (b) Purchaser, upon the request of Sellers, shall use commercially reasonable efforts to execute and deliver such documents and instruments of assumption as Sellers may reasonably request in order to confirm Purchaser's Liability for the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE V ~~ARTICLE IV~~

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Seller Disclosure Letter, Sellers represent and warrant to ~~Purchaser~~ the Bidder Parties as of the Effective Date and the Closing Date, as follows:

5.1 ~~4.1~~ Organization and Power. ~~Dominion Holdings is a limited liability company~~ Each Seller is duly formed and validly existing under ~~the laws of the State of Delaware, its jurisdiction of formation~~ and is validly existing in good standing thereunder ~~as of the Effective Date and the Closing. DDM is an unlimited liability company duly formed under the laws of British Columbia.~~ Subject to the CCAA and the Amended and Restated Initial Order, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted. Each Seller has previously delivered to ~~Purchaser~~ the Bidder Parties true, complete and correct copies of its Organizational Documents, as amended and in effect on the Effective Date. Each Seller is duly qualified to do business ~~as a foreign corporation~~ and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.2 ~~4.2~~ Authority; No Violation. Subject to the issuance of the Sale Order, each Seller has all requisite ~~limited liability company or unlimited liability company~~ power and authority, ~~as applicable~~, to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by each Seller shall be duly and validly authorized and approved by all necessary ~~limited liability company or unlimited liability~~ company action, ~~as applicable~~. Subject to the issuance of the Sale Order ~~by the CCAA Court~~ (and assuming the due authorization, execution and delivery by the other

Parties hereto), this Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

5.3 ~~4.3~~ Consents.

(a) Except as set forth on Section 4.35.3(a) of the Seller Disclosure Letter, the execution, delivery and performance by Sellers of this Agreement or any Ancillary Document to which it is a party and the consummation of the transactions contemplated hereby or thereby in accordance with the Sale Order do not and will not (with or without notice or the passage of time): (i) contravene, violate or conflict with any term or provision of Sellers' Organizational Documents; (ii) violate any material Law applicable to any Seller or any Acquired Subsidiary or by which any property or asset of any Seller or any Acquired Subsidiary is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of any Seller or any Acquired Subsidiary under any Authorization or Material Contract, except in each case described in this clause (iii) to the extent that any such breach, default, right or requirement arises out of the commencement of the CCAA Proceedings or would be cured and the applicable Authorization or Material Contract would be assignable upon payment of the applicable Cure Amount hereunder.

(b) Except (i) for the issuance of the Sale Order, (ii) for compliance as may be required with the Competition Act or other applicable Antitrust Laws, and (iii) as set forth on Section 4.35.3(a) of the Seller Disclosure Letter, no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Sellers of this Agreement or the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business, in each case taken as a whole.

5.4 ~~4.4~~ Subsidiaries.

(a) Except as would not, individually or in the aggregate, have a Material Adverse Effect, each Acquired Subsidiary is duly incorporated, organized or formed and validly existing under the laws of its jurisdiction of incorporation, organization or formation, and has the requisite power and capacity to own, lease, license and operate its assets and properties and conduct its business as now conducted and is duly registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or operated by it, or the nature of its activities, make such registration necessary.

(b) Section 4.45.4(b) of the Seller Disclosure Letter sets out, with respect to each Subsidiary of Sellers as of the date hereof: (A) its name; (B) the percentage owned directly or indirectly by any Seller and the percentage owned by registered holders of capital

stock or other equity interests if other than Sellers and their Subsidiaries; and (C) its jurisdiction of incorporation, organization or formation.

(c) Dominion Holdings or DDM is, directly or indirectly, the registered and beneficial owner of all of the outstanding common shares or other equity interests as reflected as being owned by Dominion Holdings or DDM, as applicable, in Section 4.45.4(b) of the Seller Disclosure Letter, directly or indirectly, of each of its Subsidiaries, free and clear of any Encumbrance, other than Permitted Encumbrances, all such shares or other equity interests so owned by Sellers have been validly issued and are fully paid and non-assessable, as the case may be, and no such shares or other equity interests have been issued in violation of any pre-emptive or similar rights. Except for the shares or other equity interests owned by Dominion Holdings or DDM, directly or indirectly, in any Subsidiary, and except as set forth in Section 4.45.4(b) of the Seller Disclosure Letter neither any Seller nor any Subsidiary owns, beneficially or of record, any equity interests of any kind in any other Person as of the date hereof.

(d) No Acquired Subsidiary has any Indebtedness, other than with respect to the intercompany Indebtedness owed solely to Sellers or other Acquired Subsidiaries (and for the avoidance of doubt, trade payables incurred in the Ordinary Course of Business) and no Acquired Subsidiary has provided any Guarantee.

5.5 ~~4.5~~ Title and Sufficiency of Assets.

(a) Sellers have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Acquired Subsidiaries have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) all assets and property which any such Acquired Subsidiary purports to own, free and clear of all Encumbrances other than Permitted Encumbrances, and there is no agreement, option or other right or privilege outstanding in favor of any Person for the purchase of any material asset from any Acquired Subsidiary outside the Ordinary Course of Business.

(c) The Acquired Assets, together with the assets and properties held by the Acquired Subsidiaries, include all of the properties and assets required to operate the Business in the Ordinary Course of Business.

(d) To the Knowledge of Sellers, neither Parent nor ~~any of~~ the Retained ~~Subsidiaries~~ Subsidiary holds any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller.

5.6 ~~4.6~~ Financial Statements. Sellers have delivered to ~~Purchaser~~ the Bidder Parties Parent's audited consolidated financial statements as at and for the fiscal year ended December 31, 2019 and unaudited consolidated financial statements as at March 31, 2020 and for the three months ended March 31, 2020 and 2019 (including, in each case, any of the notes or schedules thereto, any report thereon and related management's discussion and analysis), each of which: (i)

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were prepared in accordance with IFRS; and (ii) present fairly, in all material respects, the assets, liabilities and financial condition of Parent and its Subsidiaries on a consolidated basis as at the respective dates thereof and the revenues, earnings, results of operations, changes in shareholders' equity and cash flow of Parent and its Subsidiaries on a consolidated basis for the periods covered thereby (except as may be indicated in the notes to such financial statements and subject in the case of unaudited financial statements to normal, year-end audit adjustments). Except as set forth in such financial statements, neither any Seller nor any Acquired Subsidiary is party to any off-balance sheet transaction with unconsolidated Persons.

5.7 ~~4.7~~ Compliance with Laws. Sellers and each of the Acquired Subsidiaries are, and since February 1, 2018 have been, in compliance with Law in all material respects. Neither any Seller nor any Acquired Subsidiary is, to the Knowledge of Sellers, under any material investigation with respect to, or has been charged or threatened to be charged with, or has received notice of, any material violation or potential material violation of any Law from any Governmental Body.

5.8 ~~4.8~~ Authorizations. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) each Seller and each Acquired Subsidiary owns, possesses or has obtained all Authorizations that are required by Law (including, for greater certainty, Environmental Law) to be owned, possessed or obtained by Sellers or any of the Acquired Subsidiaries in connection with the operation of the Business or in connection with the ownership, operation or use of the Acquired Assets; (ii) Sellers and the Acquired Subsidiaries, as applicable, lawfully hold, own or use, and have complied with all such Authorizations; (iii) each such Authorization is valid and in full force and effect, and is renewable by its terms or in the Ordinary Course of Business; and (iv) no action, investigation or proceeding is pending, or to the Knowledge of Sellers, threatened, against any Seller or any Acquired Subsidiary in respect of or regarding any such Authorization that could reasonably be expected to result in the suspension, loss or revocation of any such Authorization.

5.9 ~~4.9~~ Material Contracts. Section ~~4.9~~5.9 of the Seller Disclosure Letter sets out a complete and accurate list of all Material Contracts in effect or pursuant to which any Seller or any Acquired Subsidiary has surviving obligations as of the date hereof. True and complete copies of the Material Contracts have been disclosed in the Data Room and, other than as set out in the Data Room, no such Material Contract has been modified in any material respect. Each Material Contract is a legal, valid and binding agreement of the applicable Seller or the applicable Acquired Subsidiary, and is in full force and effect. Except as disclosed in ~~Section 4.9~~Section 5.9 of the Seller Disclosure Letter and other than monetary defaults or such breaches arising out of the commencement of the CCAA Proceedings, neither any Seller nor any Acquired Subsidiary or, to the Knowledge of Seller, any other parties thereto, is in material breach or violation of or in default under (in each case, with or without notice or lapse of time or both) any Material Contract and no Seller or any Acquired Subsidiary has received or given any notice of any material breach or default under any Material Contract which remains uncured, and there exists no state of facts which after notice or lapse of time or both would constitute a material breach of or default under any Material Contract by any Seller or any Acquired Subsidiary or, to the Knowledge of Sellers, any other party thereto.

5.10 ~~4.10~~ Diavik Joint Venture.

(a) DDM owns the Diavik Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Diavik Joint Venture Agreement, no Person has any Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Diavik Joint Venture. Except as specified in the Diavik Joint Venture Agreement, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Diavik Diamond Mine or the Diavik Joint Venture.

(b) A copy of the Diavik Joint Venture Agreement as currently in effect as of the date hereof has been made available to Purchaser in the Data Room.

5.11 ~~4.11~~ Ekati Mine.

(a) DDM owns each of the Ekati Buffer Zone and the Ekati Core Zone Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, no Person has any Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Ekati Buffer Zone or the Ekati Core Zone Joint Venture. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Ekati Buffer Zone, the Ekati Core Zone or the Ekati Core Zone Joint Venture.

(b) A copy of the Ekati Core Zone Joint Venture Agreement as currently in effect as of the date hereof has been made available to ~~Purchaser~~the Bidder Parties in the Data Room.

5.12 ~~4.12~~ Leased Property. With respect to the real property leased or subleased by any Seller or any Acquired Subsidiary, ~~except as would not, individually or in the aggregate, have a Material Adverse Effect:~~ (i) each lease or sublease for such property constitutes a legal, valid and binding obligation of the applicable Seller or the applicable Acquired Subsidiary, as the case may be, enforceable against such Seller or such Acquired Subsidiary, as the case may be, in accordance with its terms and is in full force and effect; (ii) except as disclosed in Section 4.125.12 (ii) of the Seller Disclosure Letter, neither any Seller nor any Acquired Subsidiary, as the case may be, is in breach of or default under any such lease or sublease and no event has occurred which, without the giving of notice or lapse of time, or both, would constitute a breach of or default under any such lease or sublease; and (iii) except as disclosed in Section 4.125.12 (iii) of the Seller Disclosure Letter, to the Knowledge of Sellers, no counterparty to any such lease or sublease is in default thereunder. Each Seller and each Acquired Subsidiary, as applicable, has good and valid leasehold title to the leased premises demised by such lease or sublease, free and clear of all Encumbrances, except for Permitted Encumbrances. Except as disclosed in Section 5.12 of the Seller Disclosure Letter, no third-party consent is required to be obtained by the Seller or the Acquired Subsidiary, nor is any notice required to be given by the Seller or the Acquired Subsidiary under any such lease or

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sublease in connection with the completion of the transactions contemplated herein. Except as disclosed in Section 5.12 of the Seller Disclosure Letter, neither the Seller nor any Acquired Subsidiary is a party to any written or oral subleases, licences or other contracts granting any Person the right to use, occupy, possess, lease or enjoy any leased premises nor has the Seller or any Acquired Subsidiary collaterally assigned or granted any other security interest in any of the leased premises or any interest therein.

5.13 ~~4.13~~ Interests in Properties and Mineral Rights.

(a) The Diavik Leases, the Ekati Buffer Zone Leases and the Ekati Core Zone Leases comprise all of Sellers' and the Acquired Subsidiaries' material real properties and all of Sellers' and the Acquired Subsidiaries' material mineral interests and rights, in each case, either existing under contract, by operation of Law or otherwise (collectively, and where material, the "Mineral Rights"). Neither Sellers nor the Acquired Subsidiaries own or have any interest in any other material real property or any other material mineral interests and rights.

(b) Other than pursuant to the Joint Venture Agreements, no ~~person~~ Person has any interest in the Mineral Rights or any right to acquire any such interest, and no ~~person~~ Person has any back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which would affect, in any material respect, DDM²s or, to the Knowledge of Sellers, DDMI's interest in any of the Mineral Rights.

5.14 ~~4.14~~ Litigation. Except as disclosed in ~~Section 4.14~~ 5.14 of the Seller Disclosure Letter, as of the date hereof, there are no claims, actions, suits, arbitrations, inquiries, investigations or proceedings pending, or, to the Knowledge of Sellers, threatened, against any Seller, any Acquired Subsidiary or, to the Knowledge of Sellers, DDMI, by or before any Governmental Body that, if determined adverse to the interests of any Seller, any Acquired Subsidiary or DDMI, would, individually or in the aggregate, have a Material Adverse Effect, or would be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby, and no Seller or Acquired Subsidiary or, to the Knowledge of Sellers, DDMI or any of the Mine Properties is subject to any outstanding judgment, order, writ, injunction or decree that would reasonably be expected to have a Material Adverse Effect.

5.15 ~~4.15~~ Environmental Matters. Except as would not, individually or in the aggregate, have a Material Adverse Effect, to the Knowledge of Sellers, (i) there exists no fact, condition or occurrence concerning any Seller, any Acquired Subsidiary, DDMI or the operation of Business or Acquired Assets (including the Joint Ventures or the Mine Properties) with respect to any non-compliance with or obligation or liability under Environmental Laws; (ii) no unresolved complaint, notice or violation, citation, summons or order has been issued to any Seller or any Acquired Subsidiary or any of the Joint Ventures or the applicable manager/operator, as the case may be, alleging any violation by or liability of any Seller or any Acquired Subsidiary or any businesses or assets thereof, including the Joint Ventures or the Mine Properties, with respect to any Environmental Law; and (iii) the operation of the Business, including the Joint Ventures and the Mine Properties, is in compliance with Environmental Laws.

5.16 ~~4.16~~ Aboriginal Claims.

(a) ~~Section 4.16~~5.16 of the Seller Disclosure Letter (to the Knowledge of Sellers, in respect of matters relating to the Diavik Joint Venture) contains a list of the current impact benefit or participation agreements, memoranda of understanding or similar arrangements (the "Aboriginal Agreements") with all Aboriginal Groups with whom any Seller, any Acquired Subsidiary or any of the Joint Ventures has any such dealings and any written notices of an Aboriginal Claim received by any Seller or any Acquired Subsidiary where there is no current Aboriginal Agreement in place with the Aboriginal Group, in each case, as of the date hereof. Copies of the Aboriginal Agreements as in effect as of the date hereof have been made available in the Data Room. Other than as disclosed in the Seller Disclosure Letter (including the Aboriginal Agreements), as of the date hereof, to the Knowledge of Sellers, neither Sellers, any of the Acquired Subsidiaries, the Ekati Buffer Zone, the Ekati Core Zone Joint Venture, nor any of the Diavik Joint Venture or its manager, as the case may be, has received any written notice of an Aboriginal Claim which materially affects Sellers, any of the Acquired Subsidiaries, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(b) The Sellers have not received written notice of any material Claims from any Aboriginal Group with respect to Sellers, any Acquired Subsidiary, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(c) The Sellers have materially complied with all material obligations under the Aboriginal Agreements.

5.17 ~~4.17~~ Employees.

(a) All written contracts in relation to the top five compensated Employees (calculated based on annual base salary plus target cash bonus) have been made available in the Data Room.

(b) The independent contractors of Sellers and the Acquired Subsidiaries are not entitled to any severance or similar payments upon termination of their Contracts that would be material and each of such Contracts can be terminated with no more than 60 days' advance notice.

(c) ~~No~~Other than as disclosed in Section 5.17 of the Seller Disclosure Letter, no Employee has any agreement as to length of notice or severance payment required to terminate his or her employment or is entitled to notice or severance payments other than such as results by Law, nor are there any change of control payments or severance payments or agreements with Employees providing for cash or other compensation or benefits upon the consummation of, or relating to, the transactions contemplated by this Agreement other than the key employee retention plan approved by the CCAA Court in the Amended and Restated ~~Initial~~Initial Order.

5.18 ~~4.18~~ Collective Agreements. ~~Section 4.18~~5.18 of the Seller Disclosure Letter sets forth a list of all Collective Agreements as of the date hereof. Except as disclosed in Section

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~~4.18~~5.18 of the Seller Disclosure Letter (A) there are no collective bargaining or union agreements or employee association agreements or other binding commitments in force with respect to Employees, (B) no Person holds bargaining rights with respect to any Employees and (C) to the Knowledge of Sellers, no Person has applied to be certified as the bargaining agent of any Employees.

5.19 ~~4.19~~ Employee Plans.

(a) Section 4.19~~5.19~~(a) of the Seller Disclosure Letter lists all written Employee Plans in effect as of the date hereof. Sellers have made available in the Data Room true, complete and up to date copies of all such material Employee Plans, as amended, together with all related documentation, including all material regulatory filings (including actuarial valuations) required to be filed with a Governmental Body and correspondence with Governmental Bodies with respect to such material regulatory filings (including actuarial valuations) of any Pension Plan (as defined in Section 4.19~~5.19~~(a) of the Sellers Disclosure Letter).

(b) Sellers and the Acquired Subsidiaries have made all contributions and paid all premiums in respect of each material Employee Plan in a timely fashion in accordance with Law and in accordance with the terms of the applicable Employee Plan and all Collective Agreements. Except as would not, individually or in the aggregate, have a Material Adverse Effect, all financial liabilities of Sellers and the Acquired Subsidiaries (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and accurately disclosed in accordance with IAS 19 Employee Benefits in the financial statements referred to in Section 4.6~~5.6~~ as of the dates of such financial statements.

(c) None of the Employee Plans (other than pension, retirement savings or retirement income plans) provide for retiree benefits or for benefits to retired or terminated Employees or to the beneficiaries or dependents of retired or terminated Employees.

(d) The execution of this Agreement and the completion of the transactions contemplated will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of indebtedness, vesting, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee or former Employee or their beneficiaries.

5.20 ~~4.20~~ Taxes.

(a) Each Seller and each Acquired Subsidiary has duly and timely filed all material Tax Returns and such Tax Returns are true, complete and correct in all material respects.

(b) Each Seller and each Acquired Subsidiary has paid all Taxes, including all installments on account thereof, that are due and payable by it.

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(c) Each Seller and each Acquired Subsidiary has paid all Taxes, including all installments on account thereof, that are due and payable by it.

~~(d) (a) DDM~~ Each Seller is: (i) not a non-resident of Canada for the purposes of Section 116 of the Tax Act; or (ii) is not disposing of Acquired Assets which are considered to be “taxable Canadian property” of the Seller for purposes of section 116 of the Tax Act.

~~(e) (b) Each~~ Seller and each ~~of the~~ Acquired ~~Subsidiaries~~ Subsidiary has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Body when required by Law to do so.

~~(e) ——— The Purchaser Acquired Interests are not “taxable Canadian property” for the purposes of Section 116 of the Tax Act.~~

~~(f) (d)~~ The Canadian Assets include all or substantially all of each Seller’s “Canadian Resource Property” for the purposes of sections 66 and 66.7 of the Tax Act.

~~(g) (e)~~ The Canadian Assets sold by each Seller constitute all or substantially all of the assets used in carrying on the Business for the purposes of section 22 of the Tax Act.

~~(h) (f)~~ For the purposes of the GST Legislation: (i) ~~DDM~~ each of DDM, DDCU, and Dominion Marketing carries on a business; and (ii) the Canadian Assets sold by each of DDM, DDCU and Dominion Marketing constitute all or substantially all of the property necessary for ~~the~~ Purchaser to be capable of carrying on the business.

~~(i) (g) DDM~~ Each of DDM, DDCU and Dominion Marketing is registered for ~~the~~ purposes of the GST Legislation. Each of DDM, DDCU and its Dominion Marketing’s GST registration number is 100013580RT0001. numbers are set out in Section 5.20(i) of the Seller Disclosure Letter.

~~(j) (h) the~~ The Purchaser Acquired Interests are “financial instruments” for the purposes of the GST Legislation.

~~(k) DDC~~ is, and at all times has been, classified as an entity disregarded from its owner for U.S. federal tax purposes.

5.21 ~~4.21~~ Brokers and Finders. Other than the Sale Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and ~~Purchaser is~~ the Bidder Parties are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Sellers or their Subsidiaries.

~~5.22~~ ~~4.22~~ No Other Representations or Warranties. Except for the representations, warranties and covenants of Sellers expressly contained herein or any certificate delivered hereunder, neither Sellers nor any of their respective Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Sellers, including, without limitation, as to (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Purchaser after the Closing, (b) the probable success or results in connection with the CCAA Court and the Sale Order, or (c) the value, use or condition of the Acquired Assets, which are being conveyed hereby on an “As-Is”, “Where-Is” condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE VI~~ARTICLE V~~

REPRESENTATIONS AND WARRANTIES OF PURCHASER~~THE BIDDERS~~

~~Purchaser~~ Each Bidder hereby represents and warrants to Sellers as of the Effective Date as follows:

~~6.1~~ ~~5.1~~ Organization and Power. ~~Purchaser is a [•],~~ Such Bidder Party is duly formed and validly existing ~~and~~ under its jurisdiction of formation and is validly existing in good standing ~~under the laws of [•], with~~ thereunder. Such Bidder has full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

~~6.2~~ ~~5.2~~ Purchaser’s Authority; No Violation. ~~Purchaser~~ Such Bidder has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by ~~Purchaser~~ such Bidder shall be duly and validly authorized and approved by all necessary company action. This Agreement shall constitute the legal and binding obligation of ~~Purchaser~~ such Bidder, enforceable against ~~Purchaser~~ such Bidder in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors’ rights generally and that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the issuance of the Sale Order ~~by the CCAA Court~~ and subject to compliance with the applicable requirements of the Competition Act, the entering into of this Agreement, and the consummation by ~~Purchaser~~ such Bidder of the transactions contemplated hereby will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of ~~Purchaser~~ such Bidder’s Organizational Documents, violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of ~~Purchaser~~ such Bidder under, any Encumbrance, contract, agreement, license, lease, instrument, indenture, Order, arbitration award, judgment, or decree to which ~~Purchaser~~ such Bidder is a party or by which it is bound, or to which any property of ~~Purchaser~~ such Bidder is subject.

6.3 ~~5.3~~ Consents, Approvals or Authorizations. Except for compliance as may be required by the Competition Act or other applicable Antitrust Laws, no consent, waiver, approval, Order or Authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchaser~~such Bidder~~ of this Agreement or the Ancillary Documents to which Purchaser~~such Bidder~~ is a party, the compliance by Purchaser~~such Bidder~~ with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities by Purchaser or the taking by Purchaser~~such Bidder~~ of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser~~such Bidder~~'s ability to perform its obligations under this Agreement and the Ancillary Documents to which Purchaser~~such Bidder~~ is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities by Purchaser.

6.4 ~~5.4~~ Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser~~such Bidder~~ in connection with the transactions contemplated by this Agreement that would obligate Sellers to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchaser~~such Bidder~~.

6.5 ~~5.5~~ GST Registration. ~~The~~By or before the Closing Date, the Purchaser shall be registered for the purposes of the GST Legislation. This registration will have an effective date on or before the Closing Date.

6.6 ~~5.6~~ “As Is, Where Is” Basis. Notwithstanding any other provision of this Agreement, ~~the Purchaser acknowledge, agree and confirm~~each Bidder acknowledges, agrees and confirms that:

(a) except for the representations and warranties of the Sellers set forth in Article IVV, and subject to the other covenants and agreements set forth herein, ~~the Purchaser~~such Bidder is entering into this Agreement, ~~acquiring and the Purchaser will acquire~~ the Acquired Assets and ~~assuming~~assume the Assumed Liabilities on an “as is, where is” basis as they exist as at Closing and will accept the Acquired Assets in their state, condition and location as at Closing except as expressly set forth in this Agreement and the sale of the Acquired Assets is made without legal warranty and at the risk of the Purchaser;

(b) except for the representations and warranties of the Sellers set forth in Article IVV, neither the Sellers, the Sale Advisor, nor the Monitor or their Representatives have made or are making, and ~~the Purchaser~~such Bidder is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Acquired Assets, the Sellers' right, title or interest in or to the Acquired Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components,

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latent defects, quality, quantity or any other thing affecting any of the Acquired Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any applicable Law in any jurisdiction, which ~~the Purchaser~~such Bidder confirms ~~do~~does not apply to this Agreement and are hereby waived in their entirety by ~~the Purchaser~~such Bidder;

(c) except as otherwise expressly provided in this Agreement, ~~the Purchaser~~such Bidder hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims ~~the Purchaser~~such Bidder might have against the Sellers, Monitor, Sale Advisor and their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Sellers expressly set forth in Article IVV. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including Claims regarding defects, whether or not discoverable or latent, product liability Claims, or similar Claims, and all other Claims that may be later created or conceived in strict liability or as strict liability type Claims and rights;

(d) none of the representations and warranties of the Sellers contained in this Agreement shall survive Closing and, subject to Section 11.12.1, the ~~Purchaser's~~Bidders' sole recourse for any breach of representation or warranty of the Sellers in Article IVV shall be for the ~~Purchaser~~Bidders not to complete the transactions as contemplated by this Agreement and for greater certainty the ~~Purchaser~~Bidders shall have no recourse or claim of any kind against the Sellers or the proceeds of the transactions contemplated by this Agreement following Closing; and

(e) this Section 5.66.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

6.7 ~~5.7~~ Investment Canada Act. The As of the Closing Date, the Purchaser ~~is~~shall be a trade agreement investor or a WTO investor for the purposes of the Investment Canada Act.

6.8 ~~5.8~~ No Other Representations or Warranties. Except for the representations, warranties and covenants of ~~Purchaser~~the Bidders expressly contained herein or any certificate delivered hereunder, ~~neither Purchaser~~none of the Bidders nor any of ~~its~~their Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of ~~Purchaser~~the Bidders.

6.9 Joint and Several. Without limiting the generality of Section 13.4, the representations and warranties of each Bidder to Sellers under this Agreement are several, and not joint and not joint and several.

~~ARTICLE VII~~ ARTICLE VICOVENANTS OF SELLERS AND/OR PURCHASER7.1 ~~6.1~~ Conduct of Business of Sellers.

(a) During the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement, the Amended and Restated Initial Order or the SISP or (z) as consented to in writing by ~~Purchaser~~ the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall, and shall cause their Subsidiaries to:

(i) continue operations at the Ekati Diamond Mine on care and maintenance only; and

(ii) use commercially reasonable efforts to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, subject to continuation of all ~~furlough arrangements~~ temporary employee layoffs in place as of the Effective Date, and (D) maintain and preserve satisfactory relationships with Aboriginal Groups and Governmental Bodies.

(b) Without limiting the generality of Section 6.17.1(a), during the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement or the SISP or (z) as consented to in writing by ~~Purchaser~~ the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) re-start operations at the Ekati Diamond Mine;

(ii) end any temporary employee ~~furlough~~ layoff or similar arrangement that is in place as of the Effective Date;

(iii) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any material Acquired Asset, including any diamonds or other Inventory;

(iv) settle or compromise any material litigation or claims relating to the Business or the Acquired Assets or that would impose any restrictions or Liabilities on the Business or Purchaser's use of the Acquired Assets after the Closing;

(v) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances;

(vi) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets;

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(vii) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement or employee association agreement with any labor organization affecting any such Persons;

(viii) grant any increase in the compensation or benefits of any employee or former employee or any dependent or other person claiming through an employee or former employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee;

(ix) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract;

(x) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder;

(xi) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that ~~could~~may reasonably be expected to have any adverse effect on the Purchaser or any of ~~their~~its Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or

(xii) agree in writing to do any of the foregoing.

7.2 ~~6.2~~ Consents and Approvals.

(a) Sellers and ~~Purchaser~~the Bidders shall each use commercially reasonable efforts (i) to obtain all consents and approvals, as reasonably requested by ~~Purchaser~~the Bidder Parties and Sellers, to more effectively consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Contracts and Assumed Liabilities, as applicable, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, if required, the Competition Act Approval and any other Mandatory Antitrust Approvals, (ii) to make, as reasonably requested by ~~Purchaser~~the Bidder Parties and Sellers, all filings, applications, statements and reports to all authorities which are required to be made prior to the Closing Date by or on behalf of ~~Purchaser~~the Bidder Parties and/or Sellers or any of their respective Affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby, (iii) to obtain, as reasonably requested by ~~Purchaser~~the Bidder Parties and Sellers, all required consents and approvals (if any) to assign and transfer the Authorizations to Purchaser at Closing and, to the extent that one or more of the Authorizations are not transferable, to obtain replacements therefor, and (iv) to satisfy the conditions precedent set out in Article VIII and

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Article IX by such dates as required to achieve the applicable target closing date set out in the SISP.

(b) In furtherance and not in limitation of the foregoing, each of Sellers and ~~Purchaser~~the Bidder Parties shall prepare and file: (i) on a timetable to be agreed by the Parties, all filings required and desirable to obtain Competition Act Approval and any other Mandatory Antitrust Approval, in each case if and to the extent required, including pre-merger notification filings in accordance with Part IX of the Competition Act; and (ii) all other necessary documents, registrations, statements, petitions, filings and applications for other Antitrust Approvals and any other consent or approval of any other Governmental Body required to satisfy the conditions set forth in Section 8.29.2 and Section 9.210.2.

(c) In furtherance and not in limitation of the foregoing, ~~Purchaser~~the Bidder Parties shall use commercially reasonable efforts to negotiate an acceptable agreement with GNWT and the sureties to satisfy the Surety Condition. Sellers shall cooperate in a timely and commercially reasonable manner with ~~Purchaser~~the Bidder Parties in ~~its~~their efforts to satisfy the Surety Condition, including providing information, assisting in evaluation and analysis, and facilitating discussions as reasonably requested by ~~Purchaser~~the Bidder Parties. ~~The Bidder Parties~~ shall provide Sellers an opportunity to participate with one attendee in any meetings of a substantive nature with DDMI, GNWT and the sureties.

(d) Subject to the provisions of Section 3.34.3 and this Section 6.27.2, in the event that certain Authorizations are not transferable or replacements therefor are not obtainable on or before the Closing, but such Authorizations are transferable or replacements therefor are obtainable after the Closing, ~~Purchaser~~the Bidder Parties and Sellers shall continue to use such reasonable efforts in cooperation with the other after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Authorizations after Closing and shall do all things reasonably necessary to give Purchaser the benefits which would be obtained under such Authorizations; provided, however, that Sellers' obligations under this Section 6.27.2(d) shall not restrict Sellers from making any distributions in or terminating the CCAA Proceedings or otherwise winding up their respective affairs or cancelling their existence upon the completion of any such winding up.

(e) Sellers and ~~Purchaser~~the Bidder Parties shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Parties informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Body and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, including providing to the other Parties copies of all such material communications given or received; (iii) provide to the other Party reasonable opportunity to comment on drafts of filings and submissions prior to submitting same to a Governmental Body; and (iv) consult with each other in advance of any meeting or conference (whether in person or by telephone) with any Governmental Body, including in connection with any proceeding by a private party, and provide the other Party an opportunity to participate with at least one attendee in any meetings of a

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substantive nature with a Governmental Body. The foregoing obligations in this ~~Section 6.27.2~~(e) shall be subject to any attorney-client, solicitor-client, work product, or other privilege, and each of the Parties hereto shall coordinate and cooperate fully with the other Parties hereto in exchanging such information and providing such assistance as such other Parties may reasonably request in connection with the foregoing.

(f) If, (i) notwithstanding the applicable provisions of the CCAA, the Sale Order, the Assignment Order (if applicable) and the commercially reasonable efforts of Sellers, any consent to the assignment of an Assigned Contract is not obtained prior to Closing and as a result thereof the Purchaser shall be prevented by a third party from receiving the rights and benefits with respect to an Acquired Asset intended to be transferred hereunder, (ii) any attempted assignment of an Acquired Asset would adversely affect the rights of Sellers thereunder so that the Purchaser would not in fact receive all of the rights and benefits contemplated or (iii) any Acquired Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order, the Assignment Order and the CCAA), then, in each case, Sellers shall, subject to any approval of the CCAA Court that may be required, at the request of the ~~Purchaser~~Bidders and subject to ~~Section 3.34.3~~, cooperate with ~~Purchaser~~the Bidders in any lawful and commercially reasonable arrangement under which the Purchaser would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Purchaser.

7.3 ~~6.3~~ Confidentiality. ~~Purchaser~~The Bidders and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under ~~Section 6.57.5~~, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality ~~Agreement, dated [•], 2020, Agreements dated June 8, 2020 (with respect to DDJ and Brigade) and July 17, 2020 (with respect to Western)~~, between ~~[•] each of the Bidders~~ and DDM (the “Confidentiality Agreement”). Sellers agree that except as may otherwise be required in connection with the CCAA Proceedings or by Law, they will treat any confidential information provided to or retained by them in accordance with this Agreement as if they were the receiving party under the Confidentiality Agreement and Sellers agree that for purposes of Sellers’ confidentiality obligation hereunder, the term contained in the fourteenth paragraph of the Confidentiality Agreement shall be deemed to be three (3) years from the Closing Date. The Parties agree that the provisions regarding confidentiality contained in the Confidentiality Agreement shall survive the termination of this Agreement and the Confidentiality Agreement in accordance with the terms set forth therein but shall terminate upon the Closing as to ~~Purchaser~~the Bidder Parties and their ~~Representative~~Representatives (as defined therein).

7.4 ~~6.4~~ Change of Name. Promptly following the Closing, Sellers shall, and shall cause their respective direct and indirect Subsidiaries to, discontinue the use of the “Dominion Diamonds” name (and any other trade names or “d/b/a” names currently utilized by Sellers or their respective direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words “Dominion Diamond Mines” or any other similar name or mark confusingly similar thereto without the prior written consent of Purchaser, and Sellers shall, if requested by the Purchaser, ~~to~~ make an application to the CCAA Court requesting the name of Sellers in the title of the CCAA Proceedings to be changed;

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provided, however, that Sellers and their respective Subsidiaries may continue to use their current names (and any other names or d/b/a's currently utilized by Sellers or their respective Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to seventy-five (75) days solely for purposes of winding down the affairs of Sellers; provided that when utilizing such materials, other than in incidental respects, Sellers and each of their respective direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each).

7.5 ~~6.5~~ Purchaser's Bidder Parties' Access to Sellers' Records. The Sellers' shall provide ~~Purchaser~~the Bidder Parties (or ~~its~~their designated Representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as ~~Purchaser~~the Bidder Parties deem appropriate or necessary in order to facilitate ~~Purchaser's~~the Bidder Parties' efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with ~~Purchaser~~the Bidder Parties in this regard.

7.6 ~~6.6~~ Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to ~~Purchaser~~the Bidder Parties of (i) any notice or other communication from any Person alleging that the consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents, is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or to the issuance of the Sale Order, and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement other than as may be provided for in the SISP or communications which are confidential, without prejudice or privileged by their nature.

(b) Each Party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event that would or would reasonably be expected to (i) constitute a breach or inaccuracy of any of the representations and warranties of such Party had such representation or warranty been made at the time of the occurrence or nonoccurrence of such event, (ii) constitute a breach of any covenant of such Party, or (iii) make the satisfaction of any condition to Closing impossible or unlikely to be satisfied; provided that no such notice shall be deemed to amend or modify the representations and warranties made hereunder or the Seller Disclosure Letter for purposes of Section 8.4~~9.4~~, Section 9.4~~10.4~~ or otherwise, or limit the remedies available to any Party hereunder.

7.7 ~~6.7~~ Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) agree and the Purchaser shall agree that each of them shall preserve and keep the

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books and records held by it relating to the pre-Closing Business for a period commencing on the Effective Date and ending at such date on which an orderly wind-down of Sellers' operations has occurred in the reasonable judgment of ~~Purchaser~~the Bidder Parties and Sellers and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, facilitating the continuing administration of the CCAA Proceedings, any insurance Claims by, legal proceedings or Tax audits against or governmental investigations of Sellers or ~~Purchaser~~the Bidder Parties or in order to enable Sellers or ~~Purchaser~~the Bidder Parties to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or ~~Purchaser~~the Bidder Parties, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

7.8 ~~6.8~~ Publicity. Neither Sellers nor ~~Purchaser~~the Bidder Parties shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of ~~Purchaser~~the Bidder Parties or Sellers, disclosure is otherwise required by such party by applicable Law or by the CCAA Court with respect to filings to be made with the CCAA Court in connection with this Agreement; provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or CCAA Court requirement to consult with the other Party with respect to the text thereof.

7.9 ~~6.9~~ Material Adverse Effect. Sellers shall promptly inform ~~Purchaser~~the Bidder Parties in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect or otherwise cause the failure of any of ~~Purchaser's~~the Bidder Parties' conditions to Closing set forth in Article VIII~~IX~~.

7.10 ~~6.10~~ Sale Free and Clear; No Successor Liability. On the Closing Date, the Acquired Assets shall be transferred to the Purchaser free and clear of all obligations, Liabilities and Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by the CCAA.

7.11 ~~6.11~~ Casualty Loss. If, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall promptly notify ~~Purchaser~~the Bidder Parties promptly in writing of such fact, (i) in the case of condemnation or taking, Sellers shall promptly assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 6.117.11 shall not in any way modify ~~Purchaser's~~the Bidder Parties' other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage

or other destruction resulted in a Material Adverse Effect or otherwise cause the failure of any of ~~Purchaser's~~the Bidder Parties' conditions to Closing set forth in ~~Article VIII~~X.

~~7.12~~ 6.12 Debtors-in-Possession. From the commencement of the CCAA Proceedings through the Closing, Sellers shall continue to operate their business pursuant to and in accordance with the CCAA and Orders of the CCAA Court. Sellers shall not convert or seek to convert the CCAA Proceedings into any form of a liquidation proceeding under the CCAA or any other applicable legislation.

~~7.13~~ 6.13 CCAA Court Filings.

(a) Subject to satisfaction of the Surety Condition, Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Sale Order on or prior to September 28, 2020.

(b) Sellers shall serve notices of assumption of the Assigned Contracts, including the designation of Cure Amounts, on all necessary parties on or prior to October 21, 2020, or such later date as may be agreed to by the Parties.

(c) If requested by ~~Purchaser~~the Bidders, subject to satisfaction of the Surety Condition, Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Assignment Order on or prior to date the Sale Order is issued.

(d) Sellers shall use their commercially reasonable efforts to provide ~~Purchaser~~the Bidder Parties for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement to be filed with the CCAA Court, including the motions for issuance of the Sale Order and the Assignment Order (if applicable).

(e) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify ~~Purchaser~~the Bidder Parties of such appeal or stay request and shall provide ~~Purchaser~~the Bidder Parties promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide ~~Purchaser~~the Bidder Parties with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and ~~Purchaser~~the Bidder Parties agree to use their reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the Parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been issued and has not been stayed and the ~~Purchaser~~Bidder Parties, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(f) Sellers and the ~~Purchaser~~Bidder Parties acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to CCAA Court approval.

(g) After issuance of the Sale Order, neither the ~~Purchaser~~Bidder Parties nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

7.14 Back-up Bid. If the Bidders participate in and submit an Overbid at the Auction (each as defined in the SISP), then, if required by the SISP as then in effect and applicable to all other Persons submitting an Overbid, this Agreement shall act as a Back-Up Bid (as defined in the SISP) following the Auction in the event that the Bidders are not selected as the Successful Bidder (as defined in the SISP).

7.15 ~~6.14~~ Parent Guaranty. Parent hereby guarantees and covenants and agrees, in favor of the Sellers and the ~~Purchaser~~Bidder Parties, to cause the due, prompt and faithful performance and discharge by, and compliance with, all of the obligations, covenants, agreements, terms, conditions and undertakings of Sellers under this Agreement in accordance with the terms hereof, and hereby covenants and agrees to take all actions contemplated by this Agreement to be taken by Parent (including, without limitation, those set forth in Section 2.73.7).

7.16 ~~6.15~~ Payment of Cure Amount. Following the Closing, ~~the~~ Purchaser will make available the Cure Funding Amount to satisfy the Cure Amount. Following the Closing, Purchaser shall provide to Sellers evidence that the Cure Amount (if any) in respect of each Assigned Contract has been paid by Purchaser in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, or (ii) the consent of the applicable counterparty or as otherwise agreed upon by Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order, in each case promptly following such payment.

7.17 ~~6.16~~ GNWT Royalties. Prior to or concurrent with the Closing, Sellers shall pay from the proceeds of the Interim Facility, and/or otherwise obtain releases in full in a form satisfactory to ~~Purchaser~~the Bidder Parties of all obligations in respect of any period that are due and payable prior to Closing in respect of royalties or similar payment obligations to GNWT, which shall include (for the avoidance of any doubt) all royalty and similar payments obligations to GNWT in respect of fiscal year 2019.

ARTICLE VIII~~ARTICLE VII~~

EMPLOYEE MATTERS

8.1 ~~7.1~~ Covenants of Sellers with respect to Employees.

(a) Bidders intend that Purchaser ~~intends to~~shall make employment offers to substantially all Employees of Sellers, subject to and consistent with requirements based on the plan for resumption of operations at Sellers' facilities, and in consultation with Sellers' management on terms and conditions that are substantially similar to those under which the Employees are employed at the time of Closing. Sellers shall provide reasonable assistance to

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facilitate the transfer of all Employees that Purchaser ~~elects~~elects to hire, which may be subject to any temporary layoff or reduction in effect at Closing, including, without limitation, providing Purchaser access to such Employees' personnel records and such other information regarding the Employees as Purchaser may reasonably request, consistent with Section 7.28.2 hereof. All Employees who receive employment offers from Purchaser and who accept such offers of employment are hereinafter referred to as the "Transferred Employees". The Purchaser ~~acknowledges~~shall acknowledge that it is successor under all collective agreements set out in Section 4.18.5.18 of the Seller Disclosure Letter.

(b) During the Pre-Closing Period, except as consented to in writing by ~~Purchaser~~the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), and without limiting the obligations and restrictions set forth in Section 6.17.1, Sellers (i) shall satisfy all pre-Closing legal or contractual requirements to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in connection with the transactions contemplated by this Agreement, and (ii) shall not (A) enter into, establish, adopt, materially amend or terminate any Employee Plan (or any plan or arrangement that would be an Employee Plan if in existence on the date of this Agreement), other than as required by Law, (B) increase the compensation and benefits payable or to become payable to Employees or former Employees or any dependent or other person claiming through an Employee or former Employee, (C) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (D) promote, hire or terminate the employment of (other than for cause) any Employee or (E) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee.

8.2 7.2 Covenants of Purchaser with respect to Employees.

(a) Purchaser shall assume the Employee Plans (collectively, the "Assumed Plans"). Purchaser, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by ~~the other~~any Party to cause Purchaser to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(b) On and following the Effective Date, Sellers and ~~Purchaser~~the Bidder Parties shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.28.2, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(c) The provisions of this Section 7.28.2 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a Party to this Agreement, nor shall any

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provision of this Agreement except solely for the purpose of giving effect to sections 7.2(a) and 7.2(b) be deemed to be the adoption of, or an amendment to, any Employee Plan, or otherwise to limit the right of Purchaser or Sellers to amend, modify or terminate any such Employee Plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any Employee Plan or (ii) prohibit the termination or change in terms of employment of any Employee (including any Transferred Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any Employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

ARTICLE IX~~ARTICLE VIII~~

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of ~~the Purchaser, and of the Bidders to cause~~ Purchaser, to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by ~~Purchaser~~~~the Bidders~~) of the following conditions precedent on or before the Closing Date.

9.1 ~~8.1~~ CCAA Court Approvals. The SISP Order, the Sale Order and the Assignment Orders (if applicable) shall have been issued by the CCAA Court and shall have become Final Orders.

9.2 ~~8.2~~ Antitrust Approvals. All Antitrust Approvals and other necessary regulatory approvals shall have been obtained.

9.3 ~~8.3~~ No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

9.4 ~~8.4~~ Representations and Warranties True as of Both Effective Date and Closing Date. Each of the representations and warranties of Sellers (a) contained herein (other than as set forth in clause (c) below) that are not qualified by “materiality” or “Material Adverse Effect” shall be true and correct in all material respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, (b) contained herein (other than as set forth in clause (c) below) that are qualified by “materiality” or “Material Adverse Effect” shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and (c) contained in Section 4.15.1, Section 4.25.2, Section 4.45.4 and Section 4.65.6 shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically

relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

9.5 ~~8.5~~ Compliance with Covenants. Sellers shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

9.6 ~~8.6~~ No Material Adverse Effect. Since the Effective Date, there shall not have been a Material Adverse Effect.

9.7 ~~8.7~~ Essential Contracts; Cure Amount. (i) All consents, approvals or waivers necessary to assign the Essential Contracts to the Purchaser shall have been obtained, or an Assignment Order shall have been granted by the CCAA Court in respect of such Essential Contracts where necessary consents, approvals or waivers have not been obtained; (ii) the Cure Amount payable with respect to Essential Contracts (other than the Diavik Joint Venture Agreement) shall not exceed the Cure Funding Amount (calculated based on an exchange rate of US\$1 to Cdn\$1.37 with respect to any amounts to be paid in Canadian dollars) and (iii) the Assignment Order shall provide that the Cure Amount with respect to Assigned Contracts subject to the Assignment Order shall not be payable earlier than 30 days following Closing.

9.8 ~~8.8~~ Authorizations. Purchaser (or the applicable Designated Purchaser) shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to ~~Purchaser~~the Bidder Parties, either by transfer or re-issuance, all material Authorizations required to operate the Business and Acquired Assets, including those set forth (or required to be set forth) on ~~Section 4.3.5.3(a)~~ of the Seller Disclosure Letter, consistent in all material respects with historical operations.

9.9 ~~8.9~~ Surety Condition. Bidders and/or Purchaser shall have entered into an agreement, in form and substance satisfactory to ~~Purchaser~~them, at ~~its~~their sole discretion, with the issuers of any surety bond supporting the obligations of the Sellers and the Government of the Northwest Territories (“GNWT”) with respect to collateralization of reclamation obligations of Purchaser under environmental agreements, Authorizations, licenses and surface leases to be transferred (the “Surety Condition”).

9.10 ~~8.10~~ Ordinary Course Operations. Purchaser shall not be subject to any mandatory governmental Regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) Purchaser from conducting operations at the Ekati Diamond Mine substantially consistent with the level of operations contemplated by Sellers’ business plan in effect prior to COVID-related impacts; or (ii) Purchaser’s ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts.

9.11 ~~8.11~~ Diavik Good Standing. Purchaser or Bidders shall have determined, acting reasonably, that upon payment of any outstanding cash calls with interest and the posting of cash collateral in respect of its portion of the reclamation Liability in accordance with the existing

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closure security agreement or pursuant to other arrangements to be agreed that: (i) Purchaser will be in full compliance with its obligations under the Diavik Joint Venture Agreement when assigned to Purchaser, (ii) Purchaser shall hold a 40% participating interest in the Diavik Joint Venture free and clear of any Encumbrance other than as imposed by DDMI under the Diavik Joint Venture Agreement and (iii) DDMI shall agree or be required to deliver any diamond inventory which accrued to the account of DDM under the Diavik Joint Venture Agreement which had not yet been delivered.

9.12 ~~8.12~~ Delivery of Acquired Assets. Each of the deliveries required to be made to Purchaser pursuant to Section 10.211.2 shall have been so delivered and at Closing, Sellers shall deliver possession of all Acquired Assets to Purchaser, *in situ*, wherever such Acquired Assets are located at Closing consistent with the terms of this Agreement.

9.13 ~~8.13~~ Corporate Documents. Sellers shall have delivered to Purchaser copies of the resolutions of Sellers' board of directors or similar governing body, as applicable, evidencing the approval of this Agreement and the transactions contemplated hereby.

9.14 ~~8.14~~ Release of Encumbrances. The Sale Order shall provide for the release of any and all Encumbrances on the Acquired Assets other than Permitted Encumbrances, and Purchaser shall have received such documents or instruments as may be required, in Purchaser's reasonable discretion, to demonstrate that, effective as of the Closing Date, the assets of the Acquired Subsidiaries are released from any and all Encumbrances other than Permitted Encumbrances.

9.15 ~~8.15~~ Accounts Payable. Sellers shall have paid all trade payables arising from the provision of goods and services on or after the Filing Date that are due and payable at or before the Closing, other than such amounts which are disputed by the Sellers in good faith for which adequate reserves have been created under the DIP Budget.

9.16 Financing. Bidders shall have entered into such arrangements, commitments and agreements as may be satisfactory to the Bidders, in their sole discretion, with respect to debt and equity financing for the transaction contemplated by this Agreement.

~~ARTICLE X~~ **ARTICLE IX**

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) of the following conditions precedent on or before the Closing Date:

10.1 ~~9.1~~ CCAA Court Approvals. The SISP Order and the Sale Order shall have been issued by the CCAA Court and shall have become Final Orders.

10.2 ~~9.2~~ Antitrust Approvals. All Antitrust Approvals shall have been obtained.

10.3 ~~9.3~~ No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated,

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withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

10.4 ~~9.4~~ Representations and Warranties True as of Both Effective Date and Closing Date. The representations and warranties of the ~~Purchaser~~ Bidder Parties (a) contained herein that are not qualified by “materiality” or “material adverse effect” shall be true and correct in all material respects on and as of the Effective Date, and shall also be true in all material respects on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) with the same force and effect as though made by the ~~Purchaser~~ Bidder Parties on and as of the Closing Date, and (b) contained herein that are qualified by “materiality” or “material adverse effect” shall be true and correct in all respects on and as of the Effective Date, and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date), in each case, except where the failure of such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ~~Purchaser’s~~ Bidder Parties’ ability to consummate the transactions contemplated by this Agreement.

10.5 ~~9.5~~ Compliance with Covenants. ~~Purchaser~~ The Bidders shall have performed or complied in all material respects with all of ~~its~~ their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

10.6 ~~9.6~~ Corporate Documents. Purchaser shall have delivered to Sellers copies of the resolutions of Purchaser’s board of directors or other governing body evidencing the approval of this Agreement and the transactions contemplated hereby.

~~ARTICLE XI~~ ARTICLE X

CLOSING

11.1 ~~10.1~~ Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the “Closing”) shall take place on the fifth (5th) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in ~~Article VIII~~ IX and ~~Article IX~~ X (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time as the Parties may agree.

11.2 ~~10.2~~ Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver, in addition to the other documents contemplated by this Agreement, the following to Purchaser:

(a) a bill of sale in ~~the form of Schedule A~~ form and content satisfactory to Sellers and Bidders, acting reasonably, duly executed by Sellers;

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(b) an assignment and assumption agreement in ~~the form of Schedule B (the "Assignment and Assumption Agreement")~~ and content satisfactory to Sellers and Bidders, acting reasonably, duly executed by Sellers;

(c) duly executed instruments for the sale, transfer, assignment or other conveyance to ~~the Purchaser~~ or relevant Designated Purchasers, of the equity interests in the Acquired Subsidiaries, in accordance with the requirements of applicable local Law and this Agreement;

(d) a true copy of the Sale Order and any Assignment Orders (if applicable);

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller certifying that the conditions set forth in Section 8.49.4 and Section 8.59.5 have been satisfied;

(f) an instrument of assumption and assignment of the Assigned Contracts regarding leased real property ~~substantially in the form of Schedule C form and content satisfactory to Sellers and Bidders, acting reasonably~~ (the "Assignment and Assumption of Leases"), duly executed by each Seller, in form for recordation with the appropriate public land records to the extent the underlying lease is of record;

(g) an Intellectual Property Assignment and Assumption Agreement ~~substantially in the form of Schedule D form and content satisfactory to Sellers and Bidders, acting reasonably~~ (the "IP Assignment and Assumption Agreement"), duly executed by each Seller;

(h) possession of all owned real property included in the Acquired Assets, together with duly executed and acknowledged transfer deeds for all such owned real property conveying the owned real property subject only to Permitted Encumbrances, and any existing surveys, legal descriptions and title policies that are in the possession of Sellers;

(i) possession of the Acquired Assets and the Business *in situ*, wherever such Acquired Assets are located at the Closing consistent with the terms of this Agreement;

(j) stock powers or similar instruments of transfer, duly executed by the applicable Seller, transferring all of the capital stock or other equity interests of the Acquired Subsidiaries to Purchaser (it being understood that such instruments shall address the requirements under applicable Law local to the jurisdiction of organization of each such Acquired Subsidiary necessary to effect and make enforceable the transfer to Purchaser of the legal and beneficial title to such capital stock or other equity interests);

(k) all tax elections or designations described in Section 12.12, ~~duly executed by DDM~~ 13.14;

(l) a certificate duly executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b)(2)(iv);

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(m) a bill of sale and assignment agreement with respect to the conveyance of any Acquired Assets required to be transferred and assigned to Purchaser pursuant to Section 2.7, 3.7, in form and substance reasonably satisfactory to Purchaser, duly executed by Parent and ~~each of the Retained Subsidiaries~~ Subsidiary; and

(n) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to ~~Purchaser, as Purchaser~~ the Bidder Parties, as the Bidder Parties may reasonably request to vest in Purchaser all of Sellers' right, title and interest ~~of Sellers~~ in, to or under any or all the Acquired Assets, including all owned real property included in the Acquired Assets.

11.3 ~~10.3~~ Deliveries by Purchaser. At the Closing, Purchaser will deliver the following:

(a) the Cash Component payable pursuant to and in accordance with Section 3.14.1 less the Deposit amount;

(b) the Assignment and Assumption Agreement duly executed by the Purchaser;

(c) the Assignment and Assumption of Leases duly executed by the Purchaser;

(d) the IP Assignment and Assumption Agreement, executed by the Purchaser;

(e) all tax elections or designations described in Section 12.12 ~~13.14~~, duly executed by Purchaser;

(f) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of the Purchaser certifying that the conditions set forth in Section 9.4 ~~10.4~~ and Section 9.5 ~~10.5~~ have been satisfied; and

(g) such other documents as Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

11.4 ~~10.4~~ Monitor's Certificate. Upon satisfaction or waiver by the Purchaser of all conditions precedent to Closing under Article VIII ~~IX~~ and delivery to the Purchaser of all Closing deliverables under Section 10.2 ~~11.2~~, the Purchaser shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Purchaser's Conditions Certificate"). Upon satisfaction or waiver by the Sellers of all conditions precedent to Closing under Article IX ~~X~~ and delivery to the Sellers of all Closing deliverables under Section 10.3 ~~11.3~~, the Sellers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Sellers' Conditions Certificate") and together with the Purchaser's Conditions Certificate, the "Conditions Certificates"). Upon receipt by the Monitor of each of the Conditions Certificates, the Monitor

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shall (i) forthwith issue its Monitor's Certificate concurrently to the Sellers and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Sellers and the Purchaser). For greater certainty, the Monitor shall be entitled to rely exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

~~ARTICLE XII~~ ARTICLE XI

TERMINATION

12.1 ~~11.1~~ Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time on or prior to the Closing Date:

(a) Mutual Consent. By mutual written consent of ~~Purchaser~~ the Bidders and Sellers.

(b) Termination by ~~Purchaser~~ the Bidder Parties or Sellers.

(i) by ~~Purchaser~~ the Bidders or Sellers, if the Closing shall not have occurred on or prior to ~~October 31, 2020~~ November 7, 2020 or such later date to which the parties may agree (the "Outside Date"); provided, however, that Sellers and ~~Purchaser~~ the Bidders shall not be entitled to terminate this Agreement pursuant to this Section ~~11.1~~ 12.1(b)(i) if the failure of the Closing to have occurred by the date specified above is caused by such Party's breach of any of its obligations under this Agreement; or

(ii) by ~~Purchaser~~ the Bidders or Sellers, if the CCAA Court or other court of competent jurisdiction or a governmental, quasi-governmental, regulatory or administrative department, agency, commission or authority shall have issued or enacted an Order or Law restraining, enjoining or otherwise prohibiting the Closing, which is not capable of appeal; provided, however, that Sellers and ~~Purchaser~~ the Bidders shall not be entitled to terminate this Agreement pursuant to this Section ~~11.1~~ 12.1(b)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement.

(c) Termination by ~~Purchaser~~ the Bidders.

(i) by ~~Purchaser~~ the Bidders, if (A) the SISP Order is amended, supplemented or otherwise modified in any manner adverse to the ~~Purchaser~~ Bidder Parties or (B) the SISP Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any manner adverse to the ~~Purchaser~~ Bidder Parties (other than in any de minimis respect), in each case without the prior written consent of the ~~Purchaser~~ Bidders;

(ii) by ~~Purchaser~~ the Bidders, if (A) the Sale Order shall not have been issued ~~by the CCAA Court~~ on or prior to September 28, 2020 or if the Sale Order has been issued by such date but has been amended, supplemented or otherwise modified

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in any respect without the prior written consent of ~~Purchaser~~the Bidders, or (B) following its issuance, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the ~~Purchaser~~Bidders, acting reasonably;

(iii) by ~~Purchaser~~the Bidders, if the CCAA Proceedings are terminated or a licensed insolvency trustee or receiver is appointed in respect of the Sellers, and such licensed insolvency trustee or receiver refuses to proceed with the transactions contemplated by this Agreement;

(iv) by ~~Purchaser~~the Bidders, if a breach of any representation, warranty, covenant or agreement on the part of Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in ~~Article VIII~~ not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Sellers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period;

(v) by ~~Purchaser~~the Bidders, if either (a) Sellers or their Affiliates request or (b) the CCAA Court approves any amendment or modification to the SISP that adversely affects the interests of ~~Purchaser~~the Bidder Parties;

(vi) by ~~Purchaser~~the Bidders, acting reasonably, if the CCAA Court enters any Order inconsistent with the SISP Order, the Sale Order or the Acquisition, other than in any de minimis respect;

(vii) by ~~Purchaser~~the Bidders, if any creditor of any Seller obtains a final and unstayed Order of the CCAA Court granting relief from the stay to foreclose or exercise enforcement rights on any portion of the Acquired Assets in excess of Cdn\$500,000 in the aggregate; or

(viii) by ~~Purchaser~~the Bidders, if a Material Adverse Effect occurs.

(d) Termination by Sellers. by Sellers, if a breach of any representation, warranty, covenant or agreement on the part of ~~Purchaser~~Bidders set forth in this Agreement shall have occurred that would cause any of the conditions set forth in ~~Article IX~~ not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, ~~Purchaser~~has Bidders have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period.

12.2 ~~11.2~~ Procedure and Effect of Termination. If this Agreement is terminated pursuant to ~~Section 11.1~~12.1, written notice thereof shall forthwith be given to the other Parties to this Agreement and the Monitor and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this ~~Article XI~~XII.

12.3 ~~11.3~~ Treatment of Deposit.

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(a) In the event that this Agreement is terminated by the Sellers as a result of a material breach by ~~Purchaser~~Bidders pursuant to ~~Section 11.12.1(d)~~ hereof, the Deposit shall be forfeited by ~~the Purchaser~~Bidders and the Sellers, as their sole remedy, shall be entitled to retain the Deposit as a genuine estimate of liquidated damages and not as a penalty. The retention of the Deposit by the Sellers shall be the sole and exclusive remedy of Sellers and their Affiliates, attorneys, accountants, Representatives or agents, and, except for the retention of the Deposit pursuant to and in accordance with this ~~Section 11.312.3~~, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against ~~Purchaser~~any of the Bidders, any ~~Purchaser~~Bidder Related Party, ~~Purchaser~~, any potential debt or equity financing source ~~and of Bidders or Purchaser, and with respect to all of the foregoing~~ any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Representatives or Affiliates, for any Liability suffered with respect to this Agreement and the transactions contemplated by or in connection with this Agreement (including any breach or failure to perform by any of the Bidders or Purchaser, whether willfully, intentionally, unintentionally or otherwise), the termination of this Agreement, the failure of the transactions contemplated under this Agreement to be consummated for any reason or no reason or any breach of this Agreement by any of the Bidders or Purchaser, and in no event shall Sellers ~~or any of the other Applicants~~ be entitled to seek or obtain any other damages or other remedy of any kind, at law or in equity, against any such Person, including consequential, special, indirect, exemplary or punitive damages or for diminution in value, lost profits or lost business.

(b) In the event that this Agreement is terminated, other than a termination by the Sellers pursuant to ~~Section 11.12.1(d)~~ hereof, the Deposit shall be returned to the ~~Purchaser~~Bidders within five (5) Business Days of the date of such termination. The return of the Deposit to the ~~Purchaser~~Bidders shall be the sole and exclusive remedy of ~~Purchaser~~the Bidder Parties and ~~its~~their Affiliates, attorneys, accountants, Representatives or agents, and, except for the return of the Deposit pursuant to and in accordance with this ~~Section 11.312.3~~, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against Sellers, any other party that acquires the Acquired Assets and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Representatives or Affiliates, for any Liability suffered with respect to this Agreement and the transactions contemplated by or in connection with this Agreement (including any breach or failure to perform by Sellers, whether willfully, intentionally, unintentionally or otherwise), the termination of this Agreement, the failure of the transactions contemplated under this Agreement to be consummated for any reason or no reason or any breach of this Agreement by Sellers, and in no event shall ~~Purchaser~~the Bidder Parties be entitled to seek or obtain any other damages or other remedy of any kind, at law or in equity, against any such Person, including consequential, special, indirect, exemplary or punitive damages or for diminution in value, lost profits or lost business.

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~~ARTICLE XIII~~ **ARTICLE XII****MISCELLANEOUS**

13.1 ~~12.1~~ **Expenses.** Except as otherwise provided herein or the SISP Order, each Party hereto shall bear its own expenses with respect to the transactions contemplated hereby: up to Closing. At Closing, Purchaser shall pay and reimburse (i) the full amount of the Deposit paid by Bidders; (ii) all costs and expenses incurred by Bidder Parties and the ad hoc group of holders of Second Lien Notes in the CCAA Proceedings in respect of this Agreement, the transactions contemplated hereby, and participation or representation in the CCAA Proceedings, including, without limitation, any and all professional fees and expenses of legal and financial advisors and any and all fees or expense reimbursements or other amounts of any kind payable to actual or prospective sources of debt or equity financing, and (iii) all legal fees and expenses incurred by the trustee under the Pre-Filing Indenture in respect of its participation or representation in the CCAA Proceedings up to an aggregate maximum amount satisfactory to the Bidders.

13.2 ~~12.2~~ **Survival of Representations and Warranties; Survival of Confidentiality.** The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. Except as otherwise provided herein, the Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

13.3 ~~12.3~~ **Amendment; Waiver.** This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided that, notwithstanding the foregoing, the Acquired Assets and Assigned Contracts may be amended in accordance with Section 2.63.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

13.4 Bidders.

(a) Any right given to, or election or decision to be made by, Bidders in this Agreement or any Ancillary Documents may be exercised by a majority in number of all Bidders who control, at the relevant time, a majority in principal amount of the aggregate Second Lien Notes held by all Bidders in their managed or advisory funds and accounts. Bidders agree to cooperate with each other reasonably and in good faith with

respect to all matters relating to this Agreement and the transaction contemplated herein. The obligations and commitments of Bidders to Sellers or any other Person under this Agreement or any Ancillary Document are several, and not joint. The Parties acknowledge and agree that Bidders and Purchaser are separate Persons and that any obligations, liabilities or commitments of Purchaser, under this Agreement or otherwise, are not obligations, liabilities or commitments of Bidders. Sellers acknowledge that Bidders are financial management and advisory companies and are entering into this Agreement on behalf of certain managed or advisory funds and accounts. No such managed or advisory funds and accounts shall under any circumstance whatsoever assume or incur any obligation, liability or commitment whatsoever to Sellers in respect of this Agreement, the Ancillary Documents or the transaction contemplated therein. Any obligation or commitment of Bidders herein to cause Purchaser to take any action or omit to take any action shall be limited to the commercially reasonable efforts of each such Bidder. Bidders acknowledge and agree as among themselves that any refund or reimbursement of the Deposit shall be refunded or reimbursed to them in the same proportions as Bidders paid the Deposit.

(b) The Parties hereto acknowledge that all representations, warranties, covenants and other agreements made by any Bidder that is an investment manager on behalf of a separately managed account managed by such Bidder are being made only with respect to the assets managed by such Bidder on behalf of such separately managed account, and shall not apply to (or be deemed to be made in relation to) any assets or interests that may be beneficially owned by such separately managed account that are not held through accounts managed by such Bidder.

~~13.5~~ ~~12.4~~ Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service (such as FedEx):

(A) If to Sellers, addressed as follows:

Dominion Diamond Mines
 900 – 606 4 Street SW
 Calgary, Alberta, Canada
 T2P 1T1
 Attention: Brendan Bell
 Email: ~~brenbellnt@gmail.com~~ brenbellnt@gmail.com

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With a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
 595 Burrard Street, Suite 2600
 Vancouver, BC, Canada
 V7X 1L3
 Attention: Linc Rogers
 Attention: Susan Tomaine
 Email: linc.rogers@blakes.com linc.rogers@blakes.com
 Email: susan.tomaine@blakes.com susan.tomaine@blakes.com

(B) If to Purchaser the Bidder Parties, to each Bidder Party,
 addressed as follows:

{•}

to DDJ:

DDJ Capital Management, LLC
130 Turner Street
Building 3, Suite 600
Waltham, MA 02453
Attention: Beth Duggan and Eric Hoff
Email: legal@ddjcap.com

to Brigade:

Brigade Capital Management, LP
399 Park Avenue, 16th Floor
New York, NY 10022
Attention: Andy Petitjean
Attention: Chris Chaice
Email: apetitjean@brigadecapital.com
Email: cchaice@brigadecapital.com

to Western:


Western Asset Management, LLC
385 E Colorado Blvd
Pasadena, CA 91101
Attention: Christopher Jacobs
Attention: Dan Giddings
Attention: Adam Wright
Email: christopher.jacobs@westernasset.com
Email: dgiddings@westernasset.com
Email: adam.wright@westernasset.com

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With a copy (which shall not constitute notice) to:


[Torys LLP](#)
[79 Wellington St., 30th Floor](#)
[Toronto, Ontario, M5K 1N2](#)
[Attention: Tony DeMarinis](#)
[E-Mail: tdemarinis@torys.com](mailto:tdemarinis@torys.com)

(C) If to the Monitor, addressed as follows

FTI Consulting Canada Inc.
 520 5th Ave SW
 Calgary AB T2P 3R7
 Attention: Deryck Helkaa
 E-Mail:
~~deryck.helkaa@fticonsulting.com~~ deryck.helkaa@fticonsulting.com

With a copy (which shall not constitute notice) to

Bennett Jones LLP
 4500 Bankers Hall East
 855 - 2nd Street SW
 Calgary AB T2P 4K7
 Attention: Chris Simard
 Email: ~~simarde@bennettjones.com~~ simardc@bennettjones.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

[13.6](#) ~~[12.5](#)~~ [Effect of Investigations](#). Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of ~~Purchaser~~ [the Bidder Parties](#) shall not limit, qualify, modify or amend the representations, warranties and covenants of, and indemnities by, Sellers made or undertaken pursuant to this Agreement, irrespective of the knowledge and information received (or which should have been received) therefrom by ~~Purchaser~~ [the Bidder Parties](#).

[13.7](#) ~~[12.6](#)~~ [Counterparts; Electronic Signatures](#).

(a) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) The exchange of copies of this Agreement and of signature pages by electronic mail in “portable document format” (“[.pdf](#)”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by

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combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

13.8 ~~12.7~~ Headings. The headings preceding the text of Articles and Sections of this Agreement and the Seller Disclosure Letter are for convenience only and shall not be deemed part of this Agreement.

13.9 ~~12.8~~ Applicable Law and Jurisdiction. Subject to any provision in this Agreement and any Ancillary Document to the contrary, this Agreement (and all documents, instruments, and agreements executed and delivered pursuant to the terms and provisions hereof) shall be governed by and construed and enforced in accordance with the laws of Alberta and the laws of Canada applicable therein. ~~Purchaser~~Bidders and Sellers further agree that the CCAA Court shall have jurisdiction over all disputes and other matters relating to (a) the interpretation and enforcement of this Agreement or any Ancillary Document and/or (b) the Acquired Assets and/or Assumed Liabilities and the Parties expressly consent to and agree not to contest such jurisdiction.

13.10 ~~12.9~~ Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, provided that, ~~Purchaser~~the Bidder Parties may grant a security interest in ~~its~~their rights and interests hereunder to ~~its~~their third party lender(s). Nothing contained herein, express or implied, is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.11 Designated Purchasers. In connection with the Closing, notwithstanding Section 13.10 or anything to the contrary contained herein, the Bidders and the Purchaser shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchaser to (a) purchase specified Acquired Assets (including specified Assigned Contracts) and pay the corresponding Purchase Price amount, (b) assume specified Assumed Liabilities, (c) employ specified Transferred Employees on and after the Closing Date, (d) perform any of the other covenants and agreements hereunder to be performed by Purchaser, and (e) be entitled to the rights and benefits afforded to Purchaser hereunder (any such Subsidiary or Affiliate of Purchaser that shall be designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the corresponding cash portion of the Purchase Price, the specified Assumed Liabilities and employment of the specified Transferred Employees. Any reference to Purchaser or Bidder Party made in this Agreement in respect of any right, obligation, purchase, assumption or employment referred to in this paragraph shall be deemed a reference to the appropriate Designated Purchaser.

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if any, with respect to the applicable obligation or right. All obligations of Purchaser and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchaser nor any other Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by a particular Designated Purchaser at the Closing and any prior obligations of Purchaser are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect any limitation on Purchaser's obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchaser and any Designated Purchaser(s) hereunder. The above designations shall be made by the Bidder Parties by way of a written notice to be delivered to Sellers in no event later than five (5) Business Days prior to the anticipated Closing Date; provided, however, that no such designation may be made if the timing of such designation would reasonably be expected to delay the Closing; provided, further, that such designation shall not be permitted unless Sellers confirm, acting reasonably, that the Designated Purchaser(s), or any party guaranteeing the obligations of such Designated Purchaser(s), are sufficiently creditworthy. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchaser(s) are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchaser(s).

13.12 ~~12.10~~ No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective Affiliates and, other than with respect to the Purchaser or Designated Purchasers, no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, Liability, reimbursement, Claim of Action or other right.

13.13 ~~12.11~~ No Recourse. This Agreement may only be enforced against, and any Claims or causes of Action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as Parties hereto and no ~~Purchaser~~ Bidder Related Party shall have any Liability for any obligations or liabilities of the Parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith. Without limiting the rights of Sellers against ~~Purchaser~~ the Bidder Parties hereunder, in no event shall Sellers or any of their Affiliates, and Sellers agree not to and to cause their Affiliates not to, seek to enforce this Agreement against, make any Claims for breach of this Agreement against, or seek to recover monetary damages from, any ~~Purchaser~~ Bidder Related Party.

13.14 ~~12.12~~ Tax Matters.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or similar fees or ~~other~~ Taxes (other than any Taxes based on income, receipts, profits, or capital), governmental charges and recording charges ~~(including any interest and penalty thereon)~~ which may be applicable to, or resulting from, or payable by reason of the

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sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne by Purchaser as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchaser shall properly file on a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to Sellers evidence of payment of ~~all~~applicable Transfer Taxes.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a "Straddle Period"), (i) Taxes imposed on the Acquired Assets that are based upon or related to income or receipts or imposed on a transaction basis (including all related items of income, gain, deduction or credit) will be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date, and (ii) any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period and in each of (i) and (ii), such amounts shall be the responsibility of Sellers (and, for the avoidance of doubt, such amounts shall be an Excluded Liability for purposes of clause (ii) of Section 2.43.4(e)).

(c) Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns for any Pre-Closing Tax Period or Straddle Period in respect of the Acquired Subsidiaries that is required to be filed after the Closing Date. Prior to filing any such Tax Returns, Purchaser shall provide a draft thereof to Sellers for Sellers' review, comment and approval (such approval not to be unreasonably withheld or delayed), unless otherwise required by applicable Law. Purchaser shall consider in good faith any comments provided by Sellers to such Tax Returns. To the extent any Taxes reflected on any such Tax Return are an Excluded Liability, Sellers shall pay to Purchaser the amount of such liability within ten (10) days of receiving notice from Purchaser that such Tax Return has been filed or that Purchaser has paid such Liability, except to the extent such Taxes were paid by Sellers to the applicable Governmental Body prior to the filing of such Tax Return.

(d) Cooperation on Tax Matters. Purchaser shall make available to Sellers, and Sellers shall make available to Purchaser, (i) such records, personnel and advisors as any such Party may require for the preparation of any Tax Returns required to be filed by Sellers or Purchaser, as the case may be, and (ii) such records, personnel and advisors as Sellers or Purchaser may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchaser was included. Sellers agree to provide all reasonable cooperation to Purchaser, and shall make available to Purchaser such records, personnel and advisors as is reasonably necessary for Purchaser, in determining the Tax attributes of Sellers and their Subsidiaries.

(e) Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with their respective fair market values. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Purchaser shall provide Sellers with a draft allocation of the Purchase Price for all purposes, including any liabilities properly included therein among the Acquired Assets and the agreements provided for

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herein, for all purposes (the “Initial Allocation”). ~~Within forty-five (45) days of the receipt of the Initial Allocation, Sellers shall deliver a written notice (the “Objection Notice”) to Purchaser, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes. Sellers may make reasonable inquiries of Purchaser and their accountants and employees relating to the Initial Allocation, and Purchaser shall use reasonable efforts to cause any such accountants and employees to cooperate with, and provide such requested information to, Sellers in a timely manner. If prior to the conclusion of such forty-five (45) day period, Sellers~~ Within forty-five (45) days of the receipt of the Initial Allocation, Sellers shall either (i) deliver a written notice (the “Objection Notice”) to Purchaser, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes or (ii) notify Purchaser in writing that they will not provide any Objection Notice (or if Sellers do not deliver an Objection Notice within such forty-five (45)-day period, then) in which case the Purchaser’s proposed Initial Allocation shall be deemed final, conclusive and binding upon each of the Parties hereto. Within thirty (30) days of Sellers’ delivery of the Objection Notice, Sellers and Purchaser shall attempt to resolve in good faith any disputed items, and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to an Arbitrating Accountant. The fees and expenses of the Arbitrating Accountant shall be paid 50% by Purchaser and 50% by Sellers, unless the Arbitrating Accountant determines that one party’s position was unreasonable in light of the circumstances, in which case such party shall bear 100% of such costs. Such determination by the Arbitrating Accountant shall be (i) in writing, (ii) furnished to Purchaser and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), (iii) made in accordance with the principles set forth in this Section 12.1213.14(e), and (iv) non-appealable and incontestable by Purchaser and Sellers. As used herein, the “Allocation” means the allocation of the Purchase Price, the Assumed Liabilities and other related items among the Acquired Assets and the agreements provided for herein as finally agreed between Purchaser and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 12.1213.14(e). The Allocation shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, provincial, territorial, local or foreign Law, as appropriate). Purchaser and Sellers shall each report the federal, state provincial, territorial and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective U.S. federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation, including in the course of any Tax audit, Tax review or Tax litigation relating thereto, unless otherwise required under applicable Law. Sellers shall provide Purchaser and Purchaser shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

(f) Section 22 Election. If requested by Purchaser and in Purchaser’s sole discretion, ~~DDM~~ one or more of DDM, DDCU and Dominion Marketing and Purchaser shall jointly execute and file an election pursuant to section 22 of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, with respect to the sale of accounts receivable, and shall designate therein the portion of the Purchase Price allocated to the accounts receivable pursuant to ~~51209326.3~~ 51209326.4

paragraph (e) of this Section as consideration paid by Purchaser for the accounts receivable of Sellers.

(g) ~~Section~~ Subsection 20(24) Election. If requested by Purchaser and in Purchaser's sole discretion, ~~DDM one or more of DDM, DDCU and Dominion Marketing~~ and Purchaser shall jointly execute and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, ~~in respect of deferred revenue as to such amount paid by Sellers to Purchaser for assuming future obligations~~ of the Business or ~~relating to~~ the Canadian Assets ~~for an amount of such deferred revenue that is being so transferred to Purchaser in consideration for Purchaser undertaking future obligations in connection with the deferred revenue~~. In this regard, DDM, DDCU and Dominion Marketing, as applicable, and Purchaser acknowledge that if such election is made, a portion of the Canadian Assets having a value equal to the elected amount under subsection 20(24) of the Tax Act is being transferred by DDM, DDCU and Dominion Marketing, as applicable, to Purchaser as a payment for the assumption of such future obligations by Purchaser.

(h) Successor Election and Designation. If requested by Purchaser and in Purchaser's sole discretion, ~~(i) one or more of DDM and DDCU~~ and Purchaser shall jointly execute and file an election described in paragraph 66.7(7)(e) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the time limits set out in that section, in respect of the "Canadian Resource Property" (as that term is defined in subsection 66(15) of the Tax Act) acquired by Purchaser from DDM ~~under this Agreement~~ or DDCU, as applicable, under this Agreement and (ii) DDM or DDCU, as applicable, shall execute and file the designation contemplated by subsection 66.7(12.1) of the Tax Act (within the time and in the manner prescribed therefor by the Tax Act) so as to designate in favour of Purchaser the maximum amount of successored pools reasonably available pursuant to the Tax Act, provided that any such ~~filing or filings does~~ filings would not give rise to any Tax Liability to DDM ~~or DDCU, as applicable~~.

(i) Section 167 Election. At the Closing, ~~DDM~~ each of DDM, DDCU and Dominion Marketing and the Purchaser will jointly execute an election pursuant to subsections 167(1) and (1.1) of the GST Legislation so that ~~DDM~~ it is not required to collect GST in respect of the transfer of the Canadian Assets. The Purchaser shall file the election within the time prescribed by the GST Legislation.

(j) Withholding. Purchaser, and any Person acting on its behalf, shall be entitled to deduct ~~and/or~~ withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchaser is required to deduct ~~and/or~~ withhold under the Code, the Tax Act or any Tax Law, with respect to the making of such payment; provided that Purchaser shall consult with the affected Sellers or other Persons in good faith prior to making such withholding or deduction and the Parties hereto shall reasonably cooperate to reduce or eliminate any such amounts. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes of this

Agreement as having been paid to Sellers or the Person in respect of whom such deductions ~~and/or~~ withholding was made, as the case may be.

13.15 ~~12.13~~ Construction.

(a) The information contained in the Seller Disclosure Letter is disclosed solely for the purposes of this Agreement and may include items or information not required to be disclosed under this Agreement, and no information contained in any Seller Disclosure Letter shall be deemed to be an admission by any Party hereto to any third Person of any matter whatsoever, including an admission of any violation of any Laws or breach of any agreement. No information contained in any section of the Seller Disclosure Letter shall be deemed to be material (whether individually or in the aggregate) to the Business, assets, liabilities, financial position, operations, or results of operations of Sellers nor shall it be deemed to give rise to circumstances which may result in a Material Adverse Effect, in each case solely by reason of it being disclosed. Information contained in a section or subsection of the Seller Disclosure Letter (or expressly incorporated therein) shall qualify the representations and warranties made in the identically numbered Section or, if applicable, subsection of this Agreement and all other representations and warranties made in any other section or subsection of the Seller Disclosure Letter to the extent its applicability to such section or subsection of the Seller Disclosure Letter is reasonably apparent on its face. References to agreements in the Seller Disclosure Letter are not intended to be a full description of such agreements, and all such disclosed agreements should be read in their entirety, and nothing disclosed in any section or subsection of the Seller Disclosure Letter is intended to broaden any representation or warranty contained in Article IVV or Article VVI.

(b) References in Article IVV or Article VVI to documents or other materials “provided” or “made available” to ~~Purchaser~~the Bidder Parties or similar phrases mean that such documents or other materials were present (and available for viewing by ~~Purchaser~~the Bidder Parties and its Representatives) in the Data Room.

13.16 ~~12.14~~ Entire Understanding. This Agreement, together with the Ancillary Documents, set forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement and the Ancillary Documents hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement or in any Ancillary Documents hereto.

13.17 ~~12.15~~ No Presumption Against Drafting Party. Each of the ~~Purchaser~~Bidders and Sellers acknowledge that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule or Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

- 73 -

13.18 ~~12.16~~ No Punitive Damages. The Parties hereto expressly acknowledge and agree that no Party hereto shall have any Liability under any provision of this Agreement for any punitive damages relating to the breach or alleged breach of this Agreement.

13.19 ~~12.17~~ Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

13.20 ~~12.18~~ Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

[SIGNATURE PAGES FOLLOW.]

~~51209326.3~~ 51209326.4

~~30353782.1~~ 30353782.11

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

~~{PURCHASER}~~; BIDDERS:

~~{•}~~

DDJ Capital Management, LLC,
acting in its capacity as investment
manager on behalf of certain funds and
accounts it manages and/or advises that
are beneficial owners of Second Lien
Notes

By: _____

Its:

Brigade Capital Management, LP,
on behalf of certain funds and accounts
that it manages and/or advises

By: _____

Its:

Western Asset Management Company,
LLC, acting as investment manager on
behalf of certain managed funds and/or
accounts

By: _____

Its:

[Signature Page to Asset Purchase Agreement]

51209326.3

30353782.1; 30353782.11

SELLERS:

Dominion Diamond Holdings, LLC

By:
Its:

Dominion Diamond Mines ULC

By:
Its:

Dominion Diamond Delaware Company
LLC

By:
Its:

Dominion Diamond Marketing
Corporation

By:
Its:

Dominion Diamond Canada ULC

By:
Its:

[Signature Page to Asset Purchase Agreement]

Dominion Finco Inc.

By:
Its:

PARENT:

Washington Diamond Investments, LLC

By:
Its:

[Signature Page to Asset Purchase Agreement]

SCHEDULE A

BILL OF SALE

SCHEDULE B

ASSIGNMENT AND ASSUMPTION AGREEMENT

SCHEDULE C

ASSIGNMENT AND ASSUMPTION OF LEASES

SCHEDULE D

IP ASSIGNMENT AND ASSUMPTION AGREEMENT

SCHEDULE E

FORM OF SALE ORDERSCHEDULE F

ASSIGNED AND EXCLUDED CONTRACTS


Document comparison by Workshare 9.5 on Monday, August 31, 2020 2:47:55 PM

Input:	
Document 1 ID	file://C:\Users\cintrate\Desktop\Project Jewel - Asset Purchase Agreement (Initial Version).DOCX
Description	Project Jewel - Asset Purchase Agreement (Initial Version)
Document 2 ID	C:\NRPortbl\TorysAtWork\CINTRATE\30353782_11.docx
Description	C:\NRPortbl\TorysAtWork\CINTRATE\30353782_11.docx
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1045
Deletions	890
Moved from	22
Moved to	22
Style change	0
Format changed	0
Total changes	1979

This is Exhibit "N" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Rubin, Peter
Sent: Wednesday, September 2, 2020 9:17 PM
To: DeMarinis, Tony
Cc: Kashuba, Kyle; Belsher, Geoff; Tomaine, Susan; Bychawski, Peter; Chris Simard (simardc@bennettjones.com)
Subject: RE: Dominion Diamond

Tony,

The November restart materials are in the data room (folders 4.10 and 4.11). I also understand that your clients had previously requested a model for an April restart which management built out for them which was also put into the data room at the time (folder 4.10). We understand a session has already taken place with management that included a discussion on the restart. We can arrange a call with Evercore if you would like to discuss.

Peter

Peter Rubin*
 Partner
peter.rubin@blakes.com
 604-631-3315
 *Law Corporation

From: DeMarinis, Tony <tdemarinis@torys.com>
Sent: Wednesday, September 2, 2020 7:16 PM
To: Rubin, Peter <peter.rubin@blakes.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Chris Simard (simardc@bennettjones.com) <simardc@bennettjones.com>
Subject: RE: Dominion Diamond

External Email | Courrier électronique externe

Peter, has the Company prepared an Ekati mine re-start plan and modeled alternative scenarios? Please share with us as soon as possible any work the Company has done in this respect, either by posting it to the VDR or sending it directly to us. Thanks.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679
 79 Wellington St. W., 30th Floor, Box 270, TD South Tower
 Toronto, Ontario M5K 1N2 Canada | www.torys.com



From: Rubin, Peter <peter.rubin@blakes.com>
Sent: Wednesday, September 2, 2020 6:08 PM
To: DeMarinis, Tony <tdemarinis@torys.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>; Tomaine, Susan

<susan.tomaine@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Chris Simard
(simardc@bennettjones.com) <simardc@bennettjones.com>

Subject: Dominion Diamond

Tony,

We write with reference to the procedures for the Sale and Investment Solicitation Process (the "SISP") being conducted by Dominion Diamond.

As one of the considerations in the process, the Applicants are required to identify the highest or otherwise best bid and, together with the Monitor (copied) and the SISP Advisor, are in the process of reviewing the bids received. The Applicants will consider any further information and clarification with respect to the terms and conditions of your client's bid, if your client believes that providing such information and clarity would be of assistance. The Applicants will consider whatever information your client wishes to submit including in respect of:

1. Details in respect of your client's current restart plan for the Ekati Mine, including the following:
 - a. When does your client intend to restart the Ekati Mine and what are the preconditions to such restart (e.g. a successful sale of diamonds by Dominion Diamonds in September)?
 - b. If your client intends to restart the Ekati Mine in Fall 2020, your client's proposed timeline for making a definitive decision for a Fall 2020 restart.
 - c. If your client does not propose to restart the Ekati Mine in the Fall of 2020:
 - i. how does your client propose to mitigate the negative effects on the business, including potential loss of employees (at all levels of the business), contractors, customers and negative effect on relationships with various Northern and other stakeholders?
 - ii. what assurances, if any, can be provided to the Government of the Northwest Territories and Northern stakeholders regarding a future restart of the Ekati Mine?
2. As previously discussed, Dominion Diamond will need to make a commitment to purchase fuel by the end of September and will need to commence payment for such fuel in October 2020 (prior to closing of a transaction), regardless as to whether the Ekati Mine is reopened in Fall 2020 or Spring 2021. Further, if Dominion Diamond does not make a commitment in September to purchase sufficient fuel for a Fall 2020 restart, there will be no option to make such a restart if the purchaser later determines to do so. Accordingly, the Applicants will consider any details your client may wish to provide as to how your client would propose to arrange for the purchase of sufficient fuel by Dominion Diamond prior to the closing of the transaction in the following scenarios:
 - a. If your client intends to restart the Ekati Mine in Fall 2020 or would like the option to be able to do so; or
 - b. If your client intends to restart the Ekati Mine in Spring 2021.
3. If your client will not have removed any surety condition by the commencement of the auction, a list of the outstanding issues which must be resolved in order to satisfy any surety condition set out in the APA, and the current position of each surety provider and the purchaser on each issue.

If your client intends on providing further information, we request that you do so no later than 3 pm EST on September 8, 2020.

In addition and further to our call yesterday, please confirm by no later than 3 pm EST on September 8, 2020 that your client's bid does not require any competition or anti-trust approvals in Canada or elsewhere.

Thank you

Peter

Peter Rubin*
Partner
peter.rubin@blakes.com
604-631-3315
**Law Corporation*



Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3
Tel: 604-631-3300 Fax: 604-631-3309
blakes.com | [LinkedIn](#)

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This is Exhibit "D" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: DeMarinis, Tony <tdemarinis@torys.com>
Sent: Thursday, September 3, 2020 8:09 AM
To: Rubin, Peter
Cc: Kashuba, Kyle; Belsher, Geoff; Tomaine, Susan; Bychawski, Peter; Chris Simard (simardc@bennettjones.com)
Subject: RE: Dominion Diamond
Attachments: Ekati Restart Plan Review Agenda Items.docx

External Email | Courrier électronique externe

Hi Peter.

I'm following-up on scheduling a management session for tomorrow. My clients have confirmed that they would like it to be focused on the Ekati mine re-start plans and considerations. I would ask that we allow flexibility to cover related or other issues as they arise in the course of the discussion.

The attached document lists Company personnel we think should attend. Please do not view this as a comprehensive list – if there are others with relevant knowledge or expertise, please include them.

We have also listed agenda items on the attached paper. Again, I would ask that we build in flexibility to cover additional points as the discussion unfolds. We are trying to ensure that this session is as effective as possible given your request yesterday that we address re-start issues in connection with our clients' offer, and the short time frame ahead.

On our side, we anticipate that Patrick Evans will be leading the discussion. He may be accompanied by other representatives of our clients and prospective financing partners.

Peter, please let me know what time works for the Company team so that we can firm up arrangements.

Thanks.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679

From: Rubin, Peter <peter.rubin@blakes.com>
Sent: Wednesday, September 2, 2020 8:12 PM
To: DeMarinis, Tony <tdemarinis@torys.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Chris Simard (simardc@bennettjones.com) <simardc@bennettjones.com>
Subject: RE: Dominion Diamond

Tony,

A session can be arranged with Dominion as requested. Is it unclear to us what you mean by "mine planning" team and whether your clients are interested in ore bodies and mining or whether the focus is more on re-start considerations. We want to ensure the discussion is productive, that Dominion is prepared and that they have the correct people on call. To that end, can you please provide a list of the:

1. specific information or documentation being sought; and
2. questions that will be asked.

Can you also provide us with a list of the people who will be attending from your clients side. If you can send this tomorrow then we can set up a call.

Thank you.

Peter

Peter Rubin*
Partner
peter.rubin@blakes.com
604-631-3315
**Law Corporation*

From: DeMarinis, Tony <tdemarinis@torys.com>
Sent: Wednesday, September 2, 2020 4:03 PM
To: Rubin, Peter <peter.rubin@blakes.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Chris Simard <simardc@bennettjones.com> <simardc@bennettjones.com>
Subject: RE: Dominion Diamond

External Email | Courrier électronique externe

Peter,

In order to settle our clients' mine re-start plans, we would like to arrange a session with the Company's full mine planning team.

Can you please advise whether they are available Friday? We anticipate that we would require the better part of the day.

Thanks.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com



From: Rubin, Peter <peter.rubin@blakes.com>
Sent: Wednesday, September 2, 2020 6:08 PM
To: DeMarinis, Tony <tdemarinis@torys.com>
Cc: Kashuba, Kyle <kkashuba@torys.com>; Belsher, Geoff <geoff.belsher@blakes.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Chris Simard <simardc@bennettjones.com> <simardc@bennettjones.com>
Subject: Dominion Diamond

Tony,

We write with reference to the procedures for the Sale and Investment Solicitation Process (the "SISP") being conducted by Dominion Diamond.

As one of the considerations in the process, the Applicants are required to identify the highest or otherwise best bid and, together with the Monitor (copied) and the SISP Advisor, are in the process of reviewing the bids received. The Applicants will consider any further information and clarification with respect to the terms and conditions of your client's bid, if your client believes that providing such information and clarity would be of assistance. The Applicants will consider whatever information your client wishes to submit including in respect of:

1. Details in respect of your client's current restart plan for the Ekati Mine, including the following:
 - a. When does your client intend to restart the Ekati Mine and what are the preconditions to such restart (e.g. a successful sale of diamonds by Dominion Diamonds in September)?
 - b. If your client intends to restart the Ekati Mine in Fall 2020, your client's proposed timeline for making a definitive decision for a Fall 2020 restart.
 - c. If your client does not propose to restart the Ekati Mine in the Fall of 2020:
 - i. how does your client propose to mitigate the negative effects on the business, including potential loss of employees (at all levels of the business), contractors, customers and negative effect on relationships with various Northern and other stakeholders?
 - ii. what assurances, if any, can be provided to the Government of the Northwest Territories and Northern stakeholders regarding a future restart of the Ekati Mine?
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 - b. If your client intends to restart the Ekati Mine in Spring 2021.
3. If your client will not have removed any surety condition by the commencement of the auction, a list of the outstanding issues which must be resolved in order to satisfy any surety condition set out in the APA, and the current position of each surety provider and the purchaser on each issue.

If your client intends on providing further information, we request that you do so no later than 3 pm EST on September 8, 2020.

In addition and further to our call yesterday, please confirm by no later than 3 pm EST on September 8, 2020 that your client's bid does not require any competition or anti-trust approvals in Canada or elsewhere.

Thank you

Peter

Peter Rubin*
 Partner
peter.rubin@blakes.com
 604-631-3315
 *Law Corporation



Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3
Tel: 604-631-3300 Fax: 604-631-3309
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Ekati Restart Plan Review

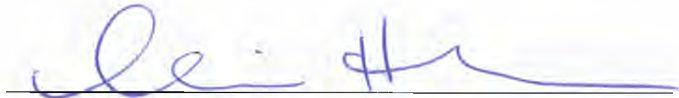
Participants

1. COO
2. Ekati General Manager
3. Head of Health Safety and Environment
4. Superintendent Mining Production
5. Misery Underground Manager
6. Process Plant Manager

Agenda Items

1. Human resources and communications
2. Health, safety and environment
3. Mobile maintenance
4. Security and IT
5. Misery Underground
6. Supply chain and site services
7. Surface mining

This is Exhibit "1" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



A Commissioner for taking Affidavits
for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan



From: Frame, Andrew <Andrew.Frame@evercore.com>
Sent: Friday, September 4, 2020 11:13 AM
To: Feintuch, Jason <JFeintuch@hl.com>
Subject: Re: [EXTERNAL] RE: Mgmt call

Is there a list of questions on any of the topics that we can have management get you responses to in the interim?

On Sep 4, 2020, at 10:40 AM, Feintuch, Jason <JFeintuch@hl.com> wrote:

CAUTION: This email originated from outside of Evercore. Do not click links or open attachments unless you recognize the sender and are expecting the attachment or link.

I think Tony will be responding to Blakes - never got a dial-in or confirmation. I think we're going to have to push.

Jason Feintuch
Managing Director

HOULIHAN LOKEY
212.497.7876 Direct

212.497.4100 Main
914.261.2333 Mobile
JFeintuch@HL.com

-----Original Message-----

From: Frame, Andrew <Andrew.Frame@evercore.com>
Sent: Friday, September 4, 2020 10:38 AM
To: Feintuch, Jason <JFeintuch@HL.com>
Subject: Mgmt call

This message is from an external sender.

Can you guys join at 11ET this morning?

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for British Columbia

CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

Crilly, Morgan

From: Rubin, Peter
Sent: Wednesday, September 9, 2020 12:07 PM
To: DeMarinis, Tony
Cc: Lake, Konata; Kashuba, Kyle; Emanoilidis, John; Balasubramanian, Amanda; Startin, John; Helkaa, Deryck (Deryck.Helkaa@fticonsulting.com); Tomaine, Susan; Belsher, Geoff; 'Chris Simard'; Salzman, Nicholas; Frame, Andrew
Subject: RE: Dominion Diamond Mines - SISP

Follow Up Flag: Follow up
Flag Status: Flagged

Tony,

Further to the email exchange below, Dominion has obtained the consent of the Washington Group to a further extension, the terms of which are as follows:

1. Given the Ad Hoc Group withdrew its bid yesterday afternoon, a new bid will be required to be submitted no later than 3 pm EST on Wednesday September 15, 2020 (the "New Deadline"). That is, a further extension of the Phase 2 Bid Deadline is granted from August 31 to September 15 at 3 pm EST.
2. The following dates will also be pushed back. There are other dates in the SISP, etc. that will have to be adjusted but I believe these are the key dates.

SISP Date	Proposed New Date	Description
Sept 3 (Thursday)	Sept 16 (Wednesday)	Auction Start Date
Sept 7 (Monday)	Sept 18 (Friday)	Deadline for selection of winning Bidder
Sept 11 (Friday)	Sept 25 (Friday)	Definitive Documents complete
Sept 14 (Monday)	Sept 21 (Monday)	45 day deadline for submission of (i) transfer documentation; and (ii) Competition Act filing, in necessary, to close by Outside Date
Sept 28 (Monday)	October 12 (Monday)	Court Approval
October 31 (Saturday)	November 7 (Saturday)	Outside Date

3. All other terms of the SISP must be complied with including providing the full deposit to the Monitor (or its counsel) by the New Deadline and advising whether the Ad Hoc Group will be purchasing the Diavik interest. If the Ad Hoc Group elects to keep the partial deposit amounts already deposited with the Monitor, those funds will be returned if no bid is submitted by the New Deadline.
4. The extension request is conditional on the following:
 - a. the Ad Hoc Group will immediately commence working with Dominion and its counsel to prepare transfer applications for the applicable authorizations so that these can be finalized and submitted to the government or applicable regulatory authorities by September 21;
 - b. the Ad Hoc Group will advise as soon as it is aware and no later than the New Deadline whether it will be required to obtain Competition Act (Canada) or other competition or anti-trust approvals based on its investor group and, if this is required, the Ad Hoc Group will work with Dominion to prepare these so that these can be submitted to the applicable regulatory authorities by September 21; and

- c. the Ad Hoc Group will respond to the questions posed on September 2, 2020 related to its intention for re-opening the Ekati Mine and fuel purchases.

Peter

Peter Rubin*
Partner
peter.rubin@blakes.com
604-631-3315
**Law Corporation*

From: DeMarinis, Tony <tdemarinis@torys.com>
Sent: Tuesday, September 8, 2020 9:31 PM
To: Rubin, Peter <peter.rubin@blakes.com>
Cc: Lake, Konata <klake@torys.com>; Kashuba, Kyle <kkashuba@torys.com>; Emanoilidis, John <jemanoilidis@torys.com>; Balasubramanian, Amanda <ABalasubramanian@torys.com>; Startin, John <John.Startin@evercore.com>; Helkaa, Deryck (Deryck.Helkaa@fticonsulting.com) <Deryck.Helkaa@fticonsulting.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Belsher, Geoff <geoff.belsher@blakes.com>; 'Chris Simard' <SimardC@bennettjones.com>; Salzman, Nicholas <Nicholas.Salzman@Evercore.com>; Frame, Andrew <Andrew.Frame@evercore.com>
Subject: RE: Dominion Diamond Mines - SISP

External Email | Courrier électronique externe

Peter,

Our clients have confirmed that they are interested in a deadline extension for their submission of a new offer as set out in your email. Please let us know as soon as possible if you are able to obtain consent and agree to the extension.

We would also appreciate confirmation of whether the stalking horse offer has been amended or remains as previously disclosed.

Thank you.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679

From: Rubin, Peter <peter.rubin@blakes.com>
Sent: Tuesday, September 8, 2020 5:52 PM
To: DeMarinis, Tony <tdemarinis@torys.com>; Startin, John <John.Startin@evercore.com>; Helkaa, Deryck (Deryck.Helkaa@fticonsulting.com) <Deryck.Helkaa@fticonsulting.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Belsher, Geoff <geoff.belsher@blakes.com>; 'Chris Simard' <SimardC@bennettjones.com>; Salzman, Nicholas <Nicholas.Salzman@Evercore.com>; Frame, Andrew <Andrew.Frame@evercore.com>
Cc: Lake, Konata <klake@torys.com>; Kashuba, Kyle <kkashuba@torys.com>; Emanoilidis, John <jemanoilidis@torys.com>; Balasubramanian, Amanda <ABalasubramanian@torys.com>
Subject: RE: Dominion Diamond Mines - SISP

Tony,

Thank you for your note. As I said on our call, we are interested in assisting the Ad Hoc Group in making its bid. We have discussed this matter with the Independent Director. As we have previously discussed, further moving the Outside

Date timing is difficult for a number of reasons. However, so long as we maintain the back-end timing of the process, there may be a way to find time to extend the Phase 2 bid deadline. We believe this could be achieved, provided that the Ad Hoc Group is prepared to work with the Company over the next week on preparing the authorization transfer documentation so that the auction process can be concluded in advance of, and the applicable documentation can be submitted to the to the government and applicable regulatory bodies by, September 21. Please let us know if the Ad Hoc Group would be interested in this and we can work out the details and seek immediate consent from The Washington Companies.

Peter

Peter Rubin*
 Partner
peter.rubin@blakes.com
 604-631-3315
 *Law Corporation



Blake, Cassels & Graydon LLP
 595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3
 Tel: 604-631-3300 Fax: 604-631-3309
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From: DeMarinis, Tony <tdemarinis@torys.com>
Sent: Tuesday, September 8, 2020 11:15 AM
To: Startin, John <John.Startin@evercore.com>; Helkaa, Deryck (Deryck.Helkaa@fticonsulting.com) <Deryck.Helkaa@fticonsulting.com>; Rubin, Peter <peter.rubin@blakes.com>; Tomaine, Susan <susan.tomaine@blakes.com>; Belsher, Geoff <geoff.belsher@blakes.com>; 'Chris Simard' <SimardC@bennettjones.com>; Salzman, Nicholas <Nicholas.Salzman@Evercore.com>; Frame, Andrew <Andrew.Frame@evercore.com>
Cc: Lake, Konata <klake@torys.com>; Kashuba, Kyle <kkashuba@torys.com>; Emanoilidis, John <jemanoilidis@torys.com>; Balasubramanian, Amanda <ABalasubramanian@torys.com>
Subject: Dominion Diamond Mines - SISP

External Email | Courriel électronique externe

We are writing in connection with the offer submitted by our clients on August 31, 2020 pursuant to the SISP for Dominion Diamond Mines ULC et. al. and further to Mr. Rubin's August 28, 2020 email to me.

Please be advised that our clients hereby immediately withdraw their offer and request prompt reimbursement of the deposit payments made to the Monitor's counsel.

Thank you.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com



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This is Exhibit "R" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.

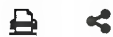


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CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331

14 Sep, 2020

Diamond market faces rough ride as fears of second coronavirus wave mount



Author **Toby Woodall**

Theme [Metals](#)

The long-suffering diamond market faces the prospect of a longer malaise as fears of a second wave of coronavirus infections in winter overshadow tentative signs of recovery seen in sales in August.

As both dealers and consumers eschewed travel amid the ongoing pandemic, the industry's largely face-to-face format left it among the worst affected by global restrictions to curb the virus.

"Worldwide retail jewelry sales have been significantly impacted by shops being closed during lockdowns," Edward Sterck, an analyst at BMO Capital Markets, told S&P Global Market Intelligence.

The sector's two main players, PJSC Alrosa and De Beers SA, saw sales pick up in August after a dismal first half, but demand remains much lower than in recent years. The duopoly's efforts to substitute their traditional sight sales with online auctions has provided little support for revenues that were already losing momentum: Alrosa's sales of rough stones sank as low as US\$13.1 million in April from US\$315.8 million a year before, and De Beers canceled its third sales cycle.



The Mir mine in eastern Siberia. Alrosa will restructure the mine complex , effective Oct. 1, to cut costs and minimize job cuts as the pandemic has pummeled demand for precious stones.

Source: PJSC Alrosa

Market miasma

"It is going to be quite a long, slow, painful journey out of the kind of miasma the market has managed to get itself mired into, just because there is so much inventory around," Sterck said.

"The situation in India, which is where the majority of the world's diamonds are cut, polished and manufactured into jewelry, has been quite acute," he said. While only a handful of mines scaled back or suspended production during the height of the pandemic, Indian diamantaires all but ceased to buy rough stones for about four months.

"[Manufacturer and trader] inventories are now estimated to be at the lowest level in almost a decade and upstream output is on pace to be the lowest since the 1990s," industry analyst Paul Zimnisky told Market Intelligence.

As a result, mining companies have accumulated large stocks of rough stones, which will need to find their way through to the market at some point, according to Sterck.

While the impact of the pandemic has extended a downward trend in diamond prices over several years, it also expedited preexisting supply trends that should be fundamentally supportive of prices, according to Zimnisky. "An oversupplied diamond market in recent years, and the implication that has had on prices, has led to a natural paring of new supply going forward which could be the catalyst for a long-awaited trend shift in diamond prices."

READ MORE: Sign up for our weekly coronavirus newsletter [here](#), and read our latest coverage on the crisis [here](#).

Green shoots?

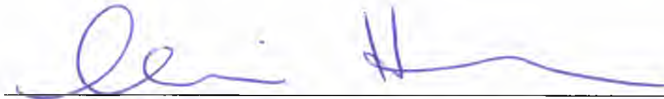
This time of year represents the last chance for dealers to buy stones in time for the extended holiday season that begins with Diwali in India and runs through to the Lunar New Year in China, Sterck noted. Retailers are preparing stocks amid steady demand in the U.S. and Far East for stones from 0.3 carats to 2 carats as shortages support prices, according to a Sept. 10 Rapaport market comment.

"Today we see cautious optimism among market participants, as the industry prepares for [the] Christmas season, which traditionally accounts for about 30 percent of annual jewelry sales," Alrosa's press service told Market Intelligence.

"Consumer spending on jewelry is still a little bit uncertain," Sterck said. "The global numbers might be slightly skewed by certain geographies' spending more in their home territories than they would have normally," he said, noting that the promising figures from China are due to buyers turning to the domestic market after being unable to travel overseas, where they usually buy luxury goods.

Sterck expects prices to bounce back to the levels seen before the pandemic, but cautioned that prices were already still quite low compared to the five- or 10-year average. "That's not quite comfortable territory, but it's certainly a lot more comfortable than where we've been in the last six months or so," he said.

This is Exhibit "S" referred to in the Affidavit of Jennifer Alambre sworn before me at Vancouver, British Columbia this 4th day of October, 2020.



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CLAIRE HILDEBRAND
Barrister & Solicitor
BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard St., P.O. Box 49314
Vancouver, B.C. V7X 1L3
(604) 631-3331



NOTIFICATION

DOMINION DIAMOND MINES PROVIDES UPDATE ON SALE PROCESS

CALGARY, AB - September 16, 2020 - Dominion Diamond Mines ULC ("Dominion" or the "Company") announced today that the stalking horse bid (the "Washington Bid") submitted by Canadian Diamond Holdings, L.P. and CA Canadian Diamond Mines ULC, affiliates of the Washington Companies ("Washington") is the successful bid under the sales process approved by the Court of Queen's Bench of Alberta (the "Court") on June 19, 2020. No other qualified bids were submitted for the purchase of all or part of Dominion's assets.

The Washington Bid contemplates a purchase of substantially all of Dominion's assets related to the Ekati Diamond Mine ("Ekati"). Dominion's 40% interest in the Diavik Diamond Mine joint venture has been excluded from the sale. The consideration to be paid by Washington to Dominion includes approximately US\$126 million in cash, US\$20 million to be made available with respect to pre-filing trade suppliers (less the amount of the Company's interim facility proceeds available to pay claims of such suppliers) and the assumption of substantially all of Dominion's other Ekati-related operating liabilities, which includes offering employment to substantially all of Dominion's employees and the assumption of pension obligations.

The Washington Bid is subject to a number of conditions to closing, including approval by the Court and Washington entering into an agreement with the issuers of the surety bonds currently posted with the Government of the Northwest Territories to provide continued security for the reclamation obligations related to Ekati. Assuming satisfaction of all conditions to closing, the transaction is expected to close by November 7, 2020.

Dominion is working to return to full operations at Ekati, pending the completion of the transaction, a successful recovery of global diamond sales and the Company's ability to maintain a safe and healthy work environment for its employees and the communities in the Northwest Territories.

Copies of the applicable Court orders and other Court materials and information related to the Company's CCAA proceedings are available on the website maintained by FTI, which has been appointed by the Court as Dominion's Monitor to oversee the CCAA proceedings: cfcanda.fticonsulting.com/Dominion.

* * * * *

About Dominion Diamond Mines

Dominion Diamond Mines ULC is a Canadian mining company and one of the world's largest producers and suppliers of premium rough diamond assortments to the global market. The company owns a controlling interest in the Ekati Diamond Mine, which it operates, and owns 40% of the Diavik Diamond Mine. The company also holds a controlling interest in the Lac de Gras Diamond Project. The Ekati and Diavik Diamond Mines, and the Lac de Gras Diamond Project are located in the Northwest Territories of Canada. In addition to its mining and exploration operations, Dominion has offices in Canada, Belgium and India.

For more information, please visit www.ddmines.com and Dominion's private investor portal, or contact investor@ddcorp.ca.

Media Contacts:

Rebecca Hurl
Rebecca.Hurl@ddcorp.ca
403-797-0486

Sard Verbinnen & Co
Jared Levy/Liz Zale
DominionDiamond-SVC@sardverb.com

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