COURT OF APPEAL OF ALBERTA

Clerk's Stamp

COURT OF APPEAL FILE NUMBER	2001-0216AC
TRIAL COURT FILE NUMBER / ESTATE NUMBERS	2001-05630
REGISTRY OFFICE	CALGARY
APPLICANT	DIAVIK DIAMOND MINES (2012) INC.
STATUS ON APPEAL STATUS ON APPLICATION	PROPOSED APPELLANT APPLICANT
RESPONDENTS	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.
STATUS ON APPEAL STATUS ON APPLICATION	PROPOSED RESPONDENTS RESPONDENTS
DOCUMENT	**AFFIDAVIT IN SUPPORT OF APPLICATION**
APPELANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Smyth, Q.C. / Sean Collins / Walker MacLeod Tel: 403-260-3698 / 3531 / 3710 Fax: 403-260-3501 Email: ssmyth@mccarthy.ca / scollins@mccarthy.ca / wmacleod@mccarthy.ca

Affidavit of Katie Doran
Sworn on November 10, 2020

I, Katie Doran, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am a legal assistant with the law firm of McCarthy Tétrault LLP ("**McCarthy Tétrault**"), counsel for Diavik Diamond Mines (2012) Inc. ("**DDMI**"), and, as such, I have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief, in which case I believe such information to be true.

2. I swear this Affidavit in support of an Application by DDMI for an order granting leave to appeal the order of the Honourable Madam Justice K.M. Eidsvik granted November 4, 2020 (the "**November 4th Order**") in the restructuring proceedings 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. (together, "**Dominion**") in Court of Queen's Bench of Alberta Action No. 2001-05630 (the "**CCAA Action**").

3. Various Court documents and transcripts from the CCAA Action are attached hereto, as is an exchange of correspondence among counsel.

SARIO

4. Attached as **Exhibit "A"** is a copy of the Second Amended and Restated Initial Order granted by the Honourable Madam Justice K.M. Eidsvik on June 19, 2020.

5. Attached as **Exhibit "B"** is a copy of the transcript from the hearing held on June 19, 2020.

September 25 Order

6. Attached as **Exhibit "C"** is a copy of the Order approved by the Honourable Madam Justice K.M. Eidsvik on September 25, 2020.

November 4th Order and Monetization Process Order

7. Attached as **Exhibit "D"** is a copy of email correspondence dated November 9, 2020 (the "**November 9 Correspondence**"), from counsel for Credit Suisse AG, Cayman Islands Branch, as agent for the first secured lenders (the "**Agent**"), to counsel for DDMI and counsel for Dominion (among others).

8. Attached as **Exhibit "E"** are draft copies of Dominion and the Agent's jointly proposed forms of Order (Dismissal of SARIO Amendment) and Order (Realization Process) granted by the Honourable Madam Justice K.M. Eidsvik on November 4, 2020, as attached to the November 9 Correspondence.

9. Attached as **Exhibit "F"** is a copy of email correspondence dated November 10, 2020 (the "**November 10 Correspondence**"), from counsel for DDMI, to counsel for the Agent and counsel for Dominion (among others).

10. Attached as **Exhibit "G** is a draft copy of DDMI's proposed form of Order (Dismissal of SARIO Amendment) granted by the Honourable Madam Justice K.M. Eidsvik on November 4, 2020, as attached to the November 10 Correspondence.

11. Attached as **Exhibit "H"** is a copy of the transcript from the hearing held on October 30, 2020.

12. Attached as **Exhibit "I"** is a copy of the transcript from the oral decision of the Honourable Madam Justice K.M. Eidsvik held on November 4, 2020.

13. Attached as **Exhibit "J"** is a copy of the draft Endorsement supporting the oral decision of the Honourable Madam Justice K.M. Eidsvik on November 4, 2020.

Croese Affidavits and Kaye Affidavit

14. Attached as **Exhibit "K"** is a copy of the Affidavit of Thomas Croese, sworn on April 30, 2020 (with Confidential Exhibit "1").

15. Attached as **Exhibit "L"** is a copy of the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020 (with Exhibits and Confidential Exhibit "1").

16. Attached as **Exhibit "M"** is a copy of the Affidavit #4 of Thomas Croese, sworn on October 19, 2020 (without Exhibits).

17. Attached as **Exhibit "N"** is a copy of the Affidavit #5 of Thomas Croese, sworn on October 29, 2020 (without Exhibits).

18. Attached as **Exhibit "O"** is a copy of the Affidavit of Kristal Kaye, sworn on October 28, 2020 (without Exhibits).

19. Attached as **Exhibit "P"** is a copy of the Affidavit #3 of Thomas Croese, sworn on June 16, 2020 (without Exhibits).

20. Attached as **Exhibit "Q"** is a copy of the Affidavit Frederick Vescio, sworn on October 7, 2020 (with Exhibits).

Bench Briefs

21. Attached as **Exhibit "R"** is a copy of the body of the Bench Brief of DDMI, filed on October 21, 2020.

22. Attached as **Exhibit "S"** is a copy of the body Reply Bench Brief of DDMI, filed on October 29, 2020.

23. I make this Affidavit in support of an application for leave to appeal.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 10th day of November, 2020.

A COMMISSIONER FOR OATHS in and for the Province of Alberta

KATIE DORAN

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

This is Exhibit "A" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

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 AND DOMINION FINCO INC.**
DOCUMENT	**SECOND AMENDED AND RESTATED INITIAL ORDER**
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 File: 00180245/000013

DATE ON WHICH ORDER WAS PRONOUNCED:	June 19, 2020
LOCATION OF HEARING:	Calgary
NAME OF JUDGE WHO MADE THIS ORDER:	The Hon. Madam Justice K. Eidsvik

UPON the application of Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, and Dominion Finco Inc. (collectively, the "**Applicants**"); **AND UPON** having read the Applicants' Amended Notice of Application, filed, the Affidavits of Brendan Bell, sworn May 21, 2020 and June 12, 2020, filed, the Affidavit of Patrick Merrin, sworn May 11, 2020 (the "**Merrin Affidavit**"), filed, the Affidavits of John Startin, sworn May 21, 2020 (the "**Startin May Affidavit**") and June 12, 2020, filed, the Affidavits of Thomas Croese, sworn May 7, 2020, May 28, 2020 and June 16, 2020, respectively, filed, the Affidavit of Eric Hoff, sworn June 17, 2020, filed, the Affidavit of Matthew Quinlan, sworn June 16, 2020, filed; **AND UPON** service having been effected in accordance with the Caselines Service Order of this Court dated May 29, 2020 and being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application; **AND UPON** hearing counsel for the Applicants, counsel for the Monitor, counsel for the Government of the Northwest Territories, counsel for the Washington Group of Companies, counsel for Credit Suisse AG, counsel for the Public Service Alliance of Canada, counsel for Procon Mining & Tunnelling Ltd., counsel for Dyno Nobel Canada Inc. and Dene Dyno Nobel, counsel for the Ad Hoc Group of Bondholders, counsel for Wilmington Trust, National Association, counsel for Matthew Quinlan, counsel for Diavik Diamond Mines (2012) Inc. ("**DDMI**") and any other counsel present; **AND UPON** reading the Fourth Report of FTI Consulting Canada Inc. (the "**Monitor**"), the Supplement to the Fourth Report of the Monitor, and the Fifth Report of the Monitor, each filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Affidavit of Kristal Kaye sworn April 21, 2020, in the within proceedings.

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

(a) subject to DDMI's rights in respect of the Dominion Products (as defined herein) as set forth at paragraph 16 of this Order, remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

(b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property;

(c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and

(d) be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Kristal Kaye sworn April 21, 2020 or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any

claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. To the extent permitted by law, the Applicants shall be entitled but not required to make, in each case in accordance with the Definitive Documents (as defined below), the following advances or payments of the following expenses, incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order; and

(c) with the consent of the Monitor, obligations owing for goods and services supplied to the Applicants prior to the date of this Order if, in the opinion of the Applicants after consultation with the Monitor, the supplier or vendor of such goods or services is necessary for the operation or preservation of the Business or Property, provided that such payments shall not exceed $5,000,000 in the aggregate without prior authorization by this Court.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay, in each case in accordance with the Definitive Documents, all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

(i) employment insurance,

(ii) Canada Pension Plan, and

(iii) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order, but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:

   (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order, provided however that the Applicants are authorized to pay interest accruing under the Existing Credit Facility in the ordinary course in accordance with the DIP Budget (as such terms are defined in the Interim Financing Term Sheet);

   (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and

   (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject in each case to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

   (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $2,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

   (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

   (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

(b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein

shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Subject to paragraph 16 of this Order, until and including September 28, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

(c) prevent the filing of any registration to preserve or perfect a security interest;

(d) prevent the registration of a claim for lien;

(e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment; or

(f) prevent DDMI from making Diavik JVA Cover Payments in accordance with the terms of the Diavik JVA.

15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity. Subject to paragraph 35 of this Order, nothing in this Order shall prevent the Interim Lenders (as defined below) from providing any notice or taking or declining to take any action permitted by the Interim Financing Term Sheet.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided however, that DDMI, in its capacity as manager under the Diavik JVA, be and is hereby authorized to hold an amount of Dominion Diamond's share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI (the "**Dominion Products**") at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "**PSF**") and the value of the Dominion Products shall be determined based on royalty valuations performed from time to time at the PSF by the Government of the Northwest Territories. DDMI shall hold the Dominion Products in trust, and subject to the following conditions:

(a) DDMI shall segregate the Dominion Products from DDMI's share of production from the Diavik Mine pursuant to and in accordance with the Agreement to establish a Protocol for Diamond Splitting Production, dated January 7, 2003, as amended, modified, supplemented or restated from time to time;

(b) DDMI shall provide adequate safeguarding of, and insurance coverage for, the Dominion Products;

(c) DDMI shall provide each of Dominion Diamond and the Monitor with reporting and records on the Dominion Products as may be requested by Dominion Diamond or the Monitor;

(d) DDMI shall permit reasonable access to Dominion Diamond and the Monitor to attend at the PSF and audit or inspect the Dominion Products;

(e) on the happening of any of the following dates, events or ocurrences, or with leave of the Court, DDMI shall be entited to apply to this Honourable Court to seek an Order allowing it to exercise rights and remedies as against the Dominion Products:

(i) the date that the within CCAA proceedings are terminated;

(ii) the date that the Interim Lenders take any action to enforce the Interim Lenders' Charge, whether pursuant to the Interim Financing Term Sheet, the Definitive Documents or at law generally;

(iii) any time after the Phase 1 Bid Deadline, when there is no Phase 1 Qualified Bid or Phase 2 Qualified Bid (including the Stalking Horse Bid) which includes the assets owned by Dominion in the Diavik Joint Venture; and

(iv) November 1, 2020.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed

upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the Interim Lenders where applicable and solely in accordance with the Definitive Documents, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $4,000,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 54 and 56 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

(a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

(b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders or DDMI (but with respect to DDMI, only with respect to the Diavik Mine and only to the extent that the Monitor determines will not prejudice the SISP) and their counsel on a periodic basis of financial and other

information as agreed to between the Applicants and the Interim Lenders or DDMI which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders or DDMI;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders or DDMI, which information shall be reviewed with the Monitor and delivered to the Interim Lenders or DDMI and their counsel on a periodic basis or as otherwise agreed to by the Interim Lenders or DDMI;

(e) fulfill the role contemplated for the Monitor in the SISP Procedures (as defined below) (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 Procedures, the filing of certain reports to the Court, and the oversight of all SISP Procedures activities) and respond to all reasonable enquiries of the Applicants' creditors in relation thereto;

(f) advise the Applicants in their development of the Plan and any amendments to the Plan;

(g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(j) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and each of the Interim Lenders and DDMI with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby

authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $3,500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 54 and 56 hereof.

INTERIM FINANCING AND INTERIM LENDER'S CHARGE

31. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Facility**") pursuant to the Amended and Restated Interim Financing Term Sheet dated as of June 15, 2020 (the "**Interim Financing Term Sheet**") among, the Applicants, Washington Diamond Lending, LLC and the other lenders party thereto (collectively in such capacity, the "**Interim Lenders**"), and the other parties thereto, in order to finance the Applicants' working capital requirements and other general corporate purposes and permitted capital expenditures set forth in the Interim Financing Term Sheet, provided that borrowings under such credit facility shall not exceed the principal amount of US$60 million unless permitted by further order of this Court and agreed to by the Interim Lenders.

32. The Interim Facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet attached hereto as **Schedule "A"**, as such Interim Financing Term Sheet may be amended in accordance with its terms with the consent of the Monitor.

33. The Applicants are hereby authorized and empowered to execute and deliver the Interim Financing Term Sheet and such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Interim Financing Term Sheet or

as may be reasonably required by the Interim Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lenders under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order or any other Order granted by this Court in these CCAA proceedings.

34. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the "**Interim Lenders' Charge**") on the Property other than the Excluded Assets (as defined in the Interim Financing Term Sheet) to secure all Interim Financing Obligations (as defined in the Interim Financing Term Sheet), which Interim Lenders' Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Interim Lenders' Charge shall not secure any obligation existing before the date this Order is made. The Interim Lenders' Charge shall have the priority set out in paragraphs 54 and 56 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders may (i) immediately cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lenders' Charge and make demand, accelerate payment, and give other notices; (ii) upon five (5) days' notice to the Applicants and the Monitor, apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and (iii) with leave of the Court, exercise any other rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents, and Interim Lenders' Charge; and

(c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. The Interim Lenders shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any Interim Financing Obligations.

37. This Order is subject to provisional execution and, if any of the provisions of this Order in connection with the Definitive Documents or the Interim Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (each, a "**Variation**") whether by subsequent order of this Court or any other court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the Interim Lenders under this Order (as made prior to the Variation) or the Definitive Documents, with respect to any advances made prior to the Interim Lenders being given written notice of the Variation and the Interim Lenders shall be entitled to rely on this Order as issued (including, without limitation, the Interim Lenders' Charge) for all advances so made.

SISP PROCEDURES, STALKING HORSE BID, AND BREAK-UP FEE AND EXPENSE CHARGE

38. Capitalized terms utilized in paragraphs 38 to 46 of this Order that are not otherwise defined in this Order shall have the meanings ascribed to them in the Procedures for the Sale and Investment Solicitation Process (the "**SISP Procedures**") in the form attached as **Schedule "B"** hereto.

39. The SISP Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.

40. The Applicants, the Monitor and their respective advisors (including the SISP Advisor) are hereby authorized and directed to carry out the SISP Procedures and to take such steps and execute such documentation as may be necessary or incidental to the SISP Procedures.

41. Each of the Applicants, the SISP Advisor and the Monitor and their respective affiliates,

partners, directors, employees, advisors (including the SISP Advisor), agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP Procedures or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). The Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) and its directors, employees, advisors and agents (solely in connection with the Stalking Horse Bid and the SISP Procedures) shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Stalking Horse Bid, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). Nothing in this paragraph 41 shall have the effect of releasing any rights, remedies or claims of DDMI under the Diavik JVA.

42. Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and Dominion Diamond Mines ULC, as vendors (collectively, the "**Dominion Vendors**"), are hereby authorized to execute and enter into a definitive stalking horse agreement of purchase and sale among the Dominion Vendors, as sellers, and the Stalking Horse Bidder, as purchaser, which shall be substantially on the terms set out in the stalking horse agreement of purchase and sale attached hereto as **Schedule "C"** (the "**Stalking Horse Bid**"), subject to such amendments, additions and/or deletions as may be negotiated between the Dominion Vendors and the Stalking Horse Bidder and approved by the Monitor. The Stalking Horse Bid submitted by the Stalking Horse Bidder is hereby approved as the Stalking Horse Bid pursuant to and for purposes of the SISP Procedures, provided that nothing herein approves the sale to and the vesting of any assets or property in the Stalking Horse Bidder pursuant to the Stalking Horse Bid and that the approval of the sale and vesting of such assets and property shall be considered by this Court on a

subsequent motion made to this Court if the Stalking Horse Bidder is the Successful Bidder pursuant to the SISP Procedures.

43. The Dominion Vendors' obligation to pay the Break-Up Fee and Expense Reimbursement pursuant to and in accordance with the Stalking Horse Bid is hereby approved.

44. The Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Break-Up Fee and Expense Charge**") on the Property as security for the payment of the Break-Up Fee and Expense Reimbursement by the Dominion Vendors pursuant to and in accordance with the Stalking Horse Bid. The Break-Up Fee and Expense Charge shall have the priority set out in paragraphs 54 and 56 hereof.

45. This Order is granted without prejudice to the rights and remedies of Dominion Diamond and DDMI under the Diavik JVA.

46. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act,* the Applicants, the SISP Advisor and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP Procedures, but only to the extent desirable or required to carry out the SISP Procedures. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Applicants and the Property, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

KERP AND THE KERP CHARGE

47. The Key Employee Retention Plan (the "**KERP**") as described in the Merrin Affidavit, is hereby approved.

48. The Applicants are hereby authorized and directed to enter into the KERP with those employees (the "**Key Employees**") listed in Confidential Exhibit "A" to the Merrin Affidavit (the "**Confidential Merrin Affidavit Exhibit**").

49. The Applicants are hereby authorized and directed to pay a lump sum payment (the "**Incentive Bonus**") to each of the Key Employees in the amount set out in the Confidential Merrin Affidavit Exhibit, to be paid as follows:

(a) the first one-third of the Incentive Bonus shall be paid to each Key Employee on the earlier of June 6, 2020 and their last day of employment (if the Key Employee is terminated without cause); and

(b) the remaining two-thirds of the Incentive Bonus shall be paid to each Key Employee on the earlier of November 6, 2020, their last day of employment (if the Key Employee is terminated without cause) and the closing of any restructuring transaction.

50. Payments to Key Employees under the KERP will only be made if, at the date the relevant payment of the Incentive Bonus is due, as described in paragraph 49, the Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.

51. The Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property as security for the amounts payable to the Key Employees pursuant to the KERP, which charge shall not exceed an aggregate amount of $580,000. The KERP Charge shall have the priority set out in paragraphs 54 and 56 hereof.

FINANCIAL ADVISOR AGREEMENT AND FINANCIAL ADVISOR'S CHARGE

52. The agreement dated as of April 8, 2020 between Dominion Mines and Evercore Group L.L.C. (the "**Financial Advisor**") (as amended on April 22, 2020, the "**Financial Advisor Agreement**"), as set out in Exhibit "E" to the Startin May Affidavit, pursuant to which the Applicants have engaged the Financial Advisor to provide the services referenced therein is hereby approved, *nunc pro tunc*, including, without limitation, the payment of the Monthly Fee, Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee contemplated thereby, and the Applicants are authorized to continue the engagement of the Financial Advisor on the terms set out in the Financial Advisor Agreement.

53. The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge on the Property as security for the Monthly Fee, Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee (in each case as defined in the Financial Advisor Agreement), as follows:

(a) the Financial Advisor shall have the benefit and protections afforded by the Administration Charge, *nunc pro nunc*, as security for the Monthly Fee and the Financial Advisor's disbursements incurred both before and after the Order granted by this Court in these proceedings on April 22, 2020; and

(b) the Financial Advisor shall have the benefit of a charge (the "**Financial Advisor Charge**") on the Property, as security for the Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee (in each case on the terms set out in the Financial Advisor Agreement as approved by this Order). The Financial Advisor Charge shall have the priority set out in paragraphs 54 and 56 hereof.

VALIDITY AND PRIORITY OF CHARGES

54. The priorities of the Directors' Charge, the Administration Charge, the KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders' Charge, and the Financial Advisor Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $3,500,000);

Second – Directors' Charge (to the maximum amount of $4,000,000);

Third – KERP Charge (to the maximum amount of $580,000);

Fourth – Break-Up Fee and Expense Charge; and

Fifth – Interim Lenders' Charge and the Financial Advisor Charge, *pari passu*.

55. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected prior to or subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record, possess, or perfect.

56. Each of the Charges shall constitute a charge on the Property (other than, solely in the the case of the Interim Lenders' Charge, the Excluded Assets) and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person; provided, however, that:

(a) the KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders' Charge and the Financial Advisor Charge shall rank subordinate to any Encumbrances under Article 9 of the Diavik JVA;

(b) the Encumbrances of the Existing Credit Facility Agent (as defined in the Interim Financing Term Sheet) in respect of the Diavik Collateral (as defined in the Interim Financing Term Sheet) shall rank senior to the Interim Lenders' Charge in respect of the Diavik Collateral;

(c) the Encumbrances of the Existing Credit Facility Agent in respect of the Interim Financing Priority Collateral (as defined in the Interim Financing Term Sheet) shall be senior to the Interim Lenders' Charge in respect of the Interim Financing Priority Collateral securing any October Advances (as defined in the Interim Financing Term Sheet) and related interest; and

(d) the Interim Lenders' Charge in respect of the Interim Facility Priority Collateral securing any October Advances and related interest shall be senior to any Encumbrances of the Existing Credit Facility Agent securing the First Lien Facility LC Obligations (as defined in the Interim Financing Term Sheet).

57. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**"), or further order of this Court.

58. The Charges, the Interim Financing Term Sheet and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees

and/or the Interim Lenders thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA, or any bankruptcy or receivership order made in respect of the Applicants;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, licence, permit or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Interim Financing Term Sheet and the other Definitive Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Term Sheet, or the execution, delivery or performance of the Definitive Documents; and

(iii) the payments made by the Applicants pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

59. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property, provided that any such allocation shall not affect or impair the right of the Interim Lenders to credit bid the full amount of the Interim Financing Obligations in respect of all Property in accordance with the Interim Financing Term Sheet.

SERVICE AND NOTICE

60. The Monitor shall (i) without delay, publish in the *Globe and Mail* and *The Northern Miner* a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

61. The Monitor shall establish a case website in respect of the within proceedings at cfcanada.fticonsulting.com/Dominion (the "**Website**").

62. Any person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to the service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on the Website.

63. Any party to these proceedings may serve any document in these proceedings, (a) in the case of parties who at the time of service are on the Service List, by uploading such documents to the online filesite established by the Monitor for managing the pleadings and other relevant documents in this Action and hosted on the canada.caselines.com website (the "**CaseLines Filesite**") and all documents uploaded to the CaseLines Filesite shall be deemed as having been properly served on all parties named on the Service List as of the date and time that such documents were uploaded to the CaseLines Filesite; or, (b) in the case of parties who at the time of service are not on the Service List, by emailing

a PDF or other electronic copy of such documents to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Website.

64. Applicants and, where applicable, the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

65. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

GENERAL

66. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

67. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

68. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

69. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give

effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

70. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

71. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of Queen's Bench of Alberta

Schedule “A”

Amended and Restated Interim Financing Term Sheet

Execution Copy

AMENDED AND RESTATED
INTERIM FINANCING TERM SHEET

Dominion Diamond Mines ULC

Dated as of June 15, 2020

WHEREAS the Borrower has requested that the Interim Lenders provide financing to the Borrower during the pendency of the Borrower's proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") commenced before the Court of Queen's Bench of Alberta (the "**Court**") pursuant to an initial order granted on April 22, 2020 (the "**Initial Order**") and in accordance with the terms and conditions set out herein;

AND WHEREAS, parties hereto entered into an interim financing term sheet dated as of May 21, 2020 (the "**Original Term Sheet**") pursuant to which the Interim Lenders agreed to provide financing in order to fund certain obligations of the Credit Parties in order for the Credit Parties to pursue and implement a Permitted Restructuring Transaction pursuant to and in accordance with the SISP;

AND WHEREAS, the parties hereto wish to amend and restate the Original Term Sheet;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1.	**BORROWER:**	Dominion Diamond Mines ULC, an unlimited liability company formed under the laws of British Columbia (the "**Borrower**").
2.	**INTERIM LENDERS**	Those lenders identified on Schedule "**F**" hereto (the "**Interim Lenders**"). Schedule "**F**" may be amended from time to time with the consent of Washington Diamond in its sole and absolute discretion; it being understood and agreed that each Existing Credit Facility Lender as of the date of this Term Sheet is acceptable to Washington Diamond in its sole and absolute discretion; *provided*, *however*, that, at no time, shall the Commitment (as defined herein) held by the Existing Credit Facility Lenders (or any party other than Washington Diamond) exceed 34% of total Commitments. The amount of total funding Commitments (the "**Commitments**") of each Interim Lender, and such Interim Lender's proportion of the total Commitments are identified on Schedule F hereto. All obligations of the Interim Lenders hereunder and in connection with the Interim Facility are several, and not joint or joint and several. If any Interim Lender is a Defaulting Lender, or if any Interim Lender is a Non-Consenting Lender, then Washington Diamond may, at its sole expense and effort, upon notice to such Interim Lender, require such Interim Lender to assign and delegate, without recourse, all its interests, rights and obligations under this Term Sheet to Washington Diamond (if Washington Diamond accepts such assignment) or another Interim Lender acceptable to Washington Diamond in its sole and absolute discretion (if such Interim Lender accepts such assignment), provided that such Defaulting Lender or Non-Consenting Lender shall have received, in connection with such assignment, payment of an amount equal to the outstanding Interim Financing Obligations payable to it hereunder from the

assignee (to the extent of outstanding principal and accrued interest) or the Borrower (in the case of all other outstanding Interim Financing Obligations owing to such Defaulting Lender or Non-Consenting Lender). Upon any such assignment, Schedule "**F**" shall be deemed to be amended as required to reflect such assignment.

3. **GUARANTORS:** Each party that guarantees (collectively, the "**Guarantors**", and together with the Borrower, the "**Credit Parties**") the obligations of the Credit Parties under this Term Sheet (the "**Interim Financing Obligations**"), which parties are set forth on Schedule D hereof.

The Credit Parties subject to the CCAA Proceedings are sometimes collectively referred to herein as the "**CCAA Applicants**".

4. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Term Sheet have the meanings given thereto in Schedule "**A**".

5. **INTERIM FACILITY; DRAWDOWNS:** A senior secured, superpriority, debtor-in-possession, interim, non-revolving credit facility (the "**Interim Facility**") up to a maximum principal amount of US$60 million (as such amount may be reduced from time to time pursuant to the terms hereof, the "**Facility Amount**"), subject to the terms and conditions contained herein.

The Interim Facility shall be made available to the Borrower by way of up to six (6) advances (each an, "**Advance**") which, in the aggregate, shall not exceed the Facility Amount. The timing for each Advance shall be determined based on the funding needs of the Borrower as set forth in the DIP Budget and as such draw amounts are agreed to by the Required Interim Lenders and the Credit Parties. Each Advance (other than the final Advance) shall be in a principal amount of not less than US$2,000,000.

Each Advance shall be deposited by the applicable Interim Lenders into the Operating Account within two (2) Business Days of the date on which the Borrower delivers to the Interim Lenders an Advance request certificate in the form of Schedule "**B**" (an "**Advance Request Certificate**"), provided that, in the determination of the Interim Lenders, the Advance Conditions are satisfied as of the date on which such Advance Request Certificate is delivered and remain satisfied on the date of such Advance. Each Interim Lender's obligations are several and not joint or joint and several.

With respect to Advances to be used to make Permitted Payments on account of obligations that accrue prior to September 30, 2020 (the "**Phase 1 and Phase 2 Advances**"), each Interim Lender shall fund solely its pro rata share of each Phase 1 and Phase 2 Advance based on such Interim Lender's share of the total Commitments in respect of Phase 1 and Phase 2 Advances set out in Part I of Schedule "**F**". With respect to Advances to be used to make Permitted Payments on account of obligations that accrue on or after October 1, 2020 through the Outside Date ("**October Advances**"), Washington Diamond, in its capacity as Interim Lender, shall fund any such Advances.

The Advance Request Certificate shall certify that (i) all representations and

warranties of the Credit Parties contained in this Term Sheet remain true and correct in all material respects both before and after giving effect to the use of such proceeds and (ii) no Default or Event of Default then exists and is continuing or would result therefrom.

Each Advance Request Certificate shall be deemed to be acceptable and shall be honoured by the Interim Lenders unless the Required Interim Lenders have objected thereto in writing, providing reasons for the objection, by no later than 1:00 p.m. Eastern Time on the second Business Day following the delivery of such Advance Request Certificate. A copy of each Advance Request Certificate shall be concurrently provided to Interim Lenders and the Monitor.

6. **PURPOSE AND PERMITTED PAYMENTS:**

The Credit Parties shall use proceeds of the Interim Facility solely for the following purposes and in the following order, in each case in accordance with the DIP Budget and for the purpose of advancing and implementing a Permitted Restructuring Transaction pursuant to and in accordance with the SISP:

(a) to pay the reasonable and documented legal and financial advisory fees and expenses of (i) the Credit Parties, subject to the DIP Budget (ii) the Monitor (i.e. the Monitor's fees and those of its legal counsel), subject to the DIP Budget, (iii) the Interim Lenders, subject to the DIP Budget and (iv) the Existing Credit Facility Lenders, subject to the DIP Budget, in each case pursuant to the terms hereof, it being acknowledged by the Credit Parties and the Interim Lenders that those fees and expenses incurred to the date hereof and those provided for in the DIP Budget as of the date hereof are reasonable;

(b) to pay the interest, fees and other amounts owing to the Interim Lenders under this Term Sheet;

(c) to pay any interest accruing under the Existing Credit Facility in the ordinary course; and

(d) to fund, in accordance with the DIP Budget, the Credit Parties' operating expenditures during the Restructuring Proceedings in pursuit of a Permitted Restructuring Transaction pursuant to and in accordance with the SISP, including the working capital and other general corporate funding requirements of the Credit Parties during such period (the amounts set forth in these subsections (a) through (d), collectively, the "**Permitted Payments**").

For greater certainty, the Credit Parties may not use the proceeds of the Interim Facility to pay any obligations of the Credit Parties arising or relating to the period prior to the Filing Date without the prior written consent of (x) the Required Interim Lenders in their sole and absolute discretion and (y) the Existing Credit Facility Agent (such consent not to be unreasonably withheld) unless the payment of such pre-Filing Date obligations are specifically identified in the approved DIP Budget and

authorized pursuant to the Amended Initial Order or any subsequent Court Order.

7. **ADVANCE CONDITIONS**

The Interim Lenders' agreement to make the Facility Amount available to the Borrower and to advance any Advance to the Borrower is subject to the satisfaction, as determined by the Required Interim Lenders, of each of the following conditions precedent (collectively, the "**Advance Conditions**"), each of which is for the benefit of the Interim Lenders and may be waived by the Required Interim Lenders in their sole and absolute discretion:

(a) The Initial Order shall have remained in effect until the issuance of the Amended Initial Order;

(b) The Credit Parties shall have executed and delivered this Term Sheet, the Guarantee and such other Credit Documents as the Required Interim Lenders may reasonably request.

(c) The Credit Parties' cash management system shall continue in the manner approved by the Initial Order, unless otherwise consented to by (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent in each case in their reasonable discretion.

(d) The Court shall have issued an amended and restated version of the Initial Order or a further amended and restated version of the Initial Order (as it may be amended, the "**Amended Initial Order**") in form and substance acceptable to the Required Interim Lenders, in their reasonable discretion; *provided*, *however*, the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (acting reasonably) must be satisfied with any provision of the Amended Initial Order (or any subsequent Court Order) relating to the Interim Facility, the SISP or the Stalking Horse Transaction. The Amended Initial Order shall, without limitation, (i) approve this Term Sheet (subject only to such modifications as may be acceptable to the Supermajority Interim Lenders and the Existing Credit Facility Agent in their sole and absolute discretion), (ii) authorize the Borrower to borrow up to the Facility Amount under the Interim Facility, (iii) grant the Interim Lenders a priority charge (the "**Interim Lenders' Charge**") on the CCAA Applicants' Collateral as security for all Interim Financing Obligations, which Interim Lenders' Charge shall have priority over all Liens on the CCAA Applicants' Collateral other than as set forth in Section 11 hereof, and (iv) approve the SISP on terms acceptable to the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (acting reasonably).

(e) The Credit Parties shall be acting in accordance with the SISP.

(f) The Amended Initial Order and the Recognition Order, if applicable, shall not have been stayed, vacated or otherwise amended, restated or modified in respect of any amendment,

relating to the Interim Facility, the SISP, the Stalking Horse Transaction or any other matter that affects the Interim Lenders, without the written consent of the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld).

(g) There shall be no Liens ranking (a) in priority to the Interim Lenders' Charge over the CCAA Applicants' Collateral other than the Permitted Priority Liens or (b) *pari passu* with the Interim Lenders' Charge over the CCAA Applicants' Collateral other than the SISP Advisor Charge.

(h) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance.

(i) The Borrower shall have delivered an Advance Request Certificate in respect of such Advance.

(j) The applicable Credit Parties shall have executed an Asset Purchase Agreement with an entity managed by an affiliate of Washington Diamond with respect to the Stalking Horse Transaction, *provided* that this condition shall not apply to the initial Advance if such initial Advance is an amount less than or equal to US$10,000,000.

8. **COSTS AND EXPENSES**

The Borrower shall reimburse the Interim Lenders and the Existing Credit Facility Agent for all reasonable fees and expenses incurred (including reasonable and documented legal, financial advisory and professional fees and expenses on a full indemnity basis) (the "**Interim Lender Expenses**") by the Interim Lenders or any of their affiliates and the Existing Credit Facility Agent in connection with the negotiation, development, and implementation of Interim Facility (including the administration of the Interim Facility). The Interim Lender Expenses shall form part of the Interim Financing Obligations secured by the Interim Lenders' Charge.

All accrued and unpaid Interim Lender Expenses as at the date of any Advance shall be paid in full through deduction from such Advance. All accrued and unpaid Interim Lender Expenses incurred prior to the first Advance (including those incurred prior to the Filing Date) shall be paid in full through deduction from the first Advance.

9. **INTERIM FACILITY SECURITY:**

All Interim Financing Obligations shall be secured by the Interim Lenders' Charge. The Required Interim Lenders may, in their reasonable discretion (i) require the execution, filing or recording of any mortgages, security agreements, pledge agreements, control agreements, financing statements or other documents or instruments, or (ii) take possession or control of any Collateral of the Credit Parties, to the extent it is necessary to do so, to obtain and/or perfect its senior secured, superpriority Lien on such Collateral.

10. **INTER-COMPANY**

No intercompany advances may be made unless provided for in the DIP Budget or consented to by the Required Interim Lenders, in their sole and

ADVANCES: absolute discretion.

11. **PERMITTED LIENS AND PRIORITY:** All of the Credit Parties' Collateral and the property of the Credit Parties' subsidiaries will be free and clear of all Liens except for Permitted Liens. Except as set forth below, the Interim Lenders' Liens and the Interim Lenders' Charge shall have priority over all Liens on the CCAA Applicants' Collateral.

    (a) The Permitted Priority Liens shall be senior to any Liens of the Interim Lenders or the Existing Credit Facility Agent in any of the Collateral.

    (b) The Liens of the Existing Credit Facility Agent in the Interim Facility Priority Collateral to secure the Funded First Lien Facility Obligations shall be senior to the Liens of the Interim Lenders in the Interim Facility Priority Collateral to secure any October Advances (and related interest).

    (c) The Liens of the Interim Lenders in the Interim Facility Priority Collateral to secure any October Advances (and related interest), shall be senior to any Liens of the Existing Credit Facility Agent to secure the First Lien Facility LC Obligations.

12. **MONITOR:** The monitor in the CCAA Proceedings shall remain FTI Consulting Canada, Inc. (the "**Monitor**").

13. **REPAYMENT:** The Interim Facility and the Interim Financing Obligations shall be due and repayable in full on the earlier of: (i) the occurrence of any Event of Default which is continuing and has not been cured; (ii) the completion of a Restructuring Transaction; (iii) the conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); (iv) the closing of a Successful Bid (as defined in the SISP); (v) the sale of all or substantially all of the CCAA Applicants' collateral; and (vi) the Outside Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrower and with the prior written consent of each Interim Lender for such period and on such terms and conditions as each Interim Lender may agree in its sole and absolute discretion.

    Without the consent of each Interim Lender in its sole and absolute discretion, no Court Order sanctioning a Plan shall discharge or otherwise affect in any way the Interim Financing Obligations, other than after the permanent and indefeasible payment in cash to the Interim Lenders of all Interim Financing Obligations on or before the date such Plan is implemented.

14. **DIP BUDGET AND VARIANCE REPORTING:** Attached hereto as Schedule "**C**" is a copy of the agreed summary DIP Budget (excluding the supporting documentation provided to the Interim Lenders in connection therewith) as in effect on the date hereof (the "**Initial DIP Budget**"), which the Interim Lenders acknowledge and agree is in form and substance satisfactory to the Interim Lenders and the Existing

Credit Facility Agent. Such DIP Budget shall be the DIP Budget referenced in this Term Sheet unless and until such time as a revised DIP Budget has been approved by the Required Interim Lenders and the Existing Credit Facility Agent in accordance with this Section 14.

(A) At the written request of the Required Interim Lenders (including by email), (B) at the election of the Borrower, or (C) upon a material change, or a material change reasonably anticipated by the Borrower, to any item set forth in the DIP Budget, the Borrower shall update and propose a revised 13-week DIP Budget to the Interim Lenders and the Existing Credit Facility Agent (the "**Updated DIP Budget**"). The Required Interim Lenders may make such request up to once every two weeks, and if such request is made, the Borrower shall submit the Updated Budget no later than five (5) Business Days following receipt of the request. Such Updated DIP Budget shall have been reviewed and approved by the Monitor, prior to submission to the Interim Lenders. If (a) the Required Interim Lenders, in their sole and absolute discretion, or (b) the Existing Credit Facility Agent, in its reasonable discretion, determine that the Updated DIP Budget is not acceptable, they shall, within three (3) Business Days of receipt thereof, provide written notice to the Borrower and the Monitor stating that the Updated DIP Budget is not acceptable and setting out the reasons why such Updated DIP Budget is not acceptable, and until the Borrower has delivered a revised Updated DIP Budget acceptable to (a) the Required Interim Lenders in their sole and absolute discretion, and (b) the Existing Credit Facility Agent, in its reasonable discretion, the prior DIP Budget shall remain in effect.

At any time, the Updated DIP Budget is accepted by the Required Interim Lenders and the Existing Credit Facility Agent, such Updated Budget shall be the DIP Budget for the purpose of this Term Sheet.

On or before 3:00 p.m. Eastern Time on the Friday of every second week, (provided that such day is a Business Day and, if not, on the next Business Day) the Borrower shall deliver to the Monitor, the Interim Lenders, the Existing Credit Facility Agent, and their legal and financial advisors a variance calculation (the "**Variance Report**") setting forth actual receipts and disbursements for the preceding two weeks (each a "**Testing Period**") as against the then-current DIP Budget, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report to be promptly discussed with the Interim Lenders, the Existing Credit Facility Agent, and their legal and financial advisors, if so requested. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Testing Period.

15. **EVIDENCE OF INDEBTEDNESS:** The Interim Lenders' accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Interim Lenders pursuant to the Interim Facility. Each Interim Lender may, from time to time, require the Borrower to execute and deliver promissory notes evidencing the Borrower's liability hereunder to each

such Interim Lender.

16. **PREPAYMENTS:** Provided the Monitor (i) is satisfied that the Credit Parties have sufficient cash reserves to satisfy (a) amounts secured by any Permitted Priority Liens (other than those Permitted Priority Liens identified in subsections (vi) and (vii) of the definition of "Permitted Priority Liens") senior to the Interim Lenders' Charge, and (b) obligations set forth in the DIP Budget that the Credit Parties have incurred from and after the Filing Date for which payment has not been made (collectively, the "**Priority Payables Reserve**") and (ii) provides its consent, the Borrower may prepay any amounts outstanding under the Interim Facility at any time prior to the Maturity Date. Any amount repaid may not be reborrowed and shall be paid to the Interim Lenders on a pro rata basis. In the event that less than all of the Interim Facility Obligations are repaid using the proceeds of any debt obligations that are secured in whole or in part by Liens in the Collateral, such Liens shall be junior in all respects to the Liens in the Collateral held by the Interim Lenders to secure any remaining Interim Facility Obligations (including those related to any October Advances).

17. **INTEREST RATE:** Interest shall be payable on the aggregate outstanding amount of the Facility Amount that has been advanced to the Borrower from the date of the funding thereof at a rate equal to 5.25% *per annum*, compounded monthly and payable monthly in arrears in cash on the last Business Day of each month, with the first such payment being made on June 30, 2020. Upon the occurrence and during the continuation of an Event of Default, all overdue amounts shall bear interest at the applicable interest rate plus 2% *per annum* payable on demand in arrears in cash. All interest shall be computed on the basis of a 360-day year of twelve 30-day months, provided that, whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis for such determination.

No structuring or transaction fee shall be payable to the Interim Lenders as part of the Interim Facility.

The parties shall comply with the following provisions to ensure that the receipt by the Interim Lenders of any payments under this Term Sheet does not result in a breach of section 347 of the *Criminal Code* (Canada):

(a) If any provision of this Term Sheet would obligate the Credit Parties to make any payment to the Interim Lenders of an amount that constitutes "interest", as such term is defined in the *Criminal Code* (Canada) and referred to in this section as "**Criminal Code Interest**", during any one-year period after the date of the funding of the Facility Amount in an amount or calculated at a rate which would result in the receipt by the Interim Lenders of Criminal Code Interest at a criminal rate (as defined in the *Criminal Code*

(Canada) and referred to in this section as a "**Criminal Rate**"), then, notwithstanding such provision, that amount or rate during such one-year period shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the Interim Lenders during such one-year period of Criminal Code Interest at a Criminal Rate, and the adjustment shall be effected, to the extent necessary, as follows:

(i) *first*, by reducing the amount or rate of interest required to be paid to the Interim Lenders during such one-year period; and

(ii) *thereafter*, by reducing any other amounts (other than costs and expenses) (if any) required to be paid to the Interim Lenders during such one-year period which would constitute Criminal Code Interest.

(b) Any amount or rate of Criminal Code Interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any portion of the Interim Facility remains outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code Interest shall be *pro-rated* over the period commencing on the date of the advance of the Facility Amount and ending on the relevant Maturity Date (as may be extended by the Interim Lenders from time to time under this Term Sheet) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Interim Lenders shall be conclusive for the purposes of such calculation and determination.

18. **CURRENCY:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America and all payments made by the Credit Parties under this Term Sheet shall be in United States dollars. If any payment is received by the Interim Lenders hereunder in a currency other than United States dollars, or, if for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties hereby agree, to the fullest extent permitted by Applicable Law, that the rate of exchange used shall be the rate at which the Interim Lenders are able to purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which such payment is made or final judgment is given.

19. **MANDATORY REPAYMENTS:** Unless otherwise consented to in writing by (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), the Interim Facility shall, subject to retention of the Priority Payables Reserve, be promptly repaid and the Facility Amount shall be permanently reduced upon a sale, realization or disposition of or with respect to any assets or property of the Credit Parties or any of their subsidiaries (including obsolete, excess or worn-out Collateral) (a) out of

the ordinary course of business, including any sale or disposition of working capital assets, equipment, machinery and other operating or fixed assets and realizations of accounts receivable or (b) inventory, including diamond inventory (whether in or out of the ordinary course of business), in each case in an amount equal to the net cash proceeds of such sale, realization or disposition (for greater certainty, net of transaction fees (including, without limitation, shipping expenses and commissions payable in connection with such sale, realization or disposition) and applicable taxes in respect thereof). Any amount repaid may not be reborrowed and shall be paid to the Interim Lenders on a pro rata basis.

20. **REPS AND WARRANTIES:** Each of the Credit Parties on a joint and several basis, represents and warrants to the Interim Lenders, upon which the Interim Lenders are relying in entering into this Term Sheet and the other Credit Documents, that:

(a) The transactions contemplated by this Term Sheet and the other Credit Documents, upon the granting of the Amended Initial Order:

(i) are within the powers of such Credit Party;

(ii) have been duly executed and delivered by or on behalf of such Credit Party;

(iii) constitute legal, valid and binding obligations of the Credit Parties, enforceable against the Credit Parties in accordance with their terms;

(iv) do not require any material authorization from, the consent or approval of, registration or filing with, or any other action by, any governmental authority or any third party; and

(v) will not violate the charter documents, articles by-laws or other constating documents of such Credit Party or any Applicable Law relating to such Credit Party;

(b) The business operations of the Credit Parties have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the business has been or is carried out;

(c) The Credit Parties own their assets and undertaking free and clear of all Liens other than Permitted Liens;

(d) Each Credit Party has been duly formed and is validly existing under the law of its jurisdiction of incorporation;

(e) All Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms and no Credit Party has any knowledge of any material default that has occurred and is continuing thereunder (other than those defaults arising as a result of the commencement of the Restructuring Proceedings) or are not otherwise stayed by the Amended Initial Order and no proceedings have been commenced or threatened to

revoke or amend any Material Contracts;

(f) The Credit Parties are not aware of any introduction, amendment, repeal or replacement of any law or regulation, not related to the COVID 19 pandemic, being made or proposed which could reasonably be expected to have a material adverse effect on the Credit Parties or their respective businesses;

(g) There are no agreements of any kind between any Credit Party and any other third party or any holder of debt or equity securities of any Credit Party with respect to any Restructuring Transaction (i) as at the date hereof except for (A) this Term Sheet, (B) the agreement in respect of the Stalking Horse Transaction as of the date hereof, (C) any non-disclosure agreement entered into in connection with or in furtherance of a potential Restructuring Transaction, and (ii) as at any subsequent date, except for (A) any agreement effecting a Replacement Stalking Horse Bid, and (B) any agreement effecting a Successful Bid (other than the Stalking Horse Transaction) each as defined in the SISP and disclosed to the Interim Lenders;

(h) No Default or Event of Default has occurred and is continuing;

(i) No Credit Party is required to be registered as an "investment company" under the Investment Company Act of 1940 of the United States;

(j) No part of the proceeds of the Interim Facility will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U and Regulation X of the Board of Governors of the Federal Reserve System of the United States; and

(k) The Credit Parties have disclosed to the Interim Lenders the following with respect to the diamond inventory held by the Credit Parties and/or their subsidiaries (a) the amount and value of such inventory; (b) the location of such inventory; and (c) the amount of insurance coverage for all such inventory, in each case presented in a manner and with detail consistent with the Credit Parties' ordinary course internal accounting practices. The Credit Parties shall maintain at all times the insurance coverage disclosed to the Interim Lenders.

21. **AFFIRMATIVE COVENANTS:** Each Credit Party agrees to do, or cause to be done, with respect to itself and each of its subsidiaries, the following:

(a) (i) Allow representatives or advisors of the Required Interim Lenders and the Existing Credit Facility Agent reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Credit Parties, and (ii) cause management, the financial advisor and/or legal counsel of each Credit Party to

cooperate with reasonable requests for information by the Required Interim Lenders and the Existing Credit Facility Agent and their legal and financial advisors, in each case subject to solicitor-client privilege, all Court Orders and applicable privacy laws, in connection with matters reasonably related to the Interim Facility, the Restructuring Proceedings or compliance of the Credit Parties with their obligations pursuant to this Term Sheet;

(b) Deliver to the Required Interim Lenders and the Existing Credit Facility Agent the reporting and other information from time to time reasonably requested by it and as set out in this Term Sheet including, without limitation, the Variance Reports at the times set out herein;

(c) Use the proceeds of the Interim Facility only in accordance with the restrictions set out in this Term Sheet and pursuant to the DIP Budget and the CCAA Orders;

(d) Comply with the provisions of (i) the Amended Initial Order, the SISP and all other orders of the Court entered in connection with the CCAA Proceedings (each a "**CCAA Order**") and (ii) to the extent applicable, the Recognition Order and all other orders of the Bankruptcy Court entered in connection with the Chapter 15 Proceedings (each a "**Bankruptcy Court Order**");

(e) Preserve, renew and keep in full force its corporate existence;

(f) Conduct its business in accordance with and otherwise comply with the DIP Budget, subject to the Permitted Variance;

(g) Promptly notify the Interim Lenders and the Existing Credit Facility Agent of the occurrence of any Default or Event of Default or any event or circumstance that may materially affect the DIP Budget, including any material change in its contractual arrangements or relationships with third parties;

(h) Comply, in all material respects, with Applicable Law, except to the extent not required to do so pursuant to any Court Order;

(i) Provide the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel draft copies of all motions, applications, proposed Court Orders and other materials or documents that any of Credit Parties intend to file in the Restructuring Proceedings at least three (3) Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible and in any event not less than one (1) day prior to the date on which such motion, application, proposed order or other materials or documents are served on the service list in respect of the applicable Restructuring Proceeding; *provided* that motion materials and similar pleadings that affect the Interim Lenders, the Stalking Horse Transaction or the SISP shall

be reasonably satisfactory to the Required Interim Lenders and the Existing Credit Facility Agent;

(j) Take all actions necessary or available to defend the Court Orders that affect the Interim Lenders, the Stalking Horse Transaction, the Collateral or the SISP from any appeal, reversal, modifications, amendment, stay or vacating, unless expressly agreed to in writing in advance by the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion;

(k) Promptly provide notice to the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, and of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over the Credit Parties in respect of such Material Contract (other than in each case, routine or administrative materials or correspondence);

(l) Provide the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel with draft copies of all material letters, submissions, notices, or other materials or correspondence that any of the Credit Parties intend to file with or submit to any regulatory authority having jurisdiction over the Credit Parties relating to any Material Contract (other than in each case, routine or administrative materials or correspondence), at least three (3) Business Days prior to such submission or filing or, where it is not practically possible to do so within such time, as soon as possible;

(m) Execute and deliver, or cause each Credit Party (as applicable) to execute and deliver, loan and collateral security documentation (including any guarantees in respect of the Interim Financing Obligations) including, without limitation, such security agreements, financing statements, discharges, opinions or other documents and information, in form and substance satisfactory to the (x) Required Interim Lenders and their counsel and (y) Existing Credit Facility Agent and its counsel;

(n) Complete all necessary Lien and other searches (other than in the Mining Recorder's Office, Department of Industry, Tourism and Investment of the Government of the Northwest Territories for such time as the same cannot be completed during the COVID-19 pandemic) against the Credit Parties, together with all registrations, filings and recordings wherever the Required Interim Lenders deem appropriate, to satisfy (x) Required Interim Lenders and their counsel and (y) Existing Credit Facility Agent and its counsel that there are no Liens affecting the Credit Parties' Collateral except Permitted Liens;

(o) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Credit Parties with financially sound and reputable insurers in coverage and scope acceptable to the Required Interim Lenders and cause Washington Diamond to be listed as the loss payee or additional insured (as applicable) on such insurance policies;

(p) Pay all Interim Lender Expenses and expenses of the Existing Credit Facility Agent in accordance with the DIP Budget;

(q) Promptly upon becoming aware thereof, provide details of the following to the Required Interim Lenders and the Existing Credit Facility Agent:

(i) any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against any Credit Party, by or before any court, tribunal, Governmental Authority or regulatory body, which are not stayed by the Amended Initial Order and would be reasonably likely to result, individually or in the aggregate, in a judgment in excess of CDN$500,000, and

(ii) any existing (or threatened in writing) default or dispute with respect to any of the Material Contracts which are not stayed by the Amended Initial Order;

(r) Strictly comply with the terms of the SISP;

(s) Deliver the Budgets and Variance Reports required under Section 14;

(t) In the event that any creditor of any Credit Party or its affiliates or any other party commences or pursues litigation or claims against any Credit Party or any affiliate of any Credit Party in the United States or against property of the Credit Party or its affiliates located in the United States, which the Credit Parties reasonably determine, in consultation with the Required Interim Lenders and the Existing Credit Facility Agent, is not likely to be stayed in the CCAA Proceedings, the applicable Credit Party, in consultation with the Required Interim Lenders and the Existing Credit Facility Agent, shall initiate, or shall cause its affiliate to initiate, proceedings under Chapter 15 of the Bankruptcy Code (the "**Chapter 15 Proceedings**") in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). The Credit Parties shall pursue a final order (the "**Recognition Order**") recognizing the CCAA Proceedings as foreign main proceedings pursuant to the Bankruptcy Code, approving, authorizing and granting the full availability of the Facility Amount and the priority of the Interim Lenders' Charge on the terms of this Term Sheet, and containing such other relief as the Credit Parties, in consultation with the

Required Interim Lenders and the Existing Credit Facility Agent, determine is necessary, which Recognition Order shall be in form and substance satisfactory to the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion;

(u) Take all actions necessary or available to defend the subsidiaries of the Credit Parties and their property from any and all material pending and threatened litigation or claims; and

22. **NEGATIVE COVENANTS:** The Credit Parties covenant and agree not to do, or cause not to be done, with respect to itself and each of its subsidiaries, the following, other than with the prior written consent of the Required Interim Lenders and the Existing Credit Facility Agent to the extent express consent of the Existing Credit Facility Agent is required below:

(a) Transfer, lease or otherwise dispose of all or any part of their property, assets or undertaking outside of the ordinary course of business, except for the disposition of obsolete or worn out equipment or assets consistent with past practice, or assets of nominal value and in accordance with the Amended Initial Order and this Term Sheet;

(b) Make any payment, including, without limitation, any payment of principal, interest or fees, in respect of pre-filing indebtedness, or in respect of any other pre-filing liabilities, including payments with respect to pre-filing trade or unsecured liabilities of the Credit Parties, other than in accordance with the Amended Initial Order or any subsequent Court Order and the DIP Budget provided that the Credit Parties shall pay the Interim Lender Expenses pursuant to the terms of this Term Sheet.

(c) (i) Create or permit to exist any indebtedness other than (A) the indebtedness existing as of the date of this Term Sheet, (B) the Interim Financing Obligations, (C) post-filing trade payables or other unsecured obligations incurred in the ordinary course of business on or following the Filing Date in accordance with the DIP Budget and the Amended Initial Order, and (D) any obligations (including cash call or reclamation obligations) under any Joint Venture to which any Credit Party is party (ii) make or give any financial assurances, in the form of bonds, letter of credit, financial guarantees or otherwise to any Person or Governmental Authority other than with the prior written consent of (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(d) Make (i) any distribution, dividend, return of capital or other distribution in respect of equity securities (in cash, securities or other property or otherwise); or (ii) a retirement, redemption, purchase or repayment or other acquisition of equity securities or indebtedness (including any payment of principal, interest, fees or any other payments thereon) other than with the prior written

consent of (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(e) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than in accordance with the DIP Budget other than with the prior written consent of the (x) Required Interim Lenders in their sole and absolute discretion and (y) Existing Credit Facility Agent in its reasonable discretion;

(f) Except as may be otherwise ordered by the Court, pay, incur any obligation to pay, or establish any retainer with respect to the fees, expenses or disbursements of a legal, financial or other advisor of any party, other than (i) the Monitor and its legal counsel, (ii) the respective legal, financial and other advisors of the Credit Parties, the Interim Lenders and the Existing Credit Facility Agent, in each case engaged as of the date hereof, and (iii) such other parties as the Court may expressly order unless such fees, expenses or disbursements, as applicable, are reviewed and confirmed in advance by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent in its reasonable discretion; provided however, in all cases, no fees, expenses, or disbursements shall be paid or reimbursed and no retainer shall be established to fund any challenges or objections to the Interim Facility, the Stalking Horse Transaction (including the sale approval hearing), or the SISP or to fund any litigation or pursuit of claims (including diligence or discovery) against any Interim Facility Lender or any of its affiliates in any capacity;

(g) Create or permit to exist any Liens on any of its properties or assets other than the Permitted Liens;

(h) Challenge or fail to support the Liens and claims of the Interim Lenders;

(i) Create or establish any employee retention plan or similar benefit plan for any employees of any of the Credit Parties, except as reflected in the approved DIP Budget;

(j) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Budget, subject to the Permitted Variance;

(k) Terminate any Material Contract or amend any Material Contract in any material manner except with the prior consent of the Required Interim Lenders acting reasonably;

(l) Seek to obtain, or consent to or fail to oppose a motion brought by any other Person for, approval by the Court or the Bankruptcy Court of any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the

(x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(m) Amalgamate, consolidate with or merge into or sell all or substantially all of their assets to another entity, or change their corporate or capital structure (including their organizational documents) or enter into any agreement committing to such actions except pursuant to (i) a Permitted Restructuring Transaction, or (ii) a Restructuring Transaction other than a Permitted Restructuring Transaction with the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(n) Make an announcement in respect of, enter into any agreement or letter of intent with respect to, or attempt to consummate, or support an attempt to consummate by another party, any transaction or agreement outside the ordinary course of business except for a Permitted Restructuring Transaction;

(o) Enter into, extend, renew, waive or otherwise modify in any respect the terms of any existing operational arrangement without the prior approval of the Monitor, provided that, where this Term Sheet otherwise contains express provisions or restrictions with respect to particular operational arrangements or categories of operational arrangements, such express provisions or restrictions shall apply;

(p) Seek, obtain, support, make or permit to be made any Court Order or any change, amendment or modification to any Court Order in respect of any amendment relating to the Interim Facility, the SISP or any other matter that affects the Interim Lenders, except with the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion or as contemplated by the SISP;

(q) Enter into any settlement agreement or agree to any settlement arrangements with any Governmental Authority or regulatory authority in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against any one of them without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), or make any payments or repayments to customers outside the ordinary course of business, other than those set out in the DIP Budget;

(r) Without the approval of the Court or the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion, cease to carry on their business or any material activities as currently being conducted or modify or alter in any material manner the nature and

type of their operations or business;

(s) Seek, or consent to the appointment of, a receiver or licensed insolvency trustee or any similar official in any jurisdiction; or

(t) Use, whether directly or indirectly, and whether immediately, incidentally or ultimately, any proceeds of the Interim Facility for any purpose that results in a violation of the provisions of Regulation U of the Board of Governors of the Federal Reserve System of the United States.

23. **EVENTS OF DEFAULT:** The occurrence of any one or more of the following events shall constitute an event of default (each an "**Event of Default**") under this Term Sheet:

(a) Failure of the Borrower to pay principal, interest or other amounts when due pursuant to this Term Sheet or any other Credit Documents;

(b) Failure of any Credit Party to perform or comply with any term, condition, covenant or obligation pursuant to this Term Sheet or any other Credit Document and such failure remains unremedied for more than three (3) Business Days, *provided that*, where another provision in this Section 23 provides for a shorter or no cure period in respect of a particular Event of Default, such other provision shall apply;

(c) Any representation or warranty by a Credit Party made or deemed to be made in this Term Sheet or any other Credit Document is or proves to be incorrect or misleading in any material respect as of the date made or deemed to be made;

(d) Issuance of any Court Order (i) dismissing the Restructuring Proceedings or lifting the stay of proceedings therein to permit the enforcement of any security against any Credit Party or their Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receivership order against or in respect of any Credit Party, in each case which order is not stayed pending appeal thereof, and other than in respect of a non-material asset not required for the operations of any Credit Party's business and which is subject to a Permitted Priority Lien; (ii) granting any other Lien in respect of the CCAA Applicants' Collateral that is in priority to or *pari passu* with the Interim Lenders' Charge other than as permitted pursuant to this Term Sheet, (iii) modifying this Term Sheet or any other Credit Document without the prior written consent of the Interim Lenders and the Existing Credit Facility Agent in their sole and absolute discretion; (iv) commencing any proceedings in respect of the Credit Parties pursuant to Chapter 7 or Chapter 11 of the Bankruptcy Code; (v) approving a Restructuring Transaction, other than a Permitted Restructuring Transaction, that has not been previously consented to in writing by the Interim

Lenders and the Existing Credit Facility Agent, (vi) staying, reversing, vacating or otherwise modifying any Court Order relating to the Interim Facility, the SISP or any other matter that affects the Interim Lenders without the prior written consent of the (x) Supermajority Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion (except as contemplated by the SISP itself) or (vii) limiting or conditioning the right of the Interim Lenders to credit bid pursuant to Section 32 hereof;

(e) Unless consented to in writing by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, the expiry without further extension of the stay of proceedings provided for in the Amended Initial Order;

(f) (i) a Variance Report or Updated DIP Budget is not delivered when due under this Term Sheet or (ii) in respect of any Testing Period, there shall exist a variance in excess of the Permitted Variance for the period for which the Variance Report is prepared;

(g) Unless consented thereto in writing by (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), the filing by any of the Credit Parties of any motion or proceeding that (i) is not consistent with any provision of this Term Sheet, the Credit Documents, the Amended Initial Order, the Recognition Order (if applicable), or the SISP, as applicable, (ii) could otherwise be expected to have a material adverse effect on the interests of the Interim Lenders, (iii) seeks to continue the CCAA Proceedings under the jurisdiction of a court other than the Court, (iv) seeks to dismiss or convert the Chapter 15 Proceedings (if any), or (v) seeks to initiate any restructuring or insolvency proceedings other than the Restructuring Proceedings in any court or jurisdiction;

(h) Any proceeding, motion or application shall be commenced or filed by any Credit Party, or if commenced by another party, supported, remain unopposed or otherwise consented to by any Credit Party, seeking approval of any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent;

(i) The making by any Credit Party of a payment of any kind that is not permitted by this Term Sheet or the Credit Documents or is not in accordance with the DIP Budget, subject to the Permitted Variance;

(j) Except as stayed by order of the Court or the Bankruptcy Court or consented to by the Required Interim Lenders, a default under, revocation or cancellation of, any Material Contract;

(k) The denial or repudiation by any Credit Party of the legality, validity, binding nature or enforceability of this Term Sheet or any other Credit Documents;

(l) Except as stayed by order of the Court, the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of CDN$500,000 in the aggregate, against any Collateral, any Credit Party or any Credit Party's subsidiaries or such subsidiaries' property that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy;

(m) The Credit Parties or their affiliates (including any joint ventures in which the Credit Parties or their affiliates hold an interest) resuming mining operations without the consent of Washington Diamond in its sole and absolute discretion; *provided* that no Event of Default shall be deemed to have occurred based on a continuation of operations at the Diavik mine;

(n) The Credit Parties or their affiliates resume sales of diamond inventory to third parties; *provided*, *however*, that no Event of Default will be deemed to have occurred by virtue of a sale of diamond inventory from one Credit Party or an affiliate of a Credit Party to any other Credit Party or an affiliate of a Credit Party; *provided*, *further*, *however*, that no Event of Default shall be deemed to have occurred in the event that the Credit Parties or their affiliates undertake any sales of diamond inventory with the prior written consent of Washington Diamond, such consent not to be unreasonably withheld;

(o) Any Milestone set forth on **Schedule E** hereof shall not be satisfied; or

(p) The use of any proceeds of the Interim Facility to fund any obligations (including cash call or reclamation obligations) under any Joint Venture to which any Credit Party is party, without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion.

24. **REMEDIES:** Upon the occurrence of an Event of Default, and subject to the Court Orders, Washington Diamond may, and at the direction of the Required Interim Lenders shall, on behalf of itself and each of the Interim Lenders, in its sole and absolute discretion, elect to terminate the commitments hereunder and declare the Interim Financing Obligations to be immediately due and payable and refuse to permit further Advances. In addition, upon the occurrence of an Event of Default, Washington Diamond may, on behalf of itself and each of the Interim Lenders, in its sole and absolute discretion, subject to the Court Orders including any notice provision

contained therein:

(a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the CCAA Applicants or their Collateral, or for the appointment of a trustee in bankruptcy of the Borrower or any of the other Credit Parties;

(b) set-off or combine any amounts then owing by any Interim Lender to any Credit Party against the obligations of any of the Credit Parties to any Interim Lender hereunder;

(c) exercise the powers and rights of a secured party under the Personal Property Security Act (Alberta), or any federal, provincial, territorial or state legislation of similar effect; and

(d) exercise all such other rights and remedies under this Term Sheet, the Court Orders and Applicable Law.

In the event that, following the exercise of remedies set forth in this Section 24 and provided that Washington Diamond has taken possession of and holds, through an exercise of rights and remedies, any Collateral constituting diamonds, then for a period of 60 days (the "**Initial Holding Period**"), Washington Diamond shall hold such diamonds for the benefit of itself, the other Interim Lenders, the Existing Credit Facility Lenders and the Existing Credit Facility Agent. At all times during and after the Initial Holding Period, subject to the terms of this Section 24, (i) Washington Diamond shall have the right, but not the obligation, to purchase (x) from the remaining Interim Lenders, upon at least five (5) days prior written notice from Washington Diamond to the remaining Interim Lenders (which purchase may be made in the sole and absolute discretion of Washington Diamond), all Interim Financing Obligations held by such remaining Interim Lenders, and (y) from the Existing Credit Facility Lenders, upon at least five (5) days written notice from Washington Diamond to the Existing Credit Facility Agent (which purchase may be made in the sole and absolute discretion of Washington Diamond), all Obligations (as defined in the Existing Credit Agreement) and all Liens securing such Obligations held by such Existing Credit Facility Lenders (the right described in this subparagraph (ii), the "**Washington Diamond Call Right**"), and (ii) the Existing Credit Facility Lenders that are participating in the Interim Facility as Interim Lenders (the "**Participating Credit Facility Interim Lenders**") shall, upon at least five (5) days prior written notice from such Participating Credit Facility Interim Lenders to Washington Diamond (which purchase may be made in the sole and absolute discretion of the Participating Credit Facility Interim Lenders), have the right, but not the obligation, to purchase from Washington Diamond all (but not less than all) Interim Financing Obligations held by Washington Diamond (the right described in this subparagraph (ii), the "**Participating Credit Facility Interim Lender Call Right**"). The Participating Credit Facility Interim Lenders shall be prohibited from issuing a notice triggering the Participating Credit Facility Interim Lender Call Right if, at the time of issuing such notice, Washington Diamond has issued a notice triggering the Washington Diamond Call

Right. Washington Diamond shall be prohibited from issuing a notice triggering the Washington Diamond Call Right if, at the time of such notice, the Participating Credit Facility Interim Lenders have issued a notice triggering the Participating Credit Facility Interim Lender Call Right.

In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, the Participating Credit Facility Interim Lenders shall be required to, upon at least five (5) days written notice from Washington Diamond to the Existing Credit Facility Agent (which request may be made in the sole and absolute discretion of Washington Diamond), purchase from Washington Diamond all (but not less than all) Interim Financing Obligations held by Washington Diamond at par *plus* any interest, fees, and expenses incurring during and after the Initial Holding Period (the obligation of the Participating Credit Facility Interim Lenders set forth in this paragraph, the "**Participating Credit Facility Interim Lender Put Obligation**"). Washington Diamond or the Participating Credit Facility Interim Lenders (as applicable) shall close any transactions related to the Washington Diamond Call Right, the Participating Credit Facility Interim Lender Call Right, or the Participating Credit Facility Interim Lender Put Obligation as promptly as possible, but in no event later than 10 days following the issuance of the notice triggering such right or obligation.

If the Participating Credit Facility Interim Lender Call Right or the Participating Credit Facility Interim Lender Put Obligation is exercised, the proceeds resulting from recovery from the sale of the Collateral constituting diamonds shall be distributed: (i) first, to all costs and expenses incurred by or on behalf of the Existing Credit Facility Agent; (ii) second, to the Participating Credit Facility Lenders in respect of their pro-rata contributions to the Interim Facility; (iii) third, to the Participating Credit Facility Lenders in respect of their pro rata contributions to the Existing Credit Facility, and (iv) fourth, to the remaining Existing Credit Facility Lenders who are not Participating Credit Facility Interim Lenders in respect of their pro rata contributions to the Existing Credit Facility. If there are no Participating Credit Facility Interim Lenders, the Participating Credit Facility Interim Lender Put Obligation shall be that of the Existing Credit Facility Agent unless the Existing Credit Facility Agent has issued a Diamonds Sale Request in accordance with the terms hereof.

In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, provided that Washington Diamond has not issued a notice triggering the Participating Credit Facility Interim Lender Put Obligation and the Existing Credit Facility Agent has not issued a Diamonds Sale Request, Washington Diamond shall be permitted to liquidate the diamond inventory, with the proceeds being distributed in priority as among the Interim Facility Lender and the Existing Credit Facility Lenders in accordance with the Lien priority provisions hereof. Subject to the immediately preceding sentence, five (5) days prior to any sale of the diamond inventory set forth in this paragraph, Washington Diamond shall issue a written notice to the Existing Credit Facility Agent of Washington Diamonds' intention to sell such

diamond inventory, during which notice period, the Participating Credit Facility Interim Lenders will be permitted to exercise the Participating Credit Facility Interim Lender Call Right. In the event that the Participating Credit Facility Interim Lender Call Right, to the extent applicable, is not exercised during this five (5) day notice period, such Participating Credit Facility Interim Lender Call Right shall be deemed to have been irrevocably waived.

Notwithstanding the foregoing, during the Initial Holding Period of 60 days, the Existing Credit Facility Agent may issue to Washington Diamond a written notice, requesting Washington Diamond to sell all the diamonds that are Collateral of the Interim Lenders ("**Diamonds Sale Request**").

Upon the issuance of a Diamonds Sale Request:

- The Participating Credit Facility Interim Lender Call Right, any right of purchase of the Interim Facility Obligations and the Participating Credit Facility Interim Lender Put Obligations shall be void and no longer exercisable;

- Any subordination with respect to the October Advance shall be terminated and the October Advance, if advanced in part or in whole, shall rank equal in priority to all other Interim Facility Obligations; and

- Washington Diamond shall have 10 days to respond to such request, pursuant to which it will either accept or reject the Diamonds Sale Request.

Rejection of Diamonds Sale Request:

- Washington Diamond shall have no liability to the Existing Credit Facility Agent or Existing Credit Facility Lenders in connection with a rejection of the Diamonds Sale Request, including, without limitation, the timing of any future disposition of diamonds, but such rejection shall not relieve Washington Diamond of any obligation under Applicable Law with respect to the manner of disposition of Collateral.

Acceptance of Diamonds Sale Request

- Any disposition of diamonds shall be permitted to be sold in one or more transactions, in Washington Diamond's sole and absolute discretion, including without limitation, with respect to the timing, process, and manner of such disposition; and

- Washington Diamond shall have no liability of any kind to the Existing Credit Facility Agent or the Existing Credit Facility Lenders with respect to the disposition of any diamonds, including without limitation the timing, process, and manner of disposition, and the Existing Credit Facility Agent and the Existing Credit

Facility Lenders covenant not to sue or otherwise take any action with respect to such disposition, except for any claims that Washington Diamond's conduct with respect to the process and manner of such disposition(s) constitutes gross negligence or willful misconduct.

The Parties acknowledge and agree that any sale of diamonds by auction, and any direct to customer sale in a manner generally consistent with past practice, shall be deemed by all parties to be commercially reasonable.

25. **RIGHT OF REPURCHASE**

In the event that the purchase agreement governing the Stalking Horse Transaction is terminated, the Existing Credit Facility Lenders shall have the right, but not the obligation, to purchase from the Interim Lenders, upon at least five (5) days prior written notice from the Existing Credit Facility Lenders to Washington Diamond (which request may be made in the sole and absolute discretion of the Existing Credit Facility Lenders) either:

(a) all outstanding Interim Facility Obligations (including, for the avoidance of doubt, any accrued and unpaid interest, expenses and fees as of the date of such purchase); or

(b) a portion of the Advances made by the Interim Lenders, together with a ratable portion of accrued and unpaid interest, expenses and fees associated with such Advances (such purchase, a "**Partial Purchase**").

In the Event of a Partial Purchase, any remaining Interim Facility Obligations shall be senior in priority in all respects relative to any financing used to facilitate such Partial Purchase.

26. **INDEMNITY AND RELEASE:**

The Credit Parties agree, on a joint and several basis, to indemnify and hold harmless each of the Interim Lenders and their respective directors, officers, employees, agents, attorneys, counsel and advisors (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person (collectively, "**Claims**") as a result of or arising out of or in any way related to the Interim Facility or this Term Sheet and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim; *provided*, *however*, the Borrower and other Credit Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence, wilful misconduct or bad faith of the applicable Indemnified Person as finally determined by a court of competent jurisdiction, or (y) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Borrower or the other Credit Parties. None of the Interim Lenders, the

Indemnified Persons, nor the Credit Parties shall be responsible or liable to any other person for consequential or punitive damages.

Notwithstanding anything to the contrary herein, the indemnities granted under this Term Sheet shall survive any termination of the Interim Facility.

27. **TAXES:** All payments by the Borrower and any other Credit Parties under this Term Sheet to the Interim Lenders, including any payments required to be made from and after the exercise of any remedies available to the Interim Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any Governmental Authority country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes are required by Applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to any Interim Lender under this Term Sheet, the amount so payable to such Interim Lender shall be increased by an amount necessary to yield to such Interim Lender on a net basis after payment of all Withholding Taxes, the amount payable under this Term Sheet at the rate or in the amount specified herein and the Borrower shall provide evidence satisfactory to such Interim Lender that the Taxes have been so withheld and remitted.

If the Credit Parties pay an additional amount to an Interim Lender to account for any deduction or withholding, such Interim Lender shall, at the sole cost and expense of the Credit Parties, reasonably cooperate with the applicable Credit Parties to obtain a refund of the amounts so withheld and paid to the Interim Lender. Any refund of an additional amount so received by such Interim Lender, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund which such Interim Lender determines in its sole discretion will leave it, after such payment, in no better or worse position than it would have been if no additional amounts had been paid to it), net of all out of pocket expenses of such Interim Lender, shall be paid over by such Interim Lender to the applicable Credit Parties promptly. If reasonably requested by the Credit Parties, such Interim Lender shall apply to the relevant Governmental Authority to obtain a waiver from such withholding requirement, and such Interim Lender shall reasonably cooperate, at the sole cost and expense of the Credit Parties, with the applicable Credit Parties and assist such Credit Parties to minimize the amount of deductions or withholdings required. The Credit Parties, upon the request of such Interim Lender, shall repay any portion of the amount repaid by such Interim Lender pursuant to this Section 27 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Interim Lender is required to repay such portion of the refund to such Governmental Authority. This Section 27 shall not be construed to require any of the Interim Lenders to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person. The Interim Lenders shall not by virtue of anything in this

Term Sheet or any other Credit Document be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund on behalf of the Credit Parties.

28. **FURTHER ASSURANCES:** The Credit Parties shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Required Interim Lenders may reasonably request for the purpose of giving effect to this Term Sheet.

29. **ENTIRE AGREEMENT; CONFLICT:** This Term Sheet, including the schedules hereto and any other Credit Documents delivered in connection with this Term Sheet, constitute the entire agreement between the parties relating to the subject matter hereof.

30. **AMENDMENTS, WAIVERS, ETC.:** No waiver or delay on the part of the Interim Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing (including by e-mail) by the Required Interim Lenders, the Supermajority Interim Lenders, Washington Diamond, the Existing Credit Facility Agent, or each Interim Lender (as applicable) and delivered in accordance with the terms of this Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given.

31. **ASSIGNMENT:** Subject to the consent of Washington Diamond (not to unreasonably withheld), any Interim Lender may assign this Term Sheet and its rights and obligations hereunder, in whole or in part, to any affiliate of an Interim Lender in its discretion (subject in all cases to (i) providing the Monitor and the other Interim Lenders with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of such Interim Lender hereunder, and (ii) the assignee providing notice to the Credit Parties to confirm such assignment). Neither this Term Sheet nor any right or obligation hereunder may be assigned by any Credit Party.

32. **CREDIT BIDDING**: In any sale of any Credit Party's Collateral, Washington Diamond, on behalf of itself and each of the other Interim Lenders shall be permitted, in its sole and absolute discretion, to credit bid up to the full amount of the then outstanding Interim Financing Obligations; *provided* that, prior to making any such credit bid, Washington Diamond shall obtain the prior consent of the Existing Credit Facility Agent, such consent not to be unreasonably withheld; *provided further* that such consent shall not be required for any credit bid submitted by any affiliate of Washington Diamond in connection with the Stalking Horse Transaction or any substantially similar transaction, subject to the repayment in full in cash of any Advances (plus accrued interest, expenses, and fees) held by Interim Lenders other than Washington Diamond and its affiliates.

33. **SEVERABILITY:** Any provision in this Term Sheet which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

34. **NO THIRD PARTY BENEFICIARY:** No person, other than the Credit Parties, the Interim Lenders and the Indemnified Persons, is entitled to rely upon this Term Sheet and the parties expressly agree that this Term Sheet does not confer rights upon any other party.

35. **COUNTERPARTS AND SIGNATURES:** This Term Sheet may be executed in any number of counterparts and by electronic transmission including "pdf email", each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

36. **NOTICES:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent email to the such Person at its address set out on its signature page hereof, with a copy to counsel. Any such notice, request or other communication hereunder shall be concurrently sent to the Monitor and its counsel.

Any such notice shall be deemed to be given and received when received, unless received after 5:00 p.m. Eastern Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

37. **ENGLISH LANGUAGE:** The parties hereto confirm that this Term Sheet and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*

38. **GOVERNING LAW AND JURISDICTION:** This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. Without prejudice to the ability of the Interim Lender to enforce this Term Sheet in any other proper jurisdiction, the Credit Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

39. **JOINT & SEVERAL:** The obligations of the Credit Parties hereunder are joint and several.

40. **CONSENTS AND APPROVALS** No Interim Lender shall have any liability to any other Interim Lender or any other person by virtue of making, providing, or taking or not making, providing, or taking any consent, acceptance, waiver, modification, agreement, determination, election, permission, or action hereunder, or by taking or not taking any other action permitted or contemplated hereby (including, without limitation, any consent, acceptance, waiver, modification, agreement, determination, election, permission, or action taken or not taken in connection with the enforcement by the Interim Lenders of any remedies against the Collateral or the Credit Parties hereunder).

41. **SUPPORT OF TRANSACTION** By executing this Term Sheet, each Interim Lender, each Existing Credit Facility Lender, and the Existing Credit Facility Agent agree that it will:

(a) Cooperate with each other Interim Lender, Existing Credit Facility Lender and the Existing Credit Facility Agent with respect to the SISP, the Stalking Horse Transaction or the implementation thereof, and to use commercially reasonable efforts to pursue and support implementation of the same;

(b) Not vote for, consent to, support or participate in the formulation of any other restructuring, exchange, or settlement of any of the indebtedness of or claims against the Applicants, any transaction other than the Stalking Horse Transaction (except as provided for in the SISP) involving the Applicants, any of their assets or stock, or any plan of arrangement, reorganization or liquidation under any bankruptcy, insolvency or similar laws;

(c) Not directly or indirectly seek, solicit, support, formulate entertain, encourage or engage in any inquiries, or discussions, or enter into any agreements relating to, any transaction other than the Stalking Horse Transaction (except as provided for in the SISP) and/or any restructuring, plan of arrangement or reorganization, receivership, proposal or offer of dissolution, winding up, liquidation, reorganization, merger, transaction, sale, assignment for the benefit of creditors, or restructuring in any manner of any of the Applicants (or any of their assets, liabilities or equity interests;

(d) Not object to the Interim Facility, the SISP, the Stalking Horse Transaction or the implementation thereof or initiate any legal proceedings, that are inconsistent with, or that would delay, prevent, frustrate or impede the approval or consummation of, the Interim Facility, the SISP, the Stalking Horse Transaction or any transactions related thereto, or take any other action that is barred by this Term Sheet; and

(e) Not solicit, encourage, or direct any Person to undertake any action set forth in subparagraphs (b) through (d) above.

42. **AMENDMENT AND RESTATEMENT** The terms and provisions of the Original Term Sheet shall be and are hereby amended, superseded and restated in their entirety by the terms and provisions of this Term Sheet.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.

Washington Diamond Lending, LLC

Address:
Attention:
Email:

Per: _____
Name: Lawrence R. Simkins
Title: President
I have authority to bind the LLC.

Dominion Diamond Mines ULC

Address:
Attention:
Email:

Per: _____
Name:
Title:
I have authority to bind the corporation.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.

Washington Diamond Lending, LLC

Address:
Attention:
Email:

Per: _____
Name:
Title:
I have authority to bind the LLC.

Dominion Diamond Mines ULC

Address:
Attention:
Email:

Per: _____
Name:
Title:
I have authority to bind the corporation.

Credit Suisse AG, Cayman Islands Branch, as Existing Credit Facility Agent and Lender

Address:
Eleven Madison Avenue
New York, NY 10010-3629
Attention: Didier Siffer
Email: didier.siffer@credit-suisse.com

Per: 

Name: Didier Siffer
Title: Managing Director

-and-

Name: Megan Kane
Title: Managing Director

We have authority to bind the entity.

Washington Diamond Investments, LLC

Address:
Attention:
Email:

Per: _____
Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Dominion Diamond Holdings, LLC

Address:
Attention:
Email:

Per: _____
Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Dominion Finco Inc.

Address:
Attention:
Email:

Per: _____
Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Dominion Diamond Delaware Company LLC

Address:
Attention:
Email:

Per: _____
Name: Kristal Kaye
Title:
I have authority to bind the LLC.

Dominion Diamond Canada ULC

Address:
Attention:
Email:

Per: _____
Name: Kristal Kaye
Title:
I have authority to bind the LLC.

Washington Diamond Investments, LLC

Address:
Attention:
Email:

Per: _____
Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Diamond Holdings, LLC

Address:
Attention:
Email:

Per: _____
Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Finco Inc.

Address:
Attention:
Email:

Per: _____
Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Diamond Delaware Company LLC

Address:
Attention:
Email:

Per:  _____
Name: Kristal Kaye
Title: Chief Financial Officer
I have authority to bind the LLC.

Dominion Diamond Canada ULC

Address:
Attention:
Email:

Per:  _____
Name: Kristal Kaye
Title: Chief Financial Officer
I have authority to bind the LLC.

SCHEDULE "A"
DEFINED TERMS

"**Advance**" means an amount of the Interim Facility advanced to the Borrower pursuant to the terms hereof from time to time.

"**Administration Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Initial Order in an aggregate amount not to exceed CDN$3,500,00 to secure the fees and expenses of (i) the legal and financial advisors of the Credit Parties, (ii) the Monitor and its counsel, in connection with the CCAA Proceedings; and (iii) the monthly fees owing to the SISP Advisor under its engagement letter with the Applicants, but no other fees or expenses provided for therein.

"**Advance Conditions**" has the meaning given thereto in Section 7.

"**Advance Request Certificate**" has the meaning given thereto in Section 5.

"**Amended Initial Order**" has the meaning given thereto in Section 7(d).

"**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Authority having the force of law.

"**Bankruptcy Code**" means title 11 of the *United States Code*.

"**Bankruptcy Court**" has the meaning given thereto in Section 21(t).

"**Bankruptcy Court Order**" has the meaning given thereto in Section 21(d).

"**Borrower**" has the meanings given thereto in Section 1.

"**Business Day**" means any day other than a Saturday, Sunday or any other day on which banks in Calgary, Alberta are not open for business.

"**CCAA**" has the meaning given thereto in the Recitals.

"**CCAA Proceedings**" has the meaning given thereto in the Recitals.

"**Claims**" has the meaning given thereto in Section 26.

"**Collateral**" means, in respect of a Person, all current or future assets, businesses, undertakings and properties of such Person, real and personal, tangible or intangible, including all proceeds thereof, other than Excluded Assets.

"**Court**" has the meaning given thereto in the Recitals.

"**Court Order**" means any CCAA Order or Bankruptcy Court Order and "**Court Orders**" means, collectively, all such orders.

"**Credit Documents**" means this Term Sheet, the Guarantee delivered by the Guarantors, and any other document delivered in connection with or relating to this Term Sheet from time to time.

"**Credit Parties**" means the Borrower and the Guarantors, collectively.

"**Criminal Code Interest**" has meaning given thereto in Section 17(a).

"**Criminal Rate**" has meaning given thereto in Section 17(a).

"**Default**" means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

"**Defaulting Lender**" means any Interim Lender other than Washington Diamond that (a) has failed to fund any portion of the Advances required to be funded by it hereunder within two Business Days of the date required to be funded by it hereunder unless such failure has been cured, (b) has been determined by a court of competent jurisdiction or regulator to be insolvent or is unable to meet its obligations or admits in writing it is unable to pay its debts as they generally become due, (c) is the subject of a bankruptcy or insolvency proceeding, (d) is subject to or is seeking the appointment of an administrator, regulator, conservator, liquidator, receiver, trustee, custodian or other similar official over any material portion of its assets or business, or (e) fails to confirm in writing that it will comply with its obligations hereunder after written request from the Borrower, or an Interim Lender who provides notice in writing, or makes a public statement to the effect, that it does not intend to comply with its funding obligations hereunder.

"**Diavik Collateral**" means (a) the assets owned by the Diavik Joint Venture, (b) the Borrower's interest in the Diavik Joint Venture, and (c) the diamond inventory produced at the Diavik mine and not held by the Credit Parties or their direct or indirect affiliates as of the commencement of these CCAA Cases, and in each case, including all proceeds thereof.

"**Diavik JV Priority Liens**" means any Liens arising under Section 9.4 of the Diavik Joint Venture Agreement.

"**DIP Budget**" means the weekly financial projections prepared by the Credit Parties covering the period commencing on the week ended April 24, 2020, and ending on the week ending October 30, 2020, on a weekly basis, which shall be in form and substance acceptable to the Required Interim Lenders in their sole and absolute discretion and the Existing Credit Facility Agent in its reasonable discretion, which financial projections may be amended from time to time in accordance with Section 14. For greater certainty, for purposes of this Term Sheet, the DIP Budget shall include all supporting documentation provided in respect thereof to the Required Interim Lenders and the Existing Credit Facility Agent .

"**Directors' Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Initial Order in favour of the directors and officers of the CCAA Applicants, in an amount not to exceed CDN$4,000,000.

"**Event of Default**" has the meaning given thereto in Section 23.

"**Excluded Assets**" means voting equity interests in Dominion Diamond (India) Private Limited in excess of 65% of the aggregate voting equity interests of Dominion Diamond (India) Private Limited.

"**Existing Credit Agreement**" means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, and each of the other parties and lenders party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"**Existing Credit Facility**" means the facility governed by the Existing Credit Agreement.

"**Existing Credit Facility Agent**" means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement.

"**Existing Credit Facility Lenders**" means those lenders under the Existing Credit Agreement.

"**Facility Amount**" has the meaning given thereto in Section 5.

"**Filing Date**" means the date of commencement of the CCAA Proceedings.

"**First Lien Facility LC Obligations**" means those Obligations (as defined in the Existing Credit Agreement) related to or arising from LC Exposure (as defined in the Existing Credit Agreement).

"**Funded First Lien Facility Obligations**" means those Obligations (as defined in the Existing Credit Agreement) related to or arising from Loans (as defined in the Existing Credit Agreement).

"**Governmental Authority**" means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

"**Guarantee**" means a guarantee of the Interim Financing Obligations made by each of the Guarantors in favour of the Interim Lenders, in form and substance satisfactory to the Required Interim Lenders.

"**Guarantors**" has the meaning given thereto in Section 3.

"**Indemnified Persons**" has the meaning given thereto in Section 26.

"**Initial DIP Budget**" has the meaning given thereto in Section 14.

"**Initial Order**" has the meaning given thereto in the Recitals.

"**Interim Facility**" has the meaning given thereto in Section 5.

"**Interim Facility Priority Collateral**" means all Collateral other than the Diavik Collateral.

"**Interim Financing Obligations**" means, collectively, all obligations owing by the Credit Parties pursuant to this Term Sheet and the other Credit Documents, including, without limitation, all principal, interest, fees, costs, expenses, disbursements and Interim Lender Expenses.

"**Interim Lenders**" has the meaning given thereto in Section 2.

"**Interim Lenders' Charge**" has the meaning given thereto in Section 7**.**

"**Interim Lender Expenses**" has the meaning given thereto in Section 8.

"**KERP Charge**" means the means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Amended Initial Order to secure the obligations of the CCAA Applicants to certain key employees pursuant to the terms of a key employee retention plan in an amount not to exceed CDN$600,000, in the aggregate.

"**Liens**" means (a) all liens, hypothecs, charges, mortgages, deeds of trusts, trusts, deemed trusts (statutory or otherwise), constructive trusts, encumbrances, security interests, and statutory preferences of every kind and nature whatsoever, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Material Contract**" means any contract, licence or agreement: (i) to which any Credit Party is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of any Credit Party; and (iii) which a Credit Party cannot within a commercially reasonable timeframe replace by an alternative and comparable contract with comparable commercial terms.

"**Maturity Date**" has the meaning given thereto in Section 13.

"**Monitor**" has the meaning given thereto in Section 12.

"**Non-Consenting Lender**" means any Interim Lender other than Washington Diamond that has not provided its consent, acceptance, waiver or agreement (including in connection with any proposed amendment or modification to this Term Sheet) where requested to do so by the Borrower or Washington Diamond if such consent, acceptance, waiver or agreement (i) requires the consent of the Supermajority Interim Lenders, and (ii) Interim Lenders whose Commitments at the relevant time aggregate at least 65% of the total Commitments have consented to such consent, acceptance, waiver or agreement.

"**Operating Account**" means a bank account of the Borrower designated by the Borrower to receive Advances.

"**Original Currency**" has the meaning given thereto in Section 18.

"**Original Term Sheet**" has the meaning given thereto in the Recitals.

"**Other Currency**" has the meaning given thereto in Section 18.

"**Outside Date**" means October 31, 2020.

"**Permitted Liens**" means (i) the Interim Lenders' Charge; (ii) any charges created under the Amended Initial Order or other Court Order subsequent in priority to the Interim Lenders' Charge and approved in writing by the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion; (iii) validly perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; (v) the Permitted Priority Liens; and (vi) the SISP Advisor Charge.

"**Permitted Priority Liens**" means (i) the Administration Charge; (ii) the Directors Charge; (iii) the KERP Charge; (iv) any amounts payable by a Credit Party for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in each case solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts has not been subordinated to the Interim Lenders' Charge granted by the Court; (v) any charges created under the Amended Initial Order related to the break fee with respect to the Stalking Horse Transaction; (vi) subject to any order of the CCAA Court and solely to the extent set forth in the Rio Subordination Agreement, the Diavik JV Priority Liens; *provided* that the Diavik JV Priority Liens shall constitute Permitted Priority

Liens solely with respect to the Diavik Collateral and solely to the extent that they constitute Liens over the Diavik Collateral or portions thereof; and (vii) solely with respect to the Diavik Collateral, the Liens of the Existing Credit Facility Agent to secure the Obligations under the Existing Credit Facility Agreement; *provided further* that, for the avoidance of doubt, Permitted Priority Liens shall not include any Liens securing any Credit Party's obligations under (a) the Existing Credit Agreement, (b) the indenture governing the 7.125% Senior Secured Second Lien Secured Notes due 2022 issued by certain of the Credit Parties, as amended, restated, supplemented or otherwise modified from time to time, and (c) any joint venture agreements, as amended, restated, supplemented or otherwise modified from time to time, to which any of the Credit Parties are party.

"**Permitted Restructuring Transaction**" means:

(i) the Stalking Horse Transaction;

(ii) a transaction that (a) provides for the repayment in full in cash of all Interim Financing Obligations outstanding at the time of closing of such Restructuring Transaction and (b) otherwise constitutes a "Successful Bid" as defined in and in accordance with the SISP; or

(iii) a transaction for the Non-Diavik Assets (as defined in the SISP) that (a) provides for repayment in full in cash of all Interim Financing Obligations; (b) otherwise constitutes a "Successful Bid" as defined in and in accordance with the SISP; and (c) maintains all liens and other rights held by the Agent on behalf of the First Lien Lenders securing all obligations under the Existing Credit Facility, to the Diavik Interest including, but not limited to, all diamond production from the Diavik Interest (but excluding in all respects those diamonds (and/or proceeds thereof) delivered to any of the CCAA Applicants or their direct or indirect controlled affiliates prior to the commencement of the CCAA), including the proceeds thereof.

"**Permitted Variance**" means an adverse variance of not more than 20% relative to the aggregate "Total Operating Disbursements" line item in the applicable DIP Budget; *provided*, *however*, that if any adverse variance is reversing a prior positive variance, such adverse timing variance shall not be counted towards the 20% variance threshold.

"**Person**" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"**Plan**" means any plan of compromise, arrangement, reorganization or similar arrangement filed pursuant to the CCAA, the Bankruptcy Code, or any other statute in any jurisdiction, in respect of any of the Credit Parties.

"**Recognition Order**" has the meaning given thereto in Section 21(t).

"**Required Interim Lenders**" means those Interim Lenders holding a majority of the Commitments and any outstanding Advances held by all Interim Lenders; *provided* that Required Interim Lenders must in all cases include Washington Diamond.

"**Restructuring Proceedings**" means, collectively, the CCAA Proceedings and the Chapter 15 Proceedings.

"**Restructuring Transaction**" means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, Plan or other material transaction of, or in respect of, all or any of the Credit Parties or their respective assets and liabilities and includes, without limitation, the Stalking Horse Transaction.

"**Rio Subordination Agreement**" means that certain subordination agreement between, among others, Diavik Diamond Mines (2012) Inc. and the Existing Credit Facility Agent dated November 1, 2017.

"**SISP**" means a Sales and Investment Solicitation Process authorized pursuant to the Amended Initial Order (or other Order of the Court, as the case may be), as amended, but only to the extent such amendment is consented to by the Stalking Horse Bidder.

"**SISP Advisor**" means Evercore Group LLC.

"**SISP Advisor Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Amended Initial Order to secure the Borrowers' obligations to the SISP Advisor under the engagement letter between the SISP Advisor and the Borrower.

"**Stalking Horse Transaction**" means the transaction in respect of certain assets and property of the Credit Parties contemplated by the Letter of Intent signed by Washington Diamond Investments Holdings II, LLC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and the Borrower and dated May 21, 2020.

"**Supermajority Interim Lenders**" means those Interim Lenders holding at least 68% of the Commitments and outstanding Advances held by all Interim Lenders; *provided* that Supermajority Interim Lenders must in all cases include Washington Diamond.

"**Term Sheet**" means this amended and restated term sheet, as may be amended, modified, supplemented or restated from time to time in accordance with the provisions hereof.

"**Taxes**" has the meaning given thereto in Section 27.

"**Testing Period**" has the meaning given thereto in Section 14.

"**Updated DIP Budget**" has the meaning given thereto in Section 14.

"**Variance Report**" has the meaning given thereto in Section 14.

"**Washington Diamond**" means Washington Diamond Lending, LLC, a Delaware limited liability company.

"**Withholding Taxes**" has the meaning given thereto in Section 27.

SCHEDULE "B"
FORM OF ADVANCE CONFIRMATION CERTIFICATE

TO: The Interim Lenders

FROM: Dominion Diamond Mines ULC

DATE: ●, 2020

1. This certificate is delivered to you, as Interim Lenders, in connection with a request for an Advance pursuant to the Amended and Restated Interim Financing Term Sheet made as of June 15, 2020 between the Borrower and the Interim Lenders, as amended, supplemented, restated or replaced from time to time (the "**Term Sheet**"). All defined terms used, but not otherwise defined in this certificate shall have the respective meanings set forth in the Term Sheet, unless the context requires otherwise.

2. The Borrower hereby requests an Advance as follows in respect of the week commencing on ●, 2020:

Aggregate amount of Advance: US$●

3. All of the representations and warranties of the Credit Parties set forth in the Term Sheet are true and accurate in all material respects as at the date hereof, as though made on and as of the date hereof.

4. All of the covenants of the Credit Parties contained in the Term Sheet and all other terms and conditions contained in the Term Sheet to be complied with by the Credit Parties, not properly waived in writing by the Interim Lenders, have been fully complied with.

7. No Default or Event of Default has occurred nor will any such event occur as a result of the Advance hereby requested.

DOMINION DIAMOND MINES ULC

Per: _____
Name:
Title:

I have authority to bind the corporation.

SCHEDULE "C"
DIP BUDGET

Dominion Diamond Mines
Consolidated Second Cash Flow Statement
For the 28-week period ending October 30, 2020

		Initial Stay Period																													
		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Weeks 1 - 28
($ thousands)	*Week Ending*	24-Apr	1-May	8-May	15-May	22-May	29-May	5-Jun	12-Jun	19-Jun	26-Jun	3-Jul	10-Jul	17-Jul	24-Jul	31-Jul	7-Aug	14-Aug	21-Aug	28-Aug	4-Sep	11-Sep	18-Sep	25-Sep	2-Oct	9-Oct	16-Oct	23-Oct	30-Oct	Total
Operating Receipts																														
Sales	[1]	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Operating Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Disbursements																														
Payroll and Benefits	[2]	-	400	1,569	-	1,314	605	1,060	10	91	1,733	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,914	**20,507**
Consultants and Contractors	[3]	25	85	117	437	28	263	342	382	527	518	493	81	51	18	246	524	135	47	170	494	134	41	230	478	87	41	125	125	**6,244**
Rent	[4]	-	98	113	-	0	-	98	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	**701**
Equipment Leases		-	-	572	-	-	841	-	371	-	-	631	-	-	-	-	925	-	-	-	925	-	-	-	925	-	-	-	-	**5,191**
Underground Mining Costs	[5]	-	-	-	-	-	-	-	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	**2,646**
Travel	[6]	-	-	-	12	-	8	17	50	106	-	156	15	15	15	15	172	15	43	15	172	15	15	54	153	15	15	27	27	**1,152**
Insurance	[7]	-	-	-	-	2,418	-	-	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	407	-	-	**4,467**
IT & Software		-	-	73	413	15	62	19	70	149	396	498	-	-	-	-	368	44	-	-	382	4	-	-	382	69	-	35	35	**3,014**
IBA Payments	[8]	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	**1,899**
Power	[9]	-	-	-	-	-	-	-	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	**756**
Site Maintenance & Environment	[10]	-	-	-	-	88	33	42	54	253	298	530	253	237	275	219	474	89	40	44	419	53	53	35	419	35	53	17	17	**4,031**
CCAA Professional Fees	[11]	-	-	370	214	-	-	-	490	2,000	11,019	531	590	1,756	250	815	250	1,756	250	815	250	1,401	605	531	676	250	2,287	250	7,118	**34,473**
Critical Vendors Accounts Payable	[12]	-	-	-	1,524	58	-	163	1,085	1,085	1,085	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**5,000**
Net Taxes	[13]	-	(2,122)	-	1,757	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**(365)**
Other	[14]	-	-	-	-	-	-	-	433	551	2,040	395	176	416	163	1,276	334	40	192	15	226	15	1,686	178	299	15	2,241	139	3,576	**14,406**
Total Operating Disbursements		25	(1,539)	2,814	4,358	3,922	1,811	1,741	2,945	5,422	17,089	4,757	2,668	2,882	2,201	2,571	6,076	2,487	2,036	1,059	4,999	2,488	2,400	2,547	3,998	2,395	5,044	2,085	12,838	**104,120**
Startup Disbursements																														
Winter road construction		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,001	-	**1,001**
Diesel purchases / freight		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ramp-up costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,900	-	-	**4,900**
Total Startup Disbursements		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,900	1,001	-	**5,901**
Net Change in Cash from Operations		(25)	1,539	(2,814)	(4,358)	(3,922)	(1,811)	(1,741)	(2,945)	(5,422)	(17,089)	(4,757)	(2,668)	(2,882)	(2,201)	(2,571)	(6,076)	(2,487)	(2,036)	(1,059)	(4,999)	(2,488)	(2,400)	(2,547)	(3,998)	(2,395)	(9,944)	(3,086)	(12,838)	**(110,022)**
Financing																														
Intercompany Receipts / (Disbursements)	[15]	-	-	-	-	-	(6)	(115)	(1)	(127)	1,689	(110)	(49)	-	(0)	888	(3,802)	(15)	(0)	(0)	(635)	-	1,666	(0)	(830)	-	2,222	(0)	(0)	**773**
Interest & Bank Charges	[16]	-	(276)	(70)	(195)	-	(191)	-	(153)	(46)	-	(1,248)	(153)	-	-	-	(237)	(153)	-	-	(237)	(153)	-	-	(1,248)	(153)	-	-	(686)	**(5,197)**
DIP Facility Interest		-	-	-	-	-	-	-	-	-	(16)	-	-	-	-	(124)	-	-	-	(186)	-	-	-	(249)	-	-	-	-	(348)	**(923)**
Governmernt Support Program		-	-	-	-	-	1,849	-	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**3,379**
DIP Facility Draw		-	-	-	-	-	-	-	-	-	14,200	14,200	-	-	-	-	14,200	-	-	-	14,200	-	-	-	14,200	-	14,200	-	-	**85,200**
Net Change in Cash from Financing		-	(276)	(70)	(195)	-	1,652	(115)	(153)	677	15,873	12,842	(202)	680	(0)	764	10,161	(168)	(0)	(187)	13,328	(153)	1,666	(249)	12,123	(153)	16,422	(0)	(1,034)	**83,233**
Net Change in Cash		(25)	1,264	(2,884)	(4,552)	(3,922)	(159)	(1,857)	(3,098)	(4,745)	(1,216)	8,085	(2,870)	(2,202)	(2,201)	(1,807)	4,085	(2,655)	(2,037)	(1,246)	8,329	(2,640)	(734)	(2,795)	8,125	(2,547)	6,477	(3,086)	(13,872)	**(26,789)**
Opening Cash		26,823	26,798	28,061	25,177	20,625	16,703	16,543	14,687	11,588	6,843	5,627	13,712	10,842	8,640	6,439	4,631	8,717	6,062	4,025	2,779	11,108	8,467	7,734	4,938	13,063	10,515	16,993	13,906	**26,823**
Ending Cash		$ 26,798	$ 28,061	$ 25,177	$ 20,625	$ 16,703	$ 16,543	$ 14,687	$ 11,588	$ 6,843	$ 5,627	$ 13,712	$ 10,842	$ 8,640	$ 6,439	$ 4,631	$ 8,717	$ 6,062	$ 4,025	$ 2,779	$ 11,108	$ 8,467	$ 7,734	$ 4,938	$ 13,063	$ 10,515	$ 16,993	$ 13,906	$ 34	$ 34

-

Kristal Kaye, Chief Financial Officer
Dominion Diamond Mines

Notes:
Management has prepared this Cash Flow Statement solely for the purposes of determining the liquidity requirements of the Company during the CCAA Proceedings.
The Cash Flow Statement is based on the probable and hypothetical assumptions detailed below. Actual results will likely vary from performance projected and such variations may be material.

[1] Receipts are assumed to be nil during the Forecast Period as COVID-19 related business disruptions have resulted in the Applicants being unable to sell diamonds in the normal course.
[2] Payroll and benefits relate to management and employees at Dominion's corporate office as well as two rotating shifts of employees that perform care and maintenance activities at the Ekati mine site.
[3] Consultants and contractors relate primarily to contract camp and catering staff and consultants.
[4] Rent includes lease costs, utilities and property taxes for the Applicants' offices in Calgary and Yellowknife.
[5] Underground mining costs relate to dewatering costs and standby fees for the contractor that operates the underground mine.
[6] Travel relates to airlines that transport employees and contractors to the Ekati mine site.
[7] Insurance relates to a premium financing arrangement for the Applicants' insurance policies including Directors & Officers insurance.
[8] Impact and benefit agreements are assumed to remain current during the forecast period.
[9] Power includes contractors that operate the power plant at the Ekati mine.
[10] Site maintenance and environmental costs are based on Dominion's care and maintenance plan and are assumed to be consistent with current run rates.
[11] CCAA Professional fees includes the Applicants' Canadian legal counsel, United States legal counsel and financial advisor, the Monitor and the Monitor's legal counsel, Canadian and United States legal counsel to the DIP Lender, Canadian and United States legal counsel and financial advisor to the Revolving Facility Lenders.
[12] The Initial Order authorizes the Applicants to pay certain pre-filing amounts owing to critical suppliers of up to $5.0 million, with prior approval of the Monitor.
[13] Net Taxes includes pre-filing fuel tax payments for March and April and refund for certain pre-filing GST payments.
[14] Other operating costs include miscellaneous disbursements and a contingency including payments attendant to and required for closing subject to court approval.
[15] Intercompany accounts relate to cash calls to the joint venture partner in respect of the Ekati Core Zone and cash requirements of DDMC, DDMNV (Belgium) and DDIPL (India) beyond existing cash balances.
[16] Interest and bank fees are comprised of interest and letter of credit fees in respect of the Applicants' Revolving Facility.

Memo - DIP financing assumptions

Wind-down estate	C$000			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,420	

Memo - DIP financing assumptions

Interest	5.25%
Fees	0.00%
Facility Size - US$000	60,000
Exchange rate	1.42
Facility Size - C$000	85,200
Target min liquidity before dr	2,500
Number of Draws	6
First Draw	14,200
Draw size	14,200

DIP Balance																													
Open					-	-	-	-	-	-	14,200	28,400	28,400	28,400	28,400	28,400	42,600	42,600	42,600	42,600	56,800	56,800	56,800	56,800	71,000	71,000	85,200	85,200	
Draw						-	-	-	-	14,200	14,200	-	-	-	-	14,200	-	-	-	14,200	-	-	-	14,200	-	14,200	-	-	
Closing	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 14,200	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 42,600	$ 42,600	$ 42,600	$ 42,600	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 71,000	$ 71,000	$ 85,200	$ 85,200	$ 85,200	
Undrawn Amount	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 71,000	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 42,600	$ 42,600	$ 42,600	$ 42,600	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 14,200	$ 14,200	$ -	$ -	$ -	
Interest						$ -				$ 16					$ 124				$ 186				$ 249					$ 348	**923**

000075

	Week 1 24-Apr	Week 2 1-May	Week 3 8-May	Week 4 15-May	Week 5 22-May	Week 6 29-May	Week 7 5-Jun			Week 8 12-Jun	Week 9 19-Jun	Week 10 26-Jun	Week 11 3-Jul	Week 12 10-Jul	Week 13 17-Jul	Week 14 24-Jul	Week 15 31-Jul	Week 16 7-Aug	Week 17 14-Aug	Week 18 21-Aug	Week 19 28-Aug	Week 20 4-Sep	Week 21 11-Sep	Week 22 18-Sep	Week 23 25-Sep	Week 24 2-Oct	Week 25 9-Oct	Week 26 16-Oct	Week 27 23-Oct	Week 28 30-Oct	
[2] Employee Payroll, Benefits & Source Deductions																															
Payroll - Ekati	-	400	1,569	-	1,314	605	1,060	5,049	(101)	10	91	1,540	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,527	24,874
Payroll - SGA								-	-																						
Retention Bonus	-	-	-	-	-	-	-	-	-	-	-	193	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	387	580
	-	400	1,569	-	1,314	605	1,060	5,049	(101)	10	91	1,733	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,914	25,454
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[3] Consultants or Contractors																															
Camp and Catering	-	-	-	42				608	(565)	-	-	-	309	-	-	-	-	309	-	-	-	299	-	-	-	299					
Freight	-	-	-	143	28	263	342	197	579	36	36	36	36	18	18	-	-	18	18	-	18	18	18	18	18	-					
Tires	-	-	-	-				122	(122)	122	-	122	-	-	-	-	-	122	-	-	-	122	-	-	-	122					
Exploration Standing Charges	-	-	-	-				12	(12)	-	-	-	4	-	-	-	-	4	-	-	-	4	-	-	4	-					
Point Lake PFS								-	-		65	-	22	22			47	3	3	-	6	3	3	-	9	-					
R&R Work								-	-		-						20														
MUG Resource								-	-		15			8				8													
Lease Reduction Plan								-	-		-	15		5				5													
Alternative Mining - Lynx								-	-			70		18	-	12			20												
Alternative Mining - Sable								-	-			50	20						10				30								
552 Polishing	-	-	-	-				-	-	71	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-					
Washington G&A	-	-	-	-				-	-	-	-	89	-	-	-	-	89	-	-	-	-	-	-	-	-	-					
Exco Consultants (incl. Brendan Bell)	-	70	-	-				115	(46)	23	23	-	23	-	23	-	23	-	23	-	23	-	-	23	-	-					
Audit	-	-	-	45				200	(154)	110	-	-	-	-	-	-	-	-	-	-	-	-	-	-	73	-					
Tax, Legal and other professional consultants	-	-	45					65	(20)	20	10	10	20	10	10	6	-	48	-	41	-	43	-	-	-	41					
HR Consultants	-	-	-	-				6	(6)	-	6	-	6	-	-	-	-	-	-	6	-	-	-	-	-	16					
Other	25	15	72	206				318	-	-	372	126	54	0	-	0	68	7	62	-	123	5	83	-	126	0					
	25	85	117	437	28	263	342	1,643	(346)	382	527	518	493	81	51	18	246	524	135	47	170	494	134	41	230	478	87	41	125	125	7,541
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[4] Rent																															
Calgary and Yellowknife	-	98	117	-	0	-	98	428	(115)	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	1,018
	-	98	117	-	0	-	98	428	(115)	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	1,018
	-	-	3	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Equipment Leases																															
Mining Equipment Leases	-	-	572	-	-	841	-	964	450	-	-		572	-	-	-	-	572	-	-	-	572	-	-	-	572	-	-	-	-	5,114
Yellowknife Fuel Tanks	-	-	-	-				526	(526)	371	-	-	59	-	-	-	-	353	-	-	-	353	-	-	-	353	-	-	-	-	1,490
	-	-	572	-	-	841	-	1,490	(77)	371	-	-	631	-	-	-	-	925	-	-	-	925	-	-	-	925	-	-	-	-	6,604
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[5] Underground Mining Costs																															
Underground Mining Costs	-	-	-	-				882	(882)	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	2,646
	-	-	-	-	-	-	-	882	(882)	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	2,646
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[6] Travel																															
To and From Site	-	-	-	12	-	8	17	313	(275)	50	106	-	156	-	-	-	-	156	-	-	-	156	-	-	-	153	-	-	-	-	854
Executive travel once routes open up	-	-	-	-	-	-	-	-	-	-	-	-	-	15	15	15	15	15	15	15	15	15	15	15	15	-	15	15	15	15	248
Community	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	27	-	-	-	-	38	-	-	-	11	11	88
	-	-	-	12	-	8	17	313	(275)	50	106	-	156	15	15	15	15	172	15	43	15	172	15	15	54	153	15	15	27	27	1,189
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[7] Insurance																															
CAFO Insurance Premium Finance (Property)	-	-	-	-	395	-	-	802	(407)	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	-	407	-	-	2,839
Corporate	-	-	-	-	2,023	-	-	2,135	(112)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,046
	-	-	-	-	2,418	-	-	2,937	(519)	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	-	407	-	-	6,885
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
IT & Software																															
Ekati Site Infrastructure	-	-	-	-	15	62	19	315	(219)	70	149	-	315	-	-	-	-	184	-	-	-	199	-	-	-	199	-	-	-	-	1,308
Washington IT Services	-	-	-	327				445	(118)	-	-	118	118	-	-	-	-	118	-	-	-	118	-	-	-	118	-	-	-	-	1,246
Software Licenses	-	-	73	-				212	(139)	-	-	139	-	-	-	-	-	-	44	-	-	-	4	-	-	-	-	69	-	35	35	472
IT Service Providers	-	-	-	86				225	(139)	-	-	139	65	-	-	-	-	65	-	-	-	65	-	-	-	65	-	-	-	-	570
IT AP	-	-	-	-				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
	-	-	73	413	15	62	19	1,196	(615)	70	149	396	498	-	-	-	-	368	44	-	-	382	4	-	-	382	69	-	35	35	3,596
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[8] IBA Payments																															
Heritage Funds and Traditional Knowledge	-	-	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	1,899
	-	-	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	1,899
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[9] Power																															
Contract labour for on site powerhouse	-	-	-	-	-	-	-	252	(252)	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	756
	-	-	-	-	-	-	-	252	(252)	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	756
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[10] Site Maintenance & Environment																															
Site Vehicle Maintenance	-	-	-	-	88	33	42	63	101	21	21	21	21	21	21	34	34	34	34	13	13	13	13	13	13	13	13	13	17	17	742
Site Maintenance	-	-	-	-				101	(101)	34	34	34	34	34	34	55	55	55	55	21	21	21	21	21	21	21	21	21	-	-	613
Environmental Licenses and Land Leases	-	-	-	-				157	(157)	-	-	45	-	-	57	60	-	-	-	5	-	-	-	18	-	-	-	18	-	-	204
Environmental Management	-	-	-	-				440	(440)		199	199	397	199	126	126	126	385	-	-	-	385	-	-	-	385	-	-	-	-	2,526
Point Lake Permitting								-	-				18				4				10										32
Lac de Gras JV								-	-				60																		60
Glowworm Lake Project								-	-				-										18								18
Environmental AP	-	-	-	-				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
	-	-	-	-	88	33	42	760	(596)	54	253	298	530	253	237	275	219	474	89	40	44	419	53	53	35	419	35	53	17	17	4,194
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[11] CCAA Professional Fees																															
Evercore	-	-	-	-	-	-	-	3,121	(3,121)	-	628	2,774	281	-	-	-	281	-	-	-	281	-	-	-	281	-	-	281	-	5,688	10,493
Blake, Cassels & Graydon LLP	-	-	370	214	-	-	-	1,271	(687)	340	690	386	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	500	250	500	7,583
McDermott Will & Emery LLP	-	-	-	-	-	-	-	351	(351)	-	-	702	-	140	351	-	-	-	351	-	-	-	351	-	-	-	-	351	-	175	2,421
FTI Consulting Canada Inc	-	-	-	-	-	-	-	400	(400)	-	533	267	-	150	400	-	-	-	400	-	-	-	400	-	-	-	-	400	-	200	2,750
Bennett Jones LLP	-	-	-	-	-	-	-	250	(250)	-	-	500	-	50	250	-	-	-	250	-	-	-	250	-	-	-	-	250	-	125	1,675
TWC Legal Advisors	-	-	-	-	-	-	-	4,260	(4,260)	-	-	4,615	-	-	-	-	284	-	-	-	284	-	-	-	426	-	-	-	355	5,964
1L Legal and Financial Advisors	-	-	-	-	-	-	-	1,420	(1,420)	-	-	1,775	-	-	355	-	-	355	-	-	-	-	-	355	-	-	355	-	-	-	3,195
Non-Company Side Advisors TBU	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0

Other	-	-	-	-	-	-	-	150	(150)	150	150	-	-	-	150	-	-	-	150	-	-	-	150	-	-	-	-	150	-	75	975
	-	-	370	214	-	-	-	11,223	(10,639)	490	2,000	11,019	531	590	1,756	250	815	250	1,756	250	815	250	1,401	605	531	676	250	2,287	250	7,118	35,057
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Critical Vendors																															
DETON CHO SUMMIT AVIATION LP				440				440	-																						880
KITNUNA BBE EXPEDITING LTD.				675				675	-																						1,351
TLI CHO DOMCO INC				409				409	-																						
Other					58	-	163	1,159	(937)	1,085	1,085	1,085																			
	-	-	-	1,524	58	-	163	2,683	(937)	1,085	1,085	1,085	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,231
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Net Taxes																															
GST		(2,122)		612				(1,146)	(365)																						(3,021)
Fuel and Carbon Taxes				1,146				1,146	-																						2,291
								-	-																						
								-	-																						
	-	(2,122)	-	1,757	-	-	-	(0)	(365)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(730)
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[13] Other																															
Various Other		-	-	-	-	-	-	56	(56)	35	38	38	38	19	19	10	9	13	9	38	9	10	9	11	123	36	9	11	58	58	595
Contingency	-	-	-	-	-	-	-	675	(675)	398	513	178	358	158	397	153	378	321	31	154	6	216	6	8	55	263	6	8	81	3,518	7,209
Other Contingency	-	-	-	-	-	-	-	825	(825)	-	-	1,825	-	-	-	-	889	-	-	-	-	-	-	1,667	-	-	-	2,222	-	-	6,602
	-	-	-	-	-	-	-	1,556	(1,556)	433	551	2,040	395	176	416	163	1,276	334	40	192	15	226	15	1,686	178	299	15	2,241	139	3,576	14,406
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Government Programs																															
Estimated Support Received	-	-	-	-	-	1,849	-	1,800	49	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,228
	-	-	-	-	-	1,849	-	1,800	49	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,228
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Intercompany Receipts / (Disbursements)																															
DDMC			0	0	0	(6)	(115)	(111)	(10)	(1)	(127)	(136)	(110)	(49)	0	(0)	(0)	(110)	(15)	(0)	(0)	(110)	0	(0)	(0)	(105)	0	(0)	(0)	(0)	(1,009)
Core Zone JV partner cash calls	0	0	0	0				825	(825)	0	0	1,825	0	0	0	0	889	0	0	0	0	0	0	1,667	0	0	0	2,222	0	0	6,602
DDMNV (Belgium)	0	0	0	0				0	0	0	0	0	0	0	0	0	0	(3,692)	0	0	0	(241)	0	0	0	(284)	0	0	0	0	(4,217)
DDIPL (India)	0	0	0	0				0	0	0	0	0	0	0	0	0	0	0	0	0	0	(241)	0	0	0	(449)	0	0	0	0	(724)
	-	-	-	-	-	(6)	(115)	713	(835)	(1)	(127)	1,689	(110)	(49)	-	(0)	888	(3,802)	(15)	(0)	(0)	(635)	-	1,666	(0)	(830)	-	2,222	(0)	(0)	652
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Interest & Bank Charges																															
Interest		(226)		(138)	-	(191)	-	(600)	46	(149)	-	-	(237)	(149)	-	-	-	(237)	(149)	-	-	(237)	(149)	-	-	(237)	(149)	-	-	(349)	(3,152)
Bank Charges		(50)		(50)	-	-	-	(100)	-	(4)	(46)	-	-	(4)	-	-	-	-	(4)	-	-	-	(4)	-	-	-	(4)	-	-	-	(264)
LC Fees			(70)	(7)	-	-	-	(77)	-	-	-	-	(1,010)	-	-	-	-	-	-	-	-	-	-	-	-	(1,010)	-	-	-	(337)	(2,513)
	-	(276)	(70)	(195)	-	(191)	-	(778)	46	(153)	(46)	-	(1,248)	(153)	-	-	-	(237)	(153)	-	-	(237)	(153)	-	-	(1,248)	(153)	-	-	(686)	(5,928)
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

SCHEDULE "D"
GUARANTORS

Washington Diamond Investments, LLC

Dominion Diamond Holdings, LLC

Dominion Finco Inc.

Dominion Diamond Delaware Company LLC

Dominion Diamond Canada ULC

SCHEDULE "E"
MILESTONES

1. The Court shall have held a hearing to consider the Amended Initial Order, which shall seek approval of the DIP and the SISP (including the Stalking Horse Transaction and the bid protections in respect thereof) no later than June 19, 2020.

2. The Amended Initial Order, which shall have approved the DIP and the SISP (including the Stalking Horse Transaction and the bid protections in respect thereof) shall have been entered no later than June 19, 2020.

3. The Credit Parties shall have complied with the various deadlines established under the SISP, which are incorporated herein by reference.

4. A Permitted Restructuring Transaction shall have closed no later than October 31, 2020.

Notwithstanding the above, a specific Milestone may be (a) extended or waived with the express prior written consent of the Credit Parties and the Required Interim Lenders (except for the Milestone set forth in Item 4 above, which shall also require the consent of the Existing Credit Facility Agent, not to be unreasonably withheld) or (b) extended to the extent necessary to accommodate the Court's calendar.

SCHEDULE "F"
COMMITMENTS

PART I.

COMMITMENTS IN RESPECT OF PHASE 1 AND PHASE 2 ADVANCES

	Interim Lender	Commitments	Share of Total Commitments in Respect of Phase 1 and Phase 2 Advances
1.	Washington Diamond Lending, LLC	$55,000,000	100%

PART II.

COMMITMENTS IN RESPECT OF OCTOBER ADVANCES

	Interim Lender	Commitments	Share of Total Commitments
1.	Washington Diamond Lending, LLC	$5,000,000	100%

Schedule “B”

Procedures for the Sale and Investment Solicitation Process

Procedures for the Sale and Investment Solicitation Process

On April 22, 2020, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., Dominion Diamond Mines ULC ("**DDM**"), 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 "**Court**") that, among other things, commenced the CCAA proceedings (the "**CCAA Proceedings**"), granted an initial stay of proceedings in respect of the Applicants (the "**Stay**") and appointed FTI Consulting Canada Inc. as monitor (the "**Monitor**"). On May 1, 2020, the Applicants obtained an amended and restated version of the Initial Order from the Court (the "**Amended and Restated Initial Order**") that, among other things, extended the Stay. On June 19, 2020, the Applicants obtained a further amended and restated version of the Initial Order from the Court (the "**Second Amended and Restated Initial Order**") that, among other things, approved the DIP (as defined below) and approved the Sale and Investment Solicitation Process (the "**SISP**") set forth herein to determine whether a Successful Bid (as defined below) can be obtained.

For greater certainty, any provision of this SISP which affords discretion to the Applicants - including without limitation in connection with the granting by the Applicants of any consent, waiver or approval - requires that the Applicants exercise such discretion in a commercially reasonable manner and with prior consultation with the SISP Advisor (as defined below), the Agent Advisors (as defined below), on behalf of the First Lien Lenders (as defined below), and the Monitor. Any consent or approval to be provided by the Stalking Horse Bidder (as defined below), the SISP Advisor, the Agent, on behalf of the First Lien Lenders, the Applicants and/or the Monitor must be in writing (including by way of e-mail) and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. Notwithstanding the forgoing or any other provision of the SISP (i) the Agent Advisors shall only be consulted to the extent that the Agent confirms that neither it nor any First Lien Lender intends to participate in the SISP as a bidder and (ii) nothing herein shall oblige or permit the SISP Advisor, the Monitor or the Applicants to disclose to the Agent Advisors the identity of any Potential Bidder, Phase 1 Qualified Bidder, or Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) or any LOI, Phase 1 Qualified Bid, Binding Offer or Phase 2 Qualified Bid, prior to commencement of the Auction (all as such terms are defined below). The SISP Advisor shall consult with DDMI respecting any matters under this SISP, where the SISP Advisor determines that it is appropriate to do so, and would not be prejudicial to the conduct of the SISP.

Defined Terms

1. In addition:

   (a) "**Agent**" means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement[1];

[1] References herein to the Agent mean the Agent, on behalf of the First Lien Lenders.

(b) "**Agent Advisors**" shall mean Osler, Hoskin & Harcourt LLP, Cahill Gordon & Reindel LLP and RPA Advisors, or any one of them;

(c) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in Calgary, Alberta;

(d) "**Cover Payments**" has the same meaning as in the Diavik JVA;

(e) "**CSA**" means the Closure Security Agreement dated December 13 2019 between DDMI and DDM;

(f) "**DIP**" means the Interim Facility provided to Dominion Diamond Mines ULC and certain of its affiliates by Washington Diamond Lending, LLC (the "**Washington Interim Lender**") and the Agent and/or one or more First Lien Lenders (in their capacity as lenders under the DIP, the "**First Lien Interim Lenders**") as approved by the Second Amended and Restated Initial Order;

(g) "**DDMI**" means Diavik Diamond Mines (2012) Inc.;

(h) "**Diavik Diamond Mine**" means the Diavik diamond mine located in Lac de Gras, Northwest Territories;

(i) "**Diavik Interest**" means DDM's Participating Interest (as such term is defined in the Diavik JVA) under and pursuant to the Diavik JVA, including the Dominion Products;

(j) "**Dominion Products**" has the meaning ascribed to it in the Second Amended and Restated Initial Order;

(k) "**Existing Credit Agreement**" means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, the Agent, and each of the other parties and lenders party thereto (the "**First Lien Lenders**"), as amended, restated, supplemented or otherwise modified from time to time.

(l) "**Non-Diavik Assets**" means the Applicants' right, title and interest in all Property other than the Diavik Interest (including, for the avoidance of doubt the Applicants' right, title, and interest in the Ekati Diamond Mine located in Lac de Gras, Northwest Territories, which is operated by DDM);

(m) "**SISP Advisor**" means Evercore Group LLC, as retained by the Applicants to conduct the SISP.

Sale and Investment Solicitation Process Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for, (i) a sale or partial sales of (A) all, substantially all, or certain of the assets, property and undertakings (collectively, the "**Property**") of the Applicants and certain of their subsidiaries (together with the Applicants, the "**Dominion Diamond Group**"); (B) the Diavik Interest; or (C) the Non-Diavik Assets or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Dominion Diamond Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property of the Dominion Diamond Group, or a combination thereof (the "**Opportunity**").

3. The Applicants have received a bid from Washington Diamond Investment Holdings II, LLC (the "**Stalking Horse Bidder**") which constitutes a qualified bid for all purposes and at all times under this SISP (the "**Stalking Horse Bid**"), and which Stalking Horse Bid shall serve as the "stalking horse" bid for purposes of this SISP. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal (each as defined below). A copy of the Stalking Horse Bid is available to all Phase 1 Qualified Bidders (as defined below).

4. The SISP set forth herein describes the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Dominion Diamond Group and its Property, including a copy of the Stalking Horse Bid, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below), and the approval thereof by the Court. The Monitor shall oversee the SISP and in particular shall oversee the SISP Advisor in connection therewith. The Applicants are required to assist and support the efforts of the SISP Advisor and the Monitor as provided for herein. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have exclusive jurisdiction to hear and resolve such dispute.

5. Certain bid protections (i.e. break fee and expense reimbursement) have been approved in respect of the Stalking Horse Bid, subject to the conditions set forth therein, by the Court pursuant to the Second Amended and Restated Interim Order. No other bidder may request or receive any form of bid protection as part of any offer made pursuant to the SISP.

The key dates pursuant to the SISP are as follows (capitalized terms in the chart below have the meaning ascribed in the SISP):

Event	Date
SISP Advisor to distribute Teaser Letter to Potential Bidders	**As soon as practical**
SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR	**As soon as practical**
Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 14 of the SISP)	**By July 20, 2020**
SISP Advisor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Successful Bid	**Within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate**
Sale Approval hearing in respect of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	**By August 6, 2020**
Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 22 of the SISP)	**By August 31, 2020**
Auction Commencement Date (if needed)	**September 3, 2020**
Deadline for selection of final Successful Bid	**September 7, 2020 or at such later date as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate**
Deadline for completion of definitive documentation in respect of Successful Bid	**September 11, 2020**
Deadline for filing of Approval Motion in respect of Successful Bid	**September 21, 2020**
Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	**September 28, 2020**

Anticipated Deadline for closing of Successful Bid being the Target Closing Date	**October 7, 2020 or such earlier date as is achievable**
Outside Date by which the Successful Bid must close	**October 31, 2020**

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable after the granting of the Second Amended and Restated Initial Order:

   (a) the SISP Advisor shall cause a notice of the SISP and such other relevant information which the SISP Advisor, in consultation with the Applicants and the Monitor, considers appropriate to be published in the *Globe & Mail* and such other publications as the SISP Advisor may consider appropriate; and

   (b) the Dominion Diamond Group shall issue a press release setting out the notice and such other relevant information regarding the Opportunity as it may consider appropriate, with Canada Newswire designating dissemination in Canada.

7. The SISP Advisor shall prepare and distribute a summary describing the Opportunity (a "**Teaser Letter**"), outlining the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP, for distribution to potential bidders as soon as practical.

8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the SISP Advisor to Potential Bidders that have executed the NDA (as defined below). The VDR will be available as soon as practical. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Dominion Diamond Group and the Opportunity. The Applicants may establish separate VDRs (including "clean rooms"), if the Applicants and the SISP Advisor reasonably determine that doing so would further the Dominion Diamond Group and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

9. In order to participate in the SISP, an interested party must deliver to the SISP Advisor at the address specified in **Appendix "A"** hereto (including by email), and prior to the distribution of any confidential information by the SISP Advisor to such interested party (including access to the VDR), an executed non-disclosure agreement in form and substance satisfactory to the Applicants (an "**NDA**"), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by the Successful Bid (as defined below). Pursuant to the terms of the NDA to be signed by a

potential bidder (each potential bidder who has executed an NDA with the Applicants, a "**Potential Bidder**") each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the express written consent of the Applicants. Prior to the Applicants' executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Applicants of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Applicants in the event that it elects to act as a Potential Bidder.

10. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 9, will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the SISP Advisor. For the avoidance of doubt, the Stalking Horse Bidder is a Phase 1 Qualified Bidder.

11. The SISP Advisor, with the assistance of the Applicants, will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") and provide an unredacted copy of the Staking Horse Bid as soon as practicable. The SISP Advisor, the Applicants, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.

12. The SISP Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) with access to the VDR. The SISP Advisor, the Applicants and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a template letter of intent (the "**Template LOI**") and a proposed Purchase and Sale Agreement, based on the Stalking Horse Bid ("**Template PSA**").

13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**"), to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on July 20, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (the "**Phase 1 Bid Deadline**"). To the extent possible, the Phase 1 Qualified Bid should follow the format as set out in the Template LOI.

14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" by the Applicants, the Monitor and the SISP Advisor, if the LOI complies at a minimum with the following:

(a) it has been duly executed by all required parties;

(b) it is received by the Phase 1 Bid Deadline;

(c) it provides written evidence, satisfactory to the Applicants, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;

(d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;

(e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;

(f) an outline of any additional due diligence required to be conducted in order to submit a binding offer;

(g) it clearly indicates:

(i) the Phase 1 Qualified Bidder is seeking to acquire (A) all or substantially all of the Property, (B) the Diavik Interest or (C) the Non-Diavik Assets, whether through an asset purchase, a share purchase or a combination thereof (either one being, a "**Sale Proposal**") or some other portion of the Property (a "**Partial Sale Proposal**"); or

(ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business (an "**Investment Proposal**"); and

(iii) that the Sale Proposal or Investment Proposal, as the case may be, will at a minimum and on closing, provide cash proceeds which are equal to the aggregate total of: (A) the amount of cash payable under the Stalking Horse Bid if it does not provide for a credit bid or, if the Stalking Horse Bid does provide for a credit bid, the amount of cash payable thereunder together with the amount of obligations being credit bid thereunder, *plus* (B) the amount of the expense reimbursement and break fee (if any) payable to the Stalking Horse Bidder, *plus* (C) a minimum overbid amount of US$1

million (the amounts set forth in this paragraph 14(g)(iii), the "**Minimum Purchase Price**"); provided, however, the Applicants may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet the Minimum Purchase Price (such bids, "**Aggregated Bids**") (the amount of the Minimum Purchase Price shall be confirmed by the Sale Advisor with Potential Bidders);

(h) it contains such other information as may be reasonably requested by the SISP Advisor, in consultation with the Applicants and the Monitor;

(i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;

(j) in the case of a Sale Proposal, it identifies or contains the following:

(i) the purchase price or price range in U.S. dollars and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;

(ii) any contemplated purchase price adjustment;

(iii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;

(iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

(v) information sufficient for the SISP Advisor, the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;

(vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(k) in the case of an Investment Proposal, it identifies the following:

(i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Dominion Diamond Group or its business in U.S. dollars;

(iii) the underlying assumptions regarding the *pro forma* capital structure;

(iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

(v) information sufficient for the SISP Advisor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;

(vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

15. The Applicants with the consent of the Monitor, may waive compliance with any one or more of the requirements specified herein and deem any such non-compliant LOI to be a Phase 1 Qualified Bid; *provided* that the SISP Advisor shall consult with the Stalking Horse Bidder in advance and on a no-names basis regarding the general nature of any waiver being contemplated.

Assessment of Phase 1 Qualified Bids and Subsequent Process

16. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Successful Bid (as defined below).

17. Following the Phase 1 Bid Deadline, the Applicants shall determine, in accordance with the requirements of paragraph 14, the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a "**Phase 1 Successful Bid(s)**" and which Phase 1 Qualified Bidder(s) shall be deemed a "**Phase 2 Qualified Bidder(s)**".

18. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. The Stalking Horse Bid constitutes a Phase 1 Successful Bid and the Stalking Horse Bidder is a Phase 2 Qualified Bidder for all purposes under the SISP, other than the Auction (as defined below). Notwithstanding any other provision hereof, in order to participate in the Auction, the Stalking Horse Bidder shall have waived, or confirmed satisfaction of, any financing condition contained in the Stalking Horse Bid.

19. The SISP Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Successful Bid within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor and the Monitor, deem appropriate.

20. In the event that no Phase 1 Successful Bids are received (other than the Stalking Horse Bid), the Applicants, with the assistance and support of the SISP Advisor and the Monitor,

shall promptly proceed to seek Court approval of the Stalking Horse Bid; *provided*, *however*, that the Applicants may (i) extend the Phase 1 Bid Deadline with the consent of the Monitor, the Stalking Horse Bidder, and the Agent Advisors, or (ii) seek Court approval of an amendment to, or termination of, the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to his/her/its Sale Proposal or Investment Proposal shall submit a binding offer (a "**Binding Offer**") (a) in the case of a Sale Proposal, in the form of the Template PSA provided in the VDR, along with a marked version showing edits to the original form of Template PSA provided in the VDR, or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Applicants and the Monitor (each, such binding offer submitted in accordance with paragraph 25 below, a "**Phase 2 Qualified Bid**") in each case to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on August 31, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (as maybe extended, the "**Phase 2 Bid Deadline**").

22. A Binding Offer will only be considered as a "**Phase 2 Qualified Bid**" by the Applicants if the binding offer:

    (a) has been received by the Phase 2 Bid Deadline;

    (b) is a Binding Offer (i) to purchase (A) all, substantially all, or a portion of the Property; (B) Diavik Interest; or (C) the Non-Diavik Assets or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business, on terms and conditions reasonably acceptable to the Applicants;

    (c) identifies all executory contracts of the Applicants that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied;

    (d) is not subject to any financing conditionality;

    (e) is unconditional, other than upon the receipt of the Approval Order (as defined below) and satisfaction of any other conditions expressly set forth in the binding offer;

    (f) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or

the Property of the Dominion Diamond Group in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;

(g) provides for the payments of an amount at least equal to the Minimum Purchase Price unless it is a part of a bid the qualifies as an Aggregated Bid;

(h) the Binding Offer must be accompanied by a letter which confirms that the Binding Offer: (i) may be accepted by the Applicants by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date;

(i) does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;

(j) is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "**Deposit**"), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court and the terms described in paragraph 35 below;

(k) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before October 7, 2020, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than October 31, 2020 (the "**Outside Date**"); and

(l) contains an agreement that the Phase 2 Qualified Bidder submitting such bid, if not chosen as the Successful Bidder, shall serve, without modification to such bid, as a Backup Bidder (as defined below), in the event the Successful Bidder fails to close; *provided*, *however*, that, the Stalking Horse Bidder shall not be required to serve as Backup Bidder, except to the extent the Stalking Horse Bidder or its affiliates elect to submit an overbid in the Auction.

23. The Applicants with the consent of the Monitor may waive strict compliance with any one or more of the requirements specified above (for greater certainty, other than paragraph 22(c) above) and deem any such non-compliant Binding Offer to be a Phase 2 Qualified Bid.

Selection of Successful Bid

24. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.

25. The Applicants with the consent of the Monitor, will (a) review and evaluate each Phase 2 Qualified Bid and (b) identify the highest or otherwise best bid (the "**Successful Bid**", and the Phase 2 Qualified Bidder making such Successful Bid, the "**Successful Bidder**") pursuant to the paragraphs below. Any Successful Bid shall be subject to approval by the Court.

26. In the event there is at least one Phase 2 Qualified Bid in addition to the Stalking Horse Bid (provided that the Stalking Horse Bidder has waived or confirmed any financing condition contained in the Stalking Horse Bid has been waived or satisfied), the Applicants shall identify the Successful Bid through an Auction (as defined below).

27. ***Auction***: In the event that an Auction (the "**Auction**") is required in accordance with the terms of this SISP, it shall be conducted in accordance with the procedures set forth in this paragraph.

    (a) The Auction shall commence at a time to be designated by the Applicants on September 3, 2020, at the Calgary offices of Blakes, Cassels, and Graydon LLP or such other place and time as determined by the Applicants and continue thereafter until completed, subject to such adjournments as the Applicants may consider appropriate; *provided* that if circumstances do not permit the Auction to be held in person, the Applicants shall work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be held via videoconference, teleconference, or such other reasonable means as the Applicants deem appropriate. The Applicants reserve the right to cancel or postpone the Auction.

    (b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Phase 2 Qualified Bidder participating in the Auction.

    (c) Except as otherwise permitted in the Applicants' discretion, only the Applicants, the SISP Advisor, the Monitor, the Agent and the Phase 2 Qualified Bidders, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Phase 2 Qualified Bidder is eligible to participate in the Auction.

    (d) Phase 2 Qualified Bidders shall appear at the Auction, or through a duly authorized representative.

    (e) Except as otherwise set forth herein, the Applicants may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable

under the circumstances for conducting the Auction provided that such rules are (i) not inconsistent with the Second Amended Initial Order, the SISP, the DIP, the CCAA, or any order of the Court entered in connection with these CCAA Proceedings, (ii) disclosed to each Phase 2 Qualified Bidder, and (iii) designed, in the Applicants' business judgment, to result in the highest and otherwise best offer.

(f) The Applicants will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction shall designate a single individual to be its spokesperson during the Auction.

(g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Applicants or any other person, without the express written consent of the Applicants, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders.

(h) Prior to the Auction, the Applicants shall identify the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid shall constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than US$1 million cash in excess of the Opening Bid or in such amounts as to be determined by the Applicants, with the consent of the Monitor, prior to, and announced at, the Auction. For the purposes of facilitating bidding the Applicants may ascribe a monetary value to non-cash considerations, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) shall provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Applicants. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Applicants to facilitate bidding by the participants in the Aggregated Bid.

(i) All Phase 2 Qualified Bidders shall have the right to, at any time, request that the Applicants announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Applicants' announcement of the then-current highest and best bid.

(j) Each participating Phase 2 Qualified Bidder shall be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction shall continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder that the Applicants determine has submitted the highest and otherwise best Phase 2 Qualified Bid of the Auction. At such time and upon the conclusion of the bidding, the Auction shall be closed and the final remaining Phase 2 Qualified Bidder shall be the Successful Bidder.

(k) Upon selection of a Successful Bidder, the Applicants shall require the Successful Bidder to deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion (as defined below).

(l) The Applicants shall not consider any bids submitted after the conclusion of the Auction.

28. The Applicants shall have selected the final Successful Bid and the Backup Bid by no later than September 7, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than September 11, 2020, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Applicants with the consent of the Monitor and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. The Applicants shall not extend or otherwise vary the Outside Date except with the written consent of the Monitor and the Agent. In the case of a Successful Bid and Backup Bid that includes the purchase of the Diavik Interest, the Applicants shall also require the written consent of DDMI to any extension or variation of the Outside Date.

29. Notwithstanding anything in the SISP to the contrary, if an Auction is conducted, the Phase 2 Qualified Bidder with the next highest or otherwise best Phase 2 Qualified Bid at the Auction, as determined by the Applicants, will be designated as the backup bidder (the "**Backup Bidder**"); *provided* that the Stalking Horse Bidder shall not be a Backup Bidder, unless it elects to provide an overbid in the Auction. The Backup Bidder shall be required to keep its initial Phase 2 Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the "**Backup Bid**") open until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date.

Approval of Successful Bid

30. The Applicants shall apply to the Court (the "**Approval Motion**") for an order approving the Successful Bid and the Backup Bid (as applicable) and vesting title to any purchased Property in the name of the Successful Bidder or the Backup Bidder (as applicable) (the "**Approval Order**"). The Approval Motion will be held on a date to be scheduled by the Applicants and confirmed by the Court upon application by the Applicants, who shall use their best efforts to schedule the Approval Motion on or before September 28, 2020, subject to Court availability. The Approval Motion may be adjourned or rescheduled by the Applicants without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the Service List prior to the Approval Motion. The Applicants shall consult with the Successful Bidder and the Backup Bidder regarding the application material to be filed by the Applicants for the Approval Motion, which material shall be acceptable to the Successful Bidder, acting reasonably.

31. All Phase 2 Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid.

Deposits

32. The Deposit(s):

(a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a trust account;

(b) received from the Successful Bidder shall:

(i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of the Approval Order, upon closing of the approved transaction;

(ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Applicants and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable directly to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;

(c) received from the Backup Bidder, unless it is subsequently selected as the Successful Bidder, shall be fully refunded, to the Back-Up Bidder on or before the earlier of (i) two (2) Business Days after the date of the closing to the Successful Bid; or (ii) October 31, 2020;

(d) received from the Phase 2 Qualified Bidder(s) that are not the Successful Bidder or the Back-Up Bidder shall be fully refunded, to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the selection of the Successful Bidder and in any event no later than September 30, 2020.

33. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder shall not be required to fund a Deposit.

"As is, Where is"

34. Any sale (or sales) of the Property will be on an "as is, where is" basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to CCAA proceedings and any such representations and warranties provided for in the definitive documents shall not survive closing.

Free Of Any And All Claims And Interests

35. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges,

liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder.

Credit Bidding

36. The Washington Interim Lender shall be entitled to credit bid any outstanding DIP advances made by it as part of the closing of the Stalking Horse Bid, provided that any DIP advances made by the First Lien Interim Lenders are paid in cash by the Washington Interim Lender at closing.

37. Except as provided in paragraph 36 above, the Washington Interim Lender shall not be entitled to credit bit any outstanding DIP advances in connection with any transaction contemplated by the SISP without the consent of the Agent (such consent not to be unreasonably withheld).

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 or any holder or holders or indenture trustee of the Applicants' 7.15% secuered second lien notes 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), including those Interim Financing Obligations attributable to October Advances (as defined in the DIP). Nothing contained

in this paragraph 38 is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

Confidentiality

39. For greater certainty other than as shall be required in connection with any Auction or Approval Motion, neither the Applicants, the Monitor, the SISP Advisor will share (i) the identity of any Potential Bidder, or Phase 1 Qualified Bidder (other than the Stalking Horse Bidder), or (ii) the terms of any bid, LOI, Phase 1 Qualified Bid, Sale Proposal, Investment Proposal or Phase 2 Qualified Bid (other than the Stalking Horse Bid), with any other bidder (including, without limitation, the Stalking Horse Bidder) without the express written consent of such party (including by way of e-mail).

Further Orders

40. At any time during the SISP, the Applicants or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP including, but not limited to, the continuation of the SISP or with respect to the discharge of its powers and duties hereunder.

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 shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders. Nothing in this paragraph creates binding obligations of third parties, including but not limited to DDMI, the Government of the Northwest Territories, or sureties.

(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 require that a Successful Bid, Backup Bid or any other bid 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.

Appendix "A"

TO THE SISP ADVISOR:

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

Attention: John Startin

Phone: 212-453-5577
E-Mail: John.Startin@evercore.com

WITH A COPY TO:

Attention: Andrew Frame

Phone: 212-823-6443
E-Mail: Andrew.Frame@evercore.com

WITH A COPY TO:

Attention: Nicholas Salzman

Phone: 646-259-7783
E-Mail: Nicholas.Salzman@evercore.com

TO THE MONITOR:

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

Attention: Deryck Helkaa

Phone: 403-454-6031
E-Mail: deryck.helkaa@fticonsulting.com

WITH A COPY TO:

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary AB T2P 4K7

Attention: Chris Simard

Phone: 403-298-4485
Email: simardc@bennettjones.com

Schedule “C”

Stalking Horse Agreement of Purchase and Sale

CONFIDENTIAL

DRAFT – JUNE 12, 2020

ASSET PURCHASE AGREEMENT

BY AND AMONG

CANADIAN DIAMOND HOLDINGS, L.P.,

CA CANADIAN DIAMOND MINES ULC,

DOMINION DIAMOND HOLDINGS, LLC,

DOMINION DIAMOND MINES ULC

AND

WASHINGTON DIAMOND INVESTMENTS, LLC

Dated as of June [●], 2020

TABLE OF CONTENTS

Article I

CERTAIN DEFINITIONS

1.1 Specific Definitions 2

1.2 Other Terms 20

1.3 Other Definitional Provisions 20

Article II

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1 Acquired Assets 21

2.2 Excluded Assets 24

2.3 Assumed Liabilities 24

2.4 Excluded Liabilities 25

2.5 Allocation of Acquired Assets and Assumed Liabilities 27

2.6 Assigned Contracts/Previously Omitted Contracts 27

2.7 Circumstances for Exclusion of Diavik Joint Venture Interests 29

2.8 Assets Held by Parent or Retained Subsidiaries 30

Article III

PURCHASE PRICE AND PAYMENT

3.1 Purchase Price 31

3.2 Satisfaction of Purchase Price 31

3.3 Further Assurances 31

Article IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

4.1 Organization and Power 32

4.2 Authority; No Violation 32

4.3 Consents 32

4.4 Subsidiaries 33

4.5 Title and Sufficiency of Assets 34

4.6 Financial Statements 34

4.7 Compliance with Laws 34

4.8 Authorizations 35

4.9 Material Contracts 35

4.10 Diavik Joint Venture 35

4.11 Ekati Mine 35

4.12 Leased Property 36

4.13 Interests in Properties and Mineral Rights 36

4.14 Litigation 36

4.15 Environmental Matters 37

4.16 Aboriginal Claims 37

4.17 Employees 37

4.18 Collective Agreements 38

4.19 Employee Plans 38

4.20 Taxes 38

4.21 Brokers and Finders 39

4.22 No Other Representations or Warranties 39

Article V

REPRESENTATIONS AND WARRANTIES OF PURCHASERS

5.1 Organization and Power 40

5.2 Purchaser's Authority; No Violation 40

5.3 Consents, Approvals or Authorizations 40

5.4 Brokers 41

5.5 GST Registration 41

5.6 "As Is, Where Is" Basis 41

5.7 Investment Canada Act 42

5.8 No Other Representations or Warranties 42

Article VI

COVENANTS OF SELLERS AND/OR PURCHASERS

6.1 Conduct of Business of Sellers 42

6.2 Consents and Approvals 44

6.3 Confidentiality 45

6.4 Change of Name 46

6.5 Purchasers' Access to Sellers' Records 46

6.6 Notification of Certain Matters 46

6.7 Preservation of Records 47

6.8 Publicity 47

6.9 Material Adverse Effect 47

6.10 Sale Free and Clear; No Successor Liability 47

6.11 Casualty Loss 47

6.12 Debtors-in-Possession 48

6.13 CCAA Court Filings 48

6.14 Not a Required Back-Up Bidder 49

6.15 Financing Matters 49

6.16 Parent Guaranty 50

6.17 Payment of Cure Amount 50

Article VII

EMPLOYEE MATTERS

7.1 Covenants of Sellers with respect to Employees 50

7.2 Covenants of Purchasers with respect to Employees 51

Article VIII

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASERS

8.1 CCAA Court Approvals 52

8.2 Antitrust Approvals 52

8.3 No Court Orders 52

8.4 Representations and Warranties True as of Both Effective Date and Closing Date 52

8.5 Compliance with Covenants 52

8.6 No Material Adverse Effect 52

8.7 Essential Contracts; Cure Amount 52

8.8 Authorizations 53

8.9 Surety Condition 53

8.10 Ordinary Course Operations 53

8.11 Diavik Mine 53

8.12 Diavik Good Standing 53

8.13 Financing 54

8.14 Delivery of Acquired Assets 54

8.15 Corporate Documents 54

8.16 Release of Encumbrances 54

8.17 Accounts Payable 54

8.18 Interim Facility Compliance 54

Article IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

9.1 CCAA Court Approvals 54

9.2 Antitrust Approvals 54

9.3 No Court Orders 54

9.4 Representations and Warranties True as of Both Effective Date and Closing Date 55

9.5 Compliance with Covenants 55

9.6 Corporate Documents 55

Article X

CLOSING

10.1 Closing 55

10.2 Deliveries by Sellers 55

10.3 Deliveries by Purchasers 57

10.4 Monitor's Certificate 57

Article XI

TERMINATION

11.1 Termination of Agreement 58

11.2 Procedure and Effect of Termination 60

11.3 Breach by Purchasers 60

11.4 Break-Up Fee and Expense Reimbursement Amount. 61

Article XII

MISCELLANEOUS

12.1 Expenses 61

12.2 Survival of Representations and Warranties; Survival of Confidentiality 61

12.3 Amendment; Waiver 62

12.4 Notices 62

12.5 Effect of Investigations 64

12.6 Counterparts; Electronic Signatures 64

12.7 Headings 64

12.8 Applicable Law and Jurisdiction 64

12.9 Binding Nature; Assignment 64

12.10 Designated Purchasers 65

12.11 No Third Party Beneficiaries 65

12.12 No Recourse 65

12.13 Tax Matters. 66

12.14 Construction 68

12.15 Entire Understanding 69

12.16 No Presumption Against Drafting Party 69

12.17 No Punitive Damages 69

12.18 Time of Essence 69

12.19 Severability 69

LIST OF SCHEDULES

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 Order
SCHEDULE F Assigned Contracts
SCHEDULE G Form of SISP Order

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of June **[•]**, 2020 (the "Effective Date"), by and among Canadian Diamond Holdings, L.P., a Delaware limited partnership ("Purchaser Holdco"), CA Canadian Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Purchaser Holdco ("Canadian Purchaser" and, together with Purchaser Holdco, "Purchasers"), 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"), and Washington Diamond Investments, LLC, a Delaware limited liability company ("Parent").

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"), 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 (the "Stay"). On May 1, 2020, the Applicants 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, on May 21, 2020, Sellers, Parent and Washington Diamond Investments Holdings II, LLC entered into a non-binding letter of intent (the "LOI") that contemplated, among other things, that such parties would commence negotiations of this Agreement on terms and conditions consistent with those set forth in a stalking horse term sheet appended as Exhibit A to the LOI (the "Stalking Horse Term Sheet");

WHEREAS, the Stalking Horse Term Sheet contemplated that subject to, among other things, following the execution of this Agreement, the Purchasers would act as a "stalking horse bidder" in connection with the sale investor and solicitation process (the "SISP") for the Business and Property (as defined in the Amended and Restated Initial Order), meaning that, in the absence of the Sellers' acceptance of a superior bid made in accordance with the SISP, the Purchasers have agreed to purchase the Sellers' right, 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");

WHEREAS, the Applicants have sought to obtain approval of the SISP Order from the CCAA Court which will (a) authorize and direct the Sellers, subject to approval of the Monitor (as defined below) to execute this Agreement, which will stand as the Stalking Horse Bid (for the

purposes of the SISP) and (b) approve the Interim Facility and authorize the Applicants to enter into the Interim Facility Credit Agreement;

WHEREAS, concurrently with the execution of this Agreement, and as a condition to the willingness of Sellers to enter into this Agreement, Purchasers have delivered to Sellers a limited guaranty (the "Limited Guaranty") of Washington Liquid Investments, LLC, a Montana limited liability company (the "Guarantor"), dated as of the date hereof, pursuant to which the Guarantor has guaranteed certain obligations of Purchasers; 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 4.16(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 2.1.

"Acquired Subsidiaries" shall have the meaning ascribed thereto in Section 2.1(a).

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

"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, neither of the Purchasers is 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 12.13(e).

"Alternate Transaction" shall have the meaning ascribed thereto in Section 11.4(a).

"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 Purchasers and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchasers.

"Assigned Contracts" shall have the meaning ascribed thereto in Section 2.1(l).

"Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(b).

"Assignment and Assumption of Leases" shall have the meaning ascribed thereto in Section 10.2(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 applicable Purchasers 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 2.3.

"Assumed Plans" shall have the meaning ascribed thereto in Section 7.2(a).

"Auction" shall have the meaning ascribed to such term by the SISP.

"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.

"Break-Up Fee" shall have the meaning ascribed thereto in Section 11.4(a)(iv).

"Break-Up Fee Charge" means a priority charge in favour of Purchasers over the Property (as defined in the Amended and Restated Initial Order) of the Applicants granted by the CCAA Court pursuant to the SISP Order to secure the payment by Sellers of the Break-Up Fee and the Expense Reimbursement Amount pursuant to this Agreement, which charge shall rank in priority to all Encumbrances in respect of the Property other than the Administration Charge, the Directors Charge, and the KERP Charge (each as defined in the Amended and Restated Initial Order).

"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 Holdco Acquired Interests.

"Canadian Purchaser" shall have the meaning ascribed thereto in the Preamble.

"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 3.1(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 10.1.

"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 Purchasers 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 Purchasers have 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 Purchasers, 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 10.4.

"Confidentiality Agreement" shall have the meaning ascribed thereto in Section 6.3.

"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.

"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 Purchasers 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 Purchasers 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 Purchasers (which amount shall be set out on the form of contractual consent agreed to by the Purchasers and the counterparty to such Assigned Contract).

"Cure Funding Amount" means US$20,000,000, less any amount that the Applicants 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 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. on June [__], 2020.

"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.

"Designated Purchaser" shall have the meaning ascribed thereto in Section 12.10.

"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 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.

"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."

"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 lien, encumbrance, Claim, right, demand, charge, mortgage, deed, deed of trust, statutory, constructive or deemed trust, lease, option, pledge, security interest or similar interest, title defect, assignment, hypothecation, easement, right of way, restrictive covenant, encroachment, right of first refusal, preemptive right, proxy, voting trust or agreement, transfer restriction under any shareholder agreement or similar agreement, judgment, conditional sale or other title retention agreement or other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever.

"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.

"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 F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.[1]

"Excluded Assets" shall have the meaning ascribed thereto in Section 2.2.

"Excluded Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Excluded Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.

"Excluded Liabilities" shall have the meaning ascribed thereto in Section 2.4.

"Expense Reimbursement Amount" means the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by Purchasers or any Purchaser Related Party (including, for the avoidance of doubt, such costs, expenses and fees incurred by Washington Diamond Investments Holdings II, LLC and its Affiliates) in connection with

[1] NTD: Subject to receipt from Sellers and review of proposed Schedule F list of Essential Contracts, as well as a list of Material Contracts.

evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the Ancillary Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by or on behalf of Purchasers or any Purchaser Related Party in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the CCAA Proceedings and other judicial and regulatory proceedings related to such transactions, which amount shall be secured by the Break-Up Fee Charge and shall be payable as set forth in Section 11.4.

"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.

"Financing" shall have the meaning ascribed thereto in Section 6.15(a) hereof.

"Financing Condition" shall have the meaning ascribed thereto in Section 8.13 hereof.

"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 8.9.

"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.

"Guarantor" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"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 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 12.13(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 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; (d) computer software, computer programs, and databases (whether in source code, object code or other form); and (e) 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 Interim Facility Term Sheet among Washington Diamond, 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.

"Interim Lenders" means Washington Diamond 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 10.2(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, 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.

"Limited Guaranty" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"LOI" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"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 Purchasers.

"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;

(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 Aboriginal Groups 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;

(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 4.13(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 Purchasers 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 12.13(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.

"Other Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Other Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.

"Outside Date" shall have meaning ascribed thereto in Section 11.1(b)(i).

"Parent" shall have the meaning ascribed thereto in the Preamble hereof.

"Parties" means the Purchasers and Sellers 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; (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 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; (6) Encumbrances granted or arising pursuant to the Joint Venture Agreements included in the Acquired Assets; (7) Encumbrances to which the Purchasers consent 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(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.

"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 XI 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 2.6(b)(i).

"Previously Omitted Contract Designation" shall have the meaning ascribed thereto in Section 2.6(b)(i).

"Previously Omitted Contract Notice" shall have the meaning ascribed thereto in Section 2.6(b)(ii).

"Purchase Price" shall have the meaning ascribed thereto in Section 3.1(a).

"Purchaser Holdco" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchaser Holdco 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 Purchasers; any former, current or future, direct or indirect holder of any equity interests or securities of Purchasers (whether such holder is a limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of Purchasers; any equity or debt financing source of Purchasers; 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.

"Purchasers" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchasers' Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"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" shall have the meaning ascribed thereto in Section 2.2(b).

"Rio Condition" shall have the meaning ascribed thereto in Section 8.11.

"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 Purchasers and the Sellers, each acting reasonably, approving the transactions contemplated by this Agreement and vesting the Acquired Assets in the Purchasers, free and clear of all Encumbrances, other than the Permitted Encumbrances.

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

"Sellers" shall have the meaning ascribed thereto in the Preamble hereof.

"Sellers' Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

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

"SISP Order" means the Amended and Restated Initial Order or any other Order of the CCAA Court, which shall be in the form attached hereto as Exhibit G, with such changes as may be agreed to by Purchasers in their sole discretion and Sellers in their reasonable discretion and which shall: (a) authorize and approve the SISP, (b) authorize and direct the Sellers, subject to approval of the Monitor to execute this Agreement, which will stand as the Stalking Horse Bid (for the purposes of the SISP), (c) approve this Agreement as the Initial Stalking Horse Bid (as defined in the SISP) pursuant to the SISP, (d) approve the Break-Up Fee and Expense Reimbursement Amount and grant the Break-Up Fee Charge, (e) approve the Interim Facility Credit Agreement and authorize DDM, as Borrower, to borrow amounts under the Interim Facility.

"Stalking Horse Term Sheet" shall have the meaning ascribed thereto in the Recitals to this Agreement.

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

"Straddle Period" shall have the meaning ascribed thereto in Section 12.13(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.

"Successful Bidder" shall mean the successful bidder determined in accordance with the SISP.

"Surety Condition" shall have the meaning ascribed thereto in Section 8.9.

"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 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, 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.

A "third party" means any Person other than any Seller, Purchasers or any of their respective Affiliates.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 12.13(a).

"Transferred Employees" shall have the meaning ascribed thereto in Section 7.1(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.

"Washington Diamond" means Washington Diamond Lending, LLC and any of its Affiliates or designees as an Interim Lender under the Interim Facility Credit Agreement.

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 Purchasers to act reasonably shall not be deemed to require Purchasers to accept, agree or consent to any Order or supplement, amendment or modification thereto, or any other matter that adversely affects Purchasers or is inconsistent with the terms of this Agreement, in each case, other than in any de minimis respect.

(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

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

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 Purchasers, and Purchasers 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 and Section 2.7, 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. (collectively, the "Acquired Subsidiaries");

(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;

(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;

(l) subject to Section 2.6, all of the Essential Contracts and Other Contracts set forth on Schedule F 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 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 Purchasers and will pay such amounts to the Purchasers 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 Purchasers and will pay such amounts to the Purchasers 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.

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 Finco, 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");

(c) all Excluded Contracts;

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

(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 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;

(f) all assets that are removed from the Acquired Assets pursuant to Section 2.6 and Section 2.7; and

(g) Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchasers 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.

2.3 Assumed Liabilities. At the Closing, except as provided in Section 2.2 and/or in Section 2.4 hereof, and subject to Section 2.6, Section 2.7, Purchasers 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 the operation of the Business 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 Purchasers; (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 2.4;

(f) solely with respect to the Acquired Assets, and subject to such agreements and arrangements as Purchasers may enter into in satisfaction of the Surety Condition and the Rio 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 Purchasers may enter into in satisfaction of the Surety Condition.

2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchasers are 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 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, (ii) all intercompany Indebtedness between any Seller, on the one hand, and Parent or any 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 12.13(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 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;

(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;

(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 Purchasers 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;

(k) any and all Liabilities in respect of Employees other than the Liabilities relating to Transferred Employees that are expressly assumed under Section 2.3;

(l) any and all Liabilities with respect to change of control 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;

(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 for any taxable period, other than Transfer Taxes; and

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

2.5 Allocation of Acquired Assets and Assumed Liabilities. Further to Sections 2.1 and 2.3, above, (i) the Canadian Assets shall be conveyed to the Canadian Purchaser from DDM 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 12.13(d); and the Purchaser Holdco Acquired Interests shall be conveyed to Purchaser Holdco from Dominion Holdings in consideration of the remaining portion of the Cash Component so allocated to the Purchaser Holdco Acquired Interests in accordance with Section 12.13(d).

2.6 Assigned Contracts/Previously Omitted Contracts.

(a) Assignment and Assumption at Closing.

(i) Schedule F 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. Purchasers shall, in their sole discretion following consultation with Sellers, determine which Contracts are Assigned Contracts.

(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 Purchasers, 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 F in their sole discretion following consultation with Sellers by delivery of written notice to Sellers. For greater certainty, (A) any Contract designated by Purchasers as an Excluded Contract on Schedule F 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 Purchasers as an Essential Contract on Schedule F after the date of this Agreement shall be deemed an Essential Contract for the purposes of this Agreement, and (C) any Contract designated by Purchasers as an Other Contract on Schedule F 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 Purchasers. Purchasers may request, in 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 Purchasers to seek to obtain such modifications or amendments or to assist Purchasers in obtaining such modifications or amendments; provided that Purchaser shall make available the Cure Funding Amount to satisfy the Cure Amount. If Purchaser and Sellers are unable to obtain such modifications or amendments, Purchasers may, in 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 Purchasers shall not result in a failure to satisfy the condition to closing set out in Section 8.7, 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 Purchasers 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 Purchasers 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 Purchasers 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 Purchasers in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. Purchasers 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 2.6 as an "Excluded Contract" or with respect to which Purchasers 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 a Purchaser designates a Previously Omitted Contract as an "Essential Contract" or "Other Contract" in accordance with Section 2.6, Schedule F 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 2.6. 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 applicable Purchaser, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and the applicable Purchaser 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 2.6, 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 Purchasers, which Purchasers 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.

2.7 Circumstances for Exclusion of Diavik Joint Venture Interests. Notwithstanding anything to the contrary set forth in this Agreement, if the Rio Condition is not satisfied on or before July 31, 2020, then the Parties shall proceed with the Acquisition on the terms and subject

to the conditions set forth in this Agreement, except that Purchasers shall not acquire or assume any rights or Liabilities with respect to the Diavik Joint Venture and the terms set forth in this Agreement shall be deemed to be amended on the following basis:

(a) the Cash Component shall remain unchanged (other than adjustments otherwise contemplated by Section 3.1(a));

(b) the Diavik Joint Venture Interest, and any diamonds distributed by the Diavik Joint Venture to DDM after the Filing Date shall become Excluded Assets;

(c) all Liabilities of Sellers with respect to the Diavik Joint Venture Interest, the Diavik Joint Venture Agreement, the Diavik Diamond Mine and the Diavik Joint Venture (including with respect to the Closure and Security Agreement) shall become Excluded Liabilities;

(d) Sellers shall be deemed not to make any representation or warranty with respect to the Diavik Joint Venture Interest, the Diavik Joint Venture Agreement, the Diavik Diamond Mine, the Diavik Joint Venture or DDMI (and, for greater certainty, references to the Business shall be deemed to exclude the operations of the Diavik Joint Venture);

(e) Sellers shall be deemed not to make any covenant or agreement with respect to the Diavik Joint Venture Interest;

(f) Sellers shall be permitted to sell, transfer or otherwise dispose of the Diavik Joint Venture Interest free and clear of any restriction under this Agreement;

(g) the Rio Condition and the condition set forth in Section 8.12 shall be deemed waived as of July 31, 2020 for all purposes hereunder;

(h) the aggregate amount of equity financing required to be committed in order to satisfy the Financing Condition would be reduced to US$70,000,000, less 50% of any debt raised; and

(i) Sellers and Purchasers shall agree in good faith to any other adjustments to the terms of this Agreement as may be necessary to implement the terms set forth in this Section 2.7.

2.8 Assets Held by Parent or Retained Subsidiaries. If it is determined at any time before or after the Closing that Parent or any 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 Retained Subsidiary to transfer and assign such assets to Purchasers or to one or more Designated Purchasers, as directed by Purchasers, subject to the terms of this Agreement. Without limiting the foregoing, Parent shall, and Parent and Sellers shall cause each of the Retained Subsidiaries to transfer and assign to Purchasers or to one ore more Designated Purchasers, as directed by Purchasers, all rights, options, Claims or causes of action of Parent or any such 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 Purchasers or a Designated Purchaser pursuant to this Section 2.8 shall constitute Acquired Assets for the purposes of this Agreement.

ARTICLE III

PURCHASE PRICE AND PAYMENT

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 (the "Purchase Price").

(b) The "Cash Component" shall be equal to One Hundred Twenty-Six Million One Hundred Seven Thousand U.S. Dollars (US$126,107,000) (the "Cash Component"),

(i) *minus* the amount (if any) by which 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 Fifty-Five Million U.S. Dollars (US$55,000,000) up to a maximum of Five Million U.S. Dollars (US$5,000,000).

3.2 Satisfaction of Purchase Price.

(a) The Cash Component shall be satisfied in cash 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; provided however, to the extent any of the Cash Component of the Purchase Price will be paid to Washington Diamond in its capacity as Interim Lender under the Interim Facility Credit Agreement, Purchasers may deduct such amount from the Cash Component of the Purchase Price and Washington Diamond agrees the Claims held by Washington Diamond as against the Applicants shall be reduced dollar-for-dollar on account of the amount deducted from the Cash Component. Any dispute relating to the applicable amount of Claims held by Washington Diamond as against the Applicants shall be resolved by the CCAA Court in accordance with Section 12.8.

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

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

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

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

4.1 Organization and Power. Dominion Holdings is a limited liability company duly formed under the laws of the State of Delaware, and is 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 Purchasers 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.

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.

4.3 Consents.

(a) Except as set forth on Section 4.3(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 4.3(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.

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 4.4(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 4.4(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 4.4(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.

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 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.

4.6 Financial Statements. Sellers have delivered to Purchaser 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) 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.

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.

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.

4.9 Material Contracts. Section 4.9 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 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.

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 Purchasers in the Data Room.

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 Purchasers in the Data Room.

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 4.12(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 4.12(iii) of the Seller Disclosure Letter, to the Knowledge of Sellers, no counterparty to any such lease or sublease is in default thereunder.

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 has any interest in the Mineral Rights or any right to acquire any such interest, and no 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, DDM's or, to the Knowledge of Sellers, DDMI's interest in any of the Mineral Rights.

4.14 Litigation. Except as disclosed in Section 4.14 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.

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.

4.16 Aboriginal Claims.

(a) Section 4.16 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.

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 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 Intial Order.

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

4.19 Employee Plans.

(a) Section 4.19(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(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 4.7 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.

4.20 Taxes.

(a) DDM is not a non-resident of Canada for the purposes of Section 116 of the Tax Act.

(b) Seller and each of the Acquired Subsidiaries 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.

(c) The Purchaser Holdco Acquired Interests are not "taxable Canadian property" for the purposes of Section 116 of the Tax Act.

(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.

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

(f) For the purposes of the GST Legislation, (i) DDM carries on a business, and (ii) the Canadian Assets constitute all or substantially all of the property necessary for the Canadian Purchaser to be capable of carrying on the business.

(g) DDM is registered for the purposes of the GST Legislation and its registration number is [_____].

(h) the Purchaser Holdco Acquired Interests are "financial instruments" for the purposes of the GST Legislation.

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 Purchasers 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.

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 Purchasers 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 V

REPRESENTATIONS AND WARRANTIES OF PURCHASERS

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

5.1 Organization and Power. Purchaser Holdco is a limited partnership, validly existing and in good standing under the laws of the State of Delaware, with 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. Canadian Purchaser is an unlimited liability company, validly existing and in good standing under the laws of British Columbia, with 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.

5.2 Purchaser's Authority; No Violation. Purchasers have 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 Purchasers shall be duly and validly authorized and approved by all necessary limited partnership or unlimited liability company action. This Agreement shall constitute the legal and binding obligation of Purchasers, enforceable against Purchasers 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 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 Purchasers' 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 Purchasers under, any Encumbrance, contract, agreement, license, lease, instrument, indenture, Order, arbitration award, judgment, or decree to which any Purchaser are a party or by which it is bound, or to which any property of any Purchaser is subject.

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 Purchasers of this Agreement or the Ancillary Documents to which such Purchaser is a party, the compliance by Purchasers 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 or the taking by Purchasers 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 Purchasers' ability to perform their obligations under this Agreement and the Ancillary Documents to which any such Purchaser is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities.

5.4 Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchasers 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 Purchasers.

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

5.6 "As Is, Where Is" Basis. Notwithstanding any other provision of this Agreement, the Purchasers acknowledge, agree and confirm that:

(a) except for the representations and warranties of the Sellers set forth in Article IV, and subject to the other covenants and agreements set forth herein, the Purchasers are entering into this Agreement, acquiring the Acquired Assets and assuming 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 Purchasers;

(b) except for the representations and warranties of the Sellers set forth in Article IV, neither the Sellers, the Sale Advisor, nor the Monitor or their Representatives have made or are making, and the Purchasers are 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, 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 Purchasers confirm do not apply to this Agreement and are hereby waived in their entirety by the Purchasers;

(c) except as otherwise expressly provided in this Agreement, the Purchasers hereby unconditionally and irrevocably waive any and all actual or potential rights or Claims the Purchasers 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 IV. 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 Sections 11.1 and 11.4, the Purchasers' sole

recourse for any breach of representation or warranty of the Sellers in Article IV shall be for the Purchasers not to complete the transactions as contemplated by this Agreement and for greater certainty the Purchasers 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 5.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

5.7 Investment Canada Act. The Canadian Purchaser is a trade agreement investor or a WTO investor for the purposes of the Investment Canada Act.

5.8 No Other Representations or Warranties. Except for the representations, warranties and covenants of Purchasers expressly contained herein or any certificate delivered hereunder, neither Purchasers nor any of 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 Purchasers.

ARTICLE VI

COVENANTS OF SELLERS AND/OR PURCHASERS

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, the Interim Facility Credit Agreement or the SISP or (z) as consented to in writing by Purchasers (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 in place as of the Effective Date, (D) maintain and preserve satisfactory relationships with Aboriginal Groups and Governmental Bodies, and (E) comply in all material respects with the budget and other obligations set forth by the Interim Facility.

(b) Without limiting the generality of Section 6.1(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 Purchasers (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 employee furlough 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;

(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 reasonably be expected to have any adverse effect on the Purchasers or any of their Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or

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

6.2 Consents and Approvals.

(a) Sellers and Purchasers shall each use commercially reasonable efforts (i) to obtain all consents and approvals, as reasonably requested by Purchasers 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 Purchasers 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 Purchasers 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 Purchasers and Sellers, all required consents and approvals (if any) to assign and transfer the Authorizations to Purchasers at Closing and, to the extent that one or more of the Authorizations are not transferable, to obtain replacements therefor, and (vi) to satisfy the conditions precedent set out in Article VIII and 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 Purchasers 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 8.2 and Section 9.2.

(c) In furtherance and not in limitation of the foregoing, Purchasers shall use commercially reasonable efforts to negotiate an acceptable agreement with DDMI to satisfy the Rio Condition and 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 Purchasers in their efforts to satisfy the Rio Condition and the Surety Condition, including providing information, assisting in evaluation and analysis, and facilitating discussions as reasonably requested by Purchasers. Purchasers 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 3.3 and this Section 6.2, 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, Purchasers 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 Purchasers the benefits which would be obtained under such Authorizations; provided, however, that Sellers' obligations under this Section 6.2(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 Purchasers 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 substantive nature with a Governmental Body. The foregoing obligations in this Section 6.2(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 Purchasers 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 Purchasers 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 Purchasers and subject to Section 3.3, cooperate with Purchasers in any lawful and commercially reasonable arrangement under which the Purchasers 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 Purchasers.

6.3 Confidentiality. Purchasers and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 6.5, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality Agreement, dated **[____]**, 2020, between Washington Diamond Investments Holdings II, LLC 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 Section **[__]** 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 Purchasers and their Representative (as defined therein).

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 Purchasers, and Sellers shall, if requested by the Purchasers, to make an application to the CCAA Court requesting the name of Sellers in the title of the CCAA Proceedings to be changed; 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).

6.5 Purchasers' Access to Sellers' Records. From and after Sellers' execution and delivery of this Agreement, Sellers shall continue to facilitate the due diligence investigations of Purchasers with respect to the Sellers and the Business in the same manner and scope it provides to Potential Bidders (as defined in the SISP) pursuant to the SISP. At such time as the Purchasers become the Successful Bidder (as defined in the SISP), the Sellers' shall provide Purchasers (or 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 Purchasers deem appropriate or necessary in order to facilitate Purchasers' efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with Purchasers in this regard.

6.6 Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to Purchasers 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, Section 9.4 or otherwise, or limit the remedies available to any Party hereunder.

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) and Purchasers agree that each of them shall preserve and keep the 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 Purchasers 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 Purchasers or in order to enable Sellers or Purchasers 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 Purchasers, 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.

6.8 Publicity. Neither Sellers nor Purchasers 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 Purchasers 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.

6.9 Material Adverse Effect. Sellers shall promptly inform Purchasers 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 Purchasers' conditions to Closing set forth in Article VIII.

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

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 Purchasers 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 Purchasers at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchasers at Closing. Notwithstanding the foregoing, the provisions of this Section 6.11 shall not in any way modify Purchasers' 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 Purchasers' conditions to Closing set forth in Article VIII.

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.

6.13 CCAA Court Filings.

(a) Sellers shall use their reasonable best efforts to obtain the approval of the CCAA Court to enter the SISP Order on or prior to [June 19], 2020.

(b) If required under the SISP, Sellers shall conduct the Auction for the Acquired Assets on or prior to September 3, 2020.

(c) If Purchasers are the Successful Bidder pursuant to the SISP, subject to satisfaction of the Financing Condition, Surety Condition and Rio 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.

(d) If Purchasers are the Successful Bidder pursuant to the SISP, Sellers shall serve notices of assumption of the Assigned Contracts, including the designation of Cure Amounts, on all necessary parties on or prior to **[_____]**, 2020.

(e) If requested by Purchasers and provided that the Purchasers are the Successful Bidder pursuant to the SISP, subject to satisfaction of the Financing Condition, Surety Condition and Rio 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.

(f) Sellers shall use their commercially reasonable efforts to provide Purchasers 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).

(g) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify Purchasers of such appeal or stay request and shall provide Purchasers promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchasers 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 Purchasers 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 Purchasers, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(h) Sellers and the Purchasers acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to CCAA Court approval.

(i) After issuance of the Sale Order, neither the Purchasers 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.

6.14 Not a Required Back-Up Bidder. If Purchasers 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, Purchasers shall act as Back-Up Bidder (as defined in the SISP) following the Auction in the event that the Purchasers are not selected as the Successful Bidder (as defined in the SISP). Purchasers shall not be required to act as a Back-Up Bidder under any other circumstances.

6.15 Financing Matters.

(a) Purchasers shall use commercially reasonable efforts to satisfy the Financing Condition and, without limiting the generality of the foregoing, shall use commercially reasonable efforts to (i) obtain financing commitments on terms satisfactory to Purchasers in their sole discretion in amounts sufficient to satisfy the Financing Condition (the financing contemplated by such financing commitments being referred to herein as the "Financing"), (ii) satisfy on a timely basis all conditions applicable to Purchasers in such commitments that are within Purchasers' control, and (iii) consummate the Financing at or prior to the Closing to the extent all of the conditions set forth in each of the financing commitments have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, but subject to those conditions being satisfied at the Closing).

(b) Sellers shall use commercially reasonable efforts to provide, and shall use commercially reasonable efforts to cause their respective Representatives to provide, on a timely basis, such cooperation as is reasonably required or requested in connection with Purchasers' efforts to satisfy the Financing Condition, including the arrangement of the Purchasers' Financing, which cooperation may include using commercially reasonable efforts to: (i) upon reasonable advance notice, participate in a reasonable number of due diligence or other sessions with third parties, and provide reasonable access to documents and other information in connection with due diligence investigations and (ii) reasonably assist with Purchasers' and their Representatives' preparation of definitive documentation and the creation of security interests on the Acquired Assets as part of Purchasers' acquisition financing; and (iii) to the extent required, cooperate as necessary and appropriate with respect to the release of security interests.

6.16 Parent Guaranty. Parent hereby guarantees and covenants and agrees, in favor of the Sellers and the Purchasers, 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 2.8).

6.17 Payment of Cure Amount. Following the Closing, Purchasers will make available the Cure Funding Amount to satisfy the Cure Amount. Following the Closing, Purchasers shall provide to Sellers evidence that the Cure Amount (if any) in respect of each Assigned Contract has been paid by Purchasers 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 Purchasers and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order, in each case promptly following such payment.

6.18 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 Purchasers 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 VII

EMPLOYEE MATTERS

7.1 Covenants of Sellers with respect to Employees.

(a) Purchasers intend to 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 facilitate the transfer of all Employees that Purchasers elect to hire, which may be subject to any temporary layoff or reduction in effect at Closing, including, without limitation, providing Purchasers access to such Employees' personnel records and such other information regarding the Employees as Purchasers may reasonably request, consistent with Section 7.2 hereof. All Employees who receive employment offers from Purchasers and who accept such offers of employment are hereinafter referred to as the "Transferred Employees". The Purchasers acknowledge that they are successors under all collective agreements set out in Section 4.18 of the Seller Disclosure Letter.

(b) During the Pre-Closing Period, except as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), and without limiting the obligations and restrictions set forth in Section 6.1, 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.

7.2 Covenants of Purchasers with respect to Employees.

(a) Purchasers shall assume the Employee Plans (collectively, the "Assumed Plans"). Purchasers, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause Purchasers 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 Purchasers shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.2, 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 7.2 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 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 Purchasers 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 VIII

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASERS

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

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.

8.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

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.

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 4.1, Section 4.2, Section 4.4 and Section 4.6 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.

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.

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

8.7 Essential Contracts; Cure Amount. (i) All consents, approvals or waivers necessary to assign the Essential Contracts to the Purchasers 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[2] (other than the Diavik Joint Venture Agreement) shall not exceed the Cure Funding Amount (calculated based on a US$ to Cdn$ exchange rate of [•] 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.

8.8 Authorizations. Purchasers (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 Purchasers, 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(a) of the Seller Disclosure Letter, consistent in all material respects with historical operations.

8.9 Surety Condition. Purchasers shall have entered into an agreement, in form and substance satisfactory to Purchasers at 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 Purchasers under environmental agreements, Authorizations, licenses and subleases to be transferred (the "Surety Condition").

8.10 Ordinary Course Operations. Purchasers shall not be subject to any mandatory governmental Regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) Purchasers 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) Purchasers' ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts.

8.11 Diavik Mine. Purchasers shall have reached an agreement acceptable to Purchasers with DDMI and the GNWT, in form and substance satisfactory to Purchasers at their sole discretion, in relation to the timing and quantum of capital calls and reclamation liabilities with respect to the Diavik Joint Venture (the "Rio Condition").

8.12 Diavik Good Standing. Purchasers 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 closure security agreement or pursuant to other arrangements to be agreed that: (i) Purchasers will be in full compliance with its obligations under the Diavik Joint Venture Agreement when assigned to Purchasers, (ii) Purchasers 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 to deliver any diamond inventory which accrued to the account of DDM under the Diavik Joint Venture Agreement which had not yet been delivered.

---

[2] NTD: Subject to receipt from Sellers and review of proposed Schedule F list of Essential Contracts and a schedule of Material Contracts.

8.13 Financing. Purchasers shall have obtained third party equity and debt commitments on terms satisfactory to Purchasers in their sole discretion in amounts that, in the aggregate are sufficient to pay the Purchase Price (including satisfaction of the Assumed Liabilities), and the aggregate amount of equity financing committed by parties not affiliated with Washington Diamond Investments Holdings II, LLC or any of its Affiliates shall exceed US$140,000,000 less 50% of any debt raised (the "Financing Condition").

8.14 Delivery of Acquired Assets. Each of the deliveries required to be made to Purchasers pursuant to Section 10.2 shall have been so delivered and at Closing, Sellers shall deliver possession of all Acquired Assets to Purchasers, *in situ,* wherever such Acquired Assets are located at Closing consistent with the terms of this Agreement.

8.15 Corporate Documents. Sellers shall have delivered to Purchasers 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.

8.16 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 Purchasers shall have received such documents or instruments as may be required, in Purchasers' 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.

8.17 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.

8.18 Interim Facility Compliance. Immediately prior to the Closing, there has not been an Event of Default as defined in the Interim Facility Credit Agreement.

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:

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

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

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

9.4 Representations and Warranties True as of Both Effective Date and Closing Date. The representations and warranties of each Purchaser (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 each Purchaser 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 each Purchaser's ability to consummate the transactions contemplated by this Agreement.

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

9.6 Corporate Documents. Purchasers shall have delivered to Sellers copies of the resolutions of Purchasers' board of managers evidencing the approval of this Agreement and the transactions contemplated hereby.

ARTICLE X

CLOSING

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 (5^{th}) 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 and Article IX (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.

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 Purchasers:

(a) a bill of sale in the form of Schedule A duly executed by Sellers;

(b) an assignment and assumption agreement in the form of Schedule B (the "Assignment and Assumption Agreement") duly executed by Sellers;

(c) duly executed instruments for the sale, transfer, assignment or other conveyance to the Purchasers and 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 8.4 and Section 8.5 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 (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 (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 Purchasers (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 Purchasers of the legal and beneficial title to such capital stock or other equity interests);

(k) all tax elections or designations described in Section 12.13, duly executed by DDM;

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

(m) a bill of sale and assignment agreement with respect to the conveyance of any Acquired Assets required to be transferred and assigned to Purchasers pursuant to Section 2.8, in form and substance reasonably satisfactory to Purchasers, duly executed by Parent and each of the Retained Subsidiaries; 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 Purchasers, as Purchasers may reasonably request to vest in Purchasers 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.

10.3 Deliveries by Purchasers. At the Closing, Purchasers will deliver the following:

(a) the Cash Component payable pursuant to and in accordance with Section 3.1;

(b) a confirmation, acknowledgement or other documentation satisfactory to the Sellers to be delivered by Washington Diamond, confirming the quantum of the credit to be applied against the obligations owing by the Sellers to Washington Diamond under the Interim Financing Credit Agreement towards satisfaction of the Cash Component all as contemplated by Section 3.2(a), such confirmation being subject to Monitor approval;

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

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

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

(f) all tax elections or designations described in Section 12.13, duly executed by Canadian Purchaser;

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

(h) 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.

10.4 Monitor's Certificate. Upon satisfaction or waiver by the Purchasers of all conditions precedent to Closing under Article VIII and delivery to the Purchasers of all Closing deliverables under Section 10.2, the Purchasers 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 "Purchasers' Conditions Certificate"). Upon satisfaction or waiver by the Sellers of all conditions precedent to Closing under Article IX and delivery to the Sellers of all Closing deliverables under Section 10.3, 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 Purchasers' Conditions Certificate, the "Conditions Certificates"). Upon receipt by the Monitor of each of the Conditions Certificates, the Monitor shall (i) forthwith issue its Monitor's Certificate concurrently to the Sellers and the Purchasers, 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

Purchasers). 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 XI

TERMINATION

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 Purchasers and Sellers.

(b) Termination by Purchasers or Sellers.

(i) by Purchasers or Sellers, if the Closing shall not have occurred on or prior to October 31, 2020 (the "Outside Date"); provided, however, that Sellers and Purchasers shall not be entitled to terminate this Agreement pursuant to this Section 11.1(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;

(ii) by Purchasers 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 Purchasers shall not be entitled to terminate this Agreement pursuant to this Section 11.1(b)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement;

(iii) by Purchasers or Sellers, if the Auction has occurred and the Purchasers are not the Successful Bidder; or

(iv) by Purchasers or Sellers, if the CCAA Court issues an Order approving an Alternate Transaction.

(c) Termination by Purchasers.

(i) by Purchasers, if (A) the SISP Order, including approval of the Break-Up Fee and Expense Reimbursement Amount and the granting of the Break-Up Fee Charge, shall not have been entered by the CCAA Court on or prior to June [19], 2020 (B) the SISP Order is amended, supplemented or otherwise modified in any manner adverse to the Purchasers or (C) 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 Purchasers (other than in any de minimums respect), in each case without the prior written consent of the Purchasers;

(ii) by Purchasers, 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 in any respect without the prior written consent of Purchasers, 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 Purchasers, acting reasonably;

(iii) by Purchasers, if there is any unwaived and uncured Event of Default (as defined in the Interim Facility Credit Agreement) under the Interim Facility or if at any time Washington Diamond is not an Interim Lender;

(iv) by Purchasers, 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;

(v) by Purchasers, 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;

(vi) by Purchasers, if either (a) Sellers or their Affiliates request or (b) the CCAA Court approves any amendments or modifications to the SISP that adversely affects the interests of Purchasers, the Interim Lenders, or the transactions contemplated by this Agreement (which, for the avoidance of doubt, include any amendments or modifications to the Minimum Purchase Price or the Outside Date (as defined and established under the SISP), any amendments or modifications to the requirements set out for Phase 1 Qualified Bids in section 15 of the SISP or for Phase 2 Qualified Bids in section 23 of the SISP, and any amendment or modification to the terms and conditions set forth in sections 2, 3, 5, 9, 15, 17, 18, 20, 21, 23, 24-31, 35 and 36-38 of the SISP);

(vii) by Purchasers, 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 minimus respect;

(viii) by Purchasers, 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;

(ix) by Purchasers, if a Material Adverse Effect occurs; or

(x) by Purchasers, if, for any reason (including, without limitation, an Order of the CCAA Court), Purchasers are unable to credit bid up to the full amount of the Liabilities owed to Washington Diamond under the Interim Facility Credit Agreement in satisfaction of all or any portion of the Cash Component.

(d) Termination by Sellers.

(i) by Sellers, if a breach of any representation, warranty, covenant or agreement on the part of Purchasers 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, Purchasers 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; or

(ii) by Sellers, with the consent of Credit Suisse AG, Cayman Islands Branch, as administrative agent under the Pre-filing Credit Agreement, on or before the first Business Day after the Phase 2 Bid Deadline (as defined in the SISP) if Purchasers do not remove or satisfy the Financing Condition on or before July 31, 2020.

11.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 11.1, 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.

11.3 Breach by Purchasers. If this Agreement is terminated solely as a result of a material breach by Purchasers pursuant to Section 11.1(d)(i) hereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of $12,610,700 (the "Purchaser Termination Fee"), which shall be payable by Purchasers by giving the Sellers a credit towards the Indebtedness owed to Washington Diamond under the Interim Facility Credit Agreement or by wire transfer of immediately available funds. The Parties hereby agree that the foregoing dollar amount is a fair and reasonable estimate of the total detriment that Sellers would suffer in the event of Purchasers' default and failure to complete the transaction hereunder. Sellers' receipt or credit of the Purchaser Termination Fee in full pursuant to and in accordance with this Section 11.3 shall be the sole and exclusive remedy of Sellers and their Affiliates, attorneys, accountants, Representatives or agents, and, except for payment or credit of the Purchaser Termination Fee pursuant to and in accordance with this Section 11.3 or pursuant to the Limited Guaranty, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against Purchasers, any Purchaser Related Party, any potential debt or equity financing source 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 Purchasers, 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 Purchasers, 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. Sellers further acknowledge that the Purchaser Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will appropriately compensate Sellers under the circumstances.

11.4 Break-Up Fee and Expense Reimbursement Amount.

(a) In consideration of Purchasers and their Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate the Purchasers as a stalking-horse bidder, if the Financing Condition and the Rio Condition have been satisfied or waived on or before July 31, 2020, and

(i) this Agreement is terminated and (A) a Successful Bid (as defined in the SISP) or (B) any other sale of assets or plan in the CCAA Proceedings that (I) results in a change in control of DDM, (II) provides cash on closing to the Sellers or the Applicants equal to or greater than the Minimum Purchase Price (as defined in the SISP), and (III) did not arise following a termination of this Agreement solely pursuant to Section 11.1(d)(i) due to a material breach of this Agreement by Purchasers, is consummated, or

(ii) this Agreement is terminated and any other transaction is consummated within nine (9) months after termination of the SISP that (A) (i) results in a change in control of DDM, or (ii) provides cash on closing to the Sellers or the Applicants equal to or greater than the Minimum Purchase Price (as defined in the SISP), and (B) did not arise following a termination of this Agreement solely pursuant to Section 11.1(d)(i) due to a material breach of this Agreement by Purchasers,

(in either case, an "Alternate Transaction"), then Sellers shall pay to Purchaser Holdco (or as otherwise directed by Purchaser Holdco) in cash immediately following the closing of such Alternate Transaction:

(iii) the Expense Reimbursement Amount, not to exceed US$2,250,000, and

(iv) an amount equal to US$2,522,140 (the "Break-Up Fee") as consideration for the disposition of Purchaser Holdco's rights under this Agreement.

Sellers' obligation to pay the Break-Up Fee pursuant to this Section 11.4 shall survive termination of this Agreement and shall be secured by the Break-Up Fee Charge granted in favor of the Purchasers pursuant to the SISP Order. No other amounts shall be payable by the Sellers to the Purchasers arising from or in connection with the termination of this Agreement other than as provided for in this Section 11.4.

ARTICLE XII

MISCELLANEOUS

12.1 Expenses. Except as otherwise provided herein (including without limitation Section 11.4) or the SISP Order, each Party hereto shall bear its own expenses with respect to the transactions contemplated hereby.

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.

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 2.6. 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.

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

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
Email: susan.tomaine@blakes.com

(B) If to Purchasers, addressed as follows:

c/o The Washington Companies
101 International Drive
Missoula, MT 59808
Attention: Larry Simkins
Email: lsimkins@washcorp.com

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

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001-8602
Attention: Stephen F. Arcano
Attention: Marie L. Gibson
Email: Stephen.Arcano@skadden.com
Email: Marie.Gibson@skadden.com

and

Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, Illinois 60606
Attention: Ron E. Meisler
Email: Ron.Meisler@skadden.com

and

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada
Attention: Brendan O'Neill
Attention: Michael Partridge
Email: boneill@goodmans.ca
Email: mpartridge@goodmans.ca

(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

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: simardc@bennettjones.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

12.5 Effect of Investigations. Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of Purchasers 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 Purchasers.

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 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.

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.

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. Purchasers 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.

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, Purchasers may grant a security interest in its rights and interests hereunder to its 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.

12.10 Designated Purchasers. In connection with the Closing, notwithstanding Section 12.9 or anything to the contrary contained herein, Purchasers shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchasers 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 Purchasers and (e) be entitled to the rights and benefits afforded to Purchasers hereunder (any such Subsidiary or Affiliate of Purchasers 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 Purchase Price, the specified Assumed Liabilities and employment of the specified Transferred Employees. Any reference to Purchasers 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, if any, with respect to the applicable obligation or right. All obligations of Purchasers and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchasers 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 the Purchasers are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect any limitation on Purchasers' obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchasers and any Designated Purchaser(s) hereunder. The above designations shall be made by Purchasers 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 the Sellers' confirm, acting reasonably, that the Designated Purchasers, or any party guaranteeing the obligations of such Designated Purchasers, are sufficiently creditworthy. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchasers are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchasers.

12.11 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective Affiliates and no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, Liability, reimbursement, Claim of Action or other right.

12.12 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 Related Party (other than the Guarantor to the extent set forth in the Limited Guaranty) 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 Purchasers 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 Related Party (other than any payment from the Guarantor to the extent set forth in the Limited Guaranty).

12.13 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 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 Purchasers as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchasers 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 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 2.4(e)).

(c) Purchasers 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, Purchasers 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. Purchasers 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 Purchasers the amount of such liability within ten (10) days of receiving notice from Purchasers that such Tax Return has been filed or that Purchasers 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. Purchasers shall make available to Sellers, and Sellers shall make available to Purchasers, (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 Purchasers, as the case may be, and (ii) such records, personnel and advisors as Sellers or Purchasers may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchasers was included. Sellers agree to provide all reasonable cooperation to Purchasers, and shall make available to Purchasers such records,

personnel and advisors as is reasonably necessary for Purchasers, 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, Purchasers 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 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 Purchasers, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes. Sellers may make reasonable inquiries of Purchasers and their accountants and employees relating to the Initial Allocation, and Purchasers 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 notify Purchasers 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 Purchasers' 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 Purchasers 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 Purchasers 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 Purchasers 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 12.13(e), and (iv) non-appealable and incontestable by Purchasers 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 Purchasers and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 12.13(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, local or foreign Law, as appropriate). Purchasers and Sellers shall each report the federal, state 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 Purchasers and Purchasers 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 Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian 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 paragraph (e) of this Section as consideration paid by Canadian Purchaser for the accounts receivable of Sellers.

(g) Section 20(24) Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian 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 of the Business or the Canadian Assets for an amount of such deferred revenue that is being so transferred to Canadian Purchaser in consideration for Canadian Purchaser undertaking future obligations in connection with the deferred revenue. In this regard, DDM and Canadian 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 to Canadian Purchaser as a payment for the assumption of such future obligations by Canadian Purchaser.

(h) Successor Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian 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 Canadian Purchaser from DDM under this Agreement, provided that any such filing or filings does not give rise to any Tax Liability to DDM.

(i) Section 167 Election. At the Closing, DDM and the Canadian Purchaser will jointly execute an election pursuant to subsections 167(1) and (1.1) of the GST Legislation so that DDM is not required to collect GST in respect of the transfer of the Canadian Assets. The Canadian Purchaser shall file the election within the time prescribed by the GST Legislation.

(j) Withholding. Purchasers, and any Person acting on their behalf, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchasers are required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment; provided that Purchasers 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 withheld, such 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 withholding was made, as the case may be.

12.14 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 IV or Article V.

(b) References in Article IV or Article V to documents or other materials "provided" or "made available" to Purchasers or similar phrases mean that such documents or other materials were present (and available for viewing by Purchasers and their Representatives) in the Data Room.

12.15 Entire Understanding. This Agreement, together with the Ancillary Documents and the Interim Facility Credit Agreement, 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.

12.16 No Presumption Against Drafting Party. Each of the Purchasers 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.

12.17 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.

12.18 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.

12.19 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.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

PURCHASER HOLDCO:

CANADIAN DIAMOND HOLDINGS, L.P.

_____
By:
Its:

CANADIAN PURCHASER:

CA CANADIAN DIAMOND MINES ULC

_____
By:
Its:

SELLERS:

Dominion Diamond Holdings, LLC

_____
By:
Its:

Dominion Diamond Mines ULC

_____
By:
Its:

PARENT:

Washington Diamond Investments, LLC

_____
By:
Its:

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 ORDER

SCHEDULE F

ASSIGNED CONTRACTS

SCHEDULE G

FORM OF SISP ORDER

This is Exhibit "B" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

Action No.: 2001-05630
E-File Name: CVQ20DOMINION
Appeal No.:_____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

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

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

P R O C E E D I N G S

Calgary, Alberta
June 19, 2020

Transcript Management Services
Suite 1901-N, 601 – 5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@csadm.just.gov.ab.ca

TABLE OF CONTENTS

Description		Page
June 19, 2020	Morning Session	1
Discussion		1
Submissions by Mr. Rubin		3
Submissions by Ms. Buttery		34
Submissions by Mr. O'Neill		36
Submissions by Mr. Astritis		42
Submissions by Mr. Sandrelli		44
Submissions by Mr. Warner		45
Submissions by Mr. Wasserman		47
Certificate of Record		55
Certificate of Transcript		56
June 19, 2020	Afternoon Session	57
Submissions by Mr. Kashuba		58
Submissions by Mr. Salmas		63
Submissions by Mr. Nishimura		77
Submissions by Mr. Collins		81
Decision		98
Discussion		99
Submissions by Mr. O'Neill		101
Submissions by Mr. Salmas		111
Submissions by Mr. Wasserman		115
Submissions by Mr. Rubin		118
Submissions by Mr. Simard		125
Submissions by Mr. O'Neill		138
Decision		139
Certificate of Record		149
Certificate of Transcript		150

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

---

June 19, 2020	Morning Session
The Honourable Madam Justice Eidsvik (remote appearance)	Court of Queen's Bench of Alberta
P.L. Rubin (remote appearance)	For Dominion Diamond Mines UCL, Dominion Diamond Delaware Co. LLC, Dominion Diamond Canada ULC, Washington Diamond Investments LLC, Dominion Diamond Holdings LLC, Dominion Finco Inc.
S.F. Collins (remote appearance)	For Diavik Diamond Mines (2012) Inc.
M. Wasserman (remote appearance)	For Credit Suisse
K. Kashuba (remote appearance)	For Ad Hoc Group of Bondholders
B. O'Neill (remote appearance)	For Washington Group
T.M. Warner (remote appearance)	For Dyno Nobel Canada Inc. and Dene Dyno Nobel
C.D. Simard (remote appearance)	For the Monitor
J.J. Salmas (remote appearance)	For Wilmington Trust, National Association
M.I. Buttery, QC (remote appearance)	For the Government of the Northwest Territories
J.R. Sandrelli (remote appearance)	For Procon Mining & Tunnelling Ltd.
D.S. Nishimura (remote appearance)	For M. Quinlan
A. Astritis (remote appearance)	For Public Service Alliance of Canada
E. Kaye	Court Clerk

Discussion

THE COURT: Good morning, counsel.

MR. SIMARD: Good morning, My Lady. It's Mr. Simard.

THE COURT: Good morning, Mr. Simard.

So it looks, according to my list here, that we have 64 participants joining us here today, so welcome, everyone. Welcome to Friday the 19th, a (INDISCERNIBLE) in the United States apparently.

So I see that we have a full schedule. I am thanking our lucky stars that the monitor saw fit to put CaseLines in place. I was receiving material -- and I'm sure all of you were -- up to

9:30 last night in terms of briefs. I've managed to read through everything that's been uploaded, I think. I've done my best to do so anyways, and I'm sure that everybody has.

I see that we have no consensus yet about how matters should be dealt with, so I will hear from the monitor, et cetera, and everyone. Now, I -- I did get the schedule that the monitor set out. And thank you, Mr. Simard, for helping with that. I think it's not a bad schedule. We will try to get everybody heard today; that is key. And hopefully then I'll be in a position -- give you a decision by the end of the day, but we'll see. So I'm going to try to keep as close to the schedule as possible that you have set out, Mr. Simard, but you know, you never know with these things, so we'll just have to play it by ear.

Okay. So why don't we get going on the schedule, which I thought was a good idea. Mr. Simard, you were to -- to start and give an outline of where we're at, which would be tremendous, so --

MR. SIMARD: Very well. Thank you, My Lady. So as -- as you know, this is our third hearing on this application, having been before you May 29th and June 3rd. Obviously, a great deal of written material has been received by you and all the parties, and we've had a certain amount of arguments on May 29th as well.

So what we've tried to do -- I'll just give you a brief outline -- to try to facilitate a bit of streamlining is a few things, the first thing is -- is the different versions of the order and the SISP that is before the Court for consideration.

We've been somewhat successful in reducing the number of versions of documents at any rate and I think also somewhat successful in narrowing the issues. You'll obviously hear from the parties. But for purposes of just pure reference today, the -- I think the documents that everyone needs to keep handy as we go through, the -- the applicant's materials and DDMI's materials filed over the last week all use the same starting point, which is the Appendix 'M' second ARIO and the Appendix 'M' SISP, so those are the two versions that were attached in our monitor's supplement to the fourth report, dated June 2nd, so those are two good forms of order to have referenced.

And then the revisions that have been -- that have been proposed by parties since then, in the company's application materials last Friday, June 12th, they proposed some revisions starting -- from those starting points to the order in the SISP. Those blacklines so people can see the changes proposed by the company are now Appendices 'C' and 'D' to our fifth report, which was submitted yesterday.

And then for the changes proposed by DDMI, the order changes they propose are schedule -- or Appendix 'A' to their bench brief filed earlier this week, and the changes

they propose to the SISP are blacklined in Appendix 'E' to our fifth report.

So I think you will see the blacklining -- the volume of the blacklining has come down, and we hope that that will narrow the discussion today about what versions people propose that you should order if you're inclined to grant the order today.

The second thing with respect to filing deadlines, you saw the email we sent out earlier. It was Appendix 'A' to our report. I'll say there was mixed success on that. Obviously, a lot of material did come in in the early half of the, week but there have been some late filings, and of course, CaseLines, as you said, has been very helpful.

With respect to the batting order today, I'll just -- I'll very briefly go through it. There are two applications before you. There are -- there are three, including Mr. Collins' sealing application. That one is not anticipated to be controversial or take much time.

So the company's application for the approval of the second amended and restated initial order, we've agreed that will go first. That's the one that we need to get done because the -- the timing of the availability of interim financing is -- is now crucial. The cash flows show that a substantial draw is required next week on -- on an interim financing facility. So after my introduction, Mr. Rubin, who will have a lot of matters to deal with, will speak for up to 75 minutes, and then parties who wish -- wish to make submissions in support of the application will speak up to 20 minutes each. I've heard from a number of those parties that they don't think they will take all of that time. And then any opponents to the application, we have suggested, will speak for up to 20 minutes each followed by a reply from Mr. Rubin for 20 minutes and concluding submissions by me for up to 30 minutes. Then the application of Mr. Salmas would proceed after that. It's -- it's a relatively narrow issue which has been very well briefed, so we suggested that his application would take up to 20 minutes. Any supporters would speak for up to 10 minutes each, followed by any opponents for the time same limit, and then we would conclude with 10 minutes of -- of submissions.

Those were all I had. I think everyone's on the same page. I haven't heard anyone come back to us and say they're not happy with that batting order, and obviously we're in your hands, My Lady, and you've indicated that it makes sense to you, so I will mute myself now and let Mr. Rubin make his application. Thank you.

THE COURT: Okay. Thank you, very much, Mr. Simard.

We'll turn it over to you then, Mr. Rubin.

Submissions by Mr. Rubin

MR. RUBIN: Thank you, My Lady.

Just perhaps a couple of introductory comments. As Mr. Simard mentioned, we did serve an amended application on the service list, and we now have an APA before the Court rather than a term sheet, and as such, as Mr. Simard mentioned, the form of materials that we have used and have advanced are blacklines off the motion materials, and the form documents that were attached to the monitor's fourth supplement, that is Exhibit 'M' that Mr. Simard mentioned.

As he also mentioned, the monitor has weighed in again, and what the monitor has done is taken the -- the positions of -- of the applicants and of the DDMI and -- and considered all of those matters, and what the monitor has done in its fifth report is it has suggested changes to the form of SISP and the (INDISCERNIBLE) the applicants are seeking. In -- you know, in very general, terms we've lost some, and we've arguably won some, and the monitor has tried to find that middle ground, and as such, it is Dominion's position on this application that it will accept all of the monitor's suggested changes. We appreciate that, again, we didn't get everything that we wanted, but in our submission, the monitor has found a middle ground, and as such, the form of order that we're seeking is approval of the second amended and restated order that's in our application materials, which attaches the SISP and attaches the APA and the term sheet but as modified by the monitor in its fifth report. So the application and the order we're seeking is our application -- our amended application and the form of our order as amended by the monitor in its fifth report.

The application today is obviously our application. It's important, I think, to note at the outset it is supported by the first lien lenders. It's supported also by the Government of the Northwest Territories, and there may be other parties that support it. We'll have to wait and see. And it's also supported by the monitor. So it's the company's application supported by the first lien lenders, supported, obviously, by the stalking horse bidder and the DIP provider, also supported by the monitor and the government. It is opposed by the noteholders. Mr. Collins' client, DDMI, has said in his brief it does not propose the -- the DIP or the SISP. They have sought certain amendments to the form of order and the SISP, and again, the monitor has weighed in on their suggested amendments as it did with ours.

As Mr. Collins mentioned, we do need to, in our submission, move this matter forward and move this restructuring forward. The company is out of money as early as next week and obviously (INDISCERNIBLE) to proceed and a potential liquidation would be devastating for the company, in our submission, and in our submission --

THE COURT: Mr. Simard, can I just interrupt you just for a second.

Madam clerk, can you make sure, because I'm not the host on this matter -- whoever is the host here, can you make sure that everybody is muted? Somebody's phone was just going. Like, I see that Mr. Startin from Evercore is not muted Kristal Kaye is not muted. Louis Belland. Melody Yu. There's several people still are not muted. Can you please make sure that you're muted just so that we can all -- PLR, whoever that is. There's a lot of people on this line, so just doing our best to keep -- keep it going. Okay. Thank you very much.

Okay. Back to you, Mr. Rubin. Sorry to interrupt.

MR. RUBIN: No, no. Thank you. I appreciate that.

I think what I might do is turn to our bench brief and turn to our overview and start -- and start there, and I will try to direct you to -- to our document, and that is -- this is our bench brief that we filed on, I guess, last Friday.

THE COURT: Okay. I'm there. Thank you.

MR. RUBIN: And so as mentioned in -- in our bench brief, this is to be read in conjunction. We had filed a bench brief for the May 29th hearing. That -- that bench brief set out all of the law in relation to this application. Again, as I said before, there are no jurisdictional issues here. The Court clearly has the authority to grant the relief being sought. There's no issue on that front.

At paragraph 6 of our bench brief -- and -- and as I said, I will just sort of work through the bench brief -- I think it's common ground that we need a DIP. It's common ground that we need a sales process. The alternative is just a liquidation, shutting down the businesses. It's just -- it's not palatable. The company does need financing immediately, and there's affidavit evidence to support that and the monitor in its report also references that.

The DIP that we are proceeding with or asking the Court to approve is the best DIP. It is the result of a solicitation process. It is the superior DIP, and it is still the best DIP available to the company, notwithstanding the fact again that we originally served our material back on May 21st, so we're almost a month ago, and the DIP that we are advancing is still the most -- the best DIP available from an economic perspective and otherwise an (INDISCERNIBLE) position or excuse me -- submission.

And really, the principal issue, My Lady, in this application is the stalking horse APA. I mean, when you boil it down, that -- that is the issue.

As previously mentioned on -- on other applications -- and this is at paragraph 10 of our

brief -- the Court is not being asked -- the Court is not being asked to approve an actual sale today. This is a sales process. That's an important distinction in our submission. And I note that in the noteholders submissions at a number of places, there are -- there are statements that this process or stalking horse bid derives them or deprives them of their $550 million investment. In our submission, that's just not accurate. The Court is not approving a sale today. We're approving a process. In our submission, it is simply not accurate to say that they are being deprived of anything. They will clearly have the opportunity to bid, as will others, and so this process does not deprive them of the ability to effectively own this asset if that's what they want to do. The process is a market tested process. The stalking horse bid is subject to being outbid by others, and there's nothing that limits the second lien lenders or anyone else from doing that.

And so there have been a number of issues, I guess, taken with the stalking horse bid and the Washington Group. And at paragraph 12, we ask this question, you know, Really, what has the Washington Group done? And at paragraph 12, we make the following points. They appear to have lost their $550 million equity investment. They -- they -- they've lost that. But rather than walk away, they've offered a $60 million DIP to the company, and they've allowed the first lien lenders to participate and the first lien lenders (INDISCERNIBLE), and again, rather than walk away from the business and the Northern community, the suppliers, the employees, the pensioners, they have spent 6 weeks and we have spent 6 weeks coming to an asset purchase agreement and negotiating the stalking horse bid. And again, the evidence from the company and the professional advisors is that that is a positive development. That again is the evidence.

And so the stalking horse APA -- I know previously you had questions about what was the total consideration. There's a cash element, and then there's assumed values, and in paragraph 12 (d) we set out that the total consideration is the range in the 506 to 747 million dollars. That's the total consideration. And the range (INDISCERNIBLE) whether Diavik was purchased or not.

So they have rolled up their sleeves. We rolled up our sleeves. Everybody has worked for incredibly long hours, and obviously since the date of the June 3rd adjournment hearing and today, we've worked very hard to get an asset purchase agreement, and the evidence again is that the asset purchase agreement itself will be of benefit to other potential bidders because now we have a structure.

And of course, between June 3rd and today -- well, it wasn't actually between June 3rd and today because we had to deliver our materials last Friday, so it was between June 3rd and June 12th that we have worked on and have delivered an asset purchase agreement. And in that asset purchase agreement, the -- the stalking horse bidder has agreed to make available -- I'll say up to $20 million, but it's 20 million less the amount remaining to be

paid to critical suppliers, so I'm going to call it 18 or so -- $18 million for the assumption of pre-filing -- this is US -- pre-filing (INDISCERNIBLE) pursuant to (INDISCERNIBLE) contracts and assumptions of contracts, and I'll get into that law on that. So there's a significant -- there is a benefit to those parties. And again, I will get into law as to why that is perfectly permissible and in fact occurs in a number of CCAAs.

There has been -- and there is a suggestion the Washington Group, you know, has had -- and there's no doubt about it -- has had prior involvement with the company, and somehow there's a suggestion that there's something wrong with that and -- and through the submissions of the noteholder group -- and again, I use "noteholder" to lump the ad hoc and the trustee because they're both noteholders or a trustee of the noteholder group -- that there's something improper with them being "an insider" and that somehow equity is taking value from the noteholders. But again, lost in that submission is equity is not bidding its equity. The Washington Group is putting new money up like any other purchaser. They've lost their $500 million investment, and they're now putting up new money.

And there's nothing wrong with an insider putting forth a stalking horse bid. Other courts have approved this. And on that point of other courts approving this, we cited the *Brainhunter* case when the court approved it. The trustee in its reply brief that was delivered, I guess, on Wednesday night, they cite an article, and in that article, there's another case which is *Signature Aluminum* which also improved -- excuse me -- approved a stalking horse bidder from a party related to an insider. So there's nothing wrong with an insider providing a stalking horse bid.

And it's interesting in this -- this issue of the insider, it's curious because other bidders might argue that the second lien lenders have an advantage over them because they have been involved with the company for two and a half years and the -- the noteholders themselves have had access to information that others haven't. You may recall there's an investor portal that the second lien lenders have had access to, but we're not suggesting that the second lien lenders are prohibited from bidding or from advancing a stalking horse bid. But that's the very purpose of the SISP, is to allow everyone to get access to information and to provide a bid.

And in our submission, it makes no logical sense to turn away a current prospective bidder, which is the Washington Group, at this stage when the evidence is there is a limited number of potential bidders for this kind of asset, and in the company's submission, supported by the expert, Evercore, having that stalking horse bid is helpful. And when we have a limited universe of potential bidders, we do not want to turn away one in the hope -- and I say the hope -- that they'll come back and bid in the process. They may not come back and bid in the process.

And as you may recall, My Lady, DDMI is -- has their mine -- I think it's approximately 30 kilometres away from the Ekati Mine, so DDMI is a potential logical bidder as well, and they have said they're not bidding. No one can force them to. That's understandable. If they don't want to bid, they don't want to bid. So we know DDMI, who's a logical bidder owned by Rio, 30 kilometres away, they're not going to bid. Now, we've got the Washington Group who said, Well, we're prepared to bid on a stalking horse basis. And in the company's submission, it makes no sense to turn them away as well and to continue to limit the pool of prospective bidders. And at the -- at the end of the day, what we want to do is we want to avoid a scenario in which we have no bidders. We need to and we want to keep this asset and this business operating and for the benefit of all of the stakeholders.

In addition, we've now been -- I guess we filed on April 22nd, so we are almost 2 months from the filing date, and the reason I mention that is no other party has come forward with a stalking horse bid. The 2L lenders -- and I say 2L as second lien or the noteholder group -- they've been involved in this file for 7 weeks. They have not come forward with a stalking horse bid. There is no better stalking horse bid. And I think that's an important point. It's not that the 2 Ls have to come forward with a stalking horse bid. That's not the point. The point is we have a stalking horse bid. It's a benefit. There's no other -- not only a better stalking horse bid, there just isn't even another one.

At paragraph 20 of my brief, we discuss the -- the -- the professional advisors to Dominion Diamond and how that the APA -- the stalking horse APA provides value and benefits to the company and the applicants, and I say that that is the judgment of Mr. Bell and Evercore.

And -- and in 21, I talk about the evidence of Mr. Bell, and he is the independent director, and he has deep experience in the diamond industry. He was also a minister in the Government of the Northwest Territories, and not only does he have experience in the diamond industry, but he's had experience with Dominion for 10 years, and in addition, Mr. Bell has been involved -- this is the fourth strategic review process or sales process that Mr. Bell has been involved in because this asset has been -- they've tried to sell this asset on a number of times before the sale to Washington. Then there's a sale to Washington, and now we're on another one. And in my submission, nobody has more experience and more knowledge about this asset than Mr. Bell. It's also supported by Evercore, and they are the expert financial advisor, and they are deeply experienced in this area, and I'll take you to Mr. Startin's affidavit. And it's also supported by the first lien lenders and the monitor.

DDMI, as I mentioned -- at paragraph 22, and the Court has heard a great deal from DDMI. I understand that. I understand, and to confirm, that they're not opposing the SISP or the -- or the bid, but they want some changes to the SISP in the order.

But I simply make this point at paragraph 23 DDMI is a direct competitor of ours. There are also the majority partner and manager of the Diavik JV. Those are -- those are just facts. There's no doubt that we've got concerns with the way they've operated the JV. We're not going to be able to resolve that today. That's not the point. And litigation has been commenced on that front. And there is no doubt that because of the competitive nature of the relationship -- and again, they compete not just in the terms of -- of sort of being direct competitors of having two mines, but they compete with respect to the sale of clients and selling diamonds, and as a result, all of that has to be considered in the relief that is being sought.

And so what I would like to do just before I turn to the affidavit evidence is I'd ask the Court when it considers and listens to the submissions of the noteholders, I'd ask the Court to consider those submissions in light of the following facts. (1) The stalking horse bid does not take away value or deprive anyone of anything. It's an opening bid subject to overbid. The noteholders, as I said, have the ability to submit an overbid, and they will control this asset if they want. Their notes have a face value of $550 million. Regardless of what those notes trade for in the open market -- it doesn't matter whether they trade at 1 cent or 99 cents on the dollar -- (INDISCERNIBLE) they get to credit bid the full face value of their notes, so if they want, they can pay out the charges ahead of them and own the asset, and in our submission, that's what they should do. They said they were going to bid. They told the Court that, so they should bid.

The sales process that we are putting forward will tell us the value. Nobody can -- nobody knows what the value is today, but that's the reason for the sales process. The best indicator of fair market value will be shown through this sales process.

The noteholders do make a comment in their material that there's no evidence of what the value -- that the value today isn't the value in 2017. You've heard that submission, that the value today -- we don't know what it is and we know what it was in 2017. Well, there's no requirement to have a valuation today on a sales process. That's the reason you run a sales process. The market will tell us what the value is.

But more importantly, I say there is evidence that the value today is nowhere near what it was in 2017, and what is that evidence? Well, the financial statements that were filed on the initial application show that the company in 2018, the year after the purchase, lost $270 million. In 2019, they lost $62 million. So between those 2 years, the company lost $330 million in 2 years. Now, 2020 isn't complete, but I think we can fairly assume it's not going to be a good year. That is the evidence. Clearly, this company is not worth anywhere close to what it was in 2017, and the company's insolvent now.

I would also ask the Court, when you're taken to the affidavit of Mr. Hoff -- so that's the affidavit filed by the second lien lenders -- that you consider that affidavit in light of the expertise shown by -- Mr. Startin's affidavit, the experience and expert in Mr. Bell's affidavit and the experience and expertise of Mr. Hoff. You previously heard me talk about evidence because I think evidence is important rather than simply the submissions or musings of counsel. (INDISCERNIBLE) Mr. (INDISCERNIBLE), it says that he is a senior research analyst. That's it. A senior research analyst, that's it. That's all we have. And then his affidavit talks continually about his experience. He says, In my experience, blank; in my expertise, blank; in my experience, such.

And so with that, I would like to turn to the affidavit of Mr. Bell, and I will try to direct you to that affidavit.

THE COURT: All right. I'm there. Thank you very much.

MR. RUBIN: Thank you. So Mr. Bell's affidavit, at paragraph 3, he summarizes, and he says: (as read)

> As set out below and further to my evidence as set out in the first Bell affidavit, I remain strongly of the view that advancing the stalking horse bid as part of the restructuring proposal is in the best interests of the applicants and their stakeholders and provides for the best opportunity to achieve a going concern sale of Dominion. In the circumstances, including in regard to the nature of the applicant's business and the benefits to stakeholders, (INDISCERNIBLE) business continues a going concern, I believe such a process is the responsible and the most pursuant course of action at this time.

Paragraph 7, he talks about the continued restructuring efforts. The applicant and their advisors are working diligently to negotiate the stalking horse APA. The form of stalking horse APA, without schedules, have been substantially agreed by the applicants and the stalking horse bidder. It has not yet been finalized, as the applicants and the stalking horse bidder focus their attention towards negotiating and finalizing the agreement itself, and they're expected to be finalized in the coming weeks.

He says the negotiations that have occurred to date have been both lengthy -- well, we know they've been 6 weeks long -- and constructive given the complex nature of the assets.

He says at 9: (as read)

> It remains my view that the stalking horse sales process is an appropriate and prudent way to market the applicants' asset. As noted as the first Bell affidavit, a stalking horse provides value to the applicants' restructuring efforts by setting a floor price --

Again, I know that the -- the noteholders talk about it. They suggest it's a ceiling. Well, that's just factually incorrect. It is on its face subject to overbid.

> -- as well as demonstrating to the stakeholders that there will be a going concern outcome for the applicants' business. In addition, the stalking horse APA will now act as a baseline document.

And he says: (as read)

> There's also substantial value in going through the stalking horse bid process itself, including the preparation and negotiation of the APA. Both the applicants and the other bidders for their assets will benefit from Dominion having gone through this process which has assisted the applicants to identify the various issues at play in a potential sale.

We talked about going through this process is a benefit to not only the company but other potential bidders.

Paragraph 10, he says this is a -- that -- that the -- the decision to seek approval of the restructuring proposal ought to be considered in the context of the unique and complex nature of the company's assets. (as read)

> The Ekati Mine is an important strategic resource for the Northwest Territories. In my view, it's critical to, among others the, Northwest Territories, Northern communities, employees, retired employees, contractors, the environment and creditors that it continue to operate as a going concern as a significant taxpayer and the second largest non-governmental employer in the Northwest Territories with over 40 percent of its employees being Northern residents.

He goes on to say that: (as read)

> When considering the interests of Dominion stakeholders, one of my primary considerations has been to identify a process --

And again, remember, we're talking about a process.

> -- that provides for the best opportunity for the Ekati Mine to reopen and continue as a going concern. The importance of this business to the Northern communities cannot be overstated.

And then he says at paragraph 13: (as read)

> I've now been involved in four sales process with respect to Dominion and its assets. I've worked with Dominion Diamond for more than 10 -- more than a decade, was previously their CEO. I am aware of the issues that would impact a potential acquiror's interest in Dominion assets.

And as I mentioned, there is no one more knowledgeable than Mr. Bell with respect to this asset. He then, at paragraph 14, talks about the complex challenges related to this asset. They operate in the subarctic climate, one of the most challenging physical environments in the world. They're in a northern location, far away from supply chains. Diamonds are a niche resource.

And he says at paragraph 15: (as read)

> As a result of the unique and complex challenges of the Ekati Mine and the downward pressure on diamond markets, I believe there will be a limited number of potential purchasers who would be interested in acquiring and operating the Dominion assets.

And he says: (as read)

> Despite these proceedings being commenced and widely publicized over 6 weeks ago, I'm advised by Evercore that only two third parties --

And that excludes the Washington Group and the noteholders.

> -- that only two third parties have entered into non-disclosure agreements to review confidential information regarding a purchase of Dominion's assets.

So as matters currently stand, presumably we're looking at four potential purchasers. There

may be more but four (INDISCERNIBLE) know of, the (INDISCERNIBLE) and then these two other parties. And as I mentioned earlier, I would say, you know, moving out or kicking out the Washington Group in the hope that they might come back would not be prudent.

And then finally at paragraph 20, he talks about the urgent need for interim financing.

If I could turn to Mr. Startin's affidavit. Hopefully I have directed everyone to Mr. Startin's affidavit. Do you have that, My Lady?

THE COURT: Yes. I'm there. Thank you.

MR. RUBIN: And so just at paragraph 1 again, I mentioned earlier, Mr. -- Mr. Startin's experience, senior managing director in Evercore -- this is paragraph 1 -- their corporate advisory business, and he has responsibility for Evercore's global metals, minerals and mining practice. Prior to joining Evercore, he is most recently managing director, head of metals and mining in the Americas and a member of the mergers and acquisitions group at Goldman Sachs, and he has more than 18 years of corporate advisory experience.

And at paragraph 4 of his affidavit -- and again, this is to supplement his earlier affidavit -- It remains Evercore's judgment that (a) a sale transaction with respect to the applicants' business and its assets is appropriate at this time. So it's appropriate now. The -- integrated, comprehensive nature of the restructuring proposal provides material value. So he says the comprehensive nature, including the DIP and the stalking horse, provides material value to the applicants, and it's also the best available restructuring option available. And approval of the stalking horse bid, the SISP, the interim financing term sheet on the terms sought by the applicant is appropriate and will support the applicants in seeking value maximization.

Paragraph 5, Evercore remains of the view that the stalking horse will benefit the applicants' efforts to maximize value of the CCAA proceedings. So the expert says having a stalking horse bid will benefit us in our efforts to maximize value. He says in paragraph 5 it will set a floor price. He says it will help to generate interest, and he says it also provides a level of certainty.

Paragraph 6, he says Evercore remains of the view that the timelines set out in the SISP are appropriate and they will allow a reasonable process. The noteholders, in their -- in their materials, say, Last time we were before you, we had dates set out, we are now 16 days later but we've only adjusted this SISP by 10 days, not 16 days. That's what they say in their material, and that's accurate. We have moved the dates out a further 10 days. And

what Evercore is saying is moving them out 10 days is fine, doesn't create an issue, we don't need to adjust by another 6 days. And what they say -- Evercore says in paragraph 8 is that they began contacting potential bidders on April 27. So that was 7 weeks ago that they started contacting bidders.

And near the end of paragraph 8, he says that as of June 11th, Evercore's contacted 38 potential bidders. And as mentioned earlier, in Mr. Bell's affidavit, two of those parties have executed NDAs. That's two beyond the Washington Group, obviously, and the noteholders.

And he talks at paragraph 9 about the information that has been given to these parties, and he also says in paragraph 9 that where they received additional due diligence requests from those parties who are interested, they've been responding to those requests.

That's Mr. Startin's additional affidavit on this -- on this application.

And if I could turn back to the bench brief. And I am now at page 7.

THE COURT: Okay. Thank you.

MR. RUBIN: (INDISCERNIBLE) the heading, Amendments. Thank you, My Lady.

So I have -- I have already mentioned that is the form of relief that we're seeking, and as I mentioned, it is that part form of relief as amended by the monitor in its fifth report, so the -- the second ARIO that we're seeking -- or the order that we're seeking is approval of the second ARIO as amended or modified by the monitor in its fifth report.

And what I say at the bottom of this page in paragraphs 27 and 28 is we had provided amendments in our application material to the forms of orders, and as I mentioned, the monitor accepted some of them, they rejected some of them, they accepted some of ours, they rejected some of ours, they accepted some of DDMI's, and they rejected some of DDMI's. I assume you're going to hear from DDMI that they still do not accept the monitor's version, and I will deal with that in -- in -- mostly in reply, to hear where they take issue with the monitor's version of the orders, but at this point in time, the company does accept the monitor's views and accepts the monitor's middle ground, and in our submission, that is the way to go.

At paragraph 32 of our bench brief -- well, maybe I'll start at paragraph 31. At paragraph 31, we discuss the fact that -- and I've already mentioned this in the affidavits or referred to in the affidavits -- that this affidavit is very complex, and that complexity is demonstrated

in the APA. This is not a template format APA. The parties worked very hard to get to that point.

But in paragraph 32, we talk about how the APA confirms what the stalking horse bidder has agreed to assume, and we set those out. So the stalking horse -- stalking horse bidder has agreed to assume all trade payables that arise under contracts arising on or after the filing date that are not yet due and payable at closing. They've agreed to assume liabilities with respect to employees that are transferred to the stalking horse bidder -- and I will stop there for a moment. The APA says that they're going to take substantially all employees. I think it's Mr. Hoff's affidavit where he says -- he complains about that. He says, Well, that doesn't provide certainty. Well, with respect, what else is a purchaser supposed to do at this point in time other than say they're going to take substantially all employees? Paragraph (c) all payroll liabilities with respect to employees who are transferred; paragraph (e) environmental liabilities relating to the Ekati Mine and, of course, subject to the Rio condition. That is (INDISCERNIBLE) they're going to purchase Rio, their share of the environmental liabilities related to the Diavik Mine. Again, but there has to be discussion with Rio, and as we've heard lots about, there will be have to be some sort of an agreement or a waiver of those conditions. And we've heard DDMI now say that they're prepared to talk to the Washington Group, and I'm sure the Washington Group will talk to -- to Rio.

And then at paragraph 33, we say: (as read)

> Consistent with standard commercial practice, the determination of which contracts will be assigned as part of the stalking horse APA will be done through a consultative process which require discussion and negotiation with contractual counterparties.

Again, not unusual. This is a complex asset. The Washington Group has said in their stalking horse APA that they've have allocated $20 million US -- so call that 27 million Canadian or 28 million Canadian -- in this regard, but they need to have further discussion/consideration as to which contracts they -- you know, they need or are critical for the operation of their business, and they'll need to have discussion with those counterparties.

The bench brief is then -- talks about what I call the non-DDMI or non-Rio concerns, and I talk about the evidence that's before the Court in paragraph 34. I'm not going to go through it in any detail other than to say that we set out in paragraph 34 that the negotiations have been at arm's length. That's the evidence. The evidence is Mr. Bell is independent. There's evidence in his first affidavit about the lengths that have gone through to ensure that independence. There's evidence of Mr. Bell having had direct discussions with the monitor so the monitor can hear from Mr. Bell directly. The monitor has had discussions directly

with Evercore. And the evidence is that the process that we're putting forward is the best process and that it's warranted at this time, and the evidence is that the stalking horse bid is important.

Again, the focus here is on -- on the process going forward because, again, we're not approving a sale today.

And then at paragraph -- moving down to the table, which is in paragraph 37, previously, there had been questions raised as to what really -- how much -- or what is the assumption of liability now in addition to the cash purchase price and what is the total price being paid and how do you illustrate that. And this table at 37 is the monitor's table. It's not our table. So this is where when I gave you the numbers earlier -- this was the table that was provided by the monitor in their supplement to the fourth report before the last hearing. And you can see here it says operating liabilities "to be determined" in the middle of the table. This is now that US 20 million or 27 Canadian or 28 million dollar...

What's interesting here is in the noteholders' submission they talk about how, well, if you parse through the APA, the Washington Group may try -- be trying to pull a fast one because what they might do is say, We're not taking any contract, and because we're not taking any contract, they say they'll never pay this 20 million. In my submission, that just simply again is the approach of throwing everything you can against the wall, hoping something sticks. That's not the way the APA is set up. The APA provides that the Washington Group is to make available this amount of money. And I can't imagine that if we're at a sale approval hearing and the Washington Group came before Your Ladyship and said, Aha, we pulled a fast one on everyone, we're not making this available, that that would go over very well irrespective of the fact that a purchaser needs to operate this business. And whether it's the Washington Group or another bidder, they're going to need to have relationships with their contractors and their suppliers in the subarctic, so in my submission, that -- that -- that complainant of the noteholder group is -- just simply doesn't hold water.

There are fees being paid. We note that in paragraph (c). But the monitor has specifically said that the stalking horse bidder -- and this is a quote from the monitor in paragraph (c). The monitor -- excuse me. The stalking horse bidder spent considerable time and resources on the stalking horse term sheet and now the APA, and the payment of the upfront expense reimbursement is justified in the circumstances. And I've already taken you to the evidence of what the value is of that process. And then in paragraph (d), with respect to the conditions -- and there are still conditions, which are understandable in the company's view -- (as read)

> The monitor's reported --

And again, this is a quote from the monitor's report.

> -- that while the stalking horse bid is subject to significant conditions, the monitor's concluded that these conditions are not unreasonable in the circumstances, and the presence of those conditions does not outweigh the beneficial aspects of the stalking horse bid.

And then one of the things the monitor notes is -- and there's complaint in the stockholder -- excuse me -- in the noteholder submissions about the amount of the break fee, the break fee reimbursement. But again, just to remind everybody that those fees are only payable if the financing condition is removed by July 31st, the Rio condition is removed by July 31st, and -- and there's a superior transaction. Those three -- all three of those have to happen before those fees would be paid.

And at paragraph 38, they talk about how the views of Evercore and the monitor are deserving of significant weight.

Turning to what I'll call the specific submissions of the -- of the 2L trustee and the ad hoc group -- and I'm at paragraph 39 -- there has been much made of I'll call it submissions that we've somehow violated the norms of the CCAA or the priority rules. And we have stated in our submission that there are a number of CCAAs where secured parties aren't being paid but there are cure costs or amounts assumed by a purchaser, and we say that is not unusual, and we cite the *Lightstream* case for that. And then the trustee, in its submission, goes through *Lightstream*, and I -- presumably, they'll take you there, but I'd ask you when -- when they take you to *Lightstream*, I'd ask you to consider this: In *Lightstream*, the noteholder group was not paid in full, and a bunch of unsecured liabilities were assumed. So we say *Lightstream* does apply. Again, the noteholders weren't paid in full.

Now, in this case, under the stalking horse bid, if it's -- if it's the best bid, the noteholders wouldn't get paid anything. That's their point. Well, that doesn't change the fact that if that's where value breaks, that's where value breaks. And there's nothing wrong with a purchaser assuming a trade liability as part of it wanting to ensure it has a business going forward.

And I would like to take you to our reply brief that we filed last night. And again, I apologize for the late filing last night, but just so the Court understands, the noteholder material was filed late in the evening on Wednesday night, and so obviously, we worked on this yesterday and got our reply brief filed yesterday or last night. So I will take you to our reply brief, and I'm going to start -- I'm going to start at paragraph 15, and this is where I talk about the affidavit of Mr. Hoff. And -- and I state that -- I'd ask the Court -- I

mentioned this earlier to you -- to consider Mr. Hoff's affidavit with care before simply accepting the statements that he makes.

And I comment in paragraph 16 about the experience of our affiants, and I won't go through that again at paragraph 16.

And we say at paragraph 17 that Mr. Hoff criticizes Dominion for using its time since June 3rd to advance the stalking horse APA, and they criticize us for that. And again, I -- I say that criticism is misplaced, and the reason I say that is after the June 3rd hearing, as I mentioned, the parties rolled up their sleeves, dealt with this issue of -- as best we could of the to-be-determined amount on the -- on the trade supplier issue.

And again, as I mentioned, there was no proposal made to us by the 2Ls. There was a discussion very soon after the June 3rd hearing, and this is what this material says. Emails exchanged on the 4th, a conversation -- I think it was 7:30 my time on Friday the 5, and we asked the 2Ls if they've got a proposal, a better proposal, to put it to us. They asked about timing, and we said we have a Friday, June 12th filing the date, so get us -- get us what you can by -- we need to probably have a deal in place by Wednesday because we had to prepare materials for a Friday filing (INDISCERNIBLE). We got nothing from them. Nothing. And so on Friday the 12th, we filed our materials. And it's not to say that the -- the proposal that the 2Ls are putting forward now is better, because we don't think it is, but we didn't get anything from them until we filed on the 12th. And then what the ad hoc group did is they filed a proposal for a DIP 2 days ago. I don't know how the company can be criticized.

Paragraph 19, so Mr. Hoff makes a number of statements. 19(a), he criticizes a provision in the APA that says if the DIP -- the stalking horse bidder does not satisfy its financing condition by the July 31st date -- he criticizes a provision that says it doesn't automatically terminate unless we, the company, with the support of the first lien lenders, say it terminates. And he criticizes us for it. I think he misunderstands the provision. That provision is for our benefit. We inserted it because if the stalking horse bidder doesn't meet their financing condition by this date, we may want to hold their feet to the fire and say to them, You -- you have to use your commercially reasonable efforts to satisfy it. So we put that provision in for our protection to continue to force them to satisfy that or try to satisfy that condition.

Mr. Hoff criticizes the Rio condition. But again, you've heard lots about (INDISCERNIBLE) Rio or DDMI. I'm not going to get into it, but we think any purchaser is going to want that kind of condition who's going to want to have discussions with their potential joint venture partner.

Paragraph (c), I've already mentioned the fact that Mr. Hoff adopts a reading of the APA that suggests that somehow there's some funny business going on and the stalking horse bidder's not going to pay any of this $20 million amount. I've already taken you through that. I won't do it again, but -- but what I do say in paragraph (c) is that it's odd that on the one hand, the noteholders complain about the fact that any unsecured or trade payable is going to get paid and then the other hand, they criticize us and the APA by saying, Well, there's a potential scenario in which you won't pay those people. Those two things are at odds.

And then at paragraph (d), he complains that the stalking horse APA provides substantially all the employees are to be retained, and he complains that might not be a hundred percent. Well, as I said, it's just -- in our submission, that is -- that's grasping at straws.

Paragraph 20, he makes further comments about the stalking horse break fee, and he says that: (as read)

> There will be a break fee "if the company selects a different transaction."

As I told you, that's not accurate. There's a break -- there's multiple conditions that have to apply, including a superior transaction and the -- the conditions, as I mentioned earlier, having to have been satisfied or waived.

20(b), he complains about the fact that if someone wants to bid and if those -- the stalking horse break fee is payable -- so all those -- those conditions I mentioned have been satisfied or waived -- a potential bidder has to overbid by 5.8 million, and he says that that's just not -- that's not appropriate. He says that's not right. But I ask this question: They have $550 million in (INDISCERNIBLE). Do they really -- is that really the issue, that someone might come in with a better bid that doesn't outbid the stalking horse bidder by $5.8 million? Are they really trying to protect for a superior bid that is an additional $3 million? Because the way APA is structured is if the break fee is there -- it's only if -- and the expense reimbursement, someone would have to bid more than 5.8 million to pay that amount (INDISCERNIBLE). But they can't honestly be considering a scenario in which someone comes in with a bid that only outbids the stalking horse bidder by $3 million and they say, Well, we can't accept it. It's -- it's just -- it just -- it makes no sense given the amount of their debt.

And then paragraph 20(c), Mr. Hoff also complains that he says: (as read)

> The stalking horse bidder --

This is in paragraph 20(c):

> -- "would gain a huge head start in conducting due diligence" and that "it could gain immediate access to critical business partners which other bidders might not have until much later in the SISP."

The SISP protects against that. And if you're making a note, I will take you to it. Paragraph 41(c) in particular of the SISP says bidders get the same information, same access that the stalking horse bidder gets, and in fact, 41(c) goes on to say that if the stalking horse bidder gets information or the Washington Group as a DIP provider and it's relevant to the SISP, it also goes to other bidders. So this is just factually incorrect. What Mr. Hoff says is just not correct.

Paragraph 22 of our brief -- our reply brief, Mr. Hoff asserts that there needs to be far better checks and balances and says that no one driving the process is incentivized to seek a higher and better price. And I would say those submissions ignore the professional qualifications and reputation of Evercore, of Mr. Bell, of the applicants generally and in particular the monitor who's involved, directly involved, in the entire process. To suggest that no one is going to try to actually follow the process under the SISP and get a better deal I say is just completely unsupportable.

There's also a suggestion in their materials that all is well but for COVID, why are we doing this now. As noted in the initial filing materials, the company has a highly levered capital structure, and that's right in the beginning of the affidavit of Ms. Kaye. It's one of the major issues. And as I mentioned earlier, in 2018 and 2019, the company lost $330 million. That's before COVID. It's not just sustainable. And now we're on care and maintenance. The company runs out of money next week. Dominion doesn't have the ability to make its cash calls with respect to the Diavik Mine, and we're insolvent. And I say that against that backdrop, My Lady, I think it's fair to assume that the company is not worth anything close to what it was 3 years ago, and I also note that there's no evidence from the noteholders as to what this company -- they say the company is now worth.

In paragraph 27, I deal with this sort of noteholder legal objection issue. This has to do with, you know, whether what we're doing is unprecedented, you know, the idea that a purchaser could come in and -- and assume liabilities, and there's a -- there's a reference to it in the trustee's materials in particular, and I do want to take you through some case law on that just to make sure that the Court is comfortable that what we're doing is not in any way not just not prohibited but not unusual. And so at paragraph 29 -- or excuse me -- 27, I say that the trustee takes issue with the stalking horse APA on the grounds that it resulted in "unprecedented reordering of the priorities under the Canadian insolvency law." That's their submission. And we say with the greatest of respect, it's the trustee's opposition -- and

this is the noteholder trustee -- opposition to the standard occurrence in the CCAA sale transaction that's unprecedented.

And so paragraph 28, we say that the trustee's objection is premised on there being something improper about the noteholders' position in the following hypothetical circumstances. So first, the applicants' equity holders maintain ownership of substantially all the assets of the applicants. Again, true. They're providing (INDISCERNIBLE) money. (2) The interim lenders get paid in full; (3) the fees of professionals get paid in full; then (4) the senior lenders and their counsel get paid in full -- that's the 1Ls -- and then (5) the liabilities of unsecured creditors --

THE COURT: Mr. Rubin.

MR. RUBIN: -- (INDISCERNIBLE) the interest of the second lien noteholders are extinguished. Now again, that's only if the stalking horse bidder is the superior bid and only if you approve it at a subsequent hearing. And the trustee suggests that there's something unfair about that or unusual or unprecedented.

So first, at paragraph 30, the trustee acknowledges the uncontroversial position that a bidder can elect to assume certain unsecured obligations while excluding other unsecured obligations. And that's in their bench brief, and we provide the cite for it at paragraph 23 of their brief. But then the trustee appears to take the view that this uncontroversial position applies only in the context of a third-party bid and not where the equity holder is advancing the transaction with new money. And in our submission, that makes no sense.

And paragraph 31, the status of a stalking horse bidder as an equity holder does not violate any provision of the CCAA or any commercial norms. We say this is not a case where payment is proposed to be made to holders of equity claims in circumstances where non-equity have not been paid in full contrary to section 6.8. That's not what we're doing here. There's no basis in the CCAA or the applicable case law to refuse to approve the SISP from the stalking horse on this basis. On the contrary, the text of the CCAA and applicable case law expressly authorizes the sale of assets in the CCAA to insiders. That's 36.4. It expressly authorizes that.

We say in paragraph 32 that the negotiations have been going on for 2 months; the process has not been collusive.

And at paragraph 33, neither the text of the CCAA -- paragraph 33 -- the case law or commercial practice suggests there's anything unusual or improper regarding the type of transaction contemplated by the stalking horse APA. The trustee's assertion that insider stalking horse bids are "extraordinarily rare in Canada" is not supported by any authority.

They don't cite any authority for that. There's no indication that the Court approving such a bid in *Brainhunter*, where they did that very thing, considered it to be unprecedented. And the trustee's own brief cites *Signature Aluminum* which is the one I mentioned earlier where there was a bid from a related party to the equity holder. And we -- and no examples have been cited by the trustee to suggest that our proposed stalking horse bid has been rejected by any court for the reasons raised by the trustee. No examples have been cited.

In any event, this SISP is being carried with the over -- carried with the -- carried out with the oversight of the monitor, and there will be scrutiny by you at the sale approval hearing. But again, I'm not presupposing that this stalking horse bid will be the -- the best bid. We hope there are other bids.

Second and third points, there's nothing unusual about interim lenders being paid in full. Obviously, everybody knows that. That's in the CCAA. There's nothing improper about the fees of professionals being paid. In fact, that's specifically provided for in the CCAA.

And then fourth, at paragraph 37, while the authorities and priorities cited by the trustee provide correct statements of law in the context of the issue of how to determine the allocation of liquidation proceeds among the various classes of creditors, they've got no application in a proposed sales process. And again, in the context of this sales process, one of the questions before the Court is whether this proposed sale or a proposed sale will benefit the whole economic community -- that's one of the considerations that will be before you at a sale approval hearing -- with broader issues, whether such sale satisfies the section 36 sale approval criteria. And the trustee's suggestions -- the noteholder trustee suggestion that this Court should focus its analysis on the proposed SISP and stalking horse APA on what (INDISCERNIBLE) the rigid scheme of priorities that governs a distribution on a liquidation rather than the benefits of a sales process, we say that is what turns the purpose of the CCAA on its head.

And so at paragraph 39 -- I do want to make sure I've taken you to paragraph 39. Paragraph 39, and we say far from being unprecedented, this very court, My Lady, approved a sale transaction in the CCAA proceedings in *Bellatrix*. That was a month ago. It provided for no recovery for approximately $290 million of secured debt obligations but nevertheless resulted in the payment or assumption of substantial unsecured obligations relating to assumed contracts, cure costs, and environmental reclamation obligations. And as noted by the Court in that case, that the transaction in issue: (as read)

> would provide sufficient funds to pay CCAA priority charges and a substantial portion of the first lien notes as well as provides for the assumption of other contractual and statutory obligations. It would -- it would not be sufficient to the pay the entire first lien

> debt and would leave nothing for the second or third lien noteholders.

So this unprecedented situation happened a month ago in your court.

And we say at paragraph 40: (as read)

> Consistent with the purpose of the CCAA and the factors set out in section 36, the Court in *Bellatrix* focused --

Again, this was on the sale approval at that point in time.

> -- focused its analysis on the effects of the proposed sale distribution on the creditors and other interested parties rather, than on narrow priority-based issues advanced by the trustee. Specifically, while recognizing that creditor interests are important considerations when approving a sale --

Again, we're at a sale process though.

> -- the Court approved the transaction before it, notwithstanding that such approval would provide benefits to unsecured creditors, employees, other stakeholders in circumstances where certain of the debtor's secured lenders would not receive any recovery.
>
> > The Spartan bid would see the first lien noteholders paid a portion of their outstanding debt but not all. The second and third lien noteholders will receive nothing.
> >
> > The Spartan asset purchase agreement obligates Spartan to assume the obligations and liabilities except relating to excluded assets -- which is like ours. This will include environmental liabilities as well as employment, regulatory, contractual obligations.

And then at the end of that paragraph: (as read)

> > From an overarching economic view, keeping contracts intact and people employed is a significant and positive factor.

> It is axiomatic that considering someone's interests is not the same thing as satisfying those interests.

And then we say at paragraph 42 *Bellatrix* is not novel. We cite *Nelson Education*. The Ontario court approved a credit bid transaction by the first lien lenders that provided no recovery for $200 million owed to second lien lenders, and that transaction provide also provided for the assumption of trade payables, et cetera. And then in looking at the quote from that case: (as read)

> The positive effect is that all ordinary course creditors, employees, suppliers and customers will be protected. The effect on the second lien lenders is to wipe out their security and any chance of their loans being repaid.

And the last sentence of this quote is interesting. The first lien lenders -- so this is the last sentence of the quote in paragraph 42. Because there was a suggestion here, I think, that we should just -- that the parties should just simply wait until things got better and the response from the Court is: (as read)

> The first lien lenders however are not obligated to wait in the hopes of some future result.

And then at paragraph 43, affording a measure of discretion to a purchaser, we say, to allow it to address the needs of employees and others, pensioners, social stakeholders is important if in its judgment it needs to do that to carry on the business, otherwise you could imagine the kind of handcuffs that you put on a purchaser. If you couldn't do that, you would be buying a business and you would not have any of those relationships to continue to operate your business, and this would be a (INDISCERNIBLE) in essence putting on a judicial straitjacket on any potential purchaser.

My Lady, I have about 15 minutes left according to Mr. Simard, and so -- I don't say that in a pejorative sense. I understand what Mr. Simard is -- is doing. And so I think what I would like to do is just very quickly talk about Mr. Quinlan's objections, and I will do that very briefly and then perhaps turn back to go through the various comments on some of the forms of orders. I know I haven't spent a lot of time with respect to DDMI suggested changes to the orders. I may have to just do that in reply, but I am mindful that Mr. Simard is trying to move us along, and I would like to respect those timelines. So what I might do at this point is just continue with -- with Mr. Quinlan objections and then go to the various documents if that's all right with you.

THE COURT: All right. (INDISCERNIBLE) try that.

MR. RUBIN: And so just continuing our reply brief, so Mr. Quinlan, he did, as he notes, he -- he worked for Dominion for 16 months as the CFO. He was paid an annual salary of $400,000, and he had various benefits as set out in his materials that were attached to his affidavit. It appears he received about 2.1 or just over $2.1 million on the closing of the transaction, the sale to Washington, and he does have a remaining claim for 1.25 million arising from a settlement agreement.

And -- and I understand Mr. Quinlan's position. He's frustrated. He's upset, and understandable, and it's unfortunate. Absolutely it's unfortunate in the context of -- of these proceedings that he -- he wasn't paid, but also equally unfortunate is that his position I guess is no different than what happens in many, if not most, insolvencies. There are number of creditors who are owed money and who have outstanding (INDISCERNIBLE). Mr. Quinlan is not alone. You know, in this case, I think there's approximately, you know, Canadian $39 million of pre-filing trade. Mr. Quinlan is part of that.

And I know Mr. Quinlan talks about the timing, you know, when this all occurred and it was very close to the filing date, and it was, but you know, I also ask the question, Well, if there had not been a settlement with Mr. Quinlan in March, you know, the month before the filing, would -- would his position be different? And I think the answer is no. There was no settlement. You know, the litigation -- you know, there's no trial date set. As far as I could tell, he would have continued with his litigation. He still would have been an unsecured creditor. So I don't think his position has changed.

And I will say this with respect to Mr. Quinlan, absolutely appreciate and the company would like everybody to be paid in full. That's absolutely what we would like, but of course, we don't control that. We're running a process we will -- we will see what bids we get. And again, as I said, it's -- it's unfortunate, but it's unfortunate for many people.

Mr. Quinlan does suggest in his materials -- there's a paragraph in his materials where he talks about -- I think the word is cash flow from operating activities. He references a particular dollar amount in 2019 I believe it was. But again, just so the Court's aware, that cash flow from operating activities does not account for a number of expenses that have to occur from that cash flow. As I took you to earlier, there were losses in 2019 and 2018, so I've taken you through that. Those -- those financial statements are in the material. So this is not a situation in which the company was doing not just fine or even okay prior to this filing. As I mentioned, they had lost $330 million in the 2 years prior.

And I guess what I would also say is I just don't think there can be any scenario in which, you know, an unsecured creditor is able to stand in the way of a process to try to determine better bids. He can make his submission at the sale approval hearing if he thinks that the

sale should not be approved, but this particular bidder has said they're not going to assume this contract. They're going to spend their money presumably on those critical vendors and allow them to keep this business operating. So the stalking horse bidder said they won't assume his contract, but perhaps another bidder will. It seems unlikely, but it's possible. But he's in an unfortunate situation. I understand that, but again, he is in the same situation that -- that many creditors are.

I think what I'm going to do, as I mentioned, My Lady, is given I have only 10 minutes left, I think what I would like to do is take you to the form of orders that we're seeking and just provide some comments on those form of orders. And again, I -- I'll -- I've completely left out, I guess, my submissions on -- on DDMI, and perhaps I'll just deal with those in reply after hearing what Mr. Collins says.

But what I can do is take you back to our application -- our amended application, and I will take you to the form of order, and I believe that's on page 37. So I'm in the amended notice of application on page 37, and I think I can direct you there now. Sorry, My Lady. I'm -- sorry. It's actually page 10. I apologize. Here we go. Okay. So this is our form of amended and restated initial order we had served on Friday, and there are certain changes to the form of order that I -- I will take you to. The first, I guess, is paragraph 13, and you can see in paragraph 13 that we're seeking a stay extension to September 28, rather than August 31st, just to allow us to get through this SISP process. And again, that's supported by the monitor.

Paragraph 16. I do want to stop at paragraph 16. So this is the paragraph -- looking in the middle of paragraph 16, this is the paragraph that provides that DDMI -- and I'm about five lines down on paragraph 16.

THE COURT: I -- I'm also looking -- are you getting an echo in my voice or not?

MR. RUBIN: I'm not, My Lady.

THE COURT: Okay. I'm also looking at page 299 -- 4-299 to see the version that the monitor gave me that has his amendments in there too. I just am trying to compare the two because --

MR. RUBIN: And what I can --

THE COURT: -- your -- the one -- the one that you're bringing me through right now is your version without his changes, right?

MR. RUBIN: That's correct. And I was going to identify where the monitor agrees or doesn't agree, but if you've got -- I only have one screen. I am (INDISCERNIBLE).

THE COURT: I've got two screens going. I'm, like, on it.

MR. RUBIN: Yeah, absolutely.

THE COURT: Don't ask me to have done this 3 months ago, I'm telling you. Anyway, go ahead.

MR. RUBIN: Fair enough. So in paragraph 16, you can see we -- we -- the monitor accepts these changes, and what we've done in paragraph 16 is -- you can see in the middle about four lines or five lines in, it says DDMI. So it says, Provided that DDMI, in its capacity as manager in the Diavik JV, and hereby authorized to hold an amount of Dominion Diamond's share of production from the Diavik Mine equal to the total value of the JVA cover payments made by DDMI. So they can hold the -- the amount of diamonds that accords with the Diavik -- or excuse me -- with -- with the cover payments. And I think you're going to hear DDMI saying -- this -- the monitor supports this absolutely. I think you're going to hear DDMI say, No, we want to hold all of Dominion's diamonds. We don't want to limit them to the amount of the JVA cover payments. And we'll wait to hear Mr. Collins on that, but I just wanted to alert you to this point.

The other thing that I did want to -- to -- to refer the Court to is you may recall that DDMI brought an application back on May 8th, My Lady, when they first brought this application to be able to make cover payments and to be able to hold diamonds.

THE COURT: Right.

MR. RUBIN: And I can take you there. But this language right here, this is the language that DDMI sought. This is DDMI's language. They sought an order that they be permitted to hold diamonds equal to the value of the cover payments. And so we have said, Okay. And the monitor said, That's the right order. I think you're now going to hear DDMI say, No, now want more. And if you read our submissions -- I haven't gone through them all -- we -- we have said on repeated times that DDMI constantly asks for something, maybe gets it/maybe we agree, and then they ask for more, and in our submission, this -- if DDMI goes there, this is our submission, that the form of order that they asked for back in May, which is this language and this is supported by the monitor, that is what they should be limited to. And -- and again, I think you'll -- you may hear Mr. Collins talk about there are valuations. So the value of these diamonds are set by an

independent valuator, and they should be limited to withholding the diamonds in accordance with the JVA cover payments.

The other change I guess is in (e), so 16(e). So you can see our language in 16(e). The monitor supports this and makes no changes to our language here. You may also hear DDMI say they want to make a change to 16(e) whereby they're permitted to bring an application at any time. I think their language was something to the effect of DDMI shall be entitled to apply to this Honourable Court to seek remedies, and it added language like, Including with respect to that below, meaning what the monitor has done here is said there is certain triggering events, and on those triggering events, that's when DDMI can bring an application to (INDISCERNIBLE). DDMI, at least in their -- their last version of their material, said, No, no, we want to bring an application at any time. And we say that cannot be allowed either. The monitor -- this is --

THE COURT: Can I just interrupt you there? Why would it make that much of a difference, I mean, in terms of them bringing an application at any time? Like --

MR. RUBIN: Okay. So does that mean on Monday?

THE COURT: It can be accepted or not accepted, I presume, right?

MR. RUBIN: It could be. So does that mean now on Monday we get another application and we have to go through this again?

And the point here -- what the monitor's done and what we have done is said, Okay, well, when are the possible triggering events (INDISCERNIBLE) bring an application? The interim lenders, the DIP lenders, there has to be a default before they can bring an application. They can't bring an application at any time to -- to -- to turn off the DIP, and we need the ability to run a process. And so what the monitor has done if you look in 16(e)(iii): At any time after phase 1 bid deadline, when there's no qualified bid, or phase 2, which includes the Diavik joint ventures, what the monitor had said is, Okay, once we know no one's bidding on Diavik, you can bring your application. But if there's a potential purchaser for Diavik, My Lady, say they presumably want to step into our shoes, and they may want to pay DDMI the outstanding cash -- cover payments and get the diamonds back. But, My Lady, if DDMI sells those diamonds before we get to that point, that shouldn't be allowed. And so that's why the triggering events that the monitor is suggesting -- again, this is the monitor's wording here, this isn't ours because we adopted Schedule 'M'. This is the monitor's wording, and we agree with it now. But again, we'll wait to hear what DDMI says, and we'll wait to see if they continue to ask for, as I said, more.

THE COURT: Okay. Would something like, Or with leave of the Court -- if you put -- would -- I can ask Mr. Collins when we get to him, but -- but I see what you're getting at is, okay, here are some triggering events, and it's part of the process basically is what you're saying.

MR. RUBIN: We need --

THE COURT: Okay.

MR. RUBIN: Yeah. We need -- we can't -- we can't -- we -- we need to run a SISP, and if we've got a bidder, My Lady, that -- that says, Well, I want to step into your shoes and -- and -- because we want those diamonds -- and now all of a sudden DDMI sold them?

THE COURT: Well, they'd have to get an order. They'd have to bring an application. They'd have to be successful -- right? -- to sell them, so --

MR. RUBIN: But my point --

THE COURT: Right.

MR. RUBIN: It is -- it is, My Lady, but we've got this phase 1 bid deadlines that come out into July and August, and we're now in June.

THE COURT: I understand your point. I get it, Mr. Collin -- Mr. Rubin.

MR. RUBIN: And (INDISCERNIBLE).

THE COURT: That's okay. I got it.

MR. RUBIN: Well part --

THE COURT: I got it.

MR. RUBIN: Yeah. Part of (INDISCERNIBLE) I'm -- I'm tired of continually having to come to court and fight on all these things and can -- well, I guess my submission is can we not have a couple of months to run a sales process, please, and let us get through that and see if we can find a bidder without having to defend future applications on this stuff?

And there are other changes in the order, My Lady. I think those are the two that I really wanted to bring your attention to. I will leave -- I think I'll leave the rest of that for -- for reply if need be. And you've obviously got the -- you've obviously got the monitor's report, and you'll hear from the monitor on this.

Probably the last thing I guess I should take you to is the amended SISP, which is at page 84 on this document, page 84 of 191.

THE COURT: It's also good if you reference the page numbers of the actual CaseLines document because then you can find them have quickly, right? You can go up to find page.

MR. RUBIN: Okay.

THE COURT: So you're in document --

MR. RUBIN: I think it's --

THE COURT: -- 11.2-23? It should be --

MR. RUBIN: Yeah.

THE COURT: -- the same thing, 11.2- -- what is it -- 84 --

MR. RUBIN: (INDISCERNIBLE).

THE COURT: -- you want to go to? Because I think they coordinate.

MR. RUBIN: They do, yes.

THE COURT: Right. They do. Yeah. So that's helpful.

MR. RUBIN: I didn't -- oh. I didn't -- is there -- oh, I'll see if there's a search and find function, but --

THE COURT: Yeah. Right at the top, if you look under notes --

MR. RUBIN: Yeah.

THE COURT: -- and then you -- if you push notes and you go to the far right, you'll see it says find page, and then you just type in the page number. All these tricks.

MR. RUBIN: If only I'd known. I did --

THE COURT: (INDISCERNIBLE).

MR. RUBIN: I will say this, My Lady, I did -- I did skip over the -- the DIP term sheet. There were two changes made to the DIP. I think Mr. Wasserman or Mr. O'Neill will -- will deal with those two changes. I know the trustee has a concern with one of the changes in the DIP in particular. The other one's an intercreditor issue, but I'll leave that to them.

On the SISP, I should take you to a couple of pages in where we set out the deadlines, and that is on page 88, 11.2-88, and you can see there where we've changed the -- and moved out the deadlines or the dates by about 10 days.

THE COURT: Right.

MR. RUBIN: And you can see midway through the page on page 2 that's the binding date, so that's the day when we need binding bids. That's now been moved to August 31st, so you know, I think it's two and a half months or so away from today, so we've moved that date out.

There are also some -- and I'll take you to paragraph 22-3, and this is on page 94, so 11.2-94, so this is a change that we have made in 22-C. So what the monitor has done is they have said they're okay with our deletion provided that different language is -- is added in 22-C. I'm sure the monitor will take you to that, but we are okay with the monitor's additional language, and -- and the reason for our deletion here is -- and you may hear this from others and me, but some of these provisions, in our submission, prejudge issues that are issues that are better dealt with at the sale approval hearing or on an application to approve the transfer of contracts, so things like, you know, whether someone has to comply with a contract, make payments of -- of cover payments or things like that, that's not (INDISCERNIBLE) should be prejudged today. There will be evidence on those applications. You can't transfer a contract under the CCAA unless you bring an assignment application. There will be evidence that's properly dealt with at that point in time, and we don't believe that we should prejudge issues on DDMI or for any other potential party who is subject to a contract with us as well, and so the monitor has suggested a different language for this paragraph, and -- and we're content with the monitor's different language.

My Lady, my time is up, and I'm mindful of that so I am happy to -- to answer any questions, but I'm on a tight leash.

THE COURT: All right. Okay. Thank you, Mr. Rubins (sic).

MR. RUBIN: Thank you (INDISCERNIBLE).

THE COURT: (INDISCERNIBLE) through a lot of -- a lot of material in a short time, so good for you. Okay. So --

MR. SIMARD: My Lady.

THE COURT: Yes?

MR. SIMARD: I'm sorry to interrupt. It's Mr. Simard. But I wanted to clarify --

THE COURT: Right.

MR. SIMARD: -- one thing that you and Mr. Rubin spoke about and that is, in our fifth report, we do not -- we've not come up with a -- like a comprehensive, clean form of order or SISP that incorporates all our changes. You really have to -- I guess we should have done that, but we were trying to reduce the number of different versions. If you start in our fifth report at page 4-271, you have to read through those tables where we comment on the two different versions, but we -- we haven't. So there's no single document I think that you were looking for before which would have all the changes we propose.

THE COURT: Yeah. I have the -- the second amended restated initial order. You've done that for that but not the SISP, right?

MR. SIMARD: No. For the second amended and restated initial order, it's the -- the one you and Mr. Rubin were talking about, it's the company's version, the company's blackline from last --

THE COURT: Right.

MR. SIMARD: -- Friday, the 12th, showing their changes from our Appendix 'M' order.

THE COURT: Oh. Okay.

MR. SIMARD: And then we've commented on that in the table.

THE COURT: All right. But I thought the one that's at page 4 -- 4-292 is actually you've incorporated some changes. Like, you've referenced, for instance, the fifth report of the monitor, so it's the latest version, is it not?

MR. SIMARD: No. That's Mr. Rubin's from June 12th. I think he -- he referenced the fifth report in anticipation that we would be filing a fifth report.

THE COURT: Oh, I see. Okay. All right.

MR. SIMARD: Thank you.

THE COURT: Okay. So...

MR. RUBIN: My Lady, I think what I could do is I could just show you -- like, I'll show you the table that Mr. Simard is referencing.

THE COURT: Yeah, because there was several tables. Thank you for those tables, Mr. Simard. They're very helpful.

MR. RUBIN: And so, My Lady, I've directed you to, I think, the monitor's report on this, and so -- and thank you, Mr. Simard, for your clarification. So what -- what -- if you -- if you are on this page, it says second ARIO at the top. What the monitor's done is they have taken, I think, our form of our second ARIO, and you'll see for paragraph 13, you'll -- they comment on the changes, and they'll say that we propose moving this day to September 28th, and the monitor says it's appropriate. And so for instance, paragraph 16, under the ARIO -- so this is under the order -- DDMI -- so this is Mr. Collins' client -- proposes that it be allowed to hold all of Dominion's diamond share production from the Diavik Mine not just amounts, the value of which is equal in value to the cover payments. And the monitor says as a matter of principle, the monitor does not agree with DDMI's revision; they should be able to hold diamonds in the amount that is sufficient to cover the amount (INDISCERNIBLE) cover payment.

So what they've done is they've -- they've gone through each of those provisions, and so the form of order that we are seeking is our form of ARIO with the three schedules as amended pursuant to this table, so as amended by the monitor in its fifth report, you know, on pages whatever it is, 19 to -- I don't know if it's 25 or so. So that's the form of order that we're seeking. And you can see, this is where I said there's -- we've -- we've -- as I said, we've -- we've won some; we've lost some, and the monitor has looked at our changes that

are attached to our material that I've taken you through. They looked at comments from DDMI, and this is the monitor's view.

THE COURT: Right.

MR. RUBIN: I'm now over my time limit, but I blame Mr. Simard for that.

THE COURT: That's all right. Okay. So I've made a note. Okay. All right. Thank you.

MR. RUBIN: Thank you, My Lady.

MR. SIMARD: I think the idea next was to hear from parties that are in support or supportive.

THE COURT: In favour -- so, right -- of Dominion's position. Okay. Just make -- let me make a note here. All right. So perhaps we'll go then to Mr. Wasserman.

Mr. Wasserman?

MR. WASSERMAN: Yeah. I'm sorry, My Lady. I was having a little bit of technical difficulties.

THE COURT: No problem.

MR. WASSERMAN: If it's okay with you, we were going to have Ms. Buttery and then Mr. O'Neill go first, and I was going to go last if -- thank you.

THE COURT: Doesn't matter to me. Okay.

Ms. Buttery.

Submissions by Ms. Buttery

MS. BUTTERY: Yes. Good morning -- good morning, My Lady. As you know, we're counsel for the Government of the Northwest Territories, and the government has obviously put a lot of thought into the status of this matter and the restructuring because it -- it concerns not only the government but the people of the Northwest Territories. And the government did not -- we -- I didn't prepare a brief, My

Lady, largely because the ministers' meeting to discuss this matter really didn't conclude until yesterday afternoon, and as well, my clients appreciate the input of the monitor, and of course, the monitor was gathering information from other parties and didn't produce their report until yesterday afternoon, which was very helpful, but as a result, I ask for the Court's indulgence. I don't have a bench brief, but my comments will be -- will be brief.

THE COURT: All right.

MS. BUTTERY: So our client is supportive of any process that will lead to a successful restructuring, and by that, we like to see both Diavik Mine continue operation through this restructuring and SISP process and to see ultimately a restart of the Ekati Mine. And right now, our client sees that the proposed process, the proposed SISP, which includes the stalking horse bid as well as the staple (INDISCERNIBLE) represents the only formal opportunity to proceed with the restructuring of both of these mines, and as a result, our client sees it to be very important that this process start right away and so that everyone can see the path forward for these two mines.

As I've mentioned, the mines are very important employers and sources of revenue in the North, sources of revenue for the workers and also the government. And we want to ensure that all people who have supplied goods and services to the mine will be paid, and we note two important changes since we were last in court to that end. The first is that it pays the outstanding royalties, including the -- the provision (INDISCERNIBLE) that the Dominion will pay the outstanding royalties at closing, which are significant and, of course, are the -- the lifeblood of the whole business, which is the -- the mining licences, and it also provides for a $20 million US (INDISCERNIBLE) would be about $27 million Canadian cure payments to the -- those businesses that are going to continue in business with the mine. And on that note, I'll just pause.

There is fairly comprehensive miner lien legislation in the Northwest Territories that provides that essentially anyone who's provided goods or services to the mine has a lien on the minerals that are produced, that are extracted from the mine, and so those -- I know there's been some grumping by -- by the noteholders that the unsecured creditors may be getting paid before them, but certainly, there -- there are significant lien rights that -- that can't be overlooked, and so the cure -- I would think that these cure payments would in some ways also pay the liens that are registered. I think it's approximately at the moment just over $17 million of liens that have been registered.

We are hopeful, to be perfectly blunt, and all due respect to Mr. O'Neill's client, that there will be a better and higher offer for the assets, and we hope that the SISP process will -- will find that offer and that deal. But at the moment, we urge the Court to accept the deal that's in front of them, the proposed stalking horse bid, the SISP, and the DIP, because we see

that right now as the only opportunity to get Ekati reopening and Diavik to continue to operate. And that's really all that my client wanted me to say in court today.

THE COURT: All right. Thank you very much, Ms. Buttery.

MS. BUTTERY: Thank you.

Submissions by Mr. O'Neill

MR. O'NEILL: Good morning, My Lady. Brendan O'Neill from Goodmans on behalf of the Washington Group. Partner Bradley Wiffen is also on the line.

THE COURT: Okay. Thank you.

MR. O'NEILL: My Lady, you have an important decision to make today. This is a contested application for the approval of an insider stalking horse bid, and we understand that. We also understand that no doubt you would be happier if there was any third party here making a bid. We get that. That would make your life easier. And we believe that over the course of the last 2 months, because this case filed on April 22nd and there was an announcement that our client intended to bid at that time -- of course, the actual (INDISCERNIBLE) materials we have developed with the company and others have been before the Court for a month. Nobody else has come forward, and so we find ourselves -- yourself, rather, in the perhaps unenviable position of having to deal with an insider stalking horse bid. But we are here, and we are who we are, and we're here for a reason, and the reason we're here is because we understand the company. That's the benefit of being an insider. We are willing to put further new money and to assume significant liabilities of the company that we don't have right now and to support the company either as -- as the successful bidder or through a SISP. We are -- I don't want to say happy to be outbid, but we have agreed to a process that the monitor and others have concluded is fair and reasonable and will give other parties an ability to overbid, and so I completely understand the comments of counsel of the Northwest Territories. I have no issue with them. They are appropriate.

I will add, My Lady, that it is a good thing that notwithstanding all of the events of the last 2 months, all the allegations that have been levied against us, some of which I've replied to, some of which I have not, certain of which I will be replying to today, that we are still here because I will make the simple point that I don't think this SISP process would look very good for creditors and other interested parties if the Washington Group, who some would say is the natural buyer, were not here. What would it look like to the market if we walked away? That would not be a good thing. My submission, My Lady -- and I don't want to treat it as trite in any way, but I don't think the identity of Washington as an insider

is -- is the issue. The Courts have based that before in other cases. The question is always, Is it an appropriate bid?

Mr. Bell is clearly experienced and independent, so is his counsel, Blakes. The monitor and its counsel, Mr. Simard, are clearly independent. Evercore, you may recall, gets paid less when they do a deal that involves the Washington Group than with a third party. They are independent. The other party that's independent is you. And this process is overseen by those parties and by the Court. I will add that I don't believe that the 2L groups -- let's call them the 2L -- have led one single piece of evidence to suggest that that is not the case. I will note that they have not cross-examined anyone on anything. Instead, they've filed briefs with adjectives and innuendo and no evidence.

What do you really have before you today, My Lady? I'd like to highlight three things. I think you have a record before you today that shows very clearly that the company, the monitor, Evercore, the 1L -- I'll happily add the Northwest Territories to that list -- agree on three things:

One, that this is a proper stalking horse bid. They agree on that. I don't need to take you to the monitor's reports and the affidavits. It's there multiple times. Mr. Rubin has thoroughly taken you to it. But they believe that this is a proper stalking horse bid. That's number one.

Second, that they believe that that is SISP process is better with a stalking horse bid than without one, including with this bid. There is direct evidence before you on that point, including specifically from Evercore, through the monitor has acknowledged as deeply experienced.

And the third point is with that in hand, that there is a SISP process that we have agreed to that contains (INDISCERNIBLE) and procedures that the monitor has accepted and recommended as a fair and transparent process for other parties to come forward and bid against the Washington Group. They will have the benefit of our knowledge, the work we have done, the APA we have developed, and the fact that we're here. As noted, our break fee is conditional. We don't get paid it unless we advance. Timelines have been extended significantly. The SISP contains an entire new section 41 called additional terms that we agreed to with the 2Ls at the last hearing before they chose to agree to not (INDISCERNIBLE). I'll come back to that.

So I'd like to go back in time a little bit because I think in CCAA cases, the result or the decision of the Court is quite often justified by the process that preceded it. This case is filed on April 22nd. We're here on June 19th. What has happened in the process in the last 2 months? Because I'm counsel to the Washington Group, may be a little selfish, but I'm going to be an advocate, and I'm going to focus on what the Washington Group has gone.

I've had supporters at past hearing, and I've let them do most of the talking because the monitor has supported and the company has supported, but I'll speak up a little bit more this time.

On the DIP -- I won't dwell on these points, but I'll just hit them for you. On the DIP, we have provided the company with a below market DIP. We have not forced that DIP on the company at all. It was shopped for weeks and weeks, and it was selected by the monitor and the Evercore as the best DIP. It's obviously the cheapest DIP. Aside from being the cheapest DIP, it also has terms that the monitor and others have accepted. In fact, I don't want to say that the 2Ls accept the DIP, but I will note that they just copied it. Their DIP is the exact same as our DIP with a higher interest rate, so I find it hard for them to criticize our DIP when they just used the same one for themselves. We also accommodated the 1L into the DIP. They wanted that. And when they needed further revisions to paragraph 24 which happened since the last hearing and now on intercreditor issues, we worked with them, and we've come back again with a consensual DIP.

So again, the process that has led to this DIP has been robust -- probably more robust than I've seen in a CCAA case in a long time. When does a company have that amount of time, and the question is, How did it use it? It used it to shop the DIP. I actually don't think anybody really objects to the DIP. So that's the DIP.

On the SISP, we filed the SISP in -- in -- in May, and the SISP has seen a number, as I said, of amendments. As I noted, it contains the entire new section 41 that we agreed to with the 2L in advance of that hearing. Then at that hearing, they went off the deep end. I think even you were confused by their position. I think you asked them, I don't understand your position. And the response was, Well, if you enter the orders, those forms of orders are acceptable, but otherwise we disagree with everything. I don't know what that means. What I do know -- what -- what I do know is what happened, which is we accepted those changes and thought we were going into that hearing with those terms agreed and expecting some level of support, some level of support. We did not get any level of support. But we have not removed those provisions. Those provisions are still there for the benefit of the 2L.

The SISP has conditions on our break fee. The break fee is 2 percent, as you know. And the SISP has various provisions that allow other parties to the SISP to have access to information that's relevant to them as bid -- in fact, going back a minute, one of the changes that was asked to the DIP was that if we learned things as DIP lenders that would be relevant to bidders, that we share them, and that is reflected in the SISP. It is a very fair SISP, and I don't know that anybody is actually even complaining about the SISP anymore. I believe Mr. Collins, who always has a point or two to make -- and I say that very respectfully -- has a few comments there.

The monitor has come up with a proposed solution, and I'll just say at this point that we accept all of the monitor's suggested conclusions in its latest report. So we accept the company's form of order, and we accept the company's form of orders as modified or as proposed to be modified by the monitor to reach consensus, and we're happy with them.

On the stalking horse bid itself, we have brought forward a DIP -- again, I won't spend too much time here. Sorry. We have brought forward a bid, a stalking horse bid, that provides for repayment of the DIP, provides for repayment of the 1L if the entire company can be obtained, including the Diavik interest, and assume significant liabilities with respect to employees, pension, environmental reclamation and now also includes 20 million of cure costs for trade creditors. And the monitor quantified the aggregate value of all of that cash and assumption of liability and cure costs in its report, and it's in the hundreds and hundreds of millions of dollars, as you will have seen.

On the cure costs, I want to make a particular point because I actually think it shows the independence of the company and the commitment of Washington. Our understanding was prior to the last hearing -- you may wonder why the last hearing was adjourned. Because there was a -- let's call it a misunderstanding over cure costs. We believed that cure costs were going to be paid through the DIP. The latest estimate of aggregate cure costs meant that that might not happen because there wasn't sufficient enough funding. Our term sheet was clear. We don't (INDISCERNIBLE) your costs beyond the DIP, crystal here in the APA term sheet that was filed. But an issue arose, and the company came to us and said, We need to change the deal. And we agreed. So what has the process done? The process has brought further clarity to that. The deal was amended as the facts of all and as the amount of the cure costs became better known, and the consideration was increased by US $20 million, which the monitor commented on extensively in a report. It doesn't mean that everybody will be paid in full. We all understand that. We're hopeful that it will go a long way.

Another thing that we have done with our stalking horse bid is we've turned from a term sheet -- it was a rather detailed term sheet, including on cure costs -- into a definitive APA because people wanted that, so we did that over the course of the last 2 weeks, with no protection by the way. We haven't been anointed as anything yet. We did that. And that APA is now available to bidders who want to come forward in the process, and I believe that that is very helpful.

So at the end of the day, we have a deal that is supported by Dominion, the monitor, Evercore, 1L, the ad hoc -- the -- the trade creditors, I would think, would agree to cure costs. I don't want to speak for them obviously. The Northwest Territories and -- and maybe even to a degree -- I would never purport to speak for Sean Collins, but maybe even DDMI to a degree. In their latest brief, they're acknowledging that this process needs to go

forward. They have their comments as always.

There is precedent for this as you know it. There was *Brainhunter* and other cases. My friend Mr. Rubin said there is evidence for it, and no one other than the 2L are objecting to it.

And those improvements that happened over the course of the last 2 months, whether they be extended timelines to the SISP, shopping of the bid, and the DIP, the process has produced those, and I think when you look back across that process, you can see that it supports the approval of the bid at this time. The DIP is needed.

For the stalking horse bidder, this company -- the buyer here needs to conclude this process in time. There's a reason why October in the SISP. An ice road needs to be built, and the purchaser needs to put new money into the company, otherwise Ekati will remain on care and maintenance for another year. And there is very important work to do to satisfy the Rio condition and the surety condition. And nobody's going to talk to anybody if they're not actually part of a process. So this process both for the stalking horse bidder and for other bidders, it needs to start, and the company needs DIP.

And I have to be clear, My Lady, to fair to everyone here, that today is the end of the road for us. For those reasons and based on the fact that with the record that is before the Court and with everything that we have done, if we cannot be approved today, then that -- then we're going to take our leave of this process and this transaction, unfortunately, because we can't understand it, frankly, and more importantly, we won't be able to get the deal done in time, and so we need this today as the stalking horse bidder. The company needs it today as the DIP lender. That's not a threat. We believe that the time that has passed has been useful process. It just is what it is. So obviously, if My Lady needs time to render her decision, that is no issue at all, but further adjournments, further hearings, frankly, further rehashing of the exact same arguments, not a go.

I do want to spend a minute talking about the 2L group who I understand to be our only opponents. I just want to make some points, and I'm doing it in this order because I'd like to juxtapose them against some of the things that we have done which I've just walked you through. I'm just going to point them out.

They have not -- notwithstanding their statements of value of the company. They have not appealed the initial order that found the company to be insolvent. They have not cross-examined a single affiant of the company on all the things the company (INDISCERNIBLE) and the monitor or Evercore. Proper purchase price, proper bid, proper process, none of that has been challenged. Again, instead for the record, the evidence points one way, and the 2Ls adjectives and innuendo point another way. They

also haven't opposed the DIP terms. They've adopted them. And in the last 60 days, they have not brought forward a bid. They haven't even brought forward a co-bidder when they have $550 million of credit bid to play with because a credit bid dollar is worth a dollar. They haven't done that. They use adjectives that we are stealing the company. My Lady, to use that analogy for a minute, the door to the bank vault has been open for 60 days. Where are all the other robbers if we're robbers? The opportunity is here for anybody now, in the last 60 days, or during the SISP.

In *Laricina*, a case about 3 years ago before your court, Mr. Justice Lo Vecchio, Torys firm represented CPPIB who was a lender to *Laricina*, senior secured lender. Based on defaults that they asserted, they brought a receivership application against the company, CPPI did -- CPPI -- CPPIB did. I'm going to -- that's my last try. And the company opposed it and sought CCAA protection, which Justice Lo Vecchio granted. I was retained to represent the shareholders who believed that that was an opportunistic move as a secured creditor and believed that the company had value. In other words, the Torys and Goodmans firms had the exact opposite positions that they have today. Mr. Justice Lo Vecchio granted me one extension, and then at every hearing after that, he asked me one question. He would say, Welcome, Mr. O'Neill, did you bring your chequebook? And when I said no, he never listened to me again. And there's a bit of that reality here too.

No one has a better opportunity to bid here than the second lien. They've been with the company for two and a half years. They're the largest creditor. They know the company. The problem with just saying you have a credit bid is that it requires more than that. You need to fund a DIP. You need to repay a DIP. You need new cash to repay creditors. You need to pay cure costs with new cash. You need to assume hundreds of millions of dollars of liability. You need to operate the company. You need to be permitted. We have done those things, and that's important.

Those are my submissions, My Lady, subject to any questions you may have.

THE COURT: Well, you've made yourself crystal clear that, Mr. O'Neill. Thank you very much.

MR. O'NEILL: Thank you.

MR. SIMARD: My Lady, it's Mr. Simard again, playing a little bit of traffic conductor. You heard from Mr. Wasserman. We know he wants to make submissions, but I have heard from communications with other parties --

THE COURT: M-hm.

MR. SIMARD: -- before the hearing that there may be some other parties who may wish to speak in support of the company's application, so maybe we could open the floor up to them now.

THE COURT: All right. That sounds like a good idea. Okay. So who would like to speak next since we're hearing the supportive positions of Dominion's application? Mr. Astritis.

Submissions by Mr. Astritis

MR. ASTRITIS: Good morning, My Lady. I'm here on -- today on behalf of the Public Service Alliance of Canada and their component, the Union of Northern Workers. (INDISCERNIBLE) the first time I was before you in these proceedings, PSAC is the union that represents a little over 430 employees who work at the Ekati Mine, and these workers are important stakeholders, and quite frankly, they're critical to the future of the mine. As my friend, counsel for the Northwest Territories, noted, the mine itself is also an important contributor and plays an important role both in the North and the community, to the Indigenous community.

The purpose of the CCAA proceedings is to maintain ongoing operations where that is possible. And there are a range of factors that the Court has to consider in that regard, but options that allow for workers to stay employed for the company to continue to as an operating concern are positive, and those ought to be pursued. The commencement of the CCAA proceedings would naturally raise significant concerns and cause some stress amongst the workforce that we represent. That's both in the context of the broader economic conditions that the nation's facing, which have led to the layoff of the majority of PSAC's members as the mine has gone into care and maintenance mode. Those realities inform PSAC's position at this juncture.

Public Service Alliance of Canada supports the stalking horse bid. The purchaser, in its bid, has clearly stated its intent to offer employment to substantially all of the existing employees and to continue operating the mine as a going concern and to fulfil the company's collective agreement and other obligations, including its pension obligations, a plan that is currently (INDISCERNIBLE).

Having a stalking horse bid of this nature allows and creates a number of benefits for the SISP process. It sends an important message to the community of potential purchasers regarding the ongoing operation of the mine and its capacity to go forward as a profitable venture. It sets a framework in place and a baseline offer, an expectation about what the relationship will be with employees and workers as we move forward. I'll note that it provides a degree of peace of mind to the workers, 400 at the mine, over 300 of which are

currently laid off, that they may eventually return to work. With that said, PSAC recognizes the concerns that have been expressed by many of the other parties and has itself retained a financial advisor to allow it to understand this process fulsomely.

There are aspects of this bid that we would prefer would be different. There's significant conditionality as has been noted. The PSAC's support is contingent on the purchaser actually following through with the intentions that we stated in the APA, particularly regarding the ongoing operation of the mine and its obligations to employees. The SISP process is critical in this regard to ensure that at the end of the day, the Court is confident that the best purchaser who can come forward and pick up the pieces and move forward is identified. For that reason, PSAC would prefer a situation where the DIP lender and the stalking horse bid were different entities (INDISCERNIBLE) any advantage that can be gained by one entity playing both of those roles. It does not appear, however, that there is presently an option before to Court that would allow that. And while PSAC assumes that the DIP loan and the SISP process will be administered in good faith and it has heard the assurances that have been provided by Dominion and has the monitor supervising this process, any concerns that emerge in this regard, particularly anything that may serve to undermine the SISP process, must be immediately addressed by this Court in a meaningful manner. So in light of the above, PSAC supports the stalking horse bid, but it reserves its right to return to this Court to address any concerns that arise, including to seek any rights that may be necessary to protect the interests of its members.

And, My Lady, I'll just close by commenting on two other points. First of all, PSAC disagrees with the position that was asserted by the noteholder trustee that the unfunded pension amounts would be subordinated to the noteholder security. PSAC notes that no party has taken issue with the continued funding of the pension shortfall, which is in fact in accordance with the *Pension Benefit Standards Regulations*. We don't need to engage in that issue today. I identify it to be noted on the record, and we leave it to be addressed in the future if necessary.

THE COURT: Okay.

MR. ASTRITIS: The last point I'll close on, I know that we're going to be dealing subsequently with the trustee's application for legal fees, but as I only have one brief comment, I thought it would be most efficient to make it now. As we did with the ad hoc group's application, PSAC reserves the right to seek similar funding for its legal fees should the circumstances in this case warrant.

Subject to any questions you may have, My Lady, those are my submissions.

THE COURT: Okay. Thank you very much, Mr. Astritis.

All right. Is there anyone else that wants to speak to Dominion's application?

Submissions by Mr. Sandrelli

MR. SANDRELLI: Yes, My Lady. I had -- John Sandrelli, My Lady, appearing for Procon Mining & Tunnelling.

THE COURT: All right.

MR. SANDRELLI: Procon -- My Lady, I'll be very brief in support of the applicants' submissions and the sale process as well as the stalking horse purchase agreement. Procon is the lead partner, My Lady, in a joint venture with certain First Nations groups who collectively provide the underground mining services contract to the Ekati Mine. And so there are three First Nations groups, the Tlicho Nation, the Yellowknife Dene Nation, and the Lutsel K'e Dene Nation, as part of that joint venture, My Lady.

And as you've heard earlier in these proceedings, there was a small window to ship (INDISCERNIBLE) supplies to the mine site for the 2020 season while the winter road was frozen. The JV had to use that opportunity to ship additional equipment and the majority of supplies to the mine site, where it remains, and had to go out and invest in significant new equipment, all of which is really stranded at this point while the mine is in care and maintenance.

The result of that, My Lady, is my client has over 60 pieces of underground mining equipment at the site. It continues to incur significant costs associated with that equipment not only in terms of the ownership but also the pieces being leased, and that ongoing cost of our client is in the range of $500,000 a month, which as a result of the shutdown, the impact has not only created liquidity issues for the joint venture but also has precluded the ability of our client to make distributions to the First Nations and continue with the employment under the -- under the contract. There's limited employment now in terms of the surface itself, but the underground work, of course, is -- is on hold.

So I make those comments, My Lady, for Your Ladyship to appreciate the impact that any delay has not only on our client but a number of the contractors and other employees that the JV employs, including the three First Nations which are part of the joint venture. Not only is that creating immediate issues now but an ongoing delay beyond a closing to occur at the end of September/early October would have going into to next season.

All of which is to say, My Lady, we're very supportive of the sale process getting underway, and as Mr. Rubin noted, that's really what they're trying to do, is get this sale process

approved so we can move forward to try to find a going concern solution as soon as possible.

The stalking horse transaction, My Lady, from our client's perspective is not only inoffensive but reasonably consistent with other CCAA cases, and more significantly, it provides, as was submitted, certainty for employees, stakeholders, and the community that there will likely be a going concern solution. We recognize, of course, that that stalking horse purchase agreement provides for some conditionality, but it does provide a lot more certainty to the stakeholders and goes a long way to relieving the anxiety that exists not only in the Northern community but, frankly, throughout the global economy right now given -- given the pandemic and the other challenges that exist.

So -- so our client and some of the other stakeholders, the three Nations and the employees that our client employees, have a lot at stake, My Lady. In our submission, the approval of the process and the agreement before you as part of the process -- and as Mr. Rubin noted, it's not the approval of the transaction itself; it's an approval of the process -- is -- is very important to our client. The interests of the stakeholders, being the contractors, the suppliers, the community, the employees, really should be at the fore while the -- the financial stakeholders battle it out for another day in terms of this particular transaction. So I echo Mr. Rubin's submissions as well. There is an urgent need to get the process underway and get to a conclusion as soon as possible. And subject to any questions you have, My Lady, those are my submissions.

THE COURT: Okay. Thank you, Mr. Sandrelli. I appreciate that.

Is there anybody else who wants to make some submissions before I turn to Mr. Wasserman?

Submissions by Mr. Warner

MR. WARNER: My Lady, it's Terry Warner. As I've indicated previously -- good morning, My Lady -- I am counsel for Dyno Nobel Canada Inc. and a Dene joint venture by the name of Dene - Dyno Nobel. Dyno Nobel is the explosives supplier to the Ekati Mine and is part of a joint venture with Dene - Dyno, which was formed as part of the business development arm of the Lutsel K'e Dene First Nation. As has been indicated by Mr. Sandrelli, we are a key supplier to the Ekati Mine and are fully in support of this process and the bid that has been put forward. We believe that this is really the only way forward to keep this mine going for the benefit of all stakeholders.

There's only one concern that I have. This relates to the amended and restated interim

financing term sheet. One of the concerns that I have is -- is the way the priorities have been laid out. In -- in section 7(g) -- and I don't have the technical ability to direct you there, My Lady, but I'll just read it. It says: (as read)

> There shall be no liens ranking in priority to the interim lenders' charge over the CCAA applicants' collateral other than the permitted priority liens or pari passu with the interim lenders' charge over the CCAA applicants' collateral other than the SISP advisor charge.

The charges are created by the -- the form of order that has been presented, and in paragraph -- or at section 56 of the order, it provides that such charges shall rank in priority to all other security (INDISCERNIBLE) interests, trusts, liens, et cetera, statutorily or otherwise. That's a bit of a concern to us.

We have a miners lien registered in the amount approaching $10 million, and we have some concern that the miners liens who are in priority to all other interests -- registered interests, including the first lien holders in terms of the production from the mine, have not been recognized in the financing term sheet, and I would have preferred to have had a provision in there that provides for recognition of the priority status of the miners liens. But having said that, I'm satisfied with the discussions that I have had with -- with Mr. Rubin and with Mr. Simard that we are in a relatively secure position given the importance of our client to the process -- to the mining process, and while I would have preferred to have seen some provision in the order that reflects our priority status, I'm satisfied that we will be taken care of in some fashion or another, whether it's through discussions with the ultimate bidder or in some fashion, but you know, I'm -- I'm extremely concerned that if there's any further delay in this, this whole thing could fall apart, and I don't think it's in anybody's interest that this be delayed.

Those are my submissions, My Lady.

THE COURT: All right. Considerations heard. And I like the drawings of your children on your back wall, or whoever did that for you.

MR. WARNER: That's my son.

THE COURT: Quite an artist. All right. Thank you very much, Mr. Warner.

Is there anyone else who would like to speak to this before I turn to Mr. Wasserman? To Dominion's application that they're in support of?

Okay. Hearing nothing, Mr. Wasserman, are you prepared to go?

Submissions by Mr. Wasserman

MR. WASSERMAN: I am, yes. Thank you. Thank you, My Lady, and thank you for accommodating the schedule.

There are two items that I'll refer to. We filed two bench briefs, and I apologize for the late filing of the second bench brief that came in late yesterday evening. It was in large part in response to my friend's materials from the noteholder committee and the trust -- the trustee. So those are both found, My Lady, on CaseLine. It's -- it's at -- it's at item 9 on the virtual courtroom link, and it's 11.5, so if you --

THE COURT: Okay. I'm there. Thank you.

MR. WASSERMAN: -- you have those. Okay. Great. Thank you.

So you know, we -- we continue, obviously, to support this process. We continue to think it's important that the company, for the reasons that my friends have expressed -- and I don't intend to -- I don't intend to repeat -- move forward with a SISP process as quickly as possible.

What I will talk a little bit about is I'll ask if you have any questions on the amendments to section 24 of the DIP, which deals with the intercreditor issues and then talk a little bit about mostly our reply brief in connection with section 22(f) of the DIP with respect to the trustee fees and the second lien -- second lien DIP proposal and the implications that would have to us both on the basis of the record before you and, importantly, on the basis of the submissions that my friend Mr. O'Neill made on behalf of Washington.

We're -- the first lien lenders are -- you know, just to be clear, I think everybody would understand this, but I thought I would say it -- aren't necessarily happy with the situation that's at hand. You know, we -- we would much rather see a stalking horse bid that clearly takes out our position in full, continues to provide the employment, provides recovery for the second lien lenders at whatever value that may be, and is not from the equity sponsor, but that doesn't exist.

And you know, my clients don't really want to own this company because, frankly, if they did, they would credit bid their debt. First lien position, they've negotiated for what I would call very market terms in the intercreditor agreement with the second lien lenders that would allow them to do that in which the second lien lenders could not object under the

terms of that document. But they think that the better thing to have happen here is to see this process play out and recognize -- and I think this is important, and I think this is being lost in a lot of the rhetoric that's been thrown around in this case to date -- this stalking horse bid doesn't necessarily get them out in full. Why is that? If they can't get to a deal, that is, Washington with Mr. Collins' client, DDMI, we've got exposure on letters of credit that support reclamation obligations at the Diavik Mine which will remain outstanding, and we will have to deal with that as part of this process, and that is the main reason why we have been so adamant in our submissions vis-à-vis what Dominion -- what DDMI is trying to do. It's for that reason.

So this bid, yes, if it closes and, yes, if the purchase price is -- if there's not unforeseen circumstances, if the budget -- the forecast budget proves to be correct, yes, we get out on the -- on the funded debt through Ekati, but that's a commercial decision that we're making, and you know, it's very difficult to see how anybody can fault the first lien lenders for doing so. And we're doing that in circumstances where there are going to be unsecured obligations that rank junior to us and to the second liens paid. Why is that? Because there's a lot of capital expenditure that's needed to operate this business. There's a lot of operating expenditure that's needed to pay -- operate this business. It's in a remote area. You've heard all the reasons why. It couldn't happen otherwise.

So there is the risk that we continue to have on Deevik -- on Diavik. Pardon me. We're prepared to move forward knowing that risk exists, and we are not going to continue to make submissions on what Mr. Collins is asking for. We thought the way the monitor addressed those issues in the monitor's report, although not perfect for us and by no means what we would like to see happen, are acceptable under the circumstances given the need to move forward, and the hope is that those provisions and those decisions will never be brought before this Court because there will either be a solution with Washington that sees the joint venture relationship continue or, in the very unfortunate situation where that can't happen and Washington only closes on Ekati, I'm hopeful that Mr. Collins and I and our respective clients with the help of the monitor and the company will find a solution to the LC issue, which will be an issue that will have to be brought before this Court. And we believe the way that that's been dealt with is appropriate by the monitor and could be dealt with at another day when more information is available.

And turning to first the 2L submissions, the second lien submissions, on their -- on their replacement debt. If you turn, My Lady, please, to our reply bench brief, the one that we filed late yesterday evening.

THE COURT: (INDISCERNIBLE).

MR. WASSERMAN: And we go through, you know, what the

prejudice would be to the first lien lenders if that priming DIP without this Washington proposal were to be granted by this Court, and we reference a number of cases that courts have looked at for the criteria regarding competing DIP proposals and the factors set out. That's in the *United Used Auto* case at paragraph 5. We note that an important element is that the business judgment of the debtor be considered by the court. That was in *Great Basin Gold*. And finally, to the extent that one of the competing proposals will be contested by a creditor whose security is proposed to be primed is a highly relevant factor for the courts to consider.

The noteholder committee, in their materials, say that we shouldn't care about their debt. It's the same as what they call the shareholder DIP and we call the amended Washington first lien DIP. And they say -- and I'm just looking at paragraph 6 of our reply -- our reply bench brief -- that it would not be credible for the first lien lenders to oppose the fairness and the appropriateness of the noteholder DIP. I mean, clearly, this DIP with the Washington first lien lenders --

THE COURT CLERK: Mr. Wasserman, --

MR. WASSERMAN: -- (INDISCERNIBLE).

THE COURT CLERK: -- I need you to pause for -- this is the clerk.

MR. WASSERMAN: Why is that? (INDISCERNIBLE) no (INDISCERNIBLE) --

THE COURT CLERK: You've just become very fuzzy. I'm not sure why your audio is very fuzzy.

MR. WASSERMAN: -- material -- materially prejudicial to us. It recognize -- it doesn't recognize our first ranking priority position. There are significant (INDISCERNIBLE) rights and other rights that have been negotiated with Washington and the company on behalf of the first lien lenders that are appropriately placed in that DIP that the noteholder DIP does not comply with.

A shareholder bid that accompanies the Washington first lien DIP, which Mr. O'Neill has indicated would not be available after this hearing, it acts as a floor, and it generates -- it can only generate better recoveries for the company stakeholders. So from our perspective selfishly, we can't do worse because you'd require a superior bid. That superior bid would have to pay more value to the first lien lenders. It may or may not break into the second lien lenders, but it can't do worse for us, and it can't do worse for the existing stakeholders than the beneficiaries of some of the assumed obligations under the shareholder bid. So

that offsets the reason why we're not opposing a priming DIP.

If this DIP didn't provide for those information rights, if this DIP didn't provide for the way we're treated on Ekati, rest assured we would be in here opposing that DIP vigorously. You may or may not decide to take our opposition and rule in our favour, but we certainly wouldn't be taking the position we're taking relative to this hearing, this DIP with this stalking horse -- stalking horse bid.

And importantly -- and you've heard this from a number of people -- importantly, the noteholders have indicated that they're going to credit bid. They've said that on a couple different times in the hearings. We've -- we've heard that directly in conversations with them. And I hope they do. I really, really hope they do. My client does as well. That would be a hugely successful outcome for this case if those noteholders credit bid. Why? Because the obligations that are being assumed by Washington under the Washington deal would continue to need to be assumed by the second lien lenders in order to have the mine continue to operate. There may or may not be priority payables to minor liens. I heard what Mr. Warner said. I'm not going to disagree with him. I'm just going to reserve on making any judgment on whether there's priority, but there may be priority. And importantly for my client, they are required to take us out in full not only on Ekati but also deal with the LC exposure we have on Diavik. That the would be a happy day. It's 60 days. We've seen nothing. And they may say to you, Well, we could put a credit bid in that's as conditional as the Washington deal and would that satisfy you? Maybe it would, maybe it wouldn't, but it's not on the table. They haven't even done that.

So when they say in their materials, you know, that there were conversations regarding a joint DIP proposal with them, certainly there were because to the extent that the Washington deal fell down, of course it makes sense to do a joint DIP with the second liens from our client's perspective. But economically, why would we do something like that when there's no floor, there's no guarantee that it's going to happen? And importantly, what the second lien DIP on its own does, that absolutely puts the capital structure on its head because that second lien DIP, if the -- if Washington walks away and there's no other proposal and they decide to credit bid like they said their stated intention would be, they can credit bid that DIP and impair my client under the terms of the intercreditor agreement, which we say would be a violation, but nonetheless, that's what could happen, and that is an important feature, especially with respect to second lien debt that we've heard in other hearings in this case are trading at significantly depressed values.

So unless you have questions on that, I'll just quickly turn to -- if you flip to paragraph 11, please, on our reply brief.

THE COURT: Okay. M-hm.

MR. WASSERMAN: This goes through why we believe that this bid violates the intercreditor agreement. We've circulated a letter to counsel for the noteholders and the noteholder committee, indicating that they have -- we believe that they have violated it and we reserve all of our rights in respect thereof. That's not before the record, My Lady, but I thought I would let you know that it went out. It's not in the record I mean before the Court.

So if you look, paragraph -- and in paragraph 12, it references 6.01 of the intercreditor agreement.

THE COURT: Right. Yes. I read that, and I've got it highlighted. Okay.

MR. WASSERMAN: So under that provision, they've expressly -- the noteholders have agreed they will not oppose a DIP financing proposal that we have agreed to, the first lien lenders have agreed to. The first lien lenders have agreed to this DIP proposal. What's interesting, My Lady, is it's not addressed anywhere in their materials. I -- I assume my friends will address it as part of their submissions, but it's interesting that this provision was completely overlooked in their materials notwithstanding -- and I know there are different -- different counsel but notwithstanding that the noteholder trustee felt the need to indicate that we were violating the intercreditor agreement with respect to the addition of 22(f) in the DIP.

So those -- those are the submissions that I have with respect to the second lien materials. I may or may not, subject to the Court's indulgence, have something to say after we hear from them, but I think -- I think the record's very clear on the point so I doubt I will.

With respect to 22(f) of the interim if financing --

THE COURT: Yes.

MR. WASSERMAN: -- term sheet -- and that starts at paragraph 15 of our reply brief.

THE COURT: Right.

MR. WASSERMAN: So there's a indication that the trustee's suggesting that that provision violates the intercreditor agreement, and they rely on the provision in 6.03 of the intercreditor agreement, which says that the trustee shall not be prohibited from seeking adequate protection in the form of payments of fees effectively.

THE COURT: Right.

MR. WASSERMAN: So we don't think 22(f) does that at all. You know, this is just a situation where the lead-in language in 22(f) or the language in 22(f) in the interim financing term sheet does say it's expressly subject to what may be ordered by the Court. We're not suggesting they can't apply for their fees. They can apply for their fees. Whatever the Court decides to do with respect to those fees, the Court decides to do.

The other point that we'll note is section 6.03 references that we have the right as the senior secured party to the object to the reasonableness of the amount of fees and expenses or other payments sought to the junior secured parties, and that's really all 22(f) is doing. 22(f) is saying, you know, that unless the Court orders, no payment of fees can be made. And we certainly don't want any payment of fees made on behalf of the estate where there's significantly -- there's a significant impairment in terms of value to secured creditors and a process that is going to be run tightly with a tight budget to continue to fight, and that's really all 22(f) is saying, and we think that's completely within the four corners of the intercreditor agreement.

And of course, I'll note, you know, this is just a very consistent ask in terms of what the noteholder committee asked at one point for payment of their fees. From our perspective, My Lady, any payment of fees to the noteholder trustee would be inconsistent with your previous finding that it was premature to allow payment of fees to the noteholder committee.

And the last point that I'll make on all of this is you'll note that for a period of time, the noteholder committee was comprised of DDJ, which is a credit opportunity fund as I understand it; Brigade, another credit opportunity fund; and Barings, which is a multifaceted organization with significant holdings -- assets under management. The second lien DIP no longer references Barings. Mr. Kashuba indicated that when he said who he was acting for, Barings is not in the DIP any -- is not in that committee anymore. There's another entity in that committee named Western -- I forget the name of it. I apologize. And I just think you need to ask yourself -- there's obviously trading going on in that group, and so should ask yourself very carefully if that 2L DIP were to be executed for all the reasons that I've said, are we giving a third -- another party, who's coming into that situation and who's trying, you know, prime us outside the terms of the intercreditor agreement, an advantage.

THE COURT: Okay.

MR. WASSERMAN: So just to -- to sum up, you know, we are very

supportive of the SISP being launched. We are supportive of the stalking horse bid maintaining the floor in that process. We believe that there's been ample opportunity for somebody to put forward the terms of what a bid would look like. We would move off the Washington -- in support of the Washington bid if we had somebody else that was at the table that would provide that certainty. It's not here, doesn't exist. And this is the best option for not only my clients but for the company and the stakeholders under this scenario.

And I -- I agree that the second lien lenders are in a difficult position, but they are the -- they can be the author of their own destiny. They can bid. If they're really intending to bid, they should bid. If they're not getting information, that's a problem. We have a problem with that. They need to get the information. The company needs to provide them the information. The monitor needs to make sure they are getting the information. Evercore needs to be available to them to answer whatever questions they have. And they should have the absolute best opportunity to come forward and bid for this asset because, as I said, if they want this asset, it's theirs. They can own it.

THE COURT: Right.

MR. WASSERMAN: Those are my submissions.

THE COURT: Okay. Thank you very much, Mr. Wasserman.

MR. WASSERMAN: Thank you.

THE COURT: All right. So we're at noon here. We've been sitting since 9:15, so I think it's time for a break. I suggest we take a break, like, for 20 minutes or so. What do you think, Mr. Simard, our timekeeper here today?

MR. SIMARD: Sure. I think we're -- we're making good process I -- I -- on the pace we are at, and people are -- are trying to observe the time limits. I think we're on pace to finish today, so I would think that a 20-minute or even a 30-minute lunch till 12:30 Mountain would be -- would be fine.

THE COURT: All right. So why don't we do that. We'll take 30 minutes so that people can grab a bite, and I'm just going to mute myself. I'm going to keep this going.

Madam clerk, will you be able to take a break, or is somebody coming in to, you know, relieve you in and out?

THE COURT CLERK: There's no one coming in to relieve me, but I can

run down and grab my lunch.

THE COURT: Anyways, well, hopefully she can. So I will mute. I'm going to stay online, and I suggest everyone does since it just will be easier, but I'm going to mute myself and mute my -- my screen, and then I'll be back to continue at 12:30. So thank you very much, everyone. We'll see you in half an hour.

PROCEEDINGS ADJOURNED UNTIL 12:30 PM

Certificate of Record

I, Elena Kay, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench, held in courtroom 1604, at Calgary, Alberta, on the 19th day of June, 2020, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Sandy Voga, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Sandy Voga, Transcriber
Order Number: AL-JO-1005-5378
Dated: June 24, 2020

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

---

June 19, 2020	Afternoon Session
The Honourable Madam Justice Eidsvik (remote appearance)	Court of Queen's Bench of Alberta
P.L. Rubin (remote appearance)	For Dominion Diamond Mines UCL, Dominion Diamond Delaware Co. LLC, Dominion Diamond Canada ULC, Washington Diamond Investments LLC, Dominion Diamond Holdings LLC, Dominion Finco Inc.
S.F. Collins (remote appearance)	For Diavik Diamond Mines (2012) Inc.
M. Wasserman (remote appearance)	For Credit Suisse
K. Kashuba (remote appearance)	For Ad Hoc Group of Bondholders
B. O'Neill (remote appearance)	For Washington Group
T.M. Warner (remote appearance)	For Dyno Nobel Canada Inc. and Dene Dyno Nobel
C.D. Simard (remote appearance)	For the Monitor
J.J. Salmas (remote appearance)	For Wilmington Trust, National Association
M.I. Buttery, QC (remote appearance)	For the Government of the Northwest Territories
J.R. Sandrelli (remote appearance)	For Procon Mining & Tunnelling Ltd.
D.S. Nishimura (remote appearance)	For M. Quinlan
A. Astritis (remote appearance)	For Public Service Alliance of Canada
E. Kaye	Court Clerk

THE COURT: Good afternoon, everyone. I hope everybody was able to get a bit of a break there, and we can continue on with the application.

Mr. Simard, are you there?

MR. SIMARD: I am, My Lady.

THE COURT: Okay. Good. I presume now then we'll move to Mr. Collins or Mr. Kashuba, one of the two, or --

MR. SIMARD: I believe, My Lady, Mr. Kashuba will go first followed by Mr. Salmas and Mr. Collins.

THE COURT: Okay. Great. That's what we'll do then. Thank

you.

Mr. Kashuba.

Submissions by Mr. Kashuba

MR. KASHUBA: Good afternoon, My Lady.

THE COURT: Good afternoon.

MR. KASHUBA: As Mr. Simard mentioned, we have come to terms of submissions to a later part this afternoon. I will -- again I'll attempt to respond to certain suggestions and comments made by my friends earlier this morning as well as address other materials that are before the Court that I think need to be spoken to.

THE COURT: Okay. Thank you.

MR. KASHUBA: Just to be clear, for the record, we are counsel to the ad hoc note committee. That ad hoc committee, contrary to what my friend the counsel to the first lien lenders mentioned, it does include Barings LLC. It includes Brigade Capital and DDJ Capital Management. They're the same noteholders that have always been part of the committee. Today, with respect to a noteholder DIP that was before the Court that was included in Mr. Hoff's affidavit, Barings was not involved with that noteholder DIP. They're still a noteholder, still part of the committee. They were not part of the DIP itself. So I just wanted to make that clear. Western Asset Management is the third noteholder that was named as a noteholder DIP provider. They've always been part of the proceedings. Their name has been mentioned. They've been in close contact with the other three noteholders. I just want to make it clear to the Court and to all stakeholders, everybody on the call, nothing should be taken from the lack of Barings presence on the DIP. They're still a noteholder, and we're still representing them as part of the committee.

Now, I'm going to endeavour this afternoon to keep my submissions brief. I think timing-wise we're on a good track. I don't want to be the person to derail that. I'm mindful of the court's time constraints and the time blocks that our client has been allotted. We have filed some materials. I suggest those materials speak for themselves. I do want to touch on certain points however.

To be clear today, My Lady, our clients are not objecting to the proposed SISP. And we're not objecting to the joint interim financing proposal by Washington and the 1Ls.

THE COURT: Okay.

MR. KASHUBA: With respect to the SISP, enough water is under the bridge that we're prepared to allow it to proceed as proposed, as we've been saying, as long as there are certain checks and balances. This is a position that has changed largely in reliance on paragraph 41(e) to the sale investment solicitation process that makes it clear that the Court can always change or terminate the process and withhold approval for any selected bid. So in other words, nothing is in the SISP that binds the process to finish once it's started. Let's say that the diamond market opens up or we have a plan of arrangement or some other proposal that comes forward, if these opportunities arise, we need the ability to at least apply back to the Court to shut down the SISP, and we have will believe that paragraph 41(e) accomplishes this. So we don't have an issue with the SISP.

THE COURT: Thank you very much.

MR. KASHUBA: We are here to express our serious concerns with the proposed stalking horse bid and with the proceedings as a whole as they've been framed by Washington.

We will also state at the outset -- and I believe you mentioned this is highlighted in your notes, My Lady -- the first lien lenders have notified us last night that we cannot take the position that we are taking today because it's prohibited by the intercreditor agreement between the first lien lenders, the lien holder indenture trustee.

THE COURT: I think that's with respect to the -- the alternative DIP, right? And with respect to -- to not approving the DIP that they're suggesting. Anyways, okay. Right.

MR. KASHUBA: (INDISCERNIBLE) merely I'd say, My Lady, geared at the -- the providing of the noteholder DIP but also just (INDISCERNIBLE) put forward the DIP, I'd suppose the argument is then we're passively objecting to the first lien shareholder DIP and anything that's tied to that. But I can be clear today, and I think this will help clarify matters for the Court.

The first liens agent's counsel from the US did send us a letter last night, not on the court record, as Mr. Wasserman mentioned, but it was essentially a cease and desist letter that was shortly after followed by the reply bench brief from the first lien lenders and another brief from the company. We have reviewed that intercreditor agreement and section 6.01 and 6.03. We strenuously object to the position that's been taken against us. We -- we would submit that the provisions of the intercreditor agreement cited by the first lien lenders do not apply to the proposed interim approval of the stalking horse bid in a CCAA court that would result with no proceeds being made available to the noteholders, and we -- those

provisions do not apply against our client. Our client, the note committee, were not signatory to the agreement, but maybe there's an argument that they are bound by the actions of the first -- the second lien trustee.

All this being said, it's not an issue for today. There's no objection to the DIP that's been put forward by the first liens together with the Washington Group.

That DIP proposal from the noteholders can be viewed as an alternative, I'd suspect, to fill the void if, for example, this Court rejected the proposed stalking horse bid and, as Mr. O'Neill mentioned, if the Washington Group were to walk away from the (INDISCERNIBLE) financing proposal -- they say if things are not accepted today, they're walking away -- then the first -- the second lien DIP is there as an option.

Just to address the comment on *Laricina*, again, not a case on all fours with today's proceedings, Mr. O'Neill mentioned that his client was on the other side, basically inverse positions with Torys' clients on that matter, and his client was unable to come to the table with the money. That's not the case with the noteholders in this situation, My Lady. We're not pushing against the DIP any longer, but it's on the court record.

THE COURT: All right.

MR. KASHUBA: The DIP from the noteholders was a signed term sheet. It was a fully executed term sheet with upwards of $80 million Canadian in hand, so if the suggestion is we're not coming to the table with any money, with no cheque, that's just not the case in the present situation.

THE COURT: Okay. Thank you.

Oh. I can't hear you. I'm having trouble hearing you.

MR. KASHUBA: I might have -- I believe I might have --

THE COURT: There you are.

MR. KASHUBA: -- (INDISCERNIBLE) my mute button. My apologies, My Lady.

THE COURT: Yeah. There's a time for a mute button; there's a time not to have a mute button. All right.

MR. KASHUBA: Precisely.

If Washington and the first liens consensually withdraw the DIP, our client stands as an alternative. I'll leave that at that.

THE COURT: Okay.

MR. KASHUBA: As the first liens are aware, our clients are also prepared to grant joint participation to the first liens in that DIP financing offer on substantially the same terms as the Washington bid had with the first liens. I -- I thought that was clear. I thought that the first liens were aware, but it isn't that we were cutting the first liens out of the DIP. The participation door is open if we're ever to go down that path.

THE COURT: Okay.

MR. KASHUBA: Our clients' offer of financing, Mr. O'Neill had mentioned, yes, it's -- it's exactly the same or it copies the Washington bid. That was intentional. We did not want to make it out of line. There's a change in interest, but, yes, we did use that as a starting point to -- hopefully, and when that bid was on the table, we didn't want to make it appear to be something drastically different because, as we all know, that would just give reason after reason for changing the deck of cards. That would be a death sentence for the DIP if it were to go to ahead. It was copied, borrowed from, but that was intentional.

So accordingly, the only issue for our clients today is the stalking horse bid. Now, we -- for the reasons set out in our materials, we do believe that stalking horse bid should not be approved by the Court. Other counsel today has made the comment, Well, yes, we don't necessarily want the same stalking horse as providing the bid -- the DIP, which I think was a comment made by Mr. Astritis for PASC, and Mr. Wasserman even mentioned it's not ideal, it's not that what -- that's what we want, that's not what want all parties want. But fair enough, it is the DIP that's on the table. It's the stalking horse bid that's on the table. We'd much rather not have it as well, and we would submit that the SISP can proceed without the stalking horse bid.

In short, My Lady, the stalking horse bid sets the low floor price. We mentioned this at the application on May 29th. That benefits Washington and does not really provide a benefit or an assurance to anyone else, including our parties we're representing. Now, it's -- in the last 2 weeks, what's happened, an 11-page term sheet been dressed up and a lengthy purchase -- asset purchase agreement. We'd submit that that bid is still highly conditional. It's optional and vague, and it's prejudicial for the reasons we've set out in our materials.

There are some comments that have been made about, well, there's no incentive to obtain

or seek a higher purchase price. I just want to be clear. There's not a value -- a monetary value tied to an accretion in realized purchase price by the financial advisor or as set forward by the company. Mr. Rubin mentioned, Well, we have all of these other parties, professionals that are involved and that is to give no credit to their representation or to expectations made of these parties. That is not what we are intending to say. On the monitor, we respect FTI Consulting. We respect their role here. They have a tall order to fill, but we're not suggesting that they are unable to oversee the process. Evercore is a large, sophisticated, and reputable financial advisor who we've never said that they are not. But what the proposal does not have is a tied incentive, a monetary incentive, to realizing a higher purchase price. This -- these are terms that appear often in SISPs. There's nothing here, but that's not to say we don't think that these advisors are fine and qualified financial advisors.

And to that end, we also have a financial advisor. There's -- in Mr. Hoff's affidavit that was filed on June 17th, he references his discussions and his ongoing advice being sought from the very sophisticated financial advisor Houlihan Lokey, who backs our client and who backs the noteholders. So when there's a suggestion that Mr. Hoff is seemingly just a senior research analysis at DDJ, firstly, that -- that is not a position of an entry level of any sort. Mr. Hoff has considerable experience, and he also is relying on the advice and direction of a financial advisor as well as legal advisors. He comments on that at paragraph 24 of his affidavit.

Now, to comment finally and conclusively on the stalking horse bid, there's no doubt, My Lady, that it's exceptionally difficult to get people to step onto a different track once they've had their feet locked into the present one, even if the new track is better for them and for all stakeholders, and from the outset of these proceedings, that's what we've been trying to do. Despite our best efforts to demonstrate, we believe, accurately that the proposing -- that the proposed stalking horse bid is harmful, we're here again today making those comments.

Mr. O'Neill on behalf of Washington has said, Well, again, where's you're bid? We've indicated that the noteholders will be making a second -- a second lien credit bid, and that is still the intention. It shouldn't be surprising that we haven't produced one at this point. There is no SISP as of today's date. On April 22nd, when the CCAA initial order was sought and obtained, it was a complete surprise to my clients. As I've said on numerous applications, that we are 60 days down the road. But who did have a stalking horse bid in their mind? Washington did on April 22nd. They had a lot more time before the filing as my clients ever have, and we still don't have a SISP. We've said it before, and we'll say it again, it's our intention to put a bid in, a credit bid, a dollar for dollar credit bid in the SISP. We -- that's what we want to do, and I think that's going to be to the benefit of all parties.

Now, Washington does want to make a bid, and that's fine. Now, is it a benevolent thing

for them to do? Has -- has this been hinted at? That's obviously not a benevolent or a courtesy or charitable thing. Why can't they make a bid in the SISP without all the perks and advantages of a stalking horse? A stalking horse deal primarily serves the intention of Washington. We've had complaints, and I don't think it's a secret to anyone there's some acrimony and wasted time and effort here, but why is Washington unwilling to say that they will put a bid in in the SISP, put it on the record today? Instead of the stalking horse, they might say, Well, there's not real advantages, being the stalking horse. Well, why do you need that position? Why have you been fighting so hard to get that designation?

Now, with -- My Lady, I have just a couple of more points. I might have something after my friend who's counsel to the indenture trustee makes his submissions on behalf of the trustee. But there's some comments on the application that was heard on May 29th, and counsel to Washington made a suggestion that the noteholders retraded or had an agreement and reneged on that agreement. I'm not going to fully address that. It's not worth the time of this Court. But I can submit that my client did not retrade on any deal. I can say unequivocally we never supported the Washington bid or suggested anything to the contrary. That -- that's been our position throughout. That is not a promise that we made to support a bid that we fundamentally disagree with. I -- I'll leave it at that.

Now, we -- we are prepared, My Lady, to -- to speak to any of the submissions made or the points raised in the noteholders' materials, but I will repeat that our client believes that the stalking horse bid is woefully deficient and not in the best interests of the collective stakeholders in these proceedings. The SISP, we will agree to. Enough water is under the bridge. But the stalking horse bid is fundamentally opposed by the bondholder group, and that remains the case today.

Subject to any questions from the Court, that concludes my submissions.

THE COURT: Okay. Thank you, Mr. Kashuba.

All right. I was going to hear from Mr. Salmas.

Submissions by Mr. Salmas

MR. SALMAS: Good afternoon, My Lady. Can you hear me (INDISCERNIBLE)?

THE COURT: Yes, I can. Thank you.

MR. SALMAS: Great. That's great. So, John Salmas for the record, Dentons Canada, for Wilmington Trust, National Association in its capacity as a

trustee under the security secured note indenture.

My Lady, I guess we're here now 16 days after we were in front of you last, and we had been hopeful that we'd be closer to having people's positions addressed and we'd be at a spot where we might have a closer thought in terms of how this case will proceed, but the dynamic is such that hasn't been the case. I mean, clearly, there's some -- there's some parties that seem to have that thought. But from our perspective, while we have (INDISCERNIBLE) thoughts in terms of a SISP, My Lady, and we don't take any issue with the SISP today, we do want to talk about our thoughts on the DIP, and we do want to (INDISCERNIBLE) our thoughts on the -- on the stalking horse bid.

And I want to preface all these thoughts by saying that I appreciate this is a very complicated case with a lot of very experienced counsel who are unafraid to vociferously advocate for their clients' interests. And there's some very novel positions that have been taken and some very difficult contractual relationships that have had to be dealt with as part of this case, some of which are US in nature, so there are some US bankruptcy terms that have been used in this, case such as adequate production, absolute priority, admin expense, and so while all this -- that nomenclature is very complicated, at the end of the day, we think this case -- it comes down to value and description of value.

And we say that the construct here that we have is a novel construct that we haven't seen before in Canada whereby the equity has -- is seeking to act as the stalking horse bid, stapling a DIP to that document and, in our view, bypassing the secured notes totally while at the same time constructing a DIP that has some issues in it in terms of allowing the junior representative and junior secured parties from actually being able to voice their opinions on certain aspects of the overall case.

So I'll come to that in a minute, My Lady, but I did want to, as Mr. Kashuba did, take about a minute or two just to talk about -- there are some differences, clearly, between Wilmington Trust, National Association in it's capacity as trustee under these notes and the ad hoc group that's represented by Mr. Kashuba. While we definitely have certain alignment in our thinking and our ultimate positions, Wilmington is not part of that ad hoc group. Wilmington Trust is a trustee. It's a creature of the indenture. It's a fiduciary to the noteholders. It has contractual obligations under that indenture itself. Those contractual obligations are clearly subject to the intercreditor agreement. Any indication by any party that Wilmington is a (INDISCERNIBLE) party participant in these -- in this case is inaccurate. Wilmington is acting in its capacity as a trustee not in its personal or corporate capacity, and none of the Wilmington affiliates are involved in this case.

So there are some thoughts as to, you know, who Wilmington is and what Wilmington can do in this case. We are separate in the ad hoc group. We can't and didn't file a DIP. We're

not a party to the DIP proposal that was filed by the ad hoc group, and we can't and won't be part -- a participant in the SISP. We don't have any independent money to buy -- seek to buy these assets with. So I just wanted to be clear that there's definitely some differences between the ad hoc group and Wilmington, the trustee in this case.

And so in terms of how we view this, go back to the fact that we think there's some real value proposition issues here in which this equity construct bypasses the second liens in the terms of value, and so we say that that's a problem when the entity that's trying to broker that is the equity. It's their own admission, I think, earlier in the submissions, a party that understands the company. I think that was the submission that was made earlier by Mr. O'Neill. And so they do have a leg up on everybody else, and they -- this process is set to continue to give them a leg up going forward.

And so we just want to be here to make sure that our submissions are such so that the voice of the parties that are not actually part of this -- so there's a bunch of noteholders that are not represented by Mr. Kashuba's group. A few noteholders -- I think it's about 47 percent of the value of the notes -- are not represented by Mr. Kashuba's group. There may be some notes that are held by the Washington Group, but I don't have any actual visibility into that, but there's clearly a group of noteholders that are not otherwise represented by any other party in this case other than Wilmington, so that's the -- the trustee's role in this case, is to make sure that the voice of those minority noteholders is heard.

And so I want to focus on value. The one thing that I have said in the past -- in the past is, you know, we think it would have made sense to have some kind of liquidation analysis or at least a document that says based on, you know, statutory contractual priorities, what would have happened to Dominion and its affiliates in a music stops scenario. And we're not saying that because I want to effectuate a receivership or a bankruptcy necessarily of these companies, but it would good to kind of have everybody understand their positions based on those priorities and that (INDISCERNIBLE) some submissions -- some submissions from either counsel as well about -- I think PSAC made -- my friend from PSAC made a comment about the underfunded pension liability and whether or not that has a priority or not. In our -- in our brief, My Lady, we didn't say necessarily that those amounts were subordinate or in priority to the second lien notes. What we said is we don't know. And that's -- that's been the part of the problem in respect of a lot of the amounts that are in terms of how the allocation of value is going to occur by virtue of this construct. We just don't know who's -- there's no bright line shone on who's getting what and, if they're getting it, on what basis they're getting it and do they or do they not have priority to certain creditors. So that's just been a fundamental issue that we've been grappling with all along in the case. We don't have an ability independently to verify that on our own. We've asked for assistance from the applicants and the monitor, and to date, there's -- they declined to put together a document of that nature.

So in terms of the actual -- I guess I'll move to the actual proposal itself. As I indicated earlier, we don't take issue with the SISP. We had made a suggestion about whether or not the phase 1 bid line -- bid deadline could be migrated another week out to allow third party bidders some additional time to -- because they're -- they will be starting from a standing stop after -- after any order that you may grant, whereas other parties obviously have had a leg up, so we just wanted to make sure that other bidders have an opportunity. That's the only submission we wanted to make on -- on the SISP timeline.

And so clearly we wanted to talk just about the stalking horse and some of the issues that we have addressed and indicated that we have with the stalking horse, which we feel, bottom line, is a stalking horse that does reorder the priority scheme of the Canadian insolvency regime. It does clearly provide for value to subordinate stakeholders. There's some questions about, you know, whether or not some of the other values that are baked into the stalking horse would also go to stakeholders that would not otherwise have a priority to the second lien notes. And so we don't have that -- the appropriate information from either the applicants or the monitor to let us know, you know, how does this process compare for us as against a music stops process in a receivership or bankruptcy. And once again, we're not saying that's our ultimate goal. We're not looking to put anybody into receivership or bankruptcy. We would just like to know the deltas, and unfortunately, we don't.

And if I could point, My Lady, there's an example -- I mean, and it's been pointed out to you before, but in the applicants' -- and I'll lean on Mr. -- Mr. Freake on this again because, for whatever issue, I'm having an issue with CaseLines on my iPad today. In the applicants' brief that was the original brief that was filed for this application last -- (INDISCERNIBLE) it was filed last Friday, there is that charge that I believe Mr. Rubin had pointed you to previously, 37(a), and there's some line items in that chart. Do you --

THE COURT: Right. Okay. So --

MR. SALMAS: So (INDISCERNIBLE) yeah.

THE COURT: The chart -- right. The chart in terms of the value of the bid? Is that what you're talking about?

MR. SALMAS: Correct, My Lady. And a line item like, for example, reclamation, letters of credit and guarantees, it talks about that value being somewhere between 224 million and 323 million dollars. Those are significant amounts, and it may very well be the case that everything in that line item has a priority to the second

lien notes. I don't know the answer to that because on reading this chart and reading the applicants' brief, the monitor's report, the initial (INDISCERNIBLE) --

THE COURT: Thank you, Mr. Freake.

MR. SALMAS: Sorry. I was unable -- we were -- we are unable to unpack that, and so in the universe in which people are talking about value and description of value, I think it would have been helpful to unpack some of those amounts in a bit more detail than we've seen so far.

I will address a couple of cases, My Lady, that were brought up by Mr. Rubin. I'm going to focus -- with the amount of time that we have today, I just wanted to focus on reply to, I guess, Mr. Rubin's brief late last evening. He mentioned a couple of cases, I guess, in that brief and also in, I guess, his main brief about *Lightstream* and *Brainhunter* and what those cases stand for, My Lady.

We do say that while the applicants use the term that *Lightstream* was a transaction in which there -- there was an assumption of trade creditors without paying, quote/unquote, financial securities, by our read of case, My Lady, the -- the notes in that case were unsecured notes. So the purchaser, which is a third party purchaser, purchased the assets of the company, didn't pay unsecured notes, and agreed to assume certain trade creditors, different scenario than our case.

And then *Brainhunter* has been a case that's been cited by the proponents of the insider structuring proposal to suggest that it's an insider stalking horse bid and that that's allowable. I don't think we're saying that it's not allowable in any case ever. It's just that it has to have high scrutiny. And in that case, *Brainhunter*, the relief proceeded on consent, as I understand it. So there was no objection to the insider stalking horse bid in *Brainhunter*, so I can only glean from that that there was no party that felt aggrieved by that stalking horse.

In terms of how we view this, there -- there's -- the submission was made earlier about how Washington really understands the company because -- feeds into the argument that we question whether or not the expense reimbursement and the break-up fees are amounts that should apply in a case like this to the level that they apply by virtue of the fact that the recipient of those amounts would be the equity. The (INDISCERNIBLE) understands -- by his own admission understands the company. So those amounts are usually for third parties who have come fresh to the table, spent a bunch of time for doing diligence and have -- have had (INDISCERNIBLE) cost for their resources being diverted to the opportunity that we're talking about as opposed to other opportunities that could be looking at at the marketplace. This is a different scenario. This is the insider that already understood the

company seeking to make this offer. So we do question the level of those amounts in respect of this proposed stalking horse bidder.

But I did want to go to the DIP, which I think is some consternation for us, and while we're not opposed to the concept of the DIP, while we're not opposed to the concept of the DIP that was put in forth -- in front of this Court for the May 29th court appearance, that DIP has changed in terms of what that DIP does say as against what it said when we were actually really in front of you to actually argue the merits of any relief being sought, and that DIP changed on Monday morning after our Friday court appearance. And I can point to you to a couple of places that I'd like to sort of address these issues. In the monitor's supplement to the fourth report -- so once again, I ask Mr. Freake to help me on this. In the monitor's supplement to the fourth report, there are a couple of exhibits that --

THE COURT: Right. I'm there. Oh. I've lost you. I've lost you. I can't hear you. You're muted, unfortunately.

MR. SALMAS: (INDISCERNIBLE).

THE COURT: There you go.

MR. SALMAS: My apologies, My Lady.

THE COURT: No problem.

MR. SALMAS: Appendix 'G' is an email from Mr. O'Neill, so Washington's counsel, for the service list that details what Washington proposed DIP lender suggested would be an amendment to the DIP facility, I believe, based on what they say to be submissions that were made by counsel to the ad hoc group and counsel to Wilmington at the May 29th court appearance. So you've heard people address that. I don't -- once again, I don't -- I don't think there's a lot of value in wasting the Court's time on that in terms of the differentiating views as to what was said and what transpired on that day.

But I would like to point out to you this email just because this email is the one that -- it creates new language for a section 22(f) of the DIP term sheet, and this language continues to be included in -- in the DIP term sheet today, and it effectively is language which seeks to curtail the ability of parties that are receiving -- that would receive funding either under the DIP or either under a court order to obtain funding, and in effect, it suggests that no amount would be paid to those parties to fund any challenges or objections to the interim facility, the stalking horse transaction, including the sale hearing, or the SISP, or to fund any litigation or pursuit of claims, including diligence or discovery against any interim

facility lender or any of it's affiliates in any capacity. So that -- I think, that may have actually been tweaked a little bit more for today's case, but that language was commented upon by the monitor in his charts that you found -- that you -- both Your Ladyship and myself found very helpful and in this chart which appears at Appendix 'K' of that same report. It's the fourth page of six.

THE COURT: Do you have the -- the actual page number with the --

MR. SALMAS: Not --

THE COURT: -- CaseLines number?

MR. SALMAS: I -- unfortunately, I don't actually have the CaseLines reference for it. It's -- it's Appendix 'K' to the supplement of the fourth report.

THE COURT: Okay. Mr. Freake is on it. Thank you, Mr. Freake. Okay. So it's page --

MR. SALMAS: So --

THE COURT: -- 4.104. Okay. So it was with respect to paragraph 22 that you're looking at?

MR. SALMAS: Correct. So it's in respect to that language that -- that stems from that email on that -- on the Monday after the Friday court appearance in which we were in front of you last making actual submissions as opposed to adjourning. And the monitor gives its views of that provision, and if you go about maybe 10, 12 lines down, it says: (as read)

> The monitor finds this provision to be very restrictive and proscriptive.

THE COURT: Right.

MR. SALMAS: That's one comment. And then if you fast forward down another five or seven lines I think it is, it says: (as read)

> While the monitor does not find this added provision to be necessary to the effective functioning of the SISP or the CCAA proceedings, there is also no evidence suggesting that this

provision will prejudice the effective -- sorry -- will -- will prejudice the effective functioning of the SISP or the CCAA proceedings. As such, if the Court -- the Honourable Court is inclined to approve the interim financing term sheet, the monitor does not view this provision to be unduly prejudicial.

THE COURT: Right. Okay.

MR. SALMAS: The monitor finds it to be restrictive and proscriptive and unnecessary for the effective functioning of the proceedings, so why is it here? And I don't think it needs to be there. It wasn't in the DIP in front of this Court on May 29th. And it seems to me that if you do read the language -- and I disagree -- and I'm happy to talk about the comments we've heard from the first lien counsel. I disagree with the import of the language and its effect. And the reason why I say that, My Lady, is I believe that, if approved, that language -- maybe I should actually point you to the actual DIP term sheet that's in front of the Court today with that language. If approved, I believe that could neuter the ability of certain parties that are seeking to be funded from actually doing their job in terms of arguing on behalf of their clients.

So if I could point you to 22(f) which is the -- of the DIP term sheet, which is part of the -- I guess it's appended to Mr. (INDISCERNIBLE) second amended and restated initial order that was served last Friday by the applicant.

THE COURT: Okay. Oh. We lost you.

MR. SALMAS: Do you have --

THE COURT: Yes.

MR. SALMAS: (INDISCERNIBLE).

THE COURT: Yes, I can hear you.

MR. SALMAS: Okay. Great.

The language is blacklined. In the last few lines in the blackline -- so (INDISCERNIBLE) the language in the front (INDISCERNIBLE) otherwise this Court. This is a restrictive covenant that says that no fees can be paid unless it's (a), I guess -- or it's except as otherwise may be ordered by the Court (INDISCERNIBLE) any obligation or pay a fee other than to certain parties that are enumerated. (i) is the monitor; (ii) -- and (INDISCERNIBLE) monitor and its counsel; (ii) is the -- the debtor's counsel and financial

advisors, the interim lenders, and the first lien lenders; and then -- then (iii) such other party has the Court may expressly order. But if you go further down where it has the blackline, it says, Provide -- provided however, in all cases, no fees, expenses, or disbursements shall be paid or reimbursed and no retainer shall be established to fund any challenges or objections to the interim facility, stalking horse interaction including (the sale approval here) or the SISP or to fund any litigation to pursue claims against any interim facility lender or any of its affiliates or -- in any capacity. So it does say in -- in all cases.

So while there is -- and I think Mr. Wasserman pointed out the proviso at the beginning of that section, except as may be otherwise ordered by the Court. If you fast forward down to the bottom part of that section or I guess two-thirds of the way down it says, Provided however, in all cases, no fees shall be used to effectively argue against the insider restructuring proposal, including at the sale approval hearing.

So one of the arguments I've heard today is, you know, this stalking horse bid should proceed, and to the extent that the stalking horse is the winning bidder during the SISP, there's an opportunity at a sale hearing to complain about that bid to the extent as a party in interest you have a complaint in respect of that actual transaction. I think this provision (INDISCERNIBLE).

THE COURT: (INDISCERNIBLE) Fellowes. There's -- I don't know. She came up for some reason. Okay. Ms. Fellowes, I don't know what's going on, but make sure you're muted. Thank you. Okay. It keeps flipping on and off (INDISCERNIBLE).

THE COURT CLERK: So this is for Karen Fellowes.

THE COURT: Fellowes (INDISCERNIBLE).

THE COURT CLERK: Could you please mute your microphone.

THE COURT: Okay. Okay.

MR. SALMAS: So this -- so this provision is important to the trustee because the trustee doesn't have independent funding. The -- the independent funding entity (INDISCERNIBLE) the trustee are the applicants. The applicants are the party -- and I was going to get into this more during the interim -- the trustee's fee application, but the only roadmap for the trustee to get paid is via the debtors who are the contractual counterparty to the trustee in respect of the indenture. They also are a contractual counterparty to the intercreditor agreement. And so if we come to seek payment for our fees from the estate, this section says we can only get paid if we don't object to any

of the construct of the insider restructuring proposal, including at the sale hearing. So it not only suggests that we neutered you now; you'd be neutered in the future as well where everybody says that's the real argument to have in respect of this transaction. So, My Lady, we think that that provision shouldn't be in here. And we say and have said -- and we've reached out to -- proactively reached out to the applicants and the first lien lenders to say that we believe that that provision -- and I -- is a provision which is offside the intercreditor agreement.

Mr. Wasserman said something earlier about the intercreditor provisions not being in evidence. And, My Lady, if I can, I can direct to the trustee's briefing of its fee application, which actually occurred, I believe, on May 13. Our fee application was originally scheduled to be heard on May 15. As part of that fee application, we had an affidavit of Mr. Freake, and Mr. Freake's affidavit included the fulsome indenture and the fulsome intercreditor agreement at play here, which includes in their entirety section 6.01 and 6.03 of the intercreditor. So you know, we say that the evidence of the intercreditor arrangements have been in front of the Court for over a month, and so it's just that our fees had never been put on the rails as an application until today since May 15th.

So we say that section 6.0 -- so 6.01 talks about the intercreditor relationships regarding financing and sale issues, but 6.03 talks about adequate protection. As indicated earlier, it's -- it's a US buzz term, adequate protection, but it's a term to talk about protecting pre-petition secure creditors from potential diminution of value of their secured claim during the course of the case. So -- so the unfortunate reality here, My Lady, is we do have US law governed documents, not as a -- as a slight to any of my American friends, just have we have a Canadian case -- a Canadian company (INDISCERNIBLE) CCAA proceedings but US law governed indenture and a US law governed intercreditor arrangement, and the intercreditor arrangement uses American style bankruptcy code terms.

So 6.03 is the section about adequate protection, which deals with the ability of party -- the junior representative -- in this case, Wilmington -- to seek its fees or adequate protection payment in respect of the collateral that it shares with the first lien lenders so long as the first lien lenders are getting adequate protected themselves. And in this case, in our case, the debt that's in front of Your Ladyship today provides for payments to the first lien lenders on account of interest and fees, so in our submission, they are -- they are receiving adequate protection, and so in a world in which they are receiving adequate protection, this intercreditor agreement allows the trustee to seek adequate protection payments as part of a case that isn't an insolvency proceeding.

This section is -- is triggered by the insolvency filing of the debtors. So the parties that were part of the intercreditor agreement thought about a potential insolvency of the -- the companies that issued the indenture and -- and then therefore, the -- the -- the constituents

to the intercreditor had to deal with the insolvency proceedings -- the future insolvency proceedings. So these provisions are -- kick in in an insolvency scenario, so this is not a regular pre-filing intercreditor debt or contracts. It is a material senior lender contract that involves the company in the indenture side. It involves the company and the first liens on intercreditor side.

So we say that 22(f) is offside 6.03 of the intercreditor agreement which allows us to seek adequate protection, and -- and the reason for that is we can only get funding on 22(f) if we are agreeable to the construct that the equity is (INDISCERNIBLE) today. If we continue to be disagreeable, then we would not be able to get funding based on the way that 22(f) or the DIP is structured, and it would put Wilmington in a spot where it can't discharge its fiduciary obligations under the indenture because our duty is to be the voice of the minority noteholders, and if the -- and if the construct or the sale at the end of the day is one that's unfavourable to the second liens, we have to be given an ability to make arguments in that regard, and the -- the very intercreditor agreement that there is some suggestion that Wilmington has somehow violated actually protects us to do so.

So this -- so we say that 22(f) of the DIP facility would be something that would put the applicants offside the intercreditor because they are counterparties to the intercreditor. We're not asking for that. We're asking to suggest the applicants are offside. We think that by their agreement to that provision, they will be offside.

We also think they would be offside section 38 of their own SISP. If I could once again ask Mr. Freake to direct the parties and -- and Your Ladyship to section 38 of this SISP. Section 38 of the SISP, last sentence says: (as read)

> Nothing contained herein is intended to or shall alter or amend the rights, terms, or obligations under any intercreditor agreement or indenture.

And by virtue of the very construct of the equity saying that the stalking horse bid plus the DIP plus the SISP constitutes a tapestry, a section of the SISP that says that the indenture and the intercreditor agreement (INDISCERNIBLE) being amended but having a section 22(f) of the DIP that seeks to limit or amend the indenture and the intercreditor agreement would once put the applicants offside what they want to -- part of the relief they're seeking from Your Ladyship today, which is this SISP.

So we think there is a roadmap to deal with that, My Lady, and I think we've mentioned that in our brief, and the roadmap to deal with it is very much similar to how Justice Newbould dealt with this -- these kind of issues in the *Essar Steel Algoma* case a few years ago. That was the case -- and some of the lawyers that are involved in this case were

involved in that case. That was a case where Mr. Justice Newbould decide -- determined that the -- the DIP facility had some restrictive covenants and provisions in it, and Justice Newbould on his own decided that he wasn't going to approve certain portions of the DIP that he thought were not provisions that needed to be included for the effective proceedings of that case. And we have, My Lady, as part of our brief in response to today's application at tab 4 included the unofficial transcript, the endorsement of Justice Newbould in which His Honour went through his reasoning as to why he suggested that he himself had problems with certain aspects of the proposed DIP. And he told the parties to either go out and negotiate, or I think he basically told parties that he wasn't going to agree to that if they came back with certain provisions that continued to be part of a DIP that His Honour did not approve.

So -- so we say, My Lady, that we're not seeking to have this provision in here. That's not our construct. We think this provision does not need to be in here. The monitor itself has also said that this provision does not need to be in here. So we very much feel that in order for the trustee to be able to be -- effectively discharge its duties under its indenture and its intercreditor agreement which -- for which both documents are -- contractual counterparties are the applicants. We think that that provision of the DIP is not required and shouldn't be approved today, My Lady, in the event that you seek to approve the lion's share of the insider restructuring proposal.

And I appreciate that -- if I could just quickly deal with some of the reply objections or -- that we've seen or response objections we've seen from the first lien lenders' counsel, and he referred to his -- Mr. Wasserman referred to his brief earlier. You know, he -- he suggested he doesn't -- didn't think that the 22(f) of the proposed DIP was offensive to the intercreditor. We've indicated why we disagree.

I just wanted to go to some of cases or thoughts that he -- that he includes in his brief. I think he late last night provided one page of what I understand to be a hundred-something-page DIP facility in the *White Birch* case, *White Birch Paper* case. There's no amount of context that's been provided. I appreciate that was late last night in advance of a court appearance for today, but very much in my -- by my read of that piece of paper, it seems to be a situation which the pre-existing prior ranking secured creditor included terms in a DIP that were very much similar or contractually would bind a subordinated junior secured creditor.

There's no context to say that what's in the *White Birch Paper* DIP is anything different than what the intercreditor agreement in that case might have said. The intercreditor agreement in that case is not in evidence, unlike our intercreditor agreement which actually is in evidence and has been for over a month. We don't know in *White Birch* -- there's no evidence from the *White Birch* case as to whether or not the proposed DIP language -- or

the DIP language that Mr. Wasserman has provided was opposed by the junior creditor. We don't know what other court orders were in place at the time. We don't know whether or not other court orders provided certain protections to that junior creditor. We also don't know the DIP budget in that case provided for and whether or not there were any sort of adequate protection payments in that case.

What we know is what's in this case. So we know that this case has no ability in the current DIP for fees to be paid to Wilmington even though 34 point something million dollars of fees are being paid to a variety of professionals. And so we're not here to criticize or scrutinize others' fees, but we're the ones who are being told that our fees can't be paid even though the applicants had agreed to pay our fees, and the agreement is -- kicks in in a post -- post-filing basis as opposed to, yes, it's a pre-filing contract, but the construct of that contract is to pay our fees post-filing if there's an insolvency event like there has been in this case, and there appears to be no appetite to approve our fees except for the 22(f), which says, We potentially might approve your fees if you don't complaint about our relief.

So we don't think the *White Birch* case applies, and if it does, there's not enough evidence to suggest that it does apply on all fours with our situation. And so we think at the very at least in terms of 22(f), that provision of the -- of the proposed DIP should be struck.

If I could just quickly, My Lady -- I'm not sure if I'm butting up against my time, but in terms of the reply to -- the applicants' filed late last night, it's a 300-page document I'm not going to spend a detail going -- that much detail going through it. There's a mention of the *Bellatrix* case. There's a mention of the *Nelson Education* case in terms of buying assets and, depending on who purchases, what happens to some of the unsecured creditors in that those cases and also, you know, in terms of the sales process.

I note in the *Bellatrix* case, My Lady, I believe that the purchaser put in an offer 2 or 3 months after the bid deadline in a 6-month sales process. So unlike in our case, *Bellatrix* sale proceedings went on for a lot longer than what we are at this stage in our case, so I just wanted to point out there are some differences between the *Bellatrix* decision and our current case.

And in the *Nelson Education* case, which is -- is -- is a noteworthy case for other reasons, at the end of the day, as I understand *Nelson Education*, a prior ranking (INDISCERNIBLE) creditor ended up foreclosing on the collateral of the assets by credit bid two and a half years after there was a first engagement of a financial advisor to expose the assets of that company to the marketplace. So that's a two-and-a-half-year time horizon pre- and post-filing in which those assets were sought to be purchased or sold, so it's a bit of a different scenario, in -- in our submission, to the stalking horse transaction and the insider restructuring proposal that we are grappling with today.

I -- I really don't have much in the way of other submissions per se, My Lady. I would make a submission on the form of order to the extent that there would be a need to make submissions on the form of order in the event that 22(f) of the DIP continues to be included in the construct of the DIP. It just seems to me that that 22(f) section itself hamstrings the trustee from being able to do its job, and to the extent that that has continued to be the case, there may be some thought as to how we can address it in the order itself. But I think the cleanest way to deal with that is to strike 22 -- the parts of 22(f) that effectively migrated into the DIP after the May 29th court appearance.

So subject to questions, My Lady, those are my submissions.

THE COURT: Have you suggested the alternate ways that it could be dealt with to counsel or not?

MR. SALMAS: I mean, we have spoken to counsel by clearly saying that we think that that is a problematic aspect of this DIP. We have tried to engage with the counsel. We've told -- we've had discussions in that regard, especially this week starting on Monday, about how we think that that's not a requirement. We made -- we made reference to that previous to Monday as well. I think the lead up to our June 3rd court appearance -- we had a window of time between, I guess, June -- I believe it was June 1st and June 3rd, so we definitely reached out to counsel in that window of time. And then we've also reached out to counsel this week starting on Monday in earnest to say that not only do we think it's something that it should be removed, we also think that it puts the applicants in a bad spot because it puts them offside their intercreditor (INDISCERNIBLE) and their own SISP that they're seeking approval of today and told them that we think that that's not something they'd want to be in, that position, that is, coming to court today seeking good faith and due diligence to obtain a variety of relief in front of Your Ladyship, including a stay extension. So we absolutely have made the point on a number of fronts.

THE COURT: No. That's not what I asked you. What I asked you is you've said there's perhaps another way of putting it in the order, because they seem to think that they're not offside. They seem to think that the way that it's drafted in this order is fine, so they have a different view of the interpretation altogether than you, and so you've said, well, there might be another way you can put it in the order that would satisfy you --

MR. SALMAS: And I guess I probably misspoke because I'm struggling with -- we had some language that was suggested for an order in advance of the May 29th court appearance that wasn't required because this section was not included, but I would hard-pressed, My Lady, to come up with language to go in your order that would

somehow supersede 22(f) additional language, and I think the cleanest way and the only real fair way is to just strike that additional language from the DIP term sheet itself.

THE COURT: Oh, okay. I was -- I thought that you said there was -- you had other comments about the form of order, et cetera, if I (INDISCERNIBLE).

MR. SALMAS: Yeah. My Lady, my --

THE COURT: So never mind. You don't mean that.

MR. SALMAS: My train -- my train of thought was off. I apologize.

THE COURT: All right. Okay. Is that it then? Those are (INDISCERNIBLE) submissions?

MR. SALMAS: Those are my submissions.

THE COURT: Okay. Thank you very much.

MR. SALMAS: Thank you.

THE COURT CLERK: My Lady, you're muted.

THE COURT: Let's see. Who are we going to go to now?

MR. NISHIMURA: If you like, Ma'am, it's Doug Nishimura. I can make some submissions at this time unless anyone feels a need to -- feels that they would be better off going next.

THE COURT: (INDISCERNIBLE).

Submissions by Mr. Nishimura

MR. NISHIMURA: And I'll try to be brief.

We -- we agree generally with the position advanced by the second lien noteholders and -- and the issues in their briefs. I'll speak to a couple -- to a couple related points.

My friend on behalf of the company and -- and on behalf of the bidder have -- have made it clear that they believe their application, this stalking horse bid, should be approved on

the basis that it can be done, that there's nothing prohibiting -- nothing prohibiting an insider bid. And that's true. The list of things that are not prohibited or that are required in a CCAA application is pretty small, and for that reason, the Court has -- has to be pretty cautious, in my submission, in exercising its discretion. It's not a question of can it be done. It's a question of should it be done, should it be given the Court's blessing. And -- and with respect to that, I would note that first of all as was noted, the *Brainhunter* case involved an insider bid with no opposition from any stakeholders. The -- if you read the case, the only opposition and probably the reason it was even addressed came from another prospective bidder who was also a competitor. All of the creditors, it seems, had no issue with that, so it was all done virtually by consent.

I would say that there are insiders and there are insiders, so you -- you have to look at -- at how this all came about. This is not some longstanding shareholder who after years of holding the company has found itself in financial difficulty and is making -- making -- making a proposal to try to salvage its company after years and years of -- of being involved. Washington bought the company two and a half years ago. They started out with a hostile takeover bid, turned into a friendly one, but it was done very quickly two and a half years ago, and in so doing, they created the leveraging situation which is cited as part of the reason they went into CCAA. They -- they paid $1.2 billion, 150 million US of which came right out of the balance sheet of Dominion. They used the company's own money to pay for the acquisition, and then they -- they created $550 million in debt and $500 million from -- from themselves, from Washington. So it created what I -- what it calls the highly leveraged capital structure which was partly to blame for the CCAA proceedings right off the bat in April. You'll recall the other part of the problem they described in that affidavit was the COVID situation.

So this is a new -- this is a party which only two and a half years ago bought enough of the company to buy it, in their -- and in their initial CCAA application, cited the very problem that they created only two and a half years ago. So -- so as far as insiders go, these are people who just bought the company at a price and are now trying to redo a deal I think that they maybe are either regretting or at least trying to change the -- the parameters under which they bought it.

The -- the reason that we put in our affidavit that my friend spoke to is not so much to -- to put forward my client's position and what happened to him; it -- it speaks to the way that the company has gone about dealing with its creditors -- or at least my client, and it might -- it might give pause to some of the -- some of the positions or strategies that they're -- that they're exercising now.

My client, two and a half years ago, was terminated by the company and was entitled to -- to termination pay under his contract. In his affidavit, he attaches his statement of claim

which, among other things, the termination payment owed to him was $1.296 million. There are other claims for other bonuses and things like that, but that was the main substance of the claim.

My friend is correct in that -- in saying that, well, if there had been no settlement reached right before the CCAA was entered into, maybe you wouldn't have a claim or -- or the claim would be dealt with the same way. The point is, though, that that money was owed two and a half years ago. It wasn't paid. My client had to go through lengthy litigation. There was no trial date set, as my friend says, but that was because it was drawn out by -- by the applicant and its owner, Washington, up -- right up until the CCAA, at which time it looks like they didn't think that there was any bother to it anymore and -- and -- and agreed to 1.25, which was substantially the main part of the termination -- termination benefits and even at that point said, Oh, don't worry about being paid a month out, we're just going through some -- some processes right now, you'll be paid on April 22nd or 23rd. And then we all know what happened then.

So it goes to not only how my client feels about the process and the fact that it looks like under this -- this stalking horse bid that he will be one of the few creditors left out in the cold -- and I'll speak to that in a minute -- aside from the second lien noteholders, it goes to how the business has been approached. So -- so that's -- that's why we've put in that background, and that's why the -- the fact that this is an insider, that might be looked at with a little more caution as compared to other -- other situations.

My -- my friend has also said, Well, it's premature to bring objections to the stalking horse bid at this time, it could be outbid. We all want it to be outbid. And it's been argued that it might produce a higher bid and address all of -- all of my client's concerns, all of the second lien noteholders' concerns. The difficulty we have with that -- the difficulty my client has with this is that there's no -- there's no evidence to accompany -- to accompany this bid as far as -- as far as value is concerned aside from what was stated in the initial affidavit for the CCAA proceedings. I indeed asked the company if there had been any valuations done, and I've received word from them that, no, there haven't been. So there's no evidence aside from -- aside from what's in the initial affidavit and, I suppose, the -- the SISP itself and the stalking horse bid as far as what -- what the fair market value of the assets of this company is.

My friends will say, Well, this SISP is designed to suss out fair market value; whatever the final bid is -- the winning bid is, that's the fair market value. We echo the concerns, though, of the second lien noteholders that starting from an artificially low starting point which has at least the gloss of -- of a blessing from the Court is going to affect that. It will -- it will set the scene for other bidders to view the company's assets in that light. I'm often asked by bidders, complete third party bidders in -- in bidding processes in CCAAs or

receiverships, Well, what's the lowest amount I can bid and win? And my advice to them has always been, Well, bid what you think it's worth. But the bid from outsiders on -- on what this company's worth is going to come at least in part based on what's been presented to them, and what's been presented to them is this stalking horse bid which -- which, in our view, has an unreasonably low purchase price. And the -- and the beneficiaries of that unreasonably low purchase price, if the Washington Group wins with its stalking horse bid, is the Washington Group who created this -- this situation in the first place. The losers will be anyone left out in the cold like my client.

With respect to that last item, my client being left out in the cold, the monitor has said in its report that the -- the cure costs which are going to be paid under the stalking horse bid and -- this is at paragraph 25 of the -- of the monitor's report -- is about 70.4 percent of the trade creditors. I'm assuming that -- assuming that the $20 million in -- or $24 million in cure costs are paid. I'm not sure where that number comes from. My back of the -- back of the envelope calculation of that is -- is difficult. The monitor obviously has way better information, but the -- but the creditor list itself shows that there's $164 million -- $164.7 million in unsecured creditor -- unsecured debt, 130.8 million of which is owed to Dominion Diamonds ULC, so if you take that out, my addition is $33 million -- $33.8 million, and of that, there are other amounts owed to other Dominion Diamond entities. Now, that might mean that the cure costs will take care of a greater number of unsecured creditors, which was great news for them, I suppose, but what it does is create quite an -- in my -- in my client's submission, an unfair distinction between creditors who otherwise rank equally.

And once we get a list of those unsecured creditors who are left out in the cold, my suspicion is that there will be a large number of people owed relatively small amounts, you know, just sundry amounts, and then there will be my client who's owed $1.25 million on a personal basis as an individual, and -- and that's quite unfortunate, and to the extent that it creates an unfair situation, that's something that the Court should have a look at.

Now, these submissions, my friends will say, Well, these should all be made at the point where this -- this deal is going to be approved. That's true to a certain extent, and -- and if that time comes, we'll probably be repeating ourselves. But at this point, where the Court's being asked to approve it as the baseline for -- for a bidding process when it could be just a bid, as my friends say, within that process without the veneer of a stalking horse bid, without the protection of break fees for -- for -- for whatever reason. Where -- where it's an insider, one asks why a break fee when it's the -- when it's the shareholder creating a bid for its own bid. The break fee causes another impediment for other -- other bidders.

I don't want to take up any more time. It's -- the other -- the only two more points. One is my friend said this is a binary choice; it's -- it's either approve the sales process or shut

down the business. In the -- in my view, it's not quite so -- it's not quite so stark. What we're really asking for is for a sales process -- or a restructuring process because it's a SISP, not -- not just a sales process, and let's see what happens out of that. Let's not -- let's not overcomplicate it and make it more difficult for value to be obtained by putting this low -- lowball stalking horse bid in.

My friend acting on behalf of the Washington Group, Mr. O'Neill, did say that he wasn't threatening but -- but they would go away if their stalking horse bid wasn't approved. I -- I view that -- it may not -- it may not be intended as a threat, but it is a threat, and -- and it strikes me that it speaks to the things that I was speaking of earlier, the way that the Washington Group has approached, first, the purchase of the company, the way they've dealt with my client as -- as -- as a creditor, and the way that this stalking horse bid is being -- being used to position itself to really get out of the handcuffs that it created, that it put itself into two and a half years ago.

So those are all my submissions. We won't be making any submissions on the second half of the application, being the fee application.

THE COURT: Thank you, Mr. Nishimura. Appreciate that.

All right. So on my list of people that need to present here then would be Mr. Collins in terms of opposing. Is there anybody else besides Mr. Collins that will be opposing the application? There you are, Mr. Collins.

Submissions by Mr. Collins

MR. COLLINS: Well, thank you, My Lady. Good afternoon.

THE COURT: Good afternoon.

MR. COLLINS: DDMI's position is somewhat different than those that have gone before it in the second half of this application. As has been indicated, DDMI isn't opposing the relief in the main, My Lady. It simply seeks protections to be built into the process that's being sought.

THE COURT: Right. That's fair. Right.

MR. COLLINS: And that's been the consistent position of DDMI throughout these proceedings, My Lady. Counsel for Dominion has referred to applications being brought by DDMI in these proceedings, but apart from sealing orders, DDMI has brought no applications in these proceedings. It's been a respondent, an involuntary DIP

lender, senior creditor to these proceedings, My Lady.

THE COURT: Right. Right.

MR. COLLINS: And so -- so quite throughout, its -- its position has been quite -- quite consistent. It's not asking for enhancements to the contractual documents, and it's not asking for more today, and I'll get to that in a moment, My Lady.

Production continues at the Diavik Mine, and the benefits of that are diamonds continue to be produced, and those diamonds enhance the estate of Dominion and -- and benefit the Dominion estate. The fact that the Diavik Mine continues in production as well, though, My Lady, is of benefit to the stakeholders generally. The Government of the Northwest Territories in its submissions today indicated, you know, its primarily goals in this proceeding is that it would like Ekati to come off care and maintenance and it would like Diavik to keep operating.

THE COURT: Right.

MR. COLLINS: And if you reviewed Mr. Croese's third affidavit, My Lady, that was filed in connection with replying to this application, you would have noted --

THE COURT: I did.

MR. COLLINS: You would have noted on April 27th -- so five days after the CCAA commenced -- Dominion issued a demand letter to DDMI through counsel stipulating a deadline of May 8th for Diavik to cease operations, and the threat was if Diavik didn't cease operations by May 8th, that -- and -- that -- that Dominion would sue Diavik. May 8th came and went. No lawsuit was commenced until about 48 hours ago, My Lady, just as DDMI was finishing its affidavit and submissions and had to retool it. So you will have seen that -- that on Wednesday of this week, Dominion sued DDMI, which I suppose fits into the category of no good deed goes unpunished in the sense that the mine continues to operate.

So in a global sense, My Lady, what DDMI is seeking is to be treated equitably in recognition of its position in these proceedings. As a material stakeholder, counsel to Dominion notes that DDMI is a competitor, joint venture partner, manager. Counsel to Dominion doesn't note that it's a creditor and a significant creditor of -- of Dominion. So that's what's being sought again today, and it's consistent with that which has been sought since these proceedings commenced, that is to say what's being sought today, in DDMI's submission, My Lady, are minor non-prejudicial amendments to the forms of order being

sought by Dominion today.

And just to put it into some context, an update as to where we are at, My Lady -- and this comes from Mr. Croese's affidavit, number 3, and I can direct you to it or I can just is summarize it, My Lady, as you prefer. This information is pretty straightforward --

THE COURT: M-hm.

MR. COLLINS: -- $51.2 million in cover payments have been made to date, paragraph (INDISCERNIBLE). Paragraph 19 of the Croese affidavit, it's anticipated that a further $54.3 million in cover payments will be made by October 31st, 2020. So an aggregate $105.8 million in cover payments are projected to be made by October 31st, 2020.

It's also noted, My Lady -- and this was also before Your Ladyship in the May 29th application -- Dominion's share of closure costs are presently estimated to be $146.2 billion of which $105 million had been secured by way of letters of credit.

THE COURT: Right.

MR. COLLINS: So there's $41.1 million of closure security, 35 million of which is supposed to be posted in January of 2021, but absent that amount being posted, then there's a further deficiency on the current estimate of $41.1 million.

So in connection, My Lady, with the -- the diamond security that's held -- and I'm unable, of course, to direct you to this on CaseLines because we're seeking a sealing order in respect of confidential Exhibit Number 1 to Mr. Croese's affidavit, but I'm wondering if --

THE COURT: Right.

MR. COLLINS: I'm wondering, My Lady, if you're able to pull that up for yourself.

THE COURT: And I wanted to mention that. Like, I did get it. I took a look at it. Now, who has -- who had the opportunity to look at that document? Did all the parties or just Dominion and DDMI or --

MR. COLLINS: Dominion, the monitor.

THE COURT: Right.

MR. COLLINS: And at their request and pursuant to their confidentiality obligations, the first lien lenders.

THE COURT: Okay. Because --

MR. COLLINS: (INDISCERNIBLE) made a request therefor and --

THE COURT: We can put it -- we can put these documents -- and I wanted to mention this at some point, maybe mention it with the monitor, but anyways, that these -- these confidential documents can be put on CaseLines, and they can only show up on certain parties' CaseLines. Like, they can be barred from some people and allowed in other people, so they could come up on my CaseLines, for instance, but not be allowed on other parties' CaseLines availability. They wouldn't be allowed to see certain documents. And on another file I had where confidential documents were put, they were put in on the CaseLines thing. Because now it's quite awkward, right? It's floating around attached to an email somewhere, right? So --

MR. COLLINS: Right.

THE COURT: And my assistant puts them up into a P: drive, et cetera, so anyways, they're -- they're on my computer somewhere, right? But -- so if I have to, I can dig it out, but it would be helpful if we -- you -- the monitor can work with CaseLines so these confidential documents -- and I've ordered sealing orders. There's several sealing orders. Yours is not the only one. There's already a whole bunch. And those orders, they can go into a separate part so that they're there and handy, but anyways, I just say that as an aside.

I did read, when -- when I first got it -- because I saw it was a confidential document, so I read it on the email when I first got it, so -- so I have seen it.

MR. COLLINS: Okay. And it -- I mean, that functionality is good to know. This exhibit is one -- one page, three lines.

THE COURT: Right. Exactly. It's not very long. I -- yeah, exactly. So it's not a big deal for this exhibit. I'm just saying just generally there's a bunch of confidential documents in this file.

MR. COLLINS: Do you recall the magnitude of the security position, My Lady? Again, I have to be careful because I can't speak to it unless we go in camera, and that's not going to be practicable.

THE COURT: Yes.

MR. COLLINS: Okay. Thank you. So -- so -- so you know what the security position is at present, and what you will have also gathered, My Lady, from the affidavit is that that confidential Exhibit 1 is based on something called the DICAN valuation, and we'll get -- we'll get to that when we speak to the amendments that we're seeking to the SARIO, My Lady.

And -- and -- and, you know, the issues here are -- are quite narrow, happily, in terms of -- in terms of DDMI's position. We've been able to work with the monitor to really only join issue materially on, you know, three provisions in the SARIO and one provision in the SISP, and those provisions -- and we'll get to them -- are, of course, holding the entirety of the production at the PSF in Yellowknife, the ability of DDMI to make subsequent applications to lift the stay to enforce its remedies, a priority of the cover payments. Those are the three matters in issue on the SARIO. And then on the SISP, there's the issue of qualifying bids, in DDMI's submission, needing to stipulate that they will pay the cover payments in cash on closing.

Against that backdrop, I want to just speak briefly about the new stalking horse agreement of purchase and sale, My Lady. I mean, we won't -- we won't retread that which was gone over in -- in detail on May 29th, but the -- the agreement is different, but what is the same -- there's no incremental cash being paid whether Diavik is included or not, and we know that the Rio condition continues to exist and, among other things, the Washington Group is going to negotiate with the Government of the Northwest Territories on the quantum of the closure liability, and it would thus seem that a ceiling has been set for Diavik, My Lady, and the -- the -- the consideration amount can only go down, it would stand to reason, otherwise there'd be no purpose for the Rio condition.

So the issues identified by DDMI on May 29th, you know -- you know, with respect to what DDMI identifies as difficulties with the stalking horse bid and difficulties in the sense that it creates risk to DDMI that there will not be a purchaser of Diavik, that there will not be cash paid to reimburse it for the cover payments that are being made, those risks are real and material, and they arise, you know, partly because the stalking horse purchase agreement remains conditional on financing.

And you have our submissions from May 29th with respect to it being certainly uncommon, if not unheard of, that a stalking horse bid is conditional on financing, and it continues to contain the Rio condition. But most notably -- and this was also discussed on the 29th of May, My Lady, but it's come more clearly into focus -- is that if the Washington Group's agreement is accepted and if they determine to proceed with the purchase of the Diavik

interest, they're not proposing to pay the cover (INDISCERNIBLE) pursuing those obligations, My Lady. So if we get to a place where it's -- closing happens on November 1st, there's no cash available to pay the cover payments. You've heard counsel for the Washington Group saying, We won't pay cure costs beyond the DIP. We know that the DIP is $85 million. Cover payments by the time we get to the end of this piece are $105.8 million, My Lady, and this is not covered by the concept of cure amounts in the stalking horse purchase and sale agreement.

Counsel to Dominion, My Lady, made the submission that one cannot assign a contract without a court order. I wish it were so, but as a proposition under the CCAA, that is not the law, My Lady. If there's no prohibition against assignment in an executory agreement, then there is no need for an application to force the assignment of the contract, it stands to reason. And the fashion by which the stalking horse bid has been constructed is that it is only contracts for which an assignment order is required where cure payments are going to be made. And I can refer you, My Lady, to the provision in -- in the stalking horse agreement, and I can either share it or just direct you to the page number, as Your Ladyship prefers. It's -- it's 11.2-118.

THE COURT: Okay. Just a second. 11.2-118?

MR. COLLINS: Yes. You see the definition of cure amount?

THE COURT: Okay. Yeah. I'm there. Thank you.

MR. COLLINS: That definition, how it operates is a cure amount relates to an assigned contract for which a required consent to assignment has not been obtained and is to be assigned to the purchasers in accordance with the terms of an order, and it's the amounts, if any, required to be paid to remedy all of the seller's monetary defaults existing as at the closing date under the assigned contract.

THE COURT: Okay. Sorry. I'm not with you. Cure amounts. (i)? You're under (i)? With respect to any assigned (INDISCERNIBLE).

MR. COLLINS: (INDISCERNIBLE). So if -- if -- if there's a consent required -- if consent is required to assign the contract --

THE COURT: Right.

MR. COLLINS: -- and it has not been obtained, --

THE COURT: M-hm.

MR. COLLINS: -- then that constitutes a cure amount. The cure -- and the cure amount is equal to monetary defaults existing as at the closing date.

THE COURT: Okay.

MR. COLLINS: Okay? There's no consent right in the Diavik JVA, so the Diavik JVA can be assigned without the consent of DDMI. There are other conditions in the JVA with respect to assignment, including a requirement that the assignee acknowledge that it's bound by the provisions of the JVA and including preemptive rights and the like, but there's no consent right per se, so the Diavik JVA will not fit within cure amounts, and this is common cause, My Lady, that there will be no payment of the cover payments in cash on closing.

And so it's against that backdrop, what DDMI submitted on the 29th and coming clearly into focus that there's no intention on the stalking horse agreement to pay the cover payments in cash that DDMI, in preference to opposing the extension of the stay of proceedings either at large or in respect of Diavik, is offering a compromise to facilitate this proceeding to continue in a fashion that is less prejudicial to DDMI than the current construct. And so the first -- first amendment to the SARIO is that all production be held at the PSF as opposed to attempting to value that production today.

Now, counsel for Dominion asserted that DDMI is asking for more and took you, My Lady, to the form of order that was sought on May 8th, --

THE COURT: Right.

MR. COLLINS: -- the comeback application.

THE COURT: Right.

MR. COLLINS: So -- so DDMI, without notice, learns on April 22nd that its joint venture partner, without telling it, has sought protection under the CCAA and determines from the materials that are filed that they're not going to be paid their cover payments post-filing. There's no stalking horse bid in place yet. There's no indication that there's going to be a bid that's not going to pay them for cover payments. So at that moment in time at the initial comeback application, yes, that's what was sought in terms of the amendment to the SARIO, and that's 5.8-2282, the proposal at that time.

But so much more has happened since then, it's not an accurate representation, in DDMI's submission, that what -- what DDMI is asking for is more because when we came back on

May 28th, My Lady, what was sought was more in line with today, and yet we've -- we've scaled that back. And perhaps, My Lady, you can turn up 5.0-1070AJ. Want me to share that with you, My Lady, or --

THE COURT: Sure. Why don't you share it with me.

MR. COLLINS: All right. My computer's freezing a bit here.

THE COURT: Okay. That happens.

MR. COLLINS: I'll direct you to this page now. Is that going to come up?

THE COURT: Not yet. Just waiting. Okay. There we go.

MR. COLLINS: So this -- this is -- this is what DDMI sought on May 29th, which was that the entire share of production be held at the PSF either in Yellowknife or at the sorting facility in Antwerp. That was what was sought on May 29th. And the rationale for Antwerp was that, you know, much like in Dominion in terms of its internal processing of its diamonds, there is a need to move diamonds around the world to facilitate their marketing. You've heard -- heard the objection to that, and so what's before you today, My Lady, which you would seen in the monitor's report and as well in DDMI's brief, is a step back from what was sought on May 28th, and it's found at 11 -- and I'm trying to pull it up on my screen here, but 11.4-817. Again, I can --

THE COURT: Okay.

MR. COLLINS: All right. So did that come up, My Lady?

THE COURT: Yes, it has.

MR. COLLINS: So --

THE COURT: What you're seeking now is, yeah, the whole amount. But just at the -- at the base of your -- why do you need all of it? Like, if you're looking to -- because you're worried about your cover payments not being paid in cash, right? But -- and if you keep the diamonds amounts that will equal the cover payments, doesn't that satisfy your issue?

MR. COLLINS: But we don't -- we don't know the market value of the diamonds, My Lady, is the problem.

THE COURT: Okay. But you're used to dividing your diamonds in, you know, putting Dominion's aside and yours and Diavik's aside. I mean, that's a process that's been going on -- right? -- for awhile now, and so why would that be such a problem to continue to do that? I'm not --

MR. COLLINS: That's not --

THE COURT: -- quite following you.

MR. COLLINS: That's not a problem, My Lady. What -- what the problem is is -- is trying to determine whether the value of those diamonds -- because they're physically sorted in the first instance --

THE COURT: Right. I understand that.

MR. COLLINS: -- and -- and whether the value of those comes anywhere near from a market perspective as to what one might anticipate to receive on realization relates to the amount of the outstanding cover payments. We just don't know. DICAN does a valuation, but that valuation is not a proxy or a reliable proxy, DDMI says, for market value. And in the context of this case, My Lady, it's completely non-prejudicial just to leave everything at the PSF particularly because we're in this SISP process. There's no monetization of diamonds occurring. You've seen the cash flow of Dominion. They're not anticipating a nickel of revenue until October 31st, so --

THE COURT: Right, but I thought earlier at one of the other hearings that we've had -- and we've had a few -- you -- your company has been selling diamonds. That was the evidence, like, that somehow you've been managing to get your diamonds moving.

MR. COLLINS: There's been some diamonds moving, but again, it comes down the value proposition, and again, you know, much has happened since that point in time, and -- and the -- the concern here is ensuring that we don't get to the -- to -- to a place in this process where we continue to operate the mine, provide de facto DIP financing to Dominion, operations continue for the benefit of the stakeholders, yet somehow DDMI is left holding the bag and --

THE COURT: Okay. Let me -- I understand why.

MR. COLLINS: Yeah.

THE COURT: So I'm just trying to get to the bottom line. So you're saying that the percentage -- what you're saying is the percentage value, say, in this case, diamond -- the Dominion -- Dominion Diamond Mine's 40 percent of the Diavik the diamonds won't necessarily equal the total amount of cover payments, which, you know, are about a hundred million bucks, something like that, right?

MR. COLLINS: (INDISCERNIBLE). Yeah, that's correct. Or we don't know, and so rather than -- rather than --

THE COURT: Hundred and five million plus -- plus the other expenses dealing with the closure costs, but --

MR. COLLINS: The closure costs, right. So -- so until we know where this process is going, until there's an indication that we're going to be paid, we say it's -- there's no prejudice to Dominion, there's no prejudice to the stakeholders for us to hold onto these diamonds in their entirety. If we let diamonds go on the basis of a valuation that turns out to be too low and those diamonds go to Antwerp or they go to Mumbai or they're sold, then there's no means for DDMI to recover on the cover payments.

And we take the monitor's comments to be -- I think the monitor has advertently used the words in its comments on our -- our submission as, as matter of principle, the monitor doesn't agree with what DDMI is proposing, My Lady. And we should not let principle in this case get in the way of that which is practical, that which is equitable, that which is fair because holding the diamonds, maybe as a matter of principle in a different case where it could be demonstrated that we were oversecured, the principle would be that isn't fair. But here, nobody can demonstrate that we're oversecured with respect to the -- the holding of the diamonds. And applying any formulaic valuation, at least on the basis of the record before the Court today, could very well prejudice DDMI if DDMI is required to turn diamonds over.

But again, it's a balancing of the prejudice, and -- and -- and we got to look at it, My Lady, through the lens of what are the alternatives, what could we be seeking today? We could be seeking an order to not extend the stay of proceeding on the basis of, among other things, we're not being paid to continue to produce the diamonds.

THE COURT: Okay. So to date, your client presumably has been splitting up the diamonds.

MR. COLLINS: But it's a -- it's a --

THE COURT: Right. Because that was -- just -- just

(INDISCERNIBLE) -- right? -- because I mean, we've dealt with a couple times because there's been diamond production. So to date, your client has been splitting them up, I presume, right?

MR. COLLINS: By weight. Not by value.

THE COURT: By weight, right but pursuant to the JVA --

MR. COLLINS: (INDISCERNIBLE).

THE COURT: -- production (INDISCERNIBLE), right? Okay.

MR. COLLINS: Yeah. We -- we don't know --

THE COURT: And so --

MR. COLLINS: -- what -- what they're worth. They're -- you know, they can be splitted (sic) at the splitting facility. You know, DICAN can come in and apply its royalty calculation, which we -- which isn't necessarily or at all going to be determinative of what the diamonds are going to be sold for, and so we don't know whether we're undersecured or oversecured. We, again, ask Your Lady to consider the information in confidential Exhibit 1 as to the current position of the security and what's to come in terms of cost. And admittedly, yes, there's going to be diamonds that are continued to produce, but it's a mugs game today to try and guess which way it's going to go. And -- and -- and given -- given DDMI's position, it's -- it's seemingly to it a fair compromise just to allow the status quo to be maintained while the sales process goes on, for the diamonds to be held.

I suppose if we got to a place where Dominion or another stakeholder wanted to assert that -- that there was more collateral than the cover payment value, then they could come with evidence and try to convince the Court that certain of the diamonds should be released. But on these cash flows where there's not going to be any diamonds sold during this process, what's the point? What's the point?

THE COURT: Where are we at in terms of diamond sales and things opening up? I always ask this. Just curious.

MR. COLLINS: Yeah. There's no -- there's no evidence on, you know, the record beyond what Mr. Croese said in his second affidavit, My Lady, so you know, I don't want to stray too far, you know, from that.

THE COURT: All right. Fair enough.

MR. COLLINS: But --

THE COURT: All right.

MR. COLLINS: So again, we -- we know -- we know that Dominion isn't selling any diamonds.

THE COURT: No, Dominion isn't. You were.

MR. COLLINS: Yeah.

THE COURT: That's where we're at. That's the evidence.

MR. COLLINS: Yeah. We -- we were.

THE COURT: Yeah.

MR. COLLINS: We were. We were.

THE COURT: Yeah.

MR. COLLINS: So I think -- I think -- you know, I think the Court understands the position that's being made with respect to the hold and -- and, again, (INDISCERNIBLE).

THE COURT: All right.

MR. COLLINS: All right. So -- so timing of the application, My Lady, I think the Court understands the point that DDMI is making. It -- it's a big concession for DDMI. I mean, DDMI, again in an attempt to facilitate compromises, has moved off of, you know what, we should just have the right to monetize if phase 1 doesn't bring a bid for Diavik and you don't pay us our cover payments in 30 days; you know, why make us come back to court, you know? And that's, you know, almost -- almost akin somewhat to what's in the enhancement in the DIP term sheet in favour of the put rights and the call rights and the like. But -- but DDMI has backed off that, My Lady, and said, Okay, it's got to come to court if it's -- if it wants to monetize the diamonds. And it's -- and there's benchmarks prescribed, but we don't know what's going to happen in the future, and to say today that we can't come to court if there's a reason to come to court other than on one of those prescribed dates is just sort of seemingly too constrictive. We're not coming

to court on Monday.

THE COURT: Well, surely, we can't -- we can get beyond that particular issue. I mean, if something --

MR. COLLINS: Yeah.

THE COURT: -- happens, you could come back and make your -- make your pitch to have that part amended. I mean, really.

MR. COLLINS: That's -- that's -- and that's -- and that's precisely what DDMI is saying, and I don't think we have to spend, you know, any more time on that point, you know, other than to say I mean, obviously, --

THE COURT: Thank you.

MR. COLLINS: -- if DDMI comes to court in a circumstance where it's not reasonable that they're in court, you know, Your Ladyship is going to have something to say about that.

Then the third point in this -- in this second amended restated initial order comes back to the issue of it being a declaration made today that there can be no court-ordered charges in these proceedings that will prime the cover payments. This was opposed on May 29th on the basis that the issue wasn't briefed, that there wasn't a full evidentiary record. Presumably there is sufficient information on the record for the Court to make a determination, or if there isn't, DDMI would say, Time's up, too bad.

And you'll recall, My Lady, the submissions that were made on May 28th, which are as follows: DDMI, as Your Ladyship has recognized, is akin to an involuntary DIP lender. Protections that the DIP lender have under the CCAA, the Washington Group DIP is -- is -- is approved. There can't be a DIP put in overtop of it without its consent.

THE COURT: Right. I didn't hear anybody arguing against this, Mr. Collins, so I'm a bit perplexed --

MR. COLLINS: Well, just it --

THE COURT: -- what is it that you are needing that is missing?

MR. COLLINS: The monitor -- the monitor has -- has -- has indicated that it does not agree with the provision that's sought by DDMI on this point.

THE COURT: Okay. So where is it in the -- in the -- what paragraph is it in the second ARIO that -- so I can look.

MR. COLLINS: It's in my -- in my second ARIO.

THE COURT: Yeah. What paragraph? Because I've got the monitor's -- I've got the monitor's chart here in front of me, so that would be helpful.

MR. COLLINS: Shall we go to the monitor's chart? That's probably --

THE COURT: Page 4 -- you know, 4.273 onwards, so SISP -- I'm just trying to see what paragraph in the --

MR. COLLINS: Yeah. I'm sorry. I've lost track of it.

THE COURT: Well, fair enough. You can imagine me.

MR. COLLINS: I do, My Lady.

THE COURT: Okay. So if you look at page -- so I'll make you do the homework here. You go to notes. Go far right, where it says find page.

MR. COLLINS: I'm there. I think so.

THE COURT: Put -- then put 4-275 just as an example. That will bring you to the middle of that chart.

MR. COLLINS: 275.

THE COURT: Push enter, and it will bring you to -- you could also do it a different way, but anyways, there's the chart.

MR. COLLINS: Yeah. There's -- there's the chart. So that's -- yeah, that's the middle of the chart, so you've got to up because that's the SISP. It's 4-274, paragraph 58. You have that, My Lady, in the chart? It's the top --

THE COURT: Paragraph 58. Okay.

MR. COLLINS: Yeah. DDMI proposes a provision that prohibits

any court order charge other than the admin and the D&O charge from being granted priority over the Diavik collateral without DDMI's -- and it's -- it's DDMI's consent in writing.

THE COURT: Okay.

MR. COLLINS: You know, the monitor indicates that it considered this proposed revision and remains of the view that for reasons stated there, this revision is not justified.

THE COURT: Okay. It's always hard when they refer back to another thing. Just saying, --

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: -- Mr. Monitor, it's helpful if you repeat it again because now we have to try to find your supplement to the fourth report portion where you deal with paragraph 58. I mean, come on. Anyways, --

MR. COLLINS: Yeah. I mean, --

THE COURT: -- okay.

MR. COLLINS: -- they're saying, There's no application today to prime you, so why should you get that? You know, that's, you know, to summarize the positions that oppose this. And you know, on -- on May 28th, Your Lady, you know, indicated that -- or I think it was June 3rd, rather, when we spoke of that provision. Your Ladyship indicated, you know, I can't give you -- I don't know how to give you finality --

THE COURT: Right.

MR. COLLINS: -- or comfort on that point, I'm hearing the case and -- and the like. And DDMI takes a great measure of comfort from those comments of the Court, but again in terms of if we are -- you know, given DDMI's status as a de facto DIP lender, should it not -- and this is a rhetorical question -- should it not be afforded the same protection as Washington Group if it should become the DIP lender today? And -- and the answer to that question is -- in DDMI's submission is yes, My Lady.

THE COURT: Okay. So what you're looking for is, in paragraph 58(b), an addition so no encumbrance under the administrative charge and the D&O charge will be granted priority over the Diavik collateral unless consented to in writing by DDMI.

MR. COLLINS: That's -- that's correct, My Lady. That's part of managing the risk that having, you know, its counterparty in CCAA, who's not paying it for the cover payments and in a process that DDMI views as being less than certain in terms of its outcome -- it's part of managing that risk to -- in terms of (INDISCERNIBLE).

THE COURT: I understand your position. I understand. Okay.

MR. COLLINS: All right. Okay. And then it's -- it's good that we're in -- in the monitor's comments on -- on the SISP, My Lady. You know, and -- and I hasten to note there's -- there's technical amendments in the SARIO and the SISP that the monitor has accepted from DDMI, and counsel to Dominion has fairly conceded that it accepts those as well, and so I'm not going to take any court time to go through those points, My Lady. The expectation is if an order is granted today approving the SISP and if a SARIO is granted today, that the parties will take those comments and work them into the -- work them into the order and the SISP.

So at 4-275, the --

THE COURT: Okay.

MR. COLLINS: All right. So -- so just to put this -- just to frame this in terms of the timeline, on May 29th, DDMI's proposed change to the SISP, among others, was that there ought to be a provision that in order to move a bid as a qualified phase 2 bid, that -- that the bidder provide that it will pay the cover payments in full in cash on closing.

THE COURT: Okay.

MR. COLLINS: The monitor accepted that and has since -- after reviewing the stalking horse agreement and having had discussions with the stalking horse bidder, has come to the conclusion -- and it's in -- it's in the second column -- given the detailed mechanism and additional clarity that is now embodied in the stalking horse APA regarding assumption of executory contracts and the payment of cure costs, including but not limited to the Diavik JVA, the monitor suggests a replacement to that provision. But as you have seen, My Lady, the fundamental assumption and underpinning to the monitor's position is wrong.

THE COURT: Okay, because of the definition and cure costs, and you say there's no consent, you know, (INDISCERNIBLE).

MR. COLLINS: There's not going to be a payment of cure costs on the Diavik JVA. And -- and so this is putting a marker down in terms of this process, My Lady. It's -- it is -- it is not predetermining an outcome. It is getting us to a place where there's going to be a transaction that's capable of being approved by this Court.

Ask yourself, My Lady, who's getting paid in full in cash on closing. The answer is the first liens, and they're not providing any value qua first lien lender, additional value. This is all pre-filing indebtedness. They're continuing to receive interest payments, and they'll be paid in full in cash in closing. The DIP, they'll be paid in full in cash in closing. The admin, which includes the Evercore work fee (INDISCERNIBLE). Okay.

THE COURT: Sorry. About that. Carry on.

MR. COLLINS: That's okay. So I was --

THE COURT: So you were saying the DIP is paid cash, others are paid cash.

MR. COLLINS: Yeah. The first (INDISCERNIBLE), --

THE COURT: You're not being paid cash.

MR. COLLINS: -- the admin, the D&O. And -- and what do they all have in common?

THE COURT: Right.

MR. COLLINS: They're all senior secured.

THE COURT: Right.

MR. COLLINS: Right? So we're not prejudging an outcome. We know it's common cause that the cover payments constitute senior secured obligations. And all DDMI is asking, My Lady, with respect to that stipulation being in the SISP is that the process reflect the reality that we're senior secured and we're not the same as unsecured creditors who have claims under executory contracts, some of which will be paid their cure costs where there's consent rights. But there's only $20 million US available for -- for cure costs, obviously, right? And -- and DDMI's cure costs, we know they're not being paid -- would -- would be better if they were -- but will be in excess of a hundred million dollars if thing gets to -- gets to October 31st.

THE COURT: Okay.

MR. COLLINS: So, My Lady, I mean, in terms of being consistent throughout the process, DDMI would like to be paid currently for the diamonds its producing, and if that were the case, it wouldn't have to insinuate itself in these proceedings to the extent that it has, but we're talking about a hundred million dollars here, My Lady, and it just seems somewhat rich that -- that DDMI is somehow painted as having ulterior motives or seeking to work a better result for itself when -- when -- when the glaring fact is that -- which has been front and centre from the commencement of these proceedings, is that it's not being paid its post-filing amounts.

THE COURT: Right. Okay. I think I understand your position.

MR. COLLINS: And -- and it doesn't want to be prejudiced, My Lady, by continuing to operate in the sense of not being able to recover those cover payments, and these minor changes that it's requesting, you know, what DDMI doesn't want to be, My Lady, is in a position where it has to give serious consideration, owing to duties it has to other stakeholders, as whether there's to be other risk management mechanisms put in place to manage the risk that it's not going to be paid at the end of the piece.

THE COURT: Okay.

MR. COLLINS: My Lady, we have an application for a sealing order.

THE COURT: Okay. You're --

MR. COLLINS: When --

Decision

THE COURT: Yeah. I think for the application for the sealing order, subject to anybody opposing it, I don't have a problem. But I would like you to discuss with the monitor about putting up those documents in CaseLines, and that can go right in the sealing order, right? Because there's a CaseLines order with respect to service, and so if you, in that sealing order -- and if you can maybe deal with -- and I'll ask the monitor to speak to this maybe afterwards and get Mr. Simard to deal with it, but if we can put an order that they be put up and only those parties that are approved to see whatever, you know, confidential documents we're dealing with, that it be put up on that basis on the CaseLines. And other than that, I -- I don't -- wouldn't see any problem with the sealing

order subject to anybody having a problem with it.

Discussion

MR. COLLINS: All right. Thank you, My Lady. We'll send that along, and we will do that.

Now, My Lady, one minute if I may. I think the proceedings today have been remarkably nimble in the circumstances, and we've covered a lot of ground today. There was a great deal made in the Dominion's submissions in the main in its bench brief with respect to complaints that it has about DDMI. DDMI has replied to that in its written materials. Now, I've -- you know, this is an old litigator trick to get the last word. In oral submissions, counsel for Dominion said, Well, I'm not going to get into that, I'm not sure we're going to resolve it today, you know, in terms of the litigation and the dispute between Dominion and DDMI. I would have thought that if there was to be a substantive submission on any of that beyond that which is in the briefs, it was appropriate to have been made in the main.

I don't want to address it or anticipate it other than saying this, My Lady, is I think the issues are narrow. I think that which has been put on the record by the parties is sufficient for the Court to make the determination. I would ask the Court to consider to the extent that in reply submissions counsel for Dominion strays into things that ought to have been raised in the main, that the Court either give consideration to requesting that those submissions not be made -- I'm not going to object My Lady, but if if -- if we sort of leak into that, then DDMI needs to reserve the right for sur-reply on those points, My Lady. Thank you very much.

THE COURT: All right, Mr. Collins. Thank you.

MR. O'NEILL: My Lady, Brendan O'Neill from Goodmans briefly. The opponents to the application have taken 2 hours in their submissions when they were to take 20 minutes each. I kept my submissions to 21 submissions. There are number of matters raised by Mr. Salmas and Mr. Collins that I think are confusing for you and require clarification and brief submissions at least on my behalf. I'm sure others will have the same view, so I apologize, but with your leave, we would have -- I would, say, 10 to 15 minutes worth of points to make in reply to the submission --

THE COURT: In reply to who? To Mr. Salmas and who? Sorry. I missed the other --

MR. O'NEILL: Mr. Collins.

THE COURT: Mr. Collins. Oh.

MR. O'NEILL: And I'm happy to let the company or -- and others go first. I'm just noting that they used double the time, and we will need to respond to certain things that have been -- I apologize. I (INDISCERNIBLE).

THE COURT: All right. No. Fair enough, Mr. O'Neill. You kept your comments very brief and succinct, so I appreciate that.

Let's see. I'm just looking at my list of people to speak, and I think that we were going to go to Dominion with Mr. Rubins (sic) for a reply, I believe, subject to Mr. Simard, our traffic director here, and then Mr. Simard was going to finish, and there's some things that he needs to -- to discuss as well. There's been some points that were brought up that perhaps a monitor can revisit or consider. And I would like to hear reply in particular about this 22(f) issue because I know that Mr. Rubin sort of skipped over it -- well, dealt with it briefly, and so -- okay. So, Mr. Simard, what did you suggest there? I saw you briefly, your smiling face with your --

MR. SIMARD: Okay. (INDISCERNIBLE).

THE COURT: -- long hair, Mr. Simard. I've never -- I -- just as an aside, I've never seen your hair so long.

MR. SIMARD: It is.

THE COURT: It's the COVID hair I see.

MR. SIMARD: I -- I do have a haircut booked, the first one in awhile, next week.

THE COURT: You -- there we go.

MR. SIMARD: (INDISCERNIBLE).

THE COURT: It looks -- it looks lovely.

MR. SIMARD: Thank you.

So I think you just heard from Mr. O'Neill, and I suppose if you're inclined to hear from him, maybe he should go first and then -- and then Mr. Rubin, and then I can finish up.

THE COURT: All right. Good. Okay. That's -- let's deal with it that way. Okay. So, Mr. O'Neill, you're up. Put your -- put your video on if you wouldn't mind.

MR. O'NEILL: There we go.

THE COURT: There we go. Love to see your smiling face.

Submissions by Mr. O'Neill

MR. O'NEILL: I have my notes scribbled on a notepad here as we were going through, so I'm going to do my best.

THE COURT: Okay.

MR. O'NEILL: Mr. Salmas on behalf of the 2L trustee made a somebody of submissions that were in part really an application for payment of his fees by the Court but were also related directly related to 22(f) of the DIP term sheet, and it's mainly that that I wanted to speak to.

THE COURT: Right. I mean, that's quite -- quite an issue -- let's put it that way -- for that -- for that -- his client, the trust, the Wilmington Trust.

MR. O'NEILL: Yeah. I can understand that. So let me make seven points on that that aren't really that long, The first one is just going back to basics here. We have a 2L ad hoc committee that represents more than 50 percent of the bonds. I don't want to misspeak, but there's now another member to that committee. I don't know if they hold more bonds. It doesn't matter whether there's three members, four members, they hold at least 50 percent of the bonds.

THE COURT: Right.

MR. O'NEILL: Their fee application has already been denied based on the fact that they're not vulnerable and they can pay their fees. That's the way 2L ad hocs typically proceed in these cases, and that's why you don't have a 2L indenture trustee on behalf of that in addition to that. The 2L ad hoc is here. They're the ones with the actual economic interest, and they're paying their own way. Now, in the context of a credit bid, I have no doubt they'll repay themselves. They'll pay their fees in connection with their transaction. What Mr. Salmas is in essence is saying is that every CCAA that involves bonds -- which, by the way, is like all of them --

THE COURT: Right.

MR. O'NEILL: -- where there's a 2L ad hoc committee, the Court must order -- there's nothing special about it him -- the Court must order the payment of fees for the 2L trustee as well. That is not even remotely the practice. And someone is paying Mr. Salmas's fees because he makes application after application, and so I assume they can continue doing that.

THE COURT: Okay. That's with respect --

MR. O'NEILL: With respect --

THE COURT: -- to his -- his -- his fee application, which I don't know if he completely spoke to, but anyways.

MR. O'NEILL: No. His fee (INDISCERNIBLE), and so I don't mean to steal his thunder. I obviously have just shared my views with you on his fee application. But the reason I raised it is because 22(f) for him is all about saying that we are bringing forward a DIP that precludes the payment of fees for the 2L ad hoc. And let me be clear about what 22(f) says. First of all, I actually want to -- I won't make you call it up, but there were some -- the monitor reported on this in the Appendix 'M', and you recall we were looking at that table where the monitor provided his views --

THE COURT: Right.

MR. O'NEILL: -- or its views, and there are two statements in there that are important. One -- one statement is while the monitor acknowledges that provisions such as this are sometimes contained in court-approved DIP arrangements -- that's one point, --

THE COURT: M-hm.

MR. O'NEILL: -- that they are contained in DIP arrangements. And then there's the monitor's conclusion, which (INDISCERNIBLE) generally think is important: (as read)

> As such, if this Honourable Court is inclined to approve the interim financing term sheet, the monitor does not view this provision to be unduly prejudicial.

THE COURT: Right.

MR. O'NEILL: That's the conclusion of the monitor on 22(f).

But let me be clear. Let me just put it to you in plain English what we are saying in 22(f). We are not going to fund, through the DIP which we are providing, litigation against us, period, full stop. We're not doing it. Why would we? If you want to litigate against us as the 2L ad hoc seems happy to do, you can pay your own way. Our DIP is there to fund a SISP, which will be court-approved, and our transaction or another transaction that may come forward in the DIP. We are not providing funds to pay for 2L cross-examination of our clients on their (INDISCERNIBLE). If they want to do that, the ad hoc committee can do it. They can do it. They pay for it. We aren't paying for it. That's why 22(f) is there. It's very simple. It's actually very principled.

And, yes, it was added to the DIP term sheet. It was added to the DIP term sheet after we thought we had a deal with them on the additional provisions and they walked back from that deal, and that caused us to think about how are these people really looking at this case, what do they want to do. I have no problem with them litigating. I have a problem with paying for it. And we're not. That's our proposal.

THE COURT: Okay. So if --

MR. O'NEILL: If they want to --

THE COURT: If at the end of the day, let's say there's more money that flows down for some reason, down to them. They could get their fees paid if it flows -- if the money flows down, but it's not from the DIP but from the actual --

MR. O'NEILL: Of course. Of course.

THE COURT: Right. But I think that --

MR. O'NEILL: (INDISCERNIBLE).

THE COURT: -- they're afraid that even in that case they wouldn't be paid, because it's so wide, that they wouldn't be paid on that basis.

MR. O'NEILL: That's -- that's not my responsibility.

THE COURT: Okay.

MR. O'NEILL: There's also just -- so that's 22(f). I think the

monitor has stated in its report that it appears in other cases -- it has appeared in other cases. The conclusion is that it's not prejudicial here if it was included, and I provided you with just the simple rationale for why we have it.

THE COURT: Okay.

MR. O'NEILL: There was one other submission made a few times as to why don't we just show up later. Just to be clear, that's not part of our proposal. Our proposal is that we are the stalking horse bidder. The company's proposal, the monitor's proposal, Evercore's proposal is that a stalking horse bidder is needed now to provide certainty and to carry the SISP forward in the best way to maximize value. That's the proposal. There is no proposal where we show up later, and that includes our timing concerns that I talked to you about earlier about getting the show on the road.

THE COURT: Right.

MR. O'NEILL: I just want to point out that that's a nice thing to say and hope for maybe, and maybe some people think that. It's not the proposal, and it never will be.

There's just a few more things. I'll only be a few more minutes.

There's the reference to our lowball bid. I think some of those submissions are made in a myopic way from the perspective of people only looking at their recoveries, and while I'm sensitive to that, I think if you look at paragraph 27 of the monitor's fifth report which values our bid at 744 to 771 million dollars, I don't think it's a lowball bid.

THE COURT: Right.

MR. O'NEILL: I have sympathy for --

THE COURT: I think they were -- I think they were looking at the cash plus the fact that the other amounts that you were assuming were not set out very clearly in the -- especially initially, and until the monitor sort of tried to monetize in some way, some range, what payments were going to be undertaken, it was not very clear, right? And the cash as a hundred and something thousand -- or million -- sorry -- it's --

MR. O'NEILL: Everybody wants -- everybody wants more specifics from the guy who they don't want to make the stalking horse bid.

THE COURT: Right.

MR. O'NEILL: I don't understand. You don't want me to be the stalking horse bidder, but then you want me to answer every single question that only a stalking horse bidder could answer after he's been the stalking horse bidder for 2 months. I'm sorry. I can't do it.

THE COURT: Right.

MR. O'NEILL: I don't mean to be -- but it's like -- it's chicken and egg.

THE COURT: Right.

MR. O'NEILL: On DDMI, Mr. Collins is both right and not right. The cure costs in the APA are for the trade creditors, --

THE COURT: Okay.

MR. O'NEILL: -- the parties with contracts that we're going to be assigning. So no question, he's not getting a dime of the 20 million, but that isn't to say that that's the end of the story because our bid includes a Rio condition where we have to come to a deal with DDMI in order to acquire that asset. That means that during -- well, nobody knows what that means. That's some of the work to be done and the important work to be done in order for that interest to be realized. We have to pay the cover payments. We may come to some alternate arrangement with Rio, possible, where there are other terms that with worked out between the parties.

But here's also the fundamental point. When a supplier supplies to a company and is owed $200 for what they supplied and that contract wants to be assigned, you have to pay the cure costs. If they have that leverage and that's where you end up, you have to pay the 20 million -- the $20. That is not the way the joint venture agreement works necessarily. That is a complicated cost-sharing agreement. And the way that the joint venture agreement works is that if Mr. Collins elects to make the cover payments, he has remedies for these cover payments under the JVA. He gets security and the like, which we talk about endlessly it seems. That also means that someone could conceivably buy the 40 percent interest subject to his rights.

THE COURT: Right.

MR. O'NEILL: Right? I'm not saying that's a good deal because he may enforce those rights a few minutes later. I'm just saying when Mr. Collins says that

he wants the SISP changed to say that you can only buy that interest if you pay the cover payments, that's not actually the law. That's not actually correct. There could be difference scenarios.

So he's trying to create a situation through his amendments that allows for only one possibility on the Diavik interest, which is that he is paid every dime of his cure costs. And what we're saying is that may happen or there may be a negotiation where there's a different result or, because your contract is different than other contracts, it's a joint venture partnership agreement. Maybe someone will take the 40 percent. Maybe the company will be able to monetize the 40 percent, and they take it subject to those interests. Again, that might not be a good deal. We'll have to see. It'll depend on what happens with the diamonds in the future, which nobody knows. And that's why the monitor changed its position, as I understand it, on that, because we talked with the monitor about those different scenarios.

So we are not trying to box Rio into any scenario. Rather, it's Rio who's trying to create only one scenario, who's trying to say to you, We need a SISP that says the 40 percent interest can only be bought if someone pays me my cure payments. Well, that's not what the agreement says.

THE COURT: Cover payments. But anyways --

MR. O'NEILL: Cover.

THE COURT: Right. No, the agreement doesn't say that, of course, no. It doesn't say that, but that's what their concern is. And I mean, it's like a payout of -- what they're saying is it's like a payout of the DIP and a payout of the administrative costs and all the other costs, so they're saying the cover payments and the amounts thereof are -- are a little different because they're paying them like that (INDISCERNIBLE).

MR. O'NEILL: I understand that. And they may well prevail in their position. We don't need to create that conclusion in the SISP now.

THE COURT: So -- but the problem is -- is that the way that it's the revision -- and I have it up right now. It's page 4-275 of -- it's in the fifth report of the monitor. So if you go to notes on the far right-hand side, it says find page. You can just type in 4-275, and it will come up. Or I probably could show this to you too.

MR. O'NEILL: I'm having -- I'm sorry. I apologize. I'm having -- I have the fifth report here, but I don't have it through CaseLines because I'm having issues with that.

THE COURT: Oh, okay. Let's do that.

MR. O'NEILL: But I do have the fifth report, so if you just tell me where you --

THE COURT: It's on page 23, I think, page, yeah, 23 of 113.

MR. O'NEILL: I see. Yeah. One second.

THE COURT: There's the table there.

MR. O'NEILL: Yes.

THE COURT: There's a table. And if you look at the table, it starts at SISP, the second -- the second -- or the next page where it says 22(c).

MR. O'NEILL: Yeah.

THE COURT: I think that's what you're talking about here.

MR. O'NEILL: (INDISCERNIBLE).

THE COURT: (as read)

> The applicants propose the deletion of the provision requiring all qualified phase 2 bids to provide for payment in full in cash of all cover payments.

And then the monitor says: (as read)

> Given the detailed mechanism and the additional clarity that is now embodied in the stalking horse APA regarding the assumption of the executory contracts and the payment of cure costs --

Dan J., can you please mute yourself. Madam clerk, can you -- there we go. Thank you very much.

All right. So it says: (as read)

> The monitor suggests that paragraph 22(c) be replaced with the following: "identifies all executory contracts of the applicants that

> the phase 2 qualified bidder will assume and clearly describes, for each contract or on an aggregate basis, what cure payments shall be paid, the manner in which they shall be paid, and the timing of such payments.
>
> Clarity of phase 2 bidders is necessary that all qualified phase 2 bids can be judged against the stalking horse APA with respect to their treatment of executory contracts.

But this isn't -- I mean, the cover payments -- I mean, I think what Mr. Collins was saying is, look, the cover payments and the JVA isn't really just an executory contract here. I guess it is in one way. But he's saying, you know, this is something different in a way than just, say, unsecured creditors. It's a different --

MR. O'NEILL: Let's --

THE COURT: -- situation, right? So there should be a solution here. You both -- neither of you, from what I'm hearing, are against one another. It's just the way that you're drafting this.

MR. O'NEILL: Yeah. So if you look on the left side which is the DDMI submission, he's providing that phase 2 can only deal with him in one way.

THE COURT: Right. I understand your position on this.

MR. O'NEILL: Okay.

THE COURT: But I'm just trying to find another way of saying it because the one on the right doesn't really work either.

MR. O'NEILL: Well, the one on the right --

THE COURT: He's saying -- yeah. He's saying, Look, I'm not -- what -- cure payments, we don't fit under cure payments, --

MR. O'NEILL: Right. So what we should do on the right-hand --

THE COURT: -- not really an executory contract. So there might be another way of saying it to solve both of your problems that I could see, like --

MR. O'NEILL: Yeah. I have -- I have a proposal for you because

I think --

THE COURT: Okay. All right.

MR. O'NEILL: I think people -- nobody meant to exclude Diavik from the language on the right-hand side. I can't speak for everybody. I didn't read it that way.

THE COURT: Okay.

MR. O'NEILL: And so Mr. Collins and his client, DDMI, are absolutely entitled to know what each bidder is proposing to do with his contract --

THE COURT: Right.

MR. O'NEILL: -- because they'd be entitled to weigh the differences and express their opinion as to which bid is better from their perspective. And so what we should do on the right side is just expand that language to say, Including in respect of the Diavik Mine interest so that each phase 2 bidder needs to state its proposal as to how they intend to deal with Diavik so that he knows that too. He's right; he's not in the cure costs. Now, here it's lower case cure costs, so maybe he could be in that language, but why muck around? Let's just make it clear. He wants to know how people are proposing to deal with him, and he's entitled to that information.

THE COURT: So how are you saying -- again, you can run that by me again, what you're suggesting?

MR. O'NEILL: I would say the language that's there -- so identifies all executory contracts of the applicants that the phase 2 qualified bidder will assume and clearly describes for each contract -- I would add a parens: including the Diavik joint venture agreement -- what cure payments -- and we could say, Or other forms of payment due under the contract shall be paid. Now, there may be others who are -- who would kick me in the shins if we weren't all in a virtual spot, but it seems to make sense to me.

THE COURT: I know, and that's always the thing. We're having to learn new techniques of kicking each other in the shin. You can send each other a chat or something anyways.

MR. O'NEILL: I was just -- I was actually just (INDISCERNIBLE) if anybody's texting me saying, You idiot.

THE COURT: There's other ways to virtually kick each other in the shin.

MR. O'NEILL: Right. So that --

THE COURT: Okay. So we'll talk to Mr. Collins about that and see if there's some way we can solve your -- solve that issue. It just -- I sort of understand both your positions, and it doesn't -- it seems to be resolvable. Let's just put it that way.

MR. O'NEILL: I'll just trying to leave it (INDISCERNIBLE) trying to (INDISCERNIBLE) entitled to but leave the options open and not predetermine them now.

THE COURT: Okay. All right.

MR. O'NEILL: He also had the point on paragraph 58 regarding his charge. I must say I understand the analogy to Mr. Collins being a DIP lender, but he has not in fact been appointed by the Court as a DIP lender.

THE COURT: No.

MR. O'NEILL: And that --

THE COURT: He hasn't, but it really is like a DIP loan and --

MR. O'NEILL: I (INDISCERNIBLE) but -- but --

THE COURT: -- in my view, so that's sadly to say for you, perhaps.

MR. O'NEILL: No. It's fine with me. I understand. He's keeping the mine going at this time. I understand that, and it's important, but --

THE COURT: Right.

MR. O'NEILL: -- to say that he can't be primed I, think that has to come back to you, not simply determined on his consent. That should come back to you on an application. As I understood the position of the company and the monitor, that's an issue to be dealt with on an application with the facts in hand at that time.

A bit of the problem -- I'm just going to say this. A bit of the problem with dealing with Rio is we keep dealing with Rio as an add-on to one of the company's applications. I'm not saying that's improper because the company is seeking stays, but in each one of these applications, Mr. Collins shows up to talk about the value of diamonds, et cetera, and it's not necessarily what people were planning to deal with.

So I do think at some point it would make sense for Mr. Collins to schedule his issues as separate applications about only that issue, and then people could deal with them properly rather than -- I mean, there was a time 20 minutes ago I didn't know what application we were talking about anymore. It didn't seem to be part of the application for the approval of a DIP, a SISP, or a stalking horse bid. It seemed to be about whether or not he was secured or oversecure -- undersecured.

And I don't need to see confidential exhibit whatever. I know what he put in it. He expressed his opinion that he's undersecured, obviously, but I don't know that anybody agrees with that. I don't know that anybody's had a chance to cross-examine on it. Nobody's even seen it. He submitted it confidentially as part of a different application.

So Mr. Collins and DDMI's issues and concerns are real and they're important, but they should be dealt with as separate applications because they're real and important.

THE COURT: Okay. Well, right now, the way that the order is set up is -- and it did come up because in -- before because they wanted the authority to -- in the comeback hearing -- the authority to continue to pay the cover payments, and they asked for basically security for that, basically. They might not have phrased it that way. And so they were given some security with respect to holding Dominion Mines' diamonds -- portion of the diamonds, you know, they -- anyways, and now -- only the amount that would cover the cover payments, that's the part. And now they want to hold the whole amount. I mean, does it make a difference to you? I mean, Washington, it doesn't matter; you guys aren't selling any diamonds right now anyways.

MR. O'NEILL: And this is much more a 1L and 2L issue than it is for us, so I've taken enough time. I'll leave that to the company and -- and others.

THE COURT: So it doesn't matter to you.

MR. O'NEILL: It -- as I said, much more an issue for others.

THE COURT: Okay.

Submissions by Mr. Salmas

MR. SALMAS: Your Ladyship, may I just jump in. If I could just take a few minutes. I appreciate Mr. O'Neill spoke in terms of how this has unfolded. Mr. O'Neill, I think (INDISCERNIBLE) has an application in front of the Court today and, I guess, spoken reply to our responses to the applicants' application, so if I can have the Court's indulgence for 2 minutes, I just want to -- 3 minutes, I just want to --

THE COURT CLERK: I'm sorry. This is the clerk.

MR. SALMAS: -- address some points Mr. O'Neill just made.

THE COURT CLERK: Could you please tell me who you are?

THE COURT: Okay. Quickly. You've had --

UNIDENTIFIED SPEAKER: (INDISCERNIBLE).

THE COURT: You've had -- you've spent a lot of time.

MR. SALMAS: No. I appreciate that.

THE COURT: You're way over your time limit (INDISCERNIBLE).

MR. SALMAS: I appreciate that. I'll start by saying he started off with saying I'm not special, and I know that I'm not, and it's not great to hear that, but I appreciate what he's saying there, but the indentures and intercreditor agreements are not all the same, so blanket statements saying that this -- this case is like every other CCAA is not accurate for a variety of reasons, not just the contracts, but also the actual way this case is unfolding. I think we made that clear that that's our view, that this is a very novel situation.

It's obvious that we have a disconnect on what happened on the day of May 29th, and I welcome to opportunity to speak to Mr. O'Neill about that, which we haven't had an opportunity to do so. But it is evident that the language for 22(f) was put in based on what happened on May 29th, and it's crystal clear.

In addition too, that we say earlier that the language in all cases trumps any court order. The language actually uses challenges or objections, so it's not trust, litigation, or cross-examinations that would be covered by 22(f). It's basically putting up your hand and saying anything contrary to the construct that's being blocked by 22(f). So we just want to make

sure that that point is made. It's -- it's clearly not just to fund litigation per se.

THE COURT: Well, would you be able to get that sorted out between the two of few of how -- what you would accept with an amendment of 22(f)? You're saying just take it out, and that's what I was pushing you on before, Mr. Salmas, is --

MR. SALMAS: No. That -- right.

THE COURT: Because it seems again that you guys are -- you know, he -- understandably, his client doesn't want to fund people fighting against them. That's kind of silly. So --

MR. SALMAS: Yeah.

THE COURT: Or that's obvious. And you, on the other hand, --

MR. SALMAS: Yeah.

THE COURT: -- want to have the ability to eventually collect your fees in this process, which is completely understandable, but sometimes that doesn't happen either, right? So -- right? I mean --

MR. SALMAS: I agree with that. So the Hobson's choice here, Your Honour, is -- My -- Lady -- Your Lady (INDISCERNIBLE), My Lady, is either no choice or agree to construct right now. There's -- there's nothing else on the table for the trustee, and it inhibits trustee from -- from discharging its duties under the indenture on behalf of the other noteholders, so -- and just to be crystal clear, we have not received any payment from anybody to date, so I know there --

THE COURT: Well, right.

MR. SALMAS: -- (INDISCERNIBLE).

THE COURT: But he's saying that it doesn't, and you're saying that it does.

UNIDENTIFIED SPEAKER: And the -- the trustee's duties are no different than Mr. Warner's duties to his client, Mr. Nishimura --

THE COURT: Right.

UNIDENTIFIED SPEAKER: They're trust creditors, and if you pay the 2L trustees --

MR. SALMAS: That's not -- that's actually not accurate.

UNIDENTIFIED SPEAKER: I believe it is.

MR. SALMAS: (INDISCERNIBLE) there's an entire indenture trustee act in the United States. There's a bunch of case law about a trustee being a fiduciary. It's entirely inaccurate to say that it's a regular creditor.

MR. O'NEILL: Either way. But -- and we're not -- we're not paying for any other creditors to litigate against us, and we're not paying for the 2L trustee.

MR. WASSERMAN: Mr. Salmas, are any of the noteholders directing you? Are you -- are you operating under directions of any of the noteholders?

MR. SALMAS: Are you asking in open court for me to talk about conversations I'm having with clients?

MR. WASSERMAN: No. I'm not asking about whether --

THE COURT: He was just asking who your client is. That's --

MR. SALMAS: Wilmington Trust --

UNIDENTIFIED SPEAKER: (INDISCERNIBLE).

MR. SALMAS: (INDISCERNIBLE) Wilmington Trust, National Association in it's --

MR. WASSERMAN: I know who his -- I know who his client is, but trust indentures have directions and voting thresholds, all of them do. In my experience, trustees don't operate without instructions from clients. We have a noteholder committee that's represented by the Torys firm of over 50 percent of the noteholders. It seems duplicative. We have no issue with Mr. Salmas's clients getting paid out of (INDISCERNIBLE) of distributions. That is not what 22(f) is entitled -- is stopping or intended to prevent. This is all about avoiding this exact hearing every time (INDISCERNIBLE) paying for it. That's what it's about.

MR. SALMAS: This exact (INDISCERNIBLE) happening (INDISCERNIBLE). If 22(f) wasn't in here, we -- we wouldn't be making any submissions on this DIP any longer. There'd be no objection to the DIP but for 22(f). And I said I only want to take 3 minutes, so I've taken (INDISCERNIBLE).

THE COURT: All right.

MR. SALMAS: I will --

THE COURT: Thank you very much.

MR. SALMAS: Thank you.

THE COURT: Okay. So (INDISCERNIBLE) --

MR. WASSERMAN: My Lady, perhaps --

THE COURT: -- hanging out there.

Submissions by Mr. Wasserman

MR. WASSERMAN: Perhaps I could just -- I won't be long, and I just wanted to not repeat what Mr. O'Neill said, which I largely agree with. I do, however, just want to make a couple of points.

In Mr. Salmas' submissions, he referenced our analysis to *White Birch* as saying that we don't -- we haven't given you all the information and there's a bunch of different facts associated with that and you shouldn't really rely on that. We were just saying that as the proposition for the comment that DIPs like this which will not provide funding for fighting against the case have happened in other courts. It's happened a lot of times, frankly, and we were just using it for that proposition.

At the same time, Mr. Salmas showed you or took you to Justice Newbould's decision in *Essar Algoma* where he provided some suggestions around amending the DIP, ostensibly to tell you that you have authority to remove 22(f) from the DIP if you so choose. Again, you know, that's in isolation. That was a very unique set of circumstances. I mentioned this the last time we were before you. There was share collateral. There were competing DIPs by, you know, two groups. There was, you know, significant value, you know, that potentially was realized. It was a very different case. So I just caution you when those comments like that are made.

With respect to Mr. Collins' submission on, you know, this issue about being paid in full and he's the only one that's not getting paid in full and everybody else is getting paid in full and the first lien lenders aren't providing any additional value with respect to this process or at least not DIP value in his words or DIP funding in his words, again I would want to make the point there are LC obligations that are outstanding that secure reclamation obligations at Diavik that my clients have provided. My clients' security for those LC obligations if they're drawn is the security interest it has against Dominion, which includes the 40 percent interest in the diamond production and the 40 percent interest in the Diavik Mine.

The valuation evidence -- and we have seen a copy of it. Mr. Collins' client was agreeable to us seeing it to maintain it in confidence. And we appreciate it -- we haven't had an opportunity to review or evaluate it yet.

But Mr. Collins is not saying to you that he's going to assume those obligations and take those obligations. We are not necessarily going to be covered on those obligations. So that's a real issue. That's an issue that's going to have to be addressed, and we don't want anything in these orders prejudging that.

So we negotiated with the Washington Group that their DIP cannot secure any interest Dominion has in the Diavik assets, be it the diamond production and the JV interest, and that was done purposefully in case they don't take that on, that we have an ability to realize on that and have the discussion with Mr. Collins' client. So we are very concerned about any indication on selling diamonds, maintaining diamonds, keeping diamonds that go beyond the cover call payments.

And by the way, Mr. Collins is absolutely right. It is very difficult to know what the true value of the diamonds are, and I would submit to you common sense would tell you that you're going to get the least amount for diamonds in the open market or the private market today than ever before because there's an oversupply. And that is what you have to keep in mind as you make these decisions, and that is why we were prepared, based on the monitor's recommendations, to live with what the monitor has to say. It creates --

THE COURT: (INDISCERNIBLE) which is to continue to hold the 40 percent equal to the cover payments. It's hard to -- to calculate what that is though. That's, I think, one of the problems that -- that Mr. Collins is -- is indicating. How do they know what the number is for cover payments? So he's just saying, Well, why don't we just keep the 40 percent, and then it just makes it easier for now, and then you know, --

MR. WASSERMAN: Well --

THE COURT: -- (INDISCERNIBLE) can be dealt with, you know, deal with it afterwards, like, but for now, how do they know what that is?

MR. WASSERMAN: With respect to Mr. Collins and to his client, I have much more comfort if the diamonds that aren't being sold -- right? -- that represent that are in control of the estate that the monitor is overseeing as your court officer. That gives my clients more comfort. For reasons that I would hope would be obvious, but that gives us more comfort. We are not saying here that Mr. Collins' client is being nefarious or trying to do something. We're just trying to protect our interests. And it's surprising to me -- and I continue to have difficulty understanding this -- why -- I mean, certainly the monitor, I believe -- I don't want to speak for the monitor -- and the company, I believe, agrees with that because there's probably significant value.

And let's not forget that Mr. Collins' security interest is not only in the diamonds produced under the terms of the joint venture agreement, it is also in the JV interest, the 40 percent JV interest, so --

THE COURT: Of the mine itself.

MR. WASSERMAN: Of the mine itself, which would include all the -- all the equipment, which would -- everything.

THE COURT: Right.

MR. WASSERMAN: So it's not just the diamonds. So overcollateralized, undercollateralized, oversecured, undersecured, lots of words are being thrown around --

THE COURT: Right.

MR. WASSERMAN: -- and absolutely no record on them. There's no ability to -- for you to assess -- for you to assess what's really going on, and as the monitor's constructed it, in my view, that's in effect the status quo, and there's absolutely nothing wrong with leaving that in place. And hopefully we can come back with a view that makes sense, and if not, there will have to be a hearing before you where everybody has an opportunity to say the value is 'X', we agree with the valuation, we disagree with the valuation, the market is 'Y', the market is 'X', here's the best place to sell it, here's the worst place to sell it, and have a real conversation about it.

Those are the only submissions I have unless you have any additional questions.

THE COURT: No. Thank you for that, Mr. Wasserman. It's helpful. Thank you.

Okay. Now I think I was supposed to go to Mr. Rubins.

Submissions by Mr. Rubin

MR. RUBIN: Thank you, My Lady. I'm -- just a couple preliminary comments on -- on Mr. Salmas' submissions, just really two or three points on that. On a couple of occasions, he has mentioned that 22(f) prevents them from complying with their fiduciary duty, and in my respectful view, that's just -- that's just not accurate. He's entitled to continue to act as he thinks he needs to, and nothing prevents that. In fact, he's doing that now, and he's been doing it. And no one is saying he can't do that, and no one is saying they can't -- he can't oppose at the next hearing or every hearing. So he can continue to abide -- or his client can continue to abide by their fiduciary duties. They entered into a contract, a trust indenture. They're not doing that for free.

THE COURT: No, but I think what he's saying is that at the end of the day he would be -- like many of you in the terms of professional fees, you want to be able to collect your fees, and he doesn't want to be barred -- his client doesn't want to be barred from collecting his fees. That's what he's saying.

MR. RUBIN: Fair enough.

THE COURT: Right?

MR. RUBIN: And he isn't.

THE COURT: So --

MR. RUBIN: Yeah, and -- and I think he isn't, and I'll say he isn't for this reason, one is -- and you can understand the DIP lender saying, We don't want to fund you to fight us. That's not --

THE COURT: Right.

MR. RUBIN: -- unreasonable. Is he prohibited from collecting his fees? Well, he has a trust indenture that provide that his fees get paid before distributions go to the noteholders, so if there's value going to the noteholders, he gets to scoop it first. That's his protection. That's the protection that he negotiated for in his contract. And if, as someone said, an -- a trustee is entitled to come to court to say, I don't

have a provision in my contract that allows me to get money now in advance from other people so another company has to pay me, I think that is a 'c' change in the CCAA, and I think that prompts serial applications and multiple CCAAs. Every trustee comes to court now and says, Here is the Dominion case and you have to pay me. So I don't think it prevents him from doing his job. And of course, to the extent that there's money going to the 2Ls, he'll get it, and if there is no money going to the 2Ls, well, then he shouldn't be paid from the estate.

Dealing with DDMI, I'll -- I'll -- I won't repeat the submissions that were made earlier, but I think Mr. Collins had four points, the fourth one, I just will add a comment further to what Mr. O'Neill said, and this has to do with DDMI wanting a provision now that mandates cash payment of their cover calls on a deal. That's essentially what they want, and I support Mr. O'Neill in that, but I do believe that is prejudging the issues. We don't know. And as Mr. Collins has said, we don't know what's going to happen in a couple of months from now. Someone may step into the shoes of Dominion. There might be an assignment, and Mr. Collins' client presumably will have diamonds at that point and security interest. But again --

THE COURT: So you -- so you heard -- let me cut you off there, Mr. Rubins. You heard some suggested wording with respect to that. That's -- we're talking about paragraph 22(c) of the SISP. You heard suggested wording -- right? -- from --

MR. RUBIN: I have no issue with it, no issue with the addition and the suggested changes.

THE COURT: For each contract, including the JVA, what payments shall be paid. I didn't quite get it down exactly right, but it's something --

MR. RUBIN: I think the --

THE COURT: -- something to the effect that those payments will be -- will be considered. And he wants those payments to be considered in priority just like the DIP, the administrative fees, et cetera. So that's -- that's what he's saying.

MR. RUBIN: Yes. He is saying he wants the Court to order now that there cannot be a transaction with his client unless the cover payments are paid in full. He wants you to effectively order that today. That's what he wants. And --

THE COURT: Well, just like the administrative fees and the DIP and all the rest, right? I mean, it's not completely unreasonable, Mr. Rubins, quite frankly.

MR. RUBIN: I never said it was unreasonable, My Lady. What I said was I don't agree with it. And the monitor doesn't agree with it either. I didn't say it was unreasonable, but what I'm saying is that I understand why he's asking, but if he wants the Court to determine these issues now rather than on a (INDISCERNIBLE) hearing -- because you may get a bidder come in and have a different approach and may say to you -- and you will hear this motion if it comes -- here's how we propose to deal with DDMI and here's how we propose to deal with the joint venture, here's how we propose to buy it. And what we're simply saying is preserve te ability for Your Ladyship to make that determination at that stage. You will either agree or you won't agree on whatever proposal it is because we don't know what facts there are that will come before you.

THE COURT: But he -- his clients want some security that they're paying -- it's up to a hundred million dollars, like -- right? It's a little -- it's over a hundred million dollars to the end of October. That -- so that's not going to be, Well, maybe they get, maybe they don't, depending on the deal. Like, he's asking that there be a priority like there is priority for other matters, right? So how --

MR. RUBIN: Understood.

THE COURT: How can we -- how can we, you know, take his clients' consideration to do a count along with what you're saying, which is let's have a little more leeway here, they'll get paid but it might be in a different way, who knows. Like, so, you know, I hear what you're saying but, on the other hand, how do you put that in there so that that's clear?

MR. RUBIN: I think there's two -- there's two different issues. The first is in 22(c) should the Court make an order now that says the only way that someone can buy the Diavik joint venture is by paying the cash calls -- or the -- the cover payments in cash. That's what Mr. Collins wants. And I say -- and the monitor supports us in this, and you've heard Mr. O'Neill saying you shouldn't prejudge that issue today, you -- there should be some flexibility and you should hear that motion at the appropriate time with the appropriate facts with the appropriate argument and the appropriate evidence before you. And you may determine on a sale --

THE COURT: But -- but on that, what other facts do you need, Mr. Rubins? Like, they're -- they're paying cover payments -- we know that right now, right? -- that your client can't pay right now -- right? -- but they -- they're obligated to pay under the JVA, and they're -- you know, it's -- you're going to get some benefit from that too. I mean, even though I know that you wanted the Diavik Mine to be closed, but

anyways, it isn't and it's running, so what other evidence, like, do you really need?

MR. RUBIN: My Lady, what if somebody comes before you in two and a half months and says, I have the best available bid for both Ekati and Diavik by -- by a wide margin perhaps and everyone supports it and they come to you -- I don't know what the facts would be, but they come to you and say, My Lady, here's how I propose dealing with the 40 percent interest in Diavik, and they have a setup, and it -- perhaps it doesn't involve all cash. Maybe it involves 75 percent of cash and they get to keep diamonds, that is, DDA -- excuse me -- DDMI gets to keep diamonds. But perhaps there's an overall plan that you will assess at that point in time, and you will determine whether it's appropriate or not. And (INDISCERNIBLE) you may say, You know what, I hear Mr. Collins and the only deal I'm going to approve that has him paid out in cash for the cover payments, the only deal I will approve. But that's not a decision that should be made today because we don't know what bids we're going to get, we don't know what bidders are going to come to the court with.

And the second aspect of this is we're not saying that -- that -- that the diamonds -- all of the diamonds should be held by us. That's the first issue which is paragraph 16 of the order. And to be clear, what we're saying on paragraph 16 is that DDMI should be entitled to keep the diamonds up to the amount of their cover payments in accordance with the valuation.

And so I would like to do is I would like to take you to our bench brief, and I will direct you to our bench brief, and this is our reply bench brief, and I'm at paragraph 4 of our document. And paragraph 4 is the confidential exhibit, and like Mr. Collins, I'll be careful in what I -- what I do say, but I do say that that exhibit, which I know you've seen, doesn't tell the complete story because you have to consider the cash calls and the diamonds deliveries in determining whether the parties are secured, undersecured, or oversecure.

And so what we say in paragraph 6 is this: There have been two diamond deliveries since the April -- excuse me -- since the April 22nd delivery. There's two diamond deliveries. One was on -- sorry. I don't have the dates in front of me here actually. One was on June 10th, and there was one, I think, on May 20th, so two diamond deliveries, May 20 and June 10. And so what you see in the confidential exhibit is you see the independent valuation because they're valued by a third party. A third party comes in and determines the value of these, and I'll take you to that in a moment.

But that -- those two deliveries, My Lady, they don't go up to June 10th. The delivery date was actually May 27th, and that's paragraph 6(a). So what happens is there's a diamond production schedule up until May 27th, and then the Exhibit A values diamonds that DDMI is holding until May 27th. So it's just -- it's two diamond deliveries. It's only two, and that's why you see the numbers that you see.

In addition -- this is in paragraph 6(b) -- there are seven more diamond the delivery day -- or delivery -- deliveries between now and October, the end of October, so we know there's going to be seven more of these. You're seeing two of them in the schedule.

THE COURT: Okay.

MR. RUBIN: Then if you turn over to paragraph (c) -- and this is important. This is paragraph 6(c) -- the Diavik cash calls are very high. They're the highest in March, April, and May, and the reason is -- and there's evidence of this, but you're paying all of those costs for the winter road that you've heard so much about and all of the delivery.

THE COURT: Right.

MR. RUBIN: So it's very, very high in March, April, and May. So we're now past those high cash call months, and then the cash calls -- and you can see this in 6(c) -- they drop off by 50 to 65 percent. The cash calls now are -- are significantly reduced.

THE COURT: Okay.

MR. RUBIN: Diamonds are still being produced. So what you see in Schedule 1 or exhibit -- the confidential Exhibit Number 1 is at a point in time on May 27th. And so what you're going to see, presumably, is a material reversal. Well, we certainly hope, but we'll know once we get the valuation evidence. And so that deficiency -- and again, we're not saying that -- that we're asking that diamonds be delivered to us if the valuation is less than the cover payments. That's not what we're asking for. And as Mr. Wasserman mentioned, what we're seeking is they can keep diamonds according to the valuation to cover their cover payments, and then in addition to that, they still have their security on our 40 percent interest. They still have that as well.

THE COURT: How do they value what the diamonds are worth to cover the cover payments, right? That's --

MR. RUBIN: Excellent -- excellent question.

THE COURT: That's the issue, right?

MR. RUBIN: Excellent question. And that's exactly where I was going to go, and I'd like to take you Mr. Croese's affidavit, so this is their affiant's

evidence on this point, and that is found --

THE COURT: Affidavit number 3?

MR. RUBIN: It is, and you -- continually frustrated by how you're there before I am, but...

THE COURT: 11.4-714 is the affidavit.

MR. RUBIN: Thank -- thank you, My Lady. And so I would like to take you to is paragraph 20 of Mr. Croese's. This is DDMI's affidavit.

THE COURT: Okay.

MR. RUBIN: And so what he says at paragraph 20 is all diamonds produced by the Diavik Mine are evaluated by Diamonds International Canada Limited, DICAN, -- you've heard that name -- a Yellowknife-based company providing independent resource evaluation and diamond valuation services to the government of the Northwest Territories in addition to the government of Ontario. So this is a valuation company that provides valuation evidence to two governments. They're an incorporated venture between Aboriginal Diamonds Group and WWW International Diamond Consultants. As such, DICAN is the body responsible for conducting the government royalty valuations. So this is the valuation that the government uses, so the government has these people come in to make sure they get proper valuation because the government gets royalties on these amounts, so as you can imagine, you know, the government wants someone independent. They want an expert to go in there and value the diamonds.

THE COURT: Right.

MR. RUBIN: DICAN -- this is the end of paragraph 20 -- is independent from both DDMI and Dominion. And so this is how the diamonds are valued, third party expert valuator. That's DDMI's own evidence.

And I know I keep harping on evidence. Mr. Collins talked about, Well, you know, we don't know -- we don't know what the value of these diamonds will be, might be oversecured, might be undersecured. He did say, you know, There's a problem in determining the value, we don't know if the value is more or less than what we'd be able to sell on the market. You heard him say that. Well, the evidence before the Court is we have independent valuation evidence that has been used for years.

And what is not before you? There's no evidence, My Lady, no evidence from DDMI that

suggests that these valuations are wrong. DDMI, you've heard, sells diamonds. They've sold diamonds for years. There's no evidence from them to say, My Lady, here's what DICAN estimates the value at and here's where they're wrong. They clearly have that information because they know what they're selling diamonds for. But there -- My Lady, there's no evidence. And so I think we're entitled to rely on the independent expert valuation evidence. And so what we are saying is the order should go as the monitor suggests.

THE COURT: Okay.

MR. RUBIN: We've got a valuation process that's been in place for years. There's a sorting process that's been in place for years. And if we get to a scenario where the diamonds that DDMI are holding are valued at more than the cover payments, again remembering they still have their security on our 40 percent interest on top of that, but if they get to that situation, the diamonds should come back to Dominion, and that only makes sense, and that's what the monitor is saying when they say they're -- they have a principle objection to DDMI holding the diamonds.

My last comment, My Lady, is you heard Mr. Collins say, Well, what's the harm? I think that completely miscasts the question.

THE COURT: Well, he's saying, What's the prejudice?

MR. RUBIN: What's the prejudice. They're our diamonds. Those diamonds should be delivered. It -- it completely reverses the onus. The -- he has to demonstrate prejudice, and they haven't demonstrated any prejudice or suggestion that the independent valuation evidence is wrong again. So in our submission, the order that is supported by the monitor is the correct order on this point.

THE COURT: Okay. Thank you.

MR. RUBIN: And finally, so the last comment, he said, Well, diamonds aren't being sold right now. And you made it a point to him, well, he's given evidence that they sold diamonds. The markets may open up or start to open up, so Dominion should have access to its diamonds as well, again, once the valuation evidence shows that they're secured.

The -- in terms of I know Mr. Collins had four changes. The last one that I think I'm going to talk about is the provision where he wants it added that he can make an application at any time to sell the diamonds. You've heard me in my main submissions on that one. Again, there's nothing that prevents him from making an application if he wants to, but the form of order again that's supported by the monitor has particular dates set out in it.

And as I mentioned earlier, the company needs an opportunity to run an SISP. The company needs an opportunity for a buyer to come in and potentially take out and pay out the cover payments and take the diamonds instead. We can't have a situation where the diamonds are being sold in advance.

And again, the monitor has set out trigger points, and again, if something goes so wildly off the rails and DDMI is going to bring an application and say, My Judge -- Judge, circumstances have so materially changed, we know you made the order supported by the monitor on June 19th, but now we need to -- we need to come back, well, they'll do that. But we should not put that provision in the order that presupposes they can make an order at any time.

And again, I just ask the Court to allow the company some time to run this process, keep the diamonds protected. That's without prejudice, and I say that is the status quo, and I'll -- I'll finish there, My Lady.

THE COURT: Okay. Good stuff.

It's 3:30. Let's take a 10-minute break. Then I'll come to the monitor, and hopefully, we'll then move to finish. Okay? I think we all need a break. It's been 3 hours. Certainly for me and for others. Okay.

(ADJOURNMENT)

THE COURT: Hello. Hello. I'm back. Okay. Mr. Simard, are you there?

MR. SIMARD: I'm here, My Lady.

THE COURT: Okay. Thank you. I was just taking a quick look at my notes, trying to sort out things. All right. So...

MR. SIMARD: Okay. Shall I proceed?

THE COURT: Yes. Go ahead.

Submissions by Mr. Simard

MR. SIMARD: Okay. So I will -- there's been a lot of ground covered today. I will try to be efficient. I think some of the issues are now off the table, but

I'll try --

THE COURT: Right. So that's what I was trying to do. I was trying to figure out what -- what's on the table still, what's not. It's -- there's a lot.

MR. SIMARD: I think -- I think a lot of the items in the company's application, such as approval of the financial advisor agreement, the FA charge, the KERP, the KERP charge, and -- and, frankly, the stay extension, don't seem to be contested.

THE COURT: Right.

MR. SIMARD: I also took from Mr. Salmas's and Mr. Kashuba's submissions that the DIP other than paragraph 22(f) is not contested.

So I think what's really on the table is the stalking horse APA and the SISP and then, of course, the form of order and the form of SISP. So with respect to those items, you saw in the fourth report, which the monitor has re-affirmed in the fifth report, we are supportive of the company's applications.

Turning first to the stalking horse -- what was the stalking horse term sheet and is now the APA, the monitor does support the approval of that APA. The monitor does believe that the benefits of the stalking horse APA do outweigh its imperfections. It is not perfect. It is conditional. It's from an insider. But the benefits, in our view, which we have confirmed and reconfirmed with Evercore, do outweigh any detriments, and I'll just run through a few examples.

You heard today from some of the other parties who hadn't spoken yet, such as Ms. Buttery on behalf of the Government of the Northwest Territories, Mr. Astritis, Mr. Sandrelli, Mr. Warner, who were all supportive, and that goes to -- that gives some tangible evidence, I would suggest, to what we had put in our reports and what Evercore had talked to us about and what you've seen in Mr. Bell's affidavit, which is there is great benefit, we believe, in having -- having a deal in place and messaging to stakeholder groups in the North, Northern communities, trade, suppliers, et cetera, that there is a party who's interested in being there at the end if the conditions can be worked out to keep this business running as a going concern. Think -- think particularly, for example, of the furloughed employees at Ekati. We know from previous evidence that these are specialized workers in many cases. If they are sitting there with a SISP that will run for a few months, not knowing that there may be a going concern transaction, they're not going to sit around forever while government benefit programs run out, et cetera, but if they are fairly sure that there's going to be somebody running that mine, we can -- you know, the chances that they will stick around

is -- is higher obviously.

THE COURT: Right.

MR. SIMARD: So --

THE COURT: So I mean, that's the biggest part. Like, the -- one of the biggest factors when you look at the test is there sort of security, not -- security in -- there's other ways that it's put in some cases (INDISCERNIBLE) --

MR. SIMARD: Stability.

THE COURT: Stability. That's it.

MR. SIMARD: Those type of things.

THE COURT: Stability and security, yeah.

MR. SIMARD: We think that is --

THE COURT: Big issue.

MR. SIMARD: -- important certainly.

I'm going to -- I didn't know how to find a page until you --

THE COURT: We're all learning.

MR. SIMARD: -- taught me today, but it sure makes it more efficient than scrolling. So I've tried to direct everyone to page 4-264. (INDISCERNIBLE) my direction is done.

THE COURT: Right. Yes.

MR. SIMARD: So that's -- the second benefit, we say, or increased clarity from when we were last speaking about this, is the clarity on the purchase price. We've now gotten more clarity than we had on June 3rd when we broke to gain that additional clarity about cure funding amounts, and so you can see in our updated table -- we heard some commentary from the 2L groups today that -- you know, and -- and saw some commentary in the brief that these numbers are fluffed up because they include reclamation, letters of credit, and guarantees. The monitor views these as -- as valid. It's

obviously not precise. It's a range. But this is a valid representation of the overall purchase price.

You know, those reclamation, letters of credit, and guarantees, they are real liabilities that -- that an owner will have to take on. Our understanding -- Ms. Buttery is probably in a position to clarify exactly, but our understanding is that those -- with respect to Ekati, those are of the nature -- the type that -- the type of things that we would recognize in Alberta as security deposits with the ADR. In some form, they are conditions imposed by the government for a licensee to be able to operate that mine. Obviously, with Diavik, it's slightly different because it's -- it's a contractual -- it's a contractual situation with DDMI given that they're the operator.

THE COURT: Right.

MR. SIMARD: But these -- you know, so we now see the purchase price -- price. It is not insignificant. Those are large numbers. And I do echo some of the comments we've heard from some of the other parties today. You know, we've heard from some of the 2L groups that this is a low purchase price. If -- if it is a low purchase price, they are perfectly placed to capture the value that they think exists and may not be reflected in this purchase price by way of a credit bid.

There was a commentary about liquidation analysis. It would not be customary at all at this stage in this type of proceeding for the monitor to prepare a liquidation analysis. That would be something the monitor would do if the company was presenting a plan to creditors where the monitor would typically put out a report comparing recoveries under the plan to a liquidation or bankruptcy, but in a SISP, we wouldn't do that. I don't think it would be a constructive task because the SISP should let bidders -- should give them all the information they need to come to value in their own minds.

Just scrolling. Some of these pauses are -- are good things because that means that I'm skipping some of the submissions I prepared.

We do think -- based on some of the evidence -- some of the commentary in our previous monitor's report, we think this does truly present a floor price, not a ceiling price.

We talked a little bit on May 29th about this being a relatively small universe of bidders who are quite sophisticated for this large, complex type of asset. We reported to you in the fifth report -- or sorry. It was in the June 12th supplemental affidavit from John Startin about the fact that Evercore had really already started reaching out to parties. It had contacted 38 parties. As of last week, two third parties other than the Washington Group and the 2Ls had executed NDAs, and six others were in progress. We asked Evercore today

for an update, and an additional third party NDA has been agreed in form, and Evercore is just awaiting that bidder's signature. One other bidder has since provided a markup of an NDA, so that one's progressing, and four other parties are considering NDAs. So -- so that goes to the point of SISP timing. We do agree with some of the submissions you've heard that this has already been moving forward, and parties are already -- already acting on looking at this opportunity even before the approval of a SISP.

On the cure funding, if you -- I won't direct you there, but if you just scroll back one page on the -- on the fifth report to the table that's under paragraph 25.

THE COURT: (INDISCERNIBLE).

MR. SIMARD: Given that this was a question mark on June 3rd, we -- we took some time in the report to lay it out so people could understand both the mechanism for the assignment of contracts and the payment of cure costs and also the overall magnitude. And as you see in this table -- someone had asked a question earlier where we got the 41.1 number. I think it was from Mr. Nishimura -- that is the latest and best estimate of pre-filing arrears for trade creditors, and so what we see here is just over 70 percent -- based on that cure funding amount in the stalking horse APA, just over 70 percent of the unsecured trade creditors we would expect to get paid. Of course it is subject to the right of the stalking horse bidder to, you know, recategorize contracts.

We will -- we will see that Schedule 'F', and we recommended that it be made available in -- in the data room 2 weeks before the -- the phase 2 bid deadline. Schedule 'F' will list all of the executory contracts. The company will put in their best estimate of cure costs, and then the Washington Group, the stalking horse bidder, will categorize them either as assignable contracts or excluded contracts. That will not only provide clarity for everyone, it'll -- it'll be of great assistance, I would submit, to other bidders who will be able to build off that due diligence in deciding what -- what contracts they wish to assume and whether they wish to improve upon the stalking horse bid.

THE COURT: Okay.

MR. SIMARD: With respect to the concerns, I've dealt with them -- concerns raised about this stalking horse bid.

It is -- with respect to the -- the fees -- and that was calculated, I think, in the ad hoc group's bench brief -- there is a break fee of 2 percent. There's an expense reimbursement up to $2.25 million US. That's of course a cap. The reimbursement would only be for the expenses actually paid, and there would be an incremental overbid amount of US 1 million so a total of about 5.7 million US. With a deal of this size, US 385 to US 559 on our

estimation, we don't think that's an insurmountable hurdle. It's not -- it's not massively disproportional to the size of the deal, so that -- and with respect to the justification for the break fee, a question about that was asked earlier today, this stalking horse bidder has -- and we've seen it -- worked very hard, put in a great deal of effort already. The APA is there, for example, and that will -- that will be of great assistance to any other bidders. As I said, Schedule 'F' will be there. So the usual types of justifications for a break fee we think are present in this case even though the bidder is an insider or the shareholder.

THE COURT: All right.

MR. SIMARD: That's -- that's kind of it, My Lady, on the stalking horse bid, and that's my attempt to take you through, you know, what are really somewhat the intangibles and the reasons why we say if -- if we're choosing between a DIP and no stalking horse -- or sorry -- just a regular SISP and no stalking horse or this stalking horse bid and the SISP that goes along with it, we think the latter is -- is the better choice and does have substantial benefits.

With respect to the SISP, I spoke about this a little bit on May 29th, and -- and again, we're relying on Evercore as well as forming our own view. We think the SISP with the move to the additional 10 days that are being proposed does provide sufficient time for, you know, the realistic market for these assets to be able to participate fully and therefore to allow the process to generate the highest value and to generate fair market value. So I won't say much more about the SISP.

I'll jump right into the -- the form of order and just -- just the substantive issues that have been discussed by the parties. I will try to direct you to page 4-271. That's the start of our table.

So the first -- the first issue discussed by Mr. Collins and Mr. Rubin and others is paragraph 16, and that is should DDMI hold all of Dominion's share -- 40 percent share of the diamonds or just a share equivalent to the value of the cover payments. We don't agree that they should hold the entirety of Dominion's share. We think that should be -- as Mr. Collins said, as a matter of principle, it should be limited to the -- the -- the equivalent value.

DDMI, of course, made an application to you on May 8th. You granted them this diamond holding relief on May 15th on a temporary basis.

THE COURT: Right.

MR. SIMARD: You know, now I think everyone's in agreement that it should be made permanent subject to further court order.

You've seen -- you've heard from Collins and Mr. Rubin about evidence -- or about value, rather. You've seen some evidence about value. You've heard them say, you know, there are difficulties with valuing these diamonds. There may be timing issues whereby DDMI may currently take the view that it's undersecured or undercovered for the cover payments, whereas Dominion is saying as that plays out over the next few months, that might flip and they might be overcovered or oversecured. And our point, I guess, is that you should be granting an order today that works and minimizes disputes and works throughout the whole process, and so that's why we come back to what we say is the logical and fair principle, which is there's no principled reason why DDMI should be able to hold diamonds greater than the amount of the cover payments.

We recognize that practically there may be practical difficulties in the parties either coming to an agreement on, you know, what the proper pricing is and therefore what -- you know, whether there's an undersecured or oversecured situation, and -- and that will either play out one of two ways. Either they will agree on value and they'll reach agreement based on the work done by DICAN and -- and if there's an oversecured situation, then presumably they'll act rationally and there would be an agreement to turn over excess diamonds or if there's a disagreement, they'll come back to you, you'll look at the evidence, and you'll make a decision.

Those are the practical realities, but -- but I guess our bottom line is there's no reason we should deviate from what we think is the proper principle, which is this is a remedy. It's an extraordinary remedy that's not in their agreement, but they are being granted it to cover the cover payments but -- but no reason that we can see that the order should -- should do anything other than simply cover those cover payments. The practical realities will play out, you know, later.

THE COURT: Okay.

MR. SIMARD: The next issue is 16(e), and if you just roll down on CaseLines, you'll see that at the top of page 4-272, and this is the trigger events where we propose that DDMI would be able to come back to court, and I'll -- I'll just explain to you the rationale. It's described maybe not as clearly as it could be in that -- in that box on the right-hand side, but we viewed this order as basically giving DDMI pre-approved leave to come back.

I agree with your comments and the comments of others earlier, which is, you know, any -- any stakeholder in any CCAA proceedings can make a court application any time they want, but if they're seeking to exercise remedies, they have to lift the stay, and that's a slightly more difficult and, I would submit, higher test for anyone to satisfy to exercise a

remedy, whereas here, if -- if DDMI's coming back to court on one of these triggering events, one of them having happened, there won't be the same type of argument about whether it's appropriate to lift the stay. In our -- in our view, they've basically been given pre-leave to come back. And so that's -- that's why we thought this -- this clause made sense, because it's -- it's always there in the Act and pursuant to common law for DDMI to say, Look, something's different has happened, circumstances have changed, we're coming back at another time. But in that circumstance, they'd have to convince you that it would be appropriate to lift the stay.

THE COURT: Well, could we just put in in (e), because I'm following my other screen -- you have (i), (ii), (iii), and (iv) or 4, November 1, 2020, can we put in (v) or with leave of the Court or something like that so it's clear they can if something comes up. That might --

MR. SIMARD: That --

THE COURT: -- take care of their concerns.

MR. SIMARD: Probably gets us to the same place, and of course, you know, that -- that lets them come back. You know, parties will -- parties will have all their rights to argue whether they should be coming back at that time, but, ultimately it's your discretion, so we don't object to that.

THE COURT: Okay. Then that just deals with that issue. I don't think it was a huge issue, frankly, --

MR. SIMARD: No, it wasn't.

THE COURT: -- considering some of them on the table.

MR. SIMARD: Not as -- not as huge as other ones.

THE COURT: Yeah. That's right. Okay.

MR. SIMARD: So -- and then moving forward to page 4-274, which I should have just directed you to.

THE COURT: Okay.

MR. SIMARD: And the -- the final issue that the parties discussed is paragraph 58 and that is Mr. Collins' request that there be a clause put in the

order saying that other than the admin charge and D&O charge, no other court-ordered charge can be granted priority over the Diavik collateral without their consent --

THE COURT: Right.

MR. SIMARD: -- in writing. So the way things stand right now, the -- the interim financing facility has been set up so that on the Diavik assets, it is only admin charge, then D&O charge, then DDMI's security interest, and then the other court charges fall behind. So this is Mr. Collins wanting to ensure that that remains the case into the future. We -- sorry. I'm going to -- you suggested gently before that I should have -- in our fifth report, we should have actually repeated the commentary. The commentary is at page 4- --

THE COURT: Just, you know, when you refer to other things, you always just go okay. It's -- I know (INDISCERNIBLE) just being lazy, I guess, at some point. Okay.

MR. SIMARD: Yeah.

THE COURT: So all right.

MR. SIMARD: So it's 4 -- it's 4-105 where the --

THE COURT: 4-105?

MR. SIMARD: 4-105. And for some reason, I can't direct people there right now, but 4-105 is the page in the appendix.

THE COURT: 4- --

MR. SIMARD: Okay. Here we go. Now I'll direct everyone to 4-105.

THE COURT: Okay.

MR. SIMARD: So you'll see on that page we commented on paragraphs 57 and 58 because they were similar concepts, but basically, we say, Look, this -- this is a bit of an overreach, with respect, it would be extraordinary relief granted to DDMI, and we're of the view that there's no need to grant that the extraordinary relief. There's -- there's -- you know, as things stand, this -- this DIP loan on all projections is sufficient to get us through the -- the process. There's no contemplation that someone would

come back and seek further court-ordered charges. Of course, it's not entirely impossible. But this would be an extraordinary right, and Mr. Collins' argument for it is basically -- you know, follows -- follows his argument that he's a DIP lender because, of course, in -- in the Act, where a DIP charge is granted, the Act does say that that DIP charge cannot be subsequently primed without the -- the express consent of the DIP lender.

While we recognize that there may be some elements of -- of DDMI's situation that is akin to a DIP lender, we don't think they're a DIP lender. They're an executory contract counterparty, so that's basically it. We just say that this relief is unnecessary. Not only are they not a DIP lender, but they have the benefit of an extraordinary remedy which the DIP lenders don't have, which is physical possession of -- of an asset of the debtor companies -- two assets, really, diamonds and they're also in physical possession, obviously, of the -- of JVA interest as operator. So we say just it's extraordinary and -- and unnecessary.

Now I will take you back to our fifth report, to 4-274, and that's where we start the table with my commentary on the SISP changes. Sorry. 4-275. Just scroll down one page. And so this comes to the 22(c) issue.

So -- and Mr. Collins is right; when we -- when we looked at this in our supplement, we -- we said that we thought this was appropriate, and the clause he wants in there is to say that for any bid to qualify as a phrase 2 qualified bid, it must say that there will be payment in full in cash at closing of all the cover payments, and we have gone back on that, I guess. We -- we looked at the stalking horse APA. We saw the stalking horse APA set out a mechanism for how contracts will be assigned, how cover payments will be made. But I think on reflection, it's -- it's maybe more important than we realized at the start because this is -- this is qualifying phase 2 bidders.

And as you heard from Mr. O'Neill, you know, the APA -- they're not saying definitively in the APA that they are going to pay the cover payments in cash at closing. They have to come to an agreement with -- with DDMI, and so they may end up paying the cover payments in cash. They may end up coming up with some other mechanism to satisfy those liabilities to the satisfaction of DDMI obviously. And so if we -- if we go to the cash payment at closing, we're holding phase 2 bidders other than Washington Group to a higher standard, and so that's something that we want to avoid because we think, you know, what -- what DDMI is properly entitled to is to have a good understanding from any bidder at this stage of how they're going to deal with the cover payments and, frankly, all of the other liabilities that flow from the Diavik JVA. But to hold other bidders to that you must pay us out in cash at closing, which is not part of the -- of the Washington bid, would potentially knock out potential bidders. And there could be -- there could be myriad ways that even DDMI doesn't appreciate at this stage but -- but we'll -- we'll come to see that

they might accept with Washington or with other bidders as they get into the negotiations that will play out over the next couple months.

So -- so that's the primary purpose for us not wanting that in there; we don't want to disqualify bidders.

There is -- there is -- let me just read, because I think it's useful, section 11.3(4) of the Act. So this -- this is something is that applies, you know, if -- there are two scenarios here. Either -- either a bidder, Washington or someone else, is going to cut a deal with DDMI about how they deal with the whole Diavik JVA and then we don't have to worry about that, but if a deal cannot be cut, there's of course the possibility that -- that a bidder -- the company will make an application to have the Diavik JVA assigned to a bidder in a circumstance where DDMI has not been able to reach an agreement with them. I guess that would apply to another bidder because Washington has a condition of reaching agreement. But in any event, 11.3(4) says this, The Court may not make the order -- that is the assignment of a contract -- unless it is satisfied that all monetary defaults in relation to the agreement -- and I'll just skip the qualification in the middle -- will be remedied on or before the day fixed by the Court.

The Court has pretty broad discretion to ensure that monetary defaults will be remedied, but it doesn't say cash payments in full at closing. You have -- you have broad discretion there. You -- you have to, though, ensure that those will be remedied. So Mr. O'Neill's suggestion we thought was good to say something like, you know, all -- all the bidders to qualify at this stage have to identify all executory contracts, including but not limited to the Diavik JVA, that the bidder will assume, and they must clearly describe for each contract or on an aggregate basis what cure payments shall be made, the manner in which they shall be paid, and the timing of such payments. And we might even expand that wording to building --

THE COURT: I think that what -- yeah. I think the problem is if we use cure payments, that word is defined and it doesn't include the -- the Diavik payments, so he was concerned about that, so --

MR. SIMARD: Well, yeah, and what --

THE COURT: -- (INDISCERNIBLE) payments and payments based pursuant to the Diavik JVA. Let's just put it right in there. Why not?

MR. SIMARD: Yeah, or -- or we could go with the broader wording. We obviously would parenthetically make sure that all bidders have to tell us what they're going to do with the Diavik JVA, but we could go with the broader wording

in the Act to say something like, you know, all bidders have to with clarity describe how all monetary defaults in relation to an agreement -- and we could even say, And all nonmonetary defaults -- will be remedied in their bid, something like that so that DDMI gets the clarity it wants at that stage, Evercore, the monitor, and the company do as well, but it doesn't -- it doesn't do -- doesn't unnecessarily preclude bidders from moving ahead, and it doesn't prejudge issues in the way that Mr. Rubin was warning against.

THE COURT: Okay. Right.

MR. SIMARD: I think -- I think those -- I think that was really the only clause. As Mr. Collins said, paragraph 35 and part of paragraph 38 also require payment in full in cash of the cover payments, so for the reason that we don't think it should be in 22(c), we also think it shouldn't be in those paragraphs.

Those were -- those were all my submissions. There was one issue, and Mr. Salmas contacted me during the break. I'm not sure we ended up on -- on paragraph 22(f). And I guess the hypothetical question he asked, which we should have a discussion about --

THE COURT: Now, is that -- which agreement is that in now? Just --

MR. SIMARD: Sorry. That's the DIP term sheet.

THE COURT: That's in the DIP term sheet. It's not in the -- because we're dealing with the SISP right now. So it's not the SISP; it's in the DIP term sheet, right?

MR. SIMARD: It is in -- and it's in the company's application material. So section 11.2, I don't know if someone has the page reference handy.

THE COURT: Section 11.2, (INDISCERNIBLE) get there, right, in the materials --

MR. SIMARD: Looks like it's going to be about 11.2-50 --

THE COURT: Notice of application, you mean?

MR. SIMARD: Yes. I've got the page actually. It's 11.2-53.

THE COURT: 53. Okay.

MR. SIMARD: Yeah. So I should have directed everyone there now. So --

THE COURT: Yeah.

MR. SIMARD: So 22(f) that you've heard a lot about today is in the DIP term sheet. It's the blackline wording that is added there. And so I guess the hypothetical question Mr. Salmas asked me to raise for the Court's consideration and for everyone's consideration is where have we landed on this. I know you raised with him that, look, is there some way to bridge this gap. He didn't have at his fingertips a suggestion. I've since heard from Mr. O'Neill that the -- the -- the stalking horse bidder, you know, that their instructions to Mr. O'Neill has -- have not changed, which is, No, we require this as a term in the DIP term sheet. And -- and so I don't know if there's any possible way to bridge that gap, but I just raise the issue and don't have the answer but didn't want to lose sight of it.

THE COURT: Well, I mean, based on what I heard from others, because I heard from many people on this, the -- is that nobody disputes that the -- that this paragraph allows the trust -- you know, the Wilmington Trust to be paid if there's going to be money that flows down in the cascade there to the second bondholders. So to the extent that that happens, they're saying that this will not stop them from being paid. All this stops them from is being paid out of the DIP to fight Washington. That's what it stops, and that's what -- how the parties have interpreted it. I mean, it seems to me like they can be held to those representations ultimately if they try to change their mind and make other representations to me or another justice if something happens to me, which you never know.

You know, it seems to me there's different ways of interpreting it. Nobody's come up with a good way to sort of amend this. I mean, the trustee just wants it out, and the DIP lender wants it in but with an interpretation that probably in my view would be acceptable. So I just can't on the fly, when we're sitting here with 60 people on the line, try to redraft things, but it just seems to me that at base the -- the trustee has a right to get paid his fees if there's money and to pay the bondholders, and he'll be paid in priority of the bondholders because of their agreement basically, so --

MR. SIMARD: Correct.

THE COURT: -- I don't know -- he -- he is saying because it says in all cases, no fees expenses will be paid, that changes that suggestion.

MR. SIMARD: It doesn't --

THE COURT: So --

MR. SALMAS: To -- to be clear, if I could, Your Honour, if I could just jump in just in terms (INDISCERNIBLE) suggestion, the suggestion was is there a universe to have a discussion about 22(f) -- picking up on Your Ladyship's comments during the submissions, is there an ability to have a discussion about that section in a universe which still doesn't block any relief being sought today that you may grant otherwise and might flow under the indenture -- under the DIP. And on the thesis that there could be a discussion in that regard, we would also assist the Court and everybody else's timing today for perhaps taking too much time earlier by also adjourning our fee application today in order to have all the discussions with the parties.

THE COURT: Okay. So perhaps we'll order it as it is now with the representations that have been made, subject to reviewing it at a later time. That's perhaps a way to manage that.

Submissions by Mr. O'Neill

MR. O'NEILL: My Lady, let me be clear. It's Brendan O'Neill. We will not amend this provision in any way.

THE COURT: Okay.

MR. O'NEILL: And the reason for that, because it makes sense from our perspective.

THE COURT: Okay. Well, Mr. O'Neill, that's fair enough, and I've heard your representations about how you interpret it as well. Okay? So --

MR. O'NEILL: And let me be clear (INDISCERNIBLE).

THE COURT: Right -- you know --

MR. O'NEILL: Absolutely, if -- if -- if there are proceeds realized through the SISP process for the 2L, which is everybody's hope, then the indenture trustee has a charging lane, and they will apply that charging lane under their indenture, and they are first one. And nothing in this language here, which is contained in a DIP term sheet --

THE COURT: That's right.

MR. O'NEILL: -- by the way and not in their indenture of some document about them -- it's in the DIP term sheet of our DIP funds -- says anything to the contrary to that. It's talking about funding from the DIP. It's not talking about funding from the indenture trustees or from the 2L trustees -- from the 2L recoveries or anything to do with the indenture.

THE COURT: Correct.

MR. O'NEILL: There's no --

THE COURT: That's my point.

MR. O'NEILL: -- no intent on our behalf to mess with that. This is about our DIP. That's why it's in the DIP and nowhere else.

THE COURT: All right. Okay. So we'll leave it at that for today.

MR. WASSERMAN: My Lady, if it's -- if it helps the Court -- it's Marc Wasserman speaking -- we absolutely agree with Mr. O'Neill.

THE COURT: All right. Back to you, Mr. Simard.

MR. SIMARD: I did not have any further submissions because I think the rest of the application from what I've heard, stay extension KERP, FA charge, et cetera, is not contested. So you've -- you've read what we have written in our reports, and unless you have any questions from me, that was it for me.

Decision

THE COURT: Okay. All right. Well, as you can imagine, I haven't had the opportunity to write a decision on this thing -- on these applications, but nonetheless, I think it's important that I make an order today, and so I'm going to proceed to do so. And I would suggest that what I'm going do is I'm going to go over and make sure that I've covered everything, but I will wait to hear from Mr. Rubin and Mr. Simard if I've missed anything, which could possibly be because there's a lot on the plate here.

Okay. So firstly, what we're dealing with is -- and I just -- looking at getting the second ARIO which was sent on the June 12th amended application approved, and in there -- it would be nice if I had something that had a list of all of these things. I'm sure we have it somewhere. But anyways, in there, there's a few things that need to be approved, and if

you just hold on with me here, I do have one of the SARIOs. There we are. Okay. No, that's the second. It's late in the day. This is always the way it is. Oh, here it is. Okay. Okay. I have the second amended and restated initial order that I'm looking at, which is now Appendix 'C' to the fifth report of the monitor, and it's a black -- I'm looking at the blackline that's showing Appendix 'M', and then there were changes that were made -- suggested to that order as well, so I'll try to go through them in some kind of order so it will make sense. So --

MR. RUBIN: My Lady -- sorry, My Lady. I wonder if that is the correct -- I just wonder if you're intending to refer to the form of order that was attached to the company's amended notice of application as the starting point.

THE COURT: No. I'm looking at the -- I'm looking at -- for everybody's reference, you can look and find the page. It's page 4-292, and it was the second amended and restated initial order that was in the fifth report of the monitor. So if you go to notes and go over to find page and type in 4-292, you'll see that. And then on my other screen, I have page 4-271 that has the changes because this is not the last draft. As we mentioned or figured out at the very beginning of this hearing, there is no order that has all of the changes in it. So, Mr. Rubins you're going to have to draft a new order -- all right? -- with all of the changes in it which is (INDISCERNIBLE).

MR. RUBIN: I -- I think -- I think the document you're on is the same document that was attached to our motion. I understand. Thank you.

THE COURT: It could -- it could well be, right. Yeah. It could well be.

MR. RUBIN: (INDISCERNIBLE) thank you.

THE COURT: Anyways, I have it. I think it's the same thing.

So I'll just go through this order, and I think that would be the best way to go through this even though it's -- it's not beautiful -- a beautiful judgment here, but it will do the purpose, though, for this late Friday afternoon.

Okay. So -- so the first parts of this order aren't changing, paragraphs 1, 2, 3, 4.

It seems to me that the first parts of this order that change come at paragraph 16 -- oh, no -- paragraph 13 because that's the first part where you've asked for the -- the stay to be extended to September 28th, 2020. So that's the first thing I'll order, is that the stay be extended to September 28th, 2020. And seems that there's been, firstly, no objection to the

stay being extended to then, and I find that the company has been working in good faith. Despite all the mud that's been thrown Dominion's way, none has been thrown to the extent that it would bar me from finding that the stay should be allowed to be extended.

All right. So then the next -- the next part, 14, 15, there's no particular issue.

The next issue is in paragraph 16, and that brings up some of the issues that DDMI was arguing, and that -- that is dealing with segregation of the -- and the holding of the Dominion products from the Diavik Mine. DDMI has argued that they should have the ability to hold the whole 40 percent production that is coming in light of their cover payments that they're making, which are sort of like a DIP, as I had indicated in my prior judgment on this. But it seems to me right now, based on the evidence that I have in front of me, that it's not necessary for DDMI to have the ability to hold all of the 40 percent of the diamonds and that just the amounts that can be determined by the independent evaluator should be held, the -- the amounts that should cover the cover payments. And I understand that this is a moving target, so to the extent that we need to revisit this issue down the road, well, then DDMI, when it's appropriate -- because we'll come to that -- can raise this as an issue. But they have security with the diamonds to cover their cover payments, and they -- and they also have security in the mine, the -- the mine -- the 40 percent that Dominion owns in the mine. So without further and more specific evidence on this, I'm -- I'm loathe to change what would be the status quo, so I would keep section 16, that part of it, the same.

Now I'm just looking at 16(e). There was also argument -- there is the part that deals with the different times that DDMI can make an application dealing with these products, perhaps to enforce the terms of the charge, perhaps to try to sell the diamonds, et cetera, et cetera. So I'm comfortable with the deadlines that have been put in here, and I discussed with the monitor we can add to that (v) where it says that it could be on -- on application with leave of the Court so that there's an opening there which would probably be there anyways, but let's make it explicit in case something happens that is outside these times. But obviously, the intent is that -- and I think Mr. Collins was clear that he wasn't going to come back on Monday with another application. The intent is for the SISP process to get going, and this will limit the numbers of applications hopefully.

With respect to the rest of this, there's not that many changes we get to -- paragraph 41 I think is the next section we have to look at, and I'm just scrolling down. If everybody's scrolling at the time, would be good. It gets into this -- starting at after paragraph 37, the SISP procedure, stalking horse bid, which will now be APA, and break-up fee and expense charges. I believe there was qualification on paragraph 41 that is mentioned in the table that shows up in paragraph -- page 4-272 of the monitor's report. That's been accepted, so I don't need to deal with that. And there was also other changes that were accepted in

paragraph 42 and 45 and 57(a) that the monitor agreed and everybody is okay with, so those can all be made, and quite frankly, Mr. Rubins, I don't know if they -- those changes have been put in here yet, so I just assume that you will take care that that happens.

MR. RUBIN: Very well, My Lady.

THE COURT: And then I guess at this point we -- at paragraph 42, let's just deal with that because it's here, that there be authority for Washington Diamond Investments, Dominion Diamond Holdings, and Dominion Diamond Mines to execute and enter into a definitive stalking horse agreement, which has now been entered into, and we have heard quite a bit about that issue, about whether or not this stalking horse bid should be allowed or not.

And certainly I have to say and commend all the parties for working for hard on this. It's been a very heated application, and I don't know whether it's really the merits or the perhaps the fact that you guys aren't all in the same room. Lots of times, I find in these heated applications when we take breaks and you -- you all go out and have a coffee and talk to each other, you're able to sort these things out. And because of having to do all of this remotely and everybody making an amazing effort in that regard -- and I want to thank everyone for that -- but perhaps things got off the rails a little more than they would have if you could have talked to each other face to face. Maybe not. I don't know.

Anyways, I hear some of the issues, and I was concerned as well, as you might -- I might have voiced at that -- especially on the May 29th application, about some of the concerns about the -- the amount of the stalking horse bid, the concern -- so that it was really such a low amount, and I think I gave at the time the example about the Ferrari. If an owner was trying to sell a Ferrari for way lower the value, that wouldn't send a right message in the market. But a lot of my concerns, I -- I can say, have been alleviated in the sense -- two things. One, I very much appreciated the monitor making an effort to put a table in his reports to outline what the true value of the stalking horse bid was, so that was helpful, so it's not as low as it looks like on the -- at first. Also, I've heard the comments from Mr. Rubin about the differences of the value of this company from 2017, that there have been issues in terms of deficits over the last couple of years, so it's not fair to say that really the company is in the same position that it was in 2017.

And I also on the same hand take into account the fact that a lot of the -- the stalking horse bid or APA at this point is conditional, and there's a lot of conditions there. Nonetheless, in terms of some of those conditions, a lot of work has been done over the last several weeks to try to clarify what amounts are going to be paid or not, and it looks like 70 percent of them will hopefully will paid. Unfortunately, that doesn't include Mr. Nishimura's client who understandably would be upset that his hard-fought settlement in the stalking horse

bid in any event is not going to be satisfied, so I sympathize with you in that regard.

But I think and what's most important -- or one of the factors that I give great weight to -- let me put it that way -- are the submissions being made by the government, made by Ms. Buttery, by the -- the employees and just generally in the community in the -- in the North that there is some security -- and we're talking about the word "stability" -- that there will be at least one bid that will allow the Ekati Mine to carry on, and depending on the negotiations with DDMI, which may be difficult, I recognize, in light of now litigation between them and everything else -- nonetheless, there's some hope that the -- well, knowledge that at least the Ekati Mine will carry on based on the stalking horse bid. And hopefully there will be better bids that will come out.

So it's -- overall, some of my greatest concerns that I had on May 29th have been worked on, and I appreciate the efforts that have been made there. So I am prepared to approve the stalking horse bid -- I guess APA it's now being called. It says bid in this draft I'm looking at -- so that it will give a basis. And -- and I also appreciate what Washington has done and will do in terms of dealing with all of the different trade creditors out there, including $10 million worth of -- of explosives, you know, and all of the other extensive amounts of supplies that were sent up this winter. Okay. So -- so the -- so the paragraph then, paragraph 42 as amended, should -- should go in there.

And the break-up fees and expense reimbursements are also acceptable. I do note that the 2 percent -- there was a -- I think it's in the fourth supplemental report of the monitor, the break-up fee and expense reimbursement was on the low side compared to many other break-up fees and stalking horse bids. I take the point that this is a -- you know, Washington is the principal, and maybe to that extent, they might not have had to do as much work as a third party stalking horse bid, but nonetheless, it's obvious to me that they have actually done a lot of work that maybe they wouldn't -- well, for sure they would not have been doing had they not been making a stalking horse bid, so the breaking -- break-up fee and expense reimbursement seems appropriate and paragraph 43 should be allowed.

Also I -- I do hear the argument that, well, this -- this means that other people that are bidding are going to have to also pay that so it increases the amount to them, but nonetheless, when we're looking at the value of the overall -- the overall value of Dominion, this is like, wow, it's -- we know what it is. It's like 2 percent, a little over. Five -- $5 million over, say, even if it's $500 million, it's a small amount. So I -- I understand that that's a number that has to be taken into account, but it seems reasonable. So 43, 44 should -- should go.

And 45 saying it's granted without prejudice to the rights and remedies of Dominion Diamond and DDMI under the Diavik JVA seems reasonable. So that should stay there.

Then we come to the KERP and the KERP charge. There's been no objection to that. I did review in preparation for the last meeting the KERP charges that were being proposed. I think they are contained in a confidential document, but they were reasonable, it -- it appeared to me, and -- and so I will approve the KERP charges. It's very important that the key employees stay incentivized to see this process through, so it's important, and I'll allow that.

I see that paragraph 52 has been taken out of this agreement because there's a separate order. And I would ask Mr. Simard if you can look to see if the -- the confidential exhibits, we get some kind of order maybe in the one that I granted from Mr. Croese's Exhibit 1 so that it gets into the -- into CaseLines in a -- in a area that only myself and whoever is appropriate can look at these confidential documents would just be helpful.

And the financial advisor agreement and financial advisor's charges for the Evercore group, I heard on May 29th some complaints about the amounts of that because overall if they have to work right way through, it could be as much as $10 million Canadian that's being paid to them. However, once again, if you look at the monitor's report, he's -- he's set out amounts that are paid to financial advisors in similar types of CCAA arrangements and rearrangements as is happening now and that it was -- that they were reasonable amounts. When you set that amount aside, it seems like an awful lot, and I agree. However, in the circumstances, this is a very large case and Evercore is being pushed hard. I think they've worked very, very hard in this case and have given lots of advice to the parties to get this done, so I am prepared to allow their -- their charges to be paid. And seems to me that there will be in here a provision where they will be prioritized. There will be a superpriority to them. Oh, yeah, that comes up in the next part, paragraph 54, et cetera. So that's where it is, paragraph 54, the administration charge, the director's charge, the KERP charge, break fee and expense charge, interim lenders's charge, so that will -- I'll make that order.

Then we come to DDMI's charge because they want paragraph 58. And if I go back to page 4-274, there's a portion that they want a charge -- superpriority charge there, and we just finished discussing this, and I will agree with what the monitor proposes, that that not be put in separately in the SARIO. However, at the end of the day, when -- this will have to be taken into account at the end of the day when we deal with the sales process, so we'll just leave it at that for now.

I think that that finalizes that agreement. All the rest of it, I don't think there's any changes to it.

Then we deal with the change to the SISP, and I'll just ask -- I'll just ask Mr. Simard and Mr. -- if there's anything that else -- if I missed anything in the second ARIO. I think I've

covered everything there. Is there anything that you see that I've missed?

MR. SIMARD: The only -- we had said there was a change suggested by Mr. Collins with respect to paragraph 57(a), which I think in this blackline we're looking at actually is --

THE COURT: Oh, right.

MR. SIMARD: -- 56(a), and it would just end that sentence in 56(a) after Article 9 of the Diavik JVA. We would just cut the rest of the words out.

THE COURT: Right.

MR. SIMARD: I don't -- I don't think.

THE COURT: You've agreed to that, so I --

MR. SIMARD: Yeah.

THE COURT: Anything that you and Dominion agreed to, which I understood you agreed to, I agree to, so that's why I didn't deal with it. We have so much that you haven't agreed to, I've tried to just stick with -- stick with that where you need my ruling so to speak. But okay. Thank you. Good. I'm glad you're listening.

All right. So then we deal -- we'll move to the SISP, so that's starts at page 4-321 for anybody who's following along in CaseLines. I guess the first thing is that the -- the SISP milestones have been moved back approximately 10 days. I mean, I did read some material in opposition, I think, from the bondholders saying, Maybe we don't need a SISP at all. But no, I -- I believe we need a SISP, so I'll order a SISP. And so I agree with the 10 days as suggested. So that's that for that.

Then there was discussions -- quite a bit of discussions about section 22(c) of the SISP, and we've been working on -- we were working on some amending payments -- or amending wording for 22(c). Let me just -- because I have -- what was in here, 22(c) -- let me get down to it, to the draft here that's now on page -- there. 22(c). Okay. It's on page 4-330. Okay. And DDMI wanted an amendment so that all qualified phase 2 bids provide for payment in full in cash of all cover payments and the assumption of all the diamonds, Dominion's obligations on the Diavik JVA and associated agreements with DDMI.

And there was -- we've discussed amendments that Mr. O'Neill had suggested and I had suggested, basically that there will be different ways that possibly DDMI's cover payments

will be paid out, and it might not necessarily be in cash, that the -- that the stalking horse bid isn't necessarily paying them out in cash right now. That whole situation is conditional, so they didn't want to tie the hands of any other potential bidder to have to pay out cash but give some -- some flexibility to another bidder to make sure that this is paid out. And so some wording was suggested to add -- instead of after the following "identifies all executory contracts of the applicants that the phase 2 qualified bidder will assume and clearly describes, for each contract or an aggregate, what cure payments shall be paid" -- okay. I've made a note here. Actually getting dark in here. I've made a note here that -- so all executory contracts, including the Diavik JVA, will have to be paid and what cure payments JVA Diavik will be paid. All bidders -- oh, okay. Sorry. I'm having some trouble here about dictating exactly how we would change this.

The section 11 -- like, the monitor indicated that section 11.3(4) of the CCAA indicates that the Court may not make -- allow -- allow a payment unless all defaults are remedied; therefore, there's discretion that this has to be remedied.

So anyways, I'm struggling here, as you can hear, Mr. Simard, exactly what we would put into 22(c) here of the SISP.

MR. SIMARD: Let me try this. I've just made some notes and had reference to section 11.3(4), so I'm not sure if this is what you had in mind, but we can say, Identifies all executory contracts of the applicants (including the Diavik JVA) that the phase 2 qualified bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and all non-monetary defaults will be remedied.

THE COURT: Okay. Let's leave it like that for now, and -- and hopefully that will cover the issue that Diavik had. Certainly I want to make sure that they get -- they feel confident that their cover payments are going to be made, so let's put that in for now. I'll order that change to the -- to the SISP.

Okay. And then there was other changes to the SISP that the monitor supported that I note on the page 4-275 and that obviously Dominion supported and that was requested from DDMI, so those changes should all go in there to paragraph 38. There's quite a few changes that DDMI proposed that were agreeable with everybody, so obviously it was agreeable with me as well there.

I don't know that there's anything else in the -- the SISP that needs to be dealt with.

And I don't want to lose track of the -- of the issue with 22(f) that was dealt with at length by Mr. Salmas and by Mr. -- not Mr. Wasserman -- counsel for Washington.

UNIDENTIFIED SPEAKER: O'Neill.

THE COURT: Mr. O'Neill. I'm sorry, Mr. O'Neill. Anyways --

UNIDENTIFIED SPEAKER: (INDISCERNIBLE).

THE COURT: Okay. So with respect to that 22(f), I just -- at this point, I've heard your issues, Mr. Salmas, but I'm going to keep the way that it is drafted in 22(f) in there right now. It's in the DIP. The trustee can be paid. It's been made clear on the record to the extent that there will be payments to the second bondholders. It doesn't appear to me, despite your concern, that your hands are tied in terms of making disputes at the sales process level. The only thing is is that you will not be able to seek payment out of any of the DIP payments if you -- if you do so, and that seems fair to me. So that's the way I'm going to allow that amendment for now to the DIP payment. And I don't have it right in front of me, but we were looking at it earlier several times.

Okay. So I think that that should cover everything that's been requested over the last several days. Subject to anything else that, Mr. Rubin -- since this is your application -- that I might not have dealt with, if you need more instructions from me, please -- please let me know right now (INDISCERNIBLE).

MR. RUBIN: No. I don't think so, My Lady. And -- and I may have missed it. I apologize. But I believe you also granted Mr. Collins' sealing order as well.

THE COURT: Yes. I did that earlier actually (INDISCERNIBLE) my comments with CaseLines, et cetera.

Okay. Well, we're probably all exhausted, Zoom exhaustion, but it's WebEx exhaustion. I -- I can tell you that I am tired. Anyways, but I know that all counsel have been -- and clients and monitors have been working very, very hard on this very difficult case, and I recognize that what we're doing in court here today has wide repercussions to many parties in the North, and I hope that today's orders gives them some sense of stability that a SISP process is going to follow along here and hopefully be successful. And I hope that the bondholders will come up with a bid now that a SISP process is in place, and -- and we can -- that when the next time I hear from you, I'll be dealing with hopefully -- maybe the markets of diamonds will even have opened up by then, but who knows.

And I understand, Mr. Salmas, that your application with respect to your fees is adjourned. We heard quite a bit about it today, but -- so you can bring that back if you need to another time.

MR. SALMAS: Thank you, My Lady. That's -- that's (INDISCERNIBLE).

THE COURT: Okay. Good. Well, we'll -- we'll hear from you when we hear from you. We're not going to set anymore applications for today, but you know how to get a hold of me, so when we need to, I'll -- we'll reconvene.

UNIDENTIFIED SPEAKER: Thank you, My Lady.

UNIDENTIFIED SPEAKER: Thank you.

THE COURT: And, Mr. Rubins, once you --

UNIDENTIFIED SPEAKER: My Lady.

THE COURT: -- and the monitor have organized an order, just obviously get it to my assistant, and I'll digitally sign it.

MR. RUBIN: Very well.

THE COURT: And -- and same thing for you, Mr. Collins, with respect to your order, if you can work with the monitor with respect to the sealing order and then get it to me and I'll sign it.

MR. SIMARD: Very well. Thank you, My Lady.

THE COURT: Okay. Good stuff. And thank you, madam clerk, for staying late to get this done. We appreciate your assistance.

UNIDENTIFIED SPEAKER: Thanks. Goodbye.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Elena Kay, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench, held in courtroom 1604, at Calgary, Alberta, on the 19th day of June, 2020, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Sandy Voga, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Sandy Voga, Transcriber
Order Number: AL-JO-1005-5378
Dated: June 24, 2020

This is Exhibit "C" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires August 28, 2023

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, AND DOMINION FINCO INC.
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	**September 25, 2020**
NAME OF JUDGE WHO MADE THIS ORDER:	**Justice K.M. Eidsvik**
LOCATION OF HEARING:	**Calgary, Alberta**

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** hearing heard submissions from counsel to DDMI, Dominion Diamond Mines ULC ("**Dominion**") and counsel to the Agent of the First Lien Lenders;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Second Amended and Restated Initial Order, granted on June 19, 2020 (the "**SARIO**").

2. Pending further order of this Court, the operation of paragraph 16 of the SARIO be and is hereby suspended to the limited extent that DDMI shall not be required to deliver any Dominion Products to Dominion Diamond notwithstanding that the value of the Dominion Products may exceed the total value of the JVA Cover Payments. The remaining provisions of paragraph 16 of the SARIO, including, but not limited to, those conditions relative to DDMI holding Dominion Products in trust at the PSF shall continue in full force, unamended.

3. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

J.C.C.Q.B.A.

This is Exhibit "D" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires Mar 28, 2023

Doran, Katie

From: Paplawski, Emily
Sent: Monday, November 09, 2020 12:23 PM
To: MacLeod, Walker W.; Rubin, Peter
Cc: De Lellis, Michael; Wasserman, Marc; Hildebrand, Claire; Bychawski, Peter; Crilly, Morgan; Collins, Sean F.; Kelsey Meyer; Taylor, Adam; Stewart, Nathan
Subject: RE: [EXT] Dominion - Court Orders
Attachments: DOCS-#20922409-v2-DDMI_-_Order_(Dismissal_of_SARIO_Amendment).DOCX; Compare_DOCS-#20922409-v2-DDMI_-_Order_(Dismissal_of_SARIO_Amendment).PDF; DOCS-#20917370-v2-DDMI_-_Order_(Realization_Process).DOCX; Compare_DOCS-#20917370-v2-DDMI_-_Order_(Realization_Process).PDF

Walker,

Attached are our and Blake's collective comments on the two forms of order.

We have no issue moving forward with two forms of order as long as you confirm that DDMI will not raise any issues at the Court of Appeal with the relevance or admissibility of the "Realization Process" order being introduced into evidence. If you have any concerns providing this confirmation, we request that the forms of order please be combined into one since both arise out of the same application.

Regards,

OSLER

Emily Paplawski
Associate
403.260.7071 | EPaplawski@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: MacLeod, Walker W. <wmacleod@mccarthy.ca>
Sent: Sunday, November 08, 2020 3:12 PM
To: Rubin, Peter <peter.rubin@blakes.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Paplawski, Emily <EPaplawski@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>; Taylor, Adam <ATAYLOR@mccarthy.ca>; Stewart, Nathan <nstewart@mccarthy.ca>
Subject: RE: [EXT] Dominion - Court Orders

Peter, attached are the proposed order's arising from Wednesday's decision. Kelsey, we have very minor comments on the form of Monetization Process you circulated late Thursday evening – we will send those along in reply to your separate email. Thanks.

mccarthy tetrault

Walker MacLeod
Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 403-260-3710
C: 403-463-1207
F: 403-260-3501
E: wmacleod@mccarthy.ca
McCarthy Tétrault LLP

Suite 4000
421 - 7th Avenue SW
Calgary AB T2P 4K9

From: MacLeod, Walker W.
Sent: Thursday, November 05, 2020 9:05 PM
To: Rubin, Peter <peter.rubin@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>
Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Paplawski, Emily <epaplawski@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>
Subject: RE: [EXT] Dominion - Court Orders

Thanks Peter, we are good with the revisions and will arrange to have this version entered. On the orders from yesterday we are preparing and I would tend to agree that the two separate orders makes the most sense – we will send over drafts for your review / comment once we have finalized same. Thanks.

mccarthy tetrault

Walker MacLeod
Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 403-260-3710
C: 403-463-1207
F: 403-260-3501
E: wmacleod@mccarthy.ca

McCarthy Tétrault LLP
Suite 4000
421 - 7th Avenue SW
Calgary AB T2P 4K9

From: Rubin, Peter <peter.rubin@blakes.com>
Sent: Thursday, November 05, 2020 8:56 AM
To: Collins, Sean F. <scollins@MCCARTHY.CA>; MacLeod, Walker W. <wmacleod@mccarthy.ca>
Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Paplawski, Emily <epaplawski@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>
Subject: [EXT] Dominion - Court Orders

Sean/Walker,

Attached is a revised draft of the September 25th order incorporating comments from both Osler and Blakes.

In terms of the orders from yesterday, we understand that McCarthys will be preparing drafts. We presume there will be two orders. First, related to the monetization process. Second, related to paragraph 16 of the SARIO and the excess diamonds.

In terms of the second order above dismissing the application to amend paragraph 16 of the SARIO / continue the September 25th order, we note the order of the court made yesterday related to ensuring that the excess diamonds that will be delivered to Dominion be segregated and secured (and as Osler points out any proceeds of any such sale by Dominion of those excess diamonds also be segregated). I would seem to make sense that this segregation order also be part of this second order and we (or Osler) can add that language to the order you are preparing once a draft is provided by McCarthys.

Thank you.

Peter

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

Blakes

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

This is Exhibit "E" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires Mar 28, 2023

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, AND DOMINION FINCO INC.
DOCUMENT	**ORDER (Dismissal of Continuation of September 25 Order)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Nathan Stewart Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	**November 4, 2020**
NAME OF JUDGE WHO MADE THIS ORDER:	**Justice K.M. Eidsvik**
LOCATION OF HEARING:	**Calgary, Alberta**

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** having read the Affidavit of Kristal Kaye, sworn on April 21, 2020; the Affidavit of Thomas Croese, sworn on April 30, 2020; the Affidavit of Kristal Kaye, sworn May 6, 2020; the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020; the Affidavit of Thomas Croese, sworn on May 28, 2020; the Affidavit of Thomas Croese, sworn on June 16, 2020; the Affidavit of Kristal Kaye, sworn on September 18, 2020; the Affidavit of Frederick Vescio, sworn on October 7, 2020; the Affidavit of Thomas Croese, sworn on October 19, 2020; the Affidavit of Brendan Bell, sworn October 23, 2020; the Affidavit of Kristal Kaye, sworn on October 28, 2020; the Affidavit of Thomas Croese, sworn on October 29, 2020; and the Affidavit of Kristal Kaye,

sworn on October 30, 2020; **AND UPON** having read the Bench Brief of DDMI, dated October 30, 2020; the Response Bench Brief of Dominion Diamond Mines ULC ("**Dominion Diamond**"), dated October 28, 2020; the Response Bench Brief of Credit Suisse AG, Cayman Islands Branch, as agent for the first secured lenders (the "**Agent**"), dated October 28, 2020; and the Reply Bench Brief of DDMI, dated October 29, 2020; **AND UPON** having read the Fifth Report of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Dominion Diamond and certain of its affiliates (the "**Monitor**"), dated June 18, 2020; the Sixth Report of the Monitor, dated September 22, 2020; the Seventh Report of the Monitor, dated October 27, 2020; and the Eighth Report of the Monitor, dated October 29, 2020; **AND UPON** noting the order issued on September 25, 2020 (the "**September 25 Order**") in the within proceedings that temporarily suspended the operation of a portion of paragraph 16 of the Second Amended and Restated Initial Order issued in the within proceedings and dated June 19, 2020 (the "**SARIO**"); **AND UPON** reviewing the Transcript of Proceedings from the hearing before this Honourable Court on June 19, 2020; **AND UPON** having read the Affidavit of Service of Katie Doran (the "**Service Affidavit**"); **AND UPON** hearing counsel for DDMI and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the SARIO.

2. DDMI's application for the continuation of the temporary suspension ordered by this Court on September 25, 2020 of the operation of a portion of paragraph 16 of the SARIO be and is hereby dismissed.

3. In the event that all or any portion of Dominion Diamond's share of production from the Diavik Mine (the "**Dominion Production**") is delivered by DDMI to Dominion Diamond in accordance with paragraph 16 of the SARIO, Dominion Diamond shall secure and segregate the Dominion Production from all of its other Property and, subject to paragraph 4 below, shall hold the Dominion Production pending further order of this Honourable Court.

4. Dominion Diamond may monetize the Dominion Production with the consent of the Monitor and the Agent or by further order of this Honourable Court and, in the event all or a portion of the Dominion Production is monetized in accordance with the foregoing, Dominion Diamond shall account to the Monitor and the Agent for all proceeds realized from the Dominion Production,

shall secure and segregate such proceeds from all of its other Property, and shall hold such proceeds pending further order of this Honourable Court.

5. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

J.C.C.Q.B.A.

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, AND DOMINION FINCO INC.
DOCUMENT	**ORDER (Approval of Monetization Process)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	**November 4, 2020**
NAME OF JUDGE WHO MADE THIS ORDER:	**Justice K.M. Eidsvik**
LOCATION OF HEARING:	**Calgary, Alberta**

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** having read the Affidavit of Kristal Kaye, sworn on April 21, 2020, the Affidavit of Thomas Croese, sworn on April 30, 2020, the Affidavit of Kristal Kaye, sworn May 6, 2020, the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, the Affidavit of Thomas Croese, sworn on May 28, 2020, the Affidavit of Thomas Croese, sworn on June 16, 2020, the Affidavit of Kristal Kaye, sworn on September 18, 2020, the Affidavit of Frederick Vescio, sworn on October 7, 2020, the Affidavit of Thomas Croese, sworn on October 19, 2020, the Affidavit of Brendan Bell, sworn October 23, 2020, the Affidavit of Kristal Kaye, sworn on October 28, 2020, the Affidavit of Thomas Croese, sworn on October 29, 2020 and the Affidavit of Kristal Kaye,

sworn on October 30, 2020; **AND UPON** having read the Bench Brief of DDMI, dated October 30, 2020, the Response Bench Brief of Dominion Diamond Mines ULC ("**Dominion Diamond**"), dated October 28, 2020, the Response Bench Brief of Credit Suisse AG, Cayman Islands Branch, as agent for the first secured lenders, dated October 28, 2020 and the Reply Bench Brief of DDMI, dated October 29, 2020; **AND UPON** having read the Fifth Report of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Dominion Diamond and certain of its affiliates (the "**Monitor**"), dated June 18, 2020, the Sixth Report of the Monitor, dated September 22, 2020, the Seventh Report of the Monitor, dated October 27, 2020 and the Eighth Report of the Monitor, dated October 29, 2020; **AND UPON** reviewing the Transcript of Proceedings from the hearing before this Honourable Court on June 19, 2020; **AND UPON** having read the Affidavit of Service of Katie Doran (the "**Service Affidavit)**; **AND UPON** hearing counsel for DDMI and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the supporting materials is abridged, the Application is properly returnable today, service of the Application and the supporting materials on the service list created and maintained as part of the within proceedings and as set out as in the Service Affidavit (the "**Service List**"), in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the Service List, are entitled to service of the Application or the supporting materials.

2. The monetization process in the form attached as Schedule "**A**" hereto (the "**Monetization Process**") be and is hereby approved. DDMI is authorized and empowered to implement the Monetization Process and take all steps and actions necessary to complete the Monetization Process in accordance with the terms thereof.

3. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

J.C.C.Q.B.A.

SCHEDULE "A" TO THE ORDER (MONETIZATION PROCESS)

This is Exhibit "F" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

Doran, Katie

From: MacLeod, Walker W.
Sent: Tuesday, November 10, 2020 7:36 AM
To: Paplawski, Emily; Rubin, Peter
Cc: De Lellis, Michael; Wasserman, Marc; Hildebrand, Claire; Bychawski, Peter; Crilly, Morgan; Collins, Sean F.; Kelsey Meyer; Taylor, Adam; Stewart, Nathan; Smyth, Sean
Subject: RE: [EXT] Dominion - Court Orders
Attachments: DOCS-#20922409-v2-DDMI_-_Order_(Dismissal_of_SARIO_Amendment) - MT Comments.DOCX; DOCS-#20922409-v2-DDMI_-_Order_(Dismissal_of_SARIO_Amendment) - DOCS-#20922409-v2-DDMI_-_Order_(Dismissal_of_SARIO_Amendment) - MT Comments.docx

Emily, thanks for your comments In reply, we can advise as follows:

1. We will not object to the admissibility or relevance of the Monetization Process Order at the Court of Appeal;

2. The revisions to the Monetization Process Order are acceptable. We understand that Dominion has some comments on our revision to the actual Monetization Process that was circulated by the Monitor and we are looking to speak with them on that today;

3. Our comments on the SARIO amendment order are attached. The court did not order that production that is released to Dominion may be monetized and so the sole change is the deletion of para. 4.

Thanks.

mccarthy tetrault

Walker MacLeod
Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 403-260-3710
C: 403-463-1207
F: 403-260-3501
E: wmacleod@mccarthy.ca

McCarthy Tétrault LLP
Suite 4000
421 - 7th Avenue SW
Calgary AB T2P 4K9

From: Paplawski, Emily <EPaplawski@osler.com>
Sent: Monday, November 09, 2020 12:23 PM
To: MacLeod, Walker W. <wmacleod@mccarthy.ca>; Rubin, Peter <peter.rubin@blakes.com>

Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>; Taylor, Adam <ATAYLOR@mccarthy.ca>; Stewart, Nathan <nstewart@mccarthy.ca>
Subject: RE: [EXT] Dominion - Court Orders

Walker,

Attached are our and Blake's collective comments on the two forms of order.

We have no issue moving forward with two forms of order as long as you confirm that DDMI will not raise any issues at the Court of Appeal with the relevance or admissibility of the "Realization Process" order being introduced into evidence. If you have any concerns providing this confirmation, we request that the forms of order please be combined into one since both arise out of the same application.

Regards,

OSLER

Emily Paplawski
Associate
403.260.7071 | EPaplawski@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: MacLeod, Walker W. <wmacleod@mccarthy.ca>
Sent: Sunday, November 08, 2020 3:12 PM
To: Rubin, Peter <peter.rubin@blakes.com>
Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Paplawski, Emily <EPaplawski@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>; Taylor, Adam <ATAYLOR@mccarthy.ca>; Stewart, Nathan <nstewart@mccarthy.ca>
Subject: RE: [EXT] Dominion - Court Orders

Peter, attached are the proposed order's arising from Wednesday's decision. Kelsey, we have very minor comments on the form of Monetization Process you circulated late Thursday evening – we will send those along in reply to your separate email. Thanks.

mccarthy tetrault

Walker MacLeod
Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 403-260-3710
C: 403-463-1207
F: 403-260-3501
E: wmacleod@mccarthy.ca

McCarthy Tétrault LLP
Suite 4000
421 - 7th Avenue SW
Calgary AB T2P 4K9

From: MacLeod, Walker W.
Sent: Thursday, November 05, 2020 9:05 PM
To: Rubin, Peter <peter.rubin@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>
Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Paplawski, Emily <epaplawski@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>
Subject: RE: [EXT] Dominion - Court Orders

Thanks Peter, we are good with the revisions and will arrange to have this version entered. On the orders from yesterday we are preparing and I would tend to agree that the two separate orders makes the most sense – we will send over drafts for your review / comment once we have finalized same. Thanks.

mccarthy tetrault

Walker MacLeod
Partner | Associé
Bankruptcy and Restructuring | Faillite et restructuration
T: 403-260-3710
C: 403-463-1207
F: 403-260-3501
E: wmacleod@mccarthy.ca

McCarthy Tétrault LLP
Suite 4000
421 - 7th Avenue SW
Calgary AB T2P 4K9

From: Rubin, Peter <peter.rubin@blakes.com>
Sent: Thursday, November 05, 2020 8:56 AM
To: Collins, Sean F. <scollins@MCCARTHY.CA>; MacLeod, Walker W. <wmacleod@mccarthy.ca>
Cc: De Lellis, Michael <MDeLellis@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Paplawski, Emily <epaplawski@osler.com>; Hildebrand, Claire <claire.hildebrand@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>; Crilly, Morgan <morgan.crilly@blakes.com>; Collins, Sean F. <scollins@MCCARTHY.CA>; Kelsey Meyer <MEYERK@bennettjones.com>
Subject: [EXT] Dominion - Court Orders

Sean/Walker,

Attached is a revised draft of the September 25th order incorporating comments from both Osler and Blakes.

In terms of the orders from yesterday, we understand that McCarthys will be preparing drafts. We presume there will be two orders. First, related to the monetization process. Second, related to paragraph 16 of the SARIO and the excess diamonds.

In terms of the second order above dismissing the application to amend paragraph 16 of the SARIO / continue the September 25th order, we note the order of the court made yesterday related to ensuring that the excess diamonds that will be delivered to Dominion be segregated and secured (and as Osler points out any proceeds of any such sale by Dominion of those excess diamonds also be segregated). I would seem to make sense that this segregation order also be part of this second order and we (or Osler) can add that language to the order you are preparing once a draft is provided by McCarthys.

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

This is Exhibit "G" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, AND DOMINION FINCO INC.
DOCUMENT	**ORDER (Dismissal of Continuation of September 25 Order)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Nathan Stewart Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	**November 4, 2020**
NAME OF JUDGE WHO MADE THIS ORDER:	**Justice K.M. Eidsvik**
LOCATION OF HEARING:	**Calgary, Alberta**

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** having read the Affidavit of Kristal Kaye, sworn on April 21, 2020; the Affidavit of Thomas Croese, sworn on April 30, 2020; the Affidavit of Kristal Kaye, sworn May 6, 2020; the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020; the Affidavit of Thomas Croese, sworn on May 28, 2020; the Affidavit of Thomas Croese, sworn on June 16, 2020; the Affidavit of Kristal Kaye, sworn on September 18, 2020; the Affidavit of Frederick Vescio, sworn on October 7, 2020; the Affidavit of Thomas Croese, sworn on October 19, 2020; the Affidavit of Brendan Bell, sworn October 23, 2020; the Affidavit of Kristal Kaye, sworn on October 28, 2020; the Affidavit of Thomas Croese, sworn on October 29, 2020; and the Affidavit of Kristal Kaye,

sworn on October 30, 2020; **AND UPON** having read the Bench Brief of DDMI, dated October 30, 2020; the Response Bench Brief of Dominion Diamond Mines ULC ("**Dominion Diamond**"), dated October 28, 2020; the Response Bench Brief of Credit Suisse AG, Cayman Islands Branch, as agent for the first secured lenders (the "**Agent**"), dated October 28, 2020; and the Reply Bench Brief of DDMI, dated October 29, 2020; **AND UPON** having read the Fifth Report of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Dominion Diamond and certain of its affiliates (the "**Monitor**"), dated June 18, 2020; the Sixth Report of the Monitor, dated September 22, 2020; the Seventh Report of the Monitor, dated October 27, 2020; and the Eighth Report of the Monitor, dated October 29, 2020; **AND UPON** noting the order issued on September 25, 2020 (the "**September 25 Order**") in the within proceedings that temporarily suspended the operation of a portion of paragraph 16 of the Second Amended and Restated Initial Order issued in the within proceedings and dated June 19, 2020 (the "**SARIO**"); **AND UPON** reviewing the Transcript of Proceedings from the hearing before this Honourable Court on June 19, 2020; **AND UPON** having read the Affidavit of Service of Katie Doran (the "**Service Affidavit**"); **AND UPON** hearing counsel for DDMI and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the SARIO.

2. DDMI's application for the continuation of the temporary suspension ordered by this Court on September 25, 2020 of the operation of a portion of paragraph 16 of the SARIO be and is hereby dismissed.

3. In the event that all or any portion of Dominion Diamond's share of production from the Diavik Mine (the "**Dominion Production**") is delivered by DDMI to Dominion Diamond in accordance with paragraph 16 of the SARIO, Dominion Diamond shall secure and segregate the Dominion Production from all of its other Property and shall hold the Dominion Production pending further order of this Honourable Court.

4. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

J.C.C.Q.B.A.

This is Exhibit "H" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 29, 2023

Action No.: 2001-05630
E-File No.: CVQ20DOMINION
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

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

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

P R O C E E D I N G S

Calgary, Alberta
October 30, 2020

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@csadm.just.gov.ab.ca

TABLE OF CONTENTS

Description		Page
October 30, 2020	Morning Session	1
Discussion		1
Submissions by Mr. Rubin (Stay Application)		4
Submissions by Mr. Wasserman (Stay Application)		13
Submissions by Ms. Buttery (Stay Application)		19
Submissions by Mr. Wasserman (Stay Application)		23
Submissions by Mr. Kashub (Stay Application)		24
Submissions by Mr. Astritis (Stay Application)		26
Submissions by Mr. Warner (Stay Application)		28
Submissions by Mr. Wasserman (Stay Application)		30
Submissions by Ms. Meyer (Stay Application)		33
Decision		36
Submissions by Mr. Collins (Application)		38
Certificate of Record		59
Certificate of Transcript		60
October 30, 2020	Afternoon Session	61
Submissions by Mr. Collins (Application)		61
Submissions by Mr. Rubin (Application)		78
Submissions by Ms. Paplawski (Application)		99
Submissions by Mr. Kashuba (Application)		111
Submissions by Mr. Bellisimo (Application)		113
Submissions by Ms. Buttery (Application)		116
Submissions by Mr. Astritis (Application)		117
Submissions by Mr. Wasserman (Application)		119
Submissions by Ms. Meyer (Application)		121
Submissions by Mr. Rubin (Application)		124
Submissions by Mr. Wasserman (Application)		127
Submissions by Mr. Collins (Application)		128
Submissions by Ms. Meyer (Application)		133
Submissions by Mr. Rubin (Sealing Order)		134
Submissions by Mr. Collins (Sealing Order)		135
Discussion		136
Certificate of Record		140
Certificate of Transcript		141

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

---

October 30, 2020	Morning Session
The Honourable Madam Justice Eidsvik (remote appearance)	Court of Queen's Bench of Alberta
P. Rubin (remote appearance)	For Dominion Diamond Mines ULC
S. Collins (remote appearance)	For Diavik Diamond Mines (2012) Inc.
J. Bellisimo (remote appearance)	For Sandstorm Gold
M. Buttery (remote appearance)	For the Government of North West Territories
K. Meyer (remote appearance)	For FTI Consulting
A. Astritis (remote appearance)	For Public Service Alliance of Canada, Union of Northern Workers
K. Kashuba (remote appearance)	For the Ad Hoc Group of Bondholders
T. Warner (remote appearance)	For Dyno Nobel Canada & Dene Dyno Nobel
J. Salmas (remote appearance)	For Wilmington Trust
M. Wasserman (remote appearance)	For Credit Suisse AG, Cayman Islands Branch - First Lien Credit Agreement
E. Paplawski (remote appearance)	For Credit Suisse AG, Cayman Islands Branch - First Lien Credit Agreement
B. O' Neill (remote appearance)	For Washington Group of Companies
E. Kay	Court Clerk

Discussion

THE COURT: All right. So good morning, everyone. I will pass over the baton to Mr. Rubin. I understand we have a couple of applications that are to be heard today in this matter -- one, the stay application, and then applications from DDMI with respect to diamonds.

So I have received a lot of material, up to 11 PM last night. I have read all of the material so far, so thank you, everyone, for working so hard to get this matter heard today.

Perhaps, Mr. Rubin, you could begin with brief introductions, just of who willing presenting today, so it is clear -- I understand you have been speaking with the clerk about, various parties have been checking in -- but if you could just give me a brief update, that would be great. And then we will get going.

Maybe before I forget, I wanted to tell everyone that next week, we have a commercial town hall meeting on Wednesday, November 4th, at 12:30. I don't know if you have received that information, but just as a public service announcement. We will start with that. It would be greatly appreciated if as many of you could attend that as possible.

All right. So having said that, why don't I pass over to you, Mr. Rubin, if you are here -- there you are -- and you can bring us up to speed where we are at. And let me know how you and the others would like to proceed in terms of the applications today.

MR. RUBIN: Thank you, My Lady.

First, in terms of introductions, perhaps I'll just list who I think the main players will be for today.

Of course, Ms. Meyer, Kelsey Meyer, is counsel for Bennet Jones, in place of Mr. Simard today, acting for the Monitor, so Ms. Meyer is on the line as well.

In terms of counsel for the first group of lenders, we have Marc Wasserman and his colleague, Emily Paplawski. I believe they will both be making submissions, I think Mr. Wasserman may be making submissions on the stay application. Ms. Paplawski may be making submissions on the DDMI applications.

THE COURT: Mr. Wasserman and, sorry, what was the --

MR. RUBIN: Emily Paplawski, who is Mr. Wasserman's client, again, from the Osler firm.

We also have Mr. O'Neill, Brendan O'Neill. I don't know if Mr. O'Neill will be making submissions, but he is counsel for the Washington Group, but he is on the line, and you have heard previously from Mr. O'Neill.

THE COURT: Right.

MR. RUBIN: We have Mr. Kyle Kashuba. Mr. Kashuba is counsel to the Ad Hoc Group of Second Lien Note Holders, and I expect that he will be making submissions today as well.

THE COURT: Okay.

MR. RUBIN: In terms of the, we have Mr. Salmas . John Salmas is counsel to the second lien note holder trustee, so Mr. Salmas acts for the trustee

of the second lien note holders. And Mr. Kashuba, of course, acts for the ad hoc group.

THE COURT: Right.

MR. RUBIN: We have Mr. Collins, of course, and Mr. Collins acts for DDMI. And of course, he has an application before the Court.

THE COURT: Right.

MR. RUBIN: And then the other three parties I was going to mention would be Ms. Buttery, Mary Buttery is counsel to the Government of the Northwest Territories. You previously heard from her on prior applications, and I expect that she will have submissions as well.

THE COURT: Okay.

MR. RUBIN: Mr. Warner is on the phone, Terry Warner is counsel to Dene Dyno Nobel. You heard from Mr. Warner on prior occasions as well, and he may be making submissions.

And then the last person I was going to mention was Mr. Astritis, so Andrew Astritis. He is counsel to the Public Service Alliance of Canada, which is the union at the Ekati mine . And that is Mr. Astritis.

THE COURT: Right.

MR. RUBIN: There may be others, but I think those are perhaps the main players. If I have left someone out, I apologize, but I'm sure that when they speak, they will introduce themselves.

THE COURT: Right, fair enough.

MR. RUBIN: There are two applications, as you mentioned. There is an application for a stay extension. The company seeks an extension until December 15th. I have not heard of any opposition to the stay application -- in fact, I have heard from certain other creditors that are of the view that the stay should actually be longer. I think Mr. Wasserman may have things to say in respect of the stay application, but I don't believe that he is opposing the stay extension to December 15th -- but I'll, of course, let him make his submissions on that matter.

The, then, of course, there is Mr. Collins' application on behalf of DDMI. We, the parties

have been able to make some progress on the monetization proposal, through significant efforts on the part of Mr. Collins and my friends on behalf of the first lien lenders, and others. And so I think that in respect of that part of the application, I think there are only a couple of issues that we would be asking the Court to decide upon. And Mr. Collins can provide an update on this. There may be a revised draft that is going to be circulated shortly that is of the monetization process.

THE COURT: Right.

MR. RUBIN: And then the other part of that application has to do with DDMI's application seeking to hold back all of the diamonds, I will call it. That is an application that is opposed by both Dominion, the first lien lenders, and possibly others.

And so in Your Ladyship's hands as to how we proceed, or as to which application we hear first. I think we should be able to deal with both of them, because of progress that's been made on the Diamond monetization process, but of course, we'll all have to be careful on how much time we spend, because there are a number of parties that are on the call, and I think a number of them will want to make submissions.

Those are my introductory comments, without prejudging which application should go first, that's all I have to say at this time, My Lady.

THE COURT: All right. Well, I suggest we get the ball rolling by dealing with the stay application. We need to deal with that today. Emphasis the stay is only enforced, I think, until November 7th or something like that anyways, so we might as well try to deal with that application first.

And then we will move to the other applications. So I will get Mr. Collins to work us through the other applications and hear submissions from everyone.

MR. RUBIN: Thank you, My Lady.

Submissions by Mr. Rubin (Stay Application)

MR. RUBIN: So again, for the record, Peter Rubin -- R-U-B-I-N -- on behalf of Dominion.

The applicants are seeking a five-week stay extension, being from November 7th to December 15th. And as I mentioned in my introductory comments, the application is supported by many stakeholders, and certainly of which you have at least advised the

company that in their view, five weeks is not long enough, given the complexities involved.

The first lien lenders, as I mentioned, are I believe not opposing the five-week extension, but they do have views, and have filed a brief. And in part, their concerns relate to, you know, the significant costs that the CCAA brings, in particular in respect of this file, but I will obviously let them make their submissions.

The Monitor supports the application being brought by the company. And I will also add that the Monitor, in its report, has also attached a letter from various northern businesses and associations, also supporting Dominion. And that is an attachment to the Monitor's report.

THE COURT: Right.

MR. RUBIN: The application is supported by the affidavit of Mr. Bell, and perhaps I could provide the CaseLines page number, which is 14.2-9.

THE COURT: 14.2-9, affidavit of Mr. Bell. Okay, I have got it, okay, thank you.

MR. RUBIN: And I'll start at -- and we have filed a brief of argument, but I thought I just might take Your Ladyship through Mr. Bell's affidavit, because I think it is important, because there have been some material developments over the last couple of weeks.

So if I start at paragraph 5 of Mr. Bell's affidavit -- and again, Mr. Bell is the independent director who has provided prior affidavits in these proceedings -- and Mr. Bell, at paragraph 5, discusses the asset purchase agreement and references the fact that that was a multi-month effort. And again, was undertaking with the support of key stakeholders, including of course, the first lien lenders, but other stakeholders, all to find a going concern exclusion, with the goal of trying to save the Ekati mine and its attendant jobs and contracts and impact benefit agreements and tax revenue and environmental reclamation -- things that, of course, you have heard about before.

In his affidavit at paragraph 6, Mr. Bell just notes some prior evidence in this proceeding that came from Ms. Kaye, who is the CFO, back in her April 21st affidavit. And I think the intent there is just simply to (INDISCERNIBLE) everyone of the importance of Dominion to the local economy.

And in paragraph 6 -- and if I can reference Ms. Kaye's paragraphs, paragraph 8 -- there's

reference to the amount of money that Dominion has spent, which approximates almost $1 billion in 2018 to 2019, on northern businesses and communities. Obviously, you know, a significant entity, a significant impact on the northern communities, and approximately $319 million of that has gone to indigenous businesses for goods and services.

At paragraph 80, which is on page 3 of Mr. Bell's affidavit, there is reference to the SORIA economic agreements that were entered into, and those are agreements that provide support in long-term sustainable community development projects. And there is reference to those agreements and the fact that approximately $5 million is spent annually on those programs, which are quite important to the northern communities.

At paragraph 83, there are also impact benefit agreements with four indigenous groups. So Dominion has entered into these IBAs with four groups that extend over the life of the mine that deal with training, employment-related issues, business development, et cetera.

At paragraph 87, there's again, reference to the fact that, you know, when operating, Dominion was the services of 634 people in Canada, and of course, there's a list of sort of, 400 of those are unionized employees -- this is at paragraph 87 -- and then approximately 230 non-unionized employees. And of course, 380 contractors as well. So there are obviously direct employees, but obviously many many hundreds of contractors.

Turning the page over in Mr. Bell's affidavit, at paragraph 7, Mr. Bell provides some information on the recent developments. And at paragraph 7, what he deposes to is, you know, five days after swearing his October affidavit -- and again, the October affidavit was the affidavit sworn in furtherance of an application before Your Ladyship on October 14th, to approve the Washington transaction of the stalking-horse bid -- and five days after Mr. Bell swore that affidavit, and just on the Friday before the Thanksgiving long weekend, a press release was issued by Dominion advising everyone that there had been an impasse reached between the Washington group and the surety providers.

One of the conditions of the APA was that there be an agreement between the surety providers and the stalking-horse bidder. Those parties unfortunately arrived at an impasse. They couldn't get to an agreement, and of course, Dominion issued the press release and then could not proceed with the application on October 14th.

At paragraph 10 of Mr. Bell's affidavit, he discusses that given that APA was no longer an option, at paragraph 10 he talks about how the company has been working diligently with legal counsel and (INDISCERNIBLE), the financial advisor, and in consultation with the Monitor to look at all of its options.

And so since, in the two weeks since the issuance of the press release, he talks about what had been done. The involvement in the discussions with many stakeholders, including the first lien lenders, the ad hoc group, and the government, and the surety bond issuers, and others.

So while it was two weeks since that unfortunate state of affairs, the company and others have been working very hard to look at all available options.

At paragraph 11, I won't go into that in any detail, other than Mr. Bell comments that in his view, this is still a business that is deserving of restructuring, and deserving of being saved, if at all possible, for the benefit of all the parties that I mentioned earlier.

At paragraph 12, Mr. Bell comments that Dominion does require an extension in the CCAA, so that they can continue to consider a plan around those very recent events, in order to assess their restructuring options.

The affidavit, in the sort of next section, paragraphs 13 through to 21, talk about the impasse that was reached between the surety providers and the Washington group. I don't think it's necessary to go into it. We did want to provide this information for the benefit of the Court and all of the parties. Mr. Bell had obviously been monitoring and participated, to the degree, in those discussions, but again, the impasse is the impasse, and there's really nothing that Dominion could do about that.

On page 6, starting at paragraph 22, Mr. Bell goes into discussing in some detail the work that was being undertaken, starting on the Thanksgiving long weekend -- because again, the press release was issued on Friday, October 9th, Thanksgiving weekend, or the long weekend, was October 10th to 12th -- and he talks about the contacts. And at paragraph 23, Mr. Bell provides evidence concerning their regular contact that's been had with the first lien lenders and their advisors. He talks about the numerous discussions amongst the financial and legal advisors. Talks about how there have been direct discussions with management and the first lien lenders, and the sharing of information between the company's financial advisor and the first lien lenders, and various financial analyses that have been done, the modelling that has been done -- this is all obviously confidential -- but of course, that work is being done to assist the first lien lenders and others in assessing the options.

At paragraph 24, Mr. Bell then discusses that similar conversations have been had with the ad hoc group and their advisors -- and again, sharing confidential information and analyses and modelling with the ad hoc group. All of this, of course, is with the goal of trying to find a going concern solution.

At paragraph 25, Mr. Bell discusses how the ad hoc group had offered, and has offered, to provide financing to the Dominion entities. And while that financing isn't needed at this time, the ad hoc group has advised that such financing is available if indeed, it is needed.

Dominion, at paragraph 26, had discussions with the GNWT, at both the counsel and at the principal level, and obviously there are ongoing discussions with the Government of the Northwest Territories.

Paragraphs 28, we talk about how there have been direct engagement with the surety bond issuers, and while there was an impasse reached with the Washington group, the surety bond issuers -- and again, this is at paragraph 28 of Mr. Bell's affidavit -- they have advised that they are prepared to participate in such discussions and work towards finding a going concern solution to the benefit of all stakeholders.

At paragraph 29, Mr. Bell talks about how due to again the possibility that Dominion may be unable to find a going concern exclusion -- again, we say that a possibility -- but it is prudent for Dominion to work on alternate scenarios, and Dominion has done that. So we list out various numbers of documents, an analyses have been undertaken, and we list those there. Again, just evidence that Dominion is looking at all available options.

If I can turn the page over to page 8, paragraph 32 --

THE COURT: So can I just ask you a question about paragraph 29? You are looking at continued care and maintenance. Obviously, that is going to happen for a while still. Then you say -- sorry -- Mr. Bell said: (as read)

> Delayed. Restart plan contemplated. Restart scenarios of 2021.

So that is the earliest that there could be a restart, and is that presuming that something happens? Like, there is a sale?

MR. RUBIN: Yes.

THE COURT: I presume?

MR. RUBIN: Yes, exactly, My Lady. We tried to model various scenarios, and sort of one scenario is, you know, a scale-back of repair and maintenance, with no restart. One scenario is a restart in early '21. Another scenario might be April of 2021.

And so what the company has done, with the assistance of its advisors and the Monitor,

and in discussions with the ad hoc group and the first lien lenders is try to model those various scenarios to see what those outcomes might be, and what they might result in from a financial perspective.

And, of course, to the extent that there is a going concern transaction, any purchaser will want to look at and want to have modelled those various scenarios. So that is the type of work that the company has undertaken.

THE COURT: Okay.

MR. RUBIN: At paragraph 32, Mr. Bell discusses the proposed stay extension, the five-week stay extension, to December 15th. And then he says in his view, the time is required to provide Dominion with some breathing room and to continue the various efforts that have been described in this affidavit, and to continue those discussions with stakeholders.

Paragraph 33, in terms of Dominion's ability to fund its operations, Dominion has recently completed the sale of two tranches of diamonds, and we reported on this in a prior affidavit. We are simply identifying the diamond sales that have already taken place.

And at paragraph 34, Mr. Bell confirms that, in fact, the (INDISCERNIBLE) balance, or the interim money has been paid off, so there is no amount owing on the facility.

THE COURT: Right.

MR. RUBIN: And then turning the page over to paragraph 37, Mr. Bell discusses that, or says in his view that Dominion has acted, has continued to act in good faith and with due diligence -- of course, that is the test under the CCAA -- and that in his view, it is necessary and appropriate that the relief sought be granted.

So that is the evidence. What I might just do very quick is ask you to turn to our Bench brief. And if I could again provide the page number.

THE COURT: Okay.

MR. RUBIN: The page number is 14.2-24.

THE COURT: Right. I am there, thank you.

MR. RUBIN: And there are only a couple of aspects of the brief I wanted to take you to, and I wanted to start with paragraph 11, which is on page 3

of the brief. And at paragraph 11, we cite to the *Canada North Group* decision, and in that case the Court stated that: (as read)

> The role of the Court on subsequent applications --

So this is a return application to extend the stay:

> -- is not to re-evaluate the initial decision; but rather, to consider whether the applicants establish that the current circumstances support an extension as being appropriate, and whether the applicant has acted and is acting in good faith to keep (INDISCERNIBLE).
>
> The purpose of the CCAA is to permit the debtor to continue to carry on business, and where possible, avoid the social and economic costs of liquidating its assets.
>
> Appropriateness of an extension under the CCAA is assessed by inquiring into whether the order sought advances the policy objectives underlying the CCAA. The stay can be lifted if the reorganization is doomed to failure, but where the order sought realistically advances the objectives, the CCAA has the discretion to grant that stay extension.

Paragraph 13, we reference the Supreme Court of Canada decision of *Century Services*, and we provide a quote from that decision. And again, the Court comments on the appropriateness under the CCAA's assessment by inquiring as to whether the order sought advances the policy objectives. The question is whether the order will usefully further and achieve the remedial purpose of the CCAA, again, avoiding the social and economic losses resulting from liquidation of an insolvent company.

We cite, in paragraph 14, the *Tucker* (phonetic) decision, and there the Court set out a number of principles that apply in considering the length of a proposed stay extension. And again: (as read)

> (a), the extension period should be long enough to permit reasonable progress to be made in the preparation (INDISCERNIBLE) of a planned arrangement.

And, of course, we are seeking a five-week extension here, and I think you may hear in certain creditors saying given the complexities at play here, five weeks may not be long enough. But that is, of course, one of the factors that *Tucker* references.

In paragraph 14(c): (as read)

> Each application for an extension involves the expenditure of significant time on the part of the debtor company's management and advisors, which might be spent more productively in developing the plan.

And of course, I think, you know, obviously if you look at the number of the people who are participating in this call, and assess the significant cost of these stay extension applications.

THE COURT: Right.

MR. RUBIN: And then finally, (d): (as read)

> With respect to industrial and commercial concerns, as are distinguished from bricks and mortar companies, it's important to maintain the good will attributable to employee experience and customer loyalty.

And again, one of the issues, of course, here is very short stay extensions can have a negative impact on employees, contractors, et cetera, understanding of whether they are (INDISCERNIBLE) is that the big guillotine is just several weeks away.

At paragraph 16, I think, is the one of the last paragraphs I am going to reference. And at paragraph 16, we talk about in considering the length of the stay extension, it is also relevant that, of course, we have the oversight of the Monitor. And if anything untoward or negative should happen, of course, the Monitor is there to report to the Court.

And then if I could skip to paragraph 32.

THE COURT: Okay.

MR. RUBIN: And at paragraph 32, we discuss the fact that refinancing or selling a business as unique and complex as Dominion does take time. And while we appreciate and understand that an extension was granted in April, of course everybody -- well, most everybody -- was moving towards a transaction involving the stalking-horse bidder -- and of course, that process and that (INDISCERNIBLE) was supported by key stakeholders.

There's obviously been an unfortunate change in circumstances that only happened two and a half weeks ago. The company is continuing to work diligently, and people are working very hard.

And finally, the last paragraph I was going to reference is paragraph 34. We simply state at paragraph 34 that any shorter extension would require Dominion and its advisors to, again, divert their attention and really where it needs to be for exampled right now, and that is (INDISCERNIBLE) and trying to find a going concern solution.

And of course, as everybody knows, when these applications are brought, materials are served a week in advance of the application, which means you need to start those materials two weeks in advance of the motion. So this is a short extension in terms of five weeks, but anything shorter, in our submission, just would simply be unattainable. And as I mentioned, there are parties that believe it should be longer.

And those are my submissions, My Lady. And that's --

THE COURT: Okay. And just to follow-up on that last comment, that some parties think it should be longer, I mean, we head into the holiday season, so longer would be probably, like, a month. You would have to be into January sometime, right?

MR. RUBIN: Yes. I think that's right. I think it's either December 15th, or it has to be into January, it has to be January 15th. There is just no middle ground there.

THE COURT: Right. So what is your position on that?

MR. RUBIN: Well, My Lady, I mean, our application is to December 15th. I could not say that we are opposed to granting a lengthier extension, but I do know that the first lien lenders are adamantly opposed to a longer extension.

THE COURT: Yes, I understand that. I am just wondering what your position is. Okay.

MR. RUBIN: But if --

THE COURT: I have read the briefs, as I have said.

MR. RUBIN: It is a difficult one in the sense that, you know, we have asked for December 15th, and so I think I can say this: If the company was inclined -- or, sorry -- if the Court was inclined to grant a longer extension, the company wouldn't be opposed to it. And we're in this spot where we are trying to balance the interests of all the stakeholders.

THE COURT: Right, exactly.

MR. RUBIN: And I know the Monitor is doing that, and I know the Court does it as well. And so we're trying to find that balance. At the end of the day, I think every party here would like to find a going concern solution. I think everyone says that. I guess the question is what is the best way to achieve that outcome?

At the same time, there is a significant cost being incurred as the CCAA proceedings extend. I think those are fair comments from the first lien lenders and others.

THE COURT: Right. There is huge costs, and there is also sort of information issues. Of course, when these things come back, then there is a lot of information that is sent around, and there was some materials suggesting that they want to make sure that there was more information, I think that is sort of one of the main key points of the first lien lenders.

MR. RUBIN: Yes. And I'll let them speak to that. And I don't think they're suggesting -- you will hear from (INDISCERNIBLE) -- I don't think they are suggesting that there hasn't been good communication between the company and the first lien lenders. I think what you'll hear from them is they want that communication to continue. And as Mr. Bell expresses, there have been direct discussions between the first lien lenders and management, they're directly on calls directly with management. And so there has been a good flow of information involving -- and again, not just the first lien lenders, but also the ad hoc group as well. The company recognizes that, you know, we have to try to find a going concern solution, if we can, and we need to share information, and that has been done. And not just information, but as I mentioned earlier, analysis, modelling, that type of stuff that the company, with the assistance of Evercore (phonetic), is doing and has been doing. And I expect that will absolutely continue.

THE COURT: All right. Okay, thank you very much, Mr. Rubin.

MR. RUBIN: Thank you, My Lady.

THE COURT: All right. So maybe I will turn to Mr. Wasserman.

Submissions by Mr. Wasserman (Stay Application)

MR. WASSERMAN: Okay, thanks. I am just going to move this to

another screen, so that I am not looking sideways at you.

THE COURT: Oh, it is difficult. I have the same problem.

MR. WASSERMAN: All right, well, it is nice to see you again, My Lady.

THE COURT: Thank you.

MR. WASSERMAN: So Marc Wasserman, W-A-S-S-E-R-M-A-N, for Credit Suisse, as agent for the first lien lenders.

So you will have, My Lady, (INDISCERNIBLE) the number of briefs, but the one that I'll be referring to is the Bench brief of the agent. It's called the Dominion Stay Extension Application.

THE COURT: Which one is that? Which number is it in CaseLines?

MR. WASSERMAN: It is number 7, under 14.5.

THE COURT: Number 7, okay, thank you.

MR. WASSERMAN: You're welcome.

THE COURT: So page 14.5-584?

MR. WASSERMAN: Yes, that's where it starts, yes. And I'm not going to refer -- I mean, I may refer specifically to one paragraph, but my comments are just going to be more general.

THE COURT: Right. It is just helpful for everybody to know that I noticed in these applications, there is materials that is sort of in different areas, and as long as everybody knows where this stuff is, that is helpful.

MR. WASSERMAN: Okay.

THE COURT: I can go back to it if I need to, right? So okay.

MR. WASSERMAN: Thank you.

So, you know, my friend Mr. Rubin, I think fairly articulated some of the concerns that we have. You know, this is an unfortunate situation. Certainly, you know, we were supportive of the Washington transaction. I think if that transaction didn't, you know, fall on the difficulties it had, you know, this stay extension motion would be a different motion before you, perhaps with my, you know, friend's, the second lien lenders, you know, complaining about the process, as opposed to, you know, supporting the company going forward.

The most important thing here is you have to remember where this company has been, what it's done, and where we are today. And what I mean by that is this company has been up for sale for years. Prior to the CCAA, they tried to sell; during the CCAA, they ran a co-op process that lasted three months, three and a half months, longer than we wanted. The Washington group, you know, that stood to lose and stands to lose a significant amount of equity invested, couldn't even get to a deal to get themselves over the hump to get this threw.

The second lien lenders participated in that process, weren't able to put a deal together that the company supported, that took the stalking-horse bid off the table because there was a better bid on the table.

And that's all in the context of a situation where the company is not operating. So every dollar that is spent on operating costs and on this process is not being replaced, right? Like, ordinarily you replace that dollar with new assets, so you spend a dollar on operating costs, you generate inventory or services, you sell that inventory or services, and more dollars come in. So you may be operating at a loss, but the loss is not as significant as it is here.

This is a situation where we are operating at a loss. Every dollar that goes out is not replaced. And irrespective of whether there's a dip that comes in -- which we would obviously oppose, or not, right -- it has a direct impact not only on our recoveries, but there may be other stakeholders that have a view that they would take priority over us. Like the union, for example, or the Government of the Northwest Territories, for example.

THE COURT: Right.

MR. WASSERMAN: So all of this, so this is literally a situation where you've heard the expression, I'm sure, you know, The furniture is burning, or the ice is melting, this is literally that situation. That's what we have.

Against the backdrop of, you know, a company that's tried to sell itself over and over again, outside of CCAA and in CCAA, and hasn't succeeded to date.

Now, having said that, we would like to see a solution that preserves the company as a going concern. For many reasons: One, because liquidation is going to be complicated; and two, it's obviously an important business, an important operation in northern Canada. You know, it's integral to the economy, there's many, you know, different stakeholders that rely on the business. So we would like to see that as well.

But not at all costs, and not at, you know, our expense completely. And that's what this situation is right now.

And so if I could just put some context to that and point you to page 14.5-588, which is page 4 of paragraph 11 of our Bench brief -- and, you know, this has been reported by the Monitor, it's in the cash throws -- but this is, I think, sets it out pretty starkly.

So since the case commenced on April 22nd, the company has incurred operating costs of $63 million Canadian. $63 million that has not been replaced, and will never be replaced.

And of that -- you know, and I'm not, this is just a fact, I am not passing judgment or disparaging anybody when I say this, I think the professionals have been working very hard to try and achieve an outcome here -- but of that, $18 million is comprised of professional fees. That's a big number. And, you know, there's a lot of people that are interested in this case.

And then they expect to incur an additional $19 million in start-up disbursements, which relate to purchasing diesel and winter road construction costs. And that's necessary in order to be able to get -- if the company starts operating again -- diamonds out of the, you know, the area, because it's otherwise marshland. You know, and the only way in and out is through plane or it's winter road construction, and there's a joint venture with a couple of other operations up in the north.

THE COURT: Right.

MR. WASSERMAN: So then just to further make the point, in paragraph 12, it goes through in the second sentence, it talks about what the current burn-rate is. And that is about $4 million Canadian a week. 17 million per month, and 4 million per week. And, you know, that, I mean, that's why we want a shorter extension as opposed to a longer extension. We certainly do not want an extension to January 15th -- I mean, we'll get into that in a little bit more detail.

And then, lastly, after paragraph 11, between the 17th of October and the 15th of January -- that's what forecast goes out to -- it's an additional $52 million in operating

expenses, and another $8 million in professional fees. And on top of that, that 19.5 in start-costs.

And that's all to try to achieve a going concern outcome. The logical buyer, the logical buyer, the only buyer at the table, is the second lien lenders. You know, my friends have said repeatedly for the second lien lenders, the ad hoc group, that they are going to make a bid, and they're going to own this asset, and we're working with them, we're talking with them. We're hopeful that a deal can happen.

But if it doesn't happen, you know, by the end of November or early December, you have to ask yourself a question: What are we going to do? What's next? We can't just keep incurring costs on the hope that someone is going to eventually come around and buy the asset. After the private equity sponsor who invested hundreds of millions of dollars walked, and the company couldn't sell itself, and in an environment where, you know, predictability around future revenue is hard, given the pandemic.

So we think that this Court and all of the other stakeholders need to understand what's going on. We believe there needs to be reporting at intervals on November 15th and November 30th. And we believe that's the only way that you, as the supervising Judge of this case, is going to know what the prospect is of a going concern, and whether that is something you should continue to explore, or whether it's time to move in to a plan B, which doesn't necessarily mean it's a liquidation and a wind down, because the Government of Northwest Territories has bought mines before in the Northwest Territories to avoid liquidation. There may be other options, but we can't continue to just burn the furniture, let the ice cube melt, indefinitely. It's not appropriate, it's not the law.

THE COURT: Okay. So the reporting periods that you are suggesting again, November 15th and December 1st, I saw that -- it was in your brief somewhere.

MR. WASSERMAN: It is, let me find it.

THE COURT: You just mentioned the days again.

MR. WASSERMAN: Yes, we said, like, mid-November and the end of November. Let me just find it, just one minute.

THE COURT: Right. I remember reading it as well.

MR. WASSERMAN: Maybe Ms. Paplawski can remind me where that is -- oh, here it is. It's in paragraph 6.

THE COURT: Oh, right. You say mid-November and end of November.

MR. WASSERMAN: Yes.

THE COURT: Right, okay. I saw that. Okay.

MR. WASSERMAN: And we also believe, and you know, the Monitor -- and I will say that, you know, since the Washington group announced that it was, that it had failed to meet the condition, the surety condition, I mean, the company has worked with us, they have provided different scenarios. We were trying to see if there was a scenario where you could spend less cash, keep the mine, you know, on a care and maintenance, at a lower burn rate for a year, and maybe pick up it a year from now, just to see what other options may exist. And the company has been incredibly helpful in providing that information. And I know Mr. Rubin said that, so I don't want to suggest that that is not the case.

The Monitor has also been heavily involved in those discussions, and has been helpful. I think it's critical that the Monitor be involved in discussions, you know, with the sureties and the two second liens on what a potential going concern outcome could look like, so that we don't find ourselves in a similar situation -- I mean, that would be a very bad thing -- if we found ourselves in a similar situation, where the reporting suggested, you know, that that condition, you know, was potentially going to get met, and then there was a change in circumstances -- and look, at the end of the day, I don't know what exactly happened there, I'm not trying to cast blame on anybody, to the extent that the issue comes out at some point in the future, it'll come out in the future -- the only point is you have a third-party, you know, impartial Court officer, right, that really should be part of these conversations, and then they could report to you and to the rest of the stakeholders directly on the real prospects of what's going on in, you know, on negotiations with various stakeholders.

So we think it's important that FTI be in those discussions. And we also think it's important that those discussions be reported in the intervals we're suggesting.

THE COURT: Okay. And just so I'm clear about what you're requesting, you are asking for a report that could be uploaded to the CaseLines, for instance --

MR. WASSERMAN: Yes.

THE COURT: -- all the reports are there, not to have another hearing. Because these hearings, obviously, are very expensive.

MR. WASSERMAN: No, no, and that's one of the reasons why we are not asking for a shorter stay extension, right? Because the other option would be, we would say, don't go to December 15th. Go to November 15th or November 30th. But I appreciate Mr. Rubin's comments on the time it takes to get these extension materials drafted, there's going to be a lot of people to come, they're expensive, they're time-consuming. And really, what people should be focussed on is whether we can actually achieve that going concern over this time period, right? It's a lot of time. There's four weeks, so to speak, because he wouldn't have to start preparing for the next extension until December 15th.

And if we can't, we'll get interval, we'll get reporting intervals, you know, in November the 15th and November 30th. And if we can't, you know, we're asking the Court -- or we will be asking the Court potentially -- on the 15th to consider other alternatives.

But we definitely think that, you know, that reporting would be important for the stakeholders -- and the Court, frankly.

THE COURT: All right. Thank you very much, Mr. Wasserman.

MR. WASSERMAN: Thank you.

THE COURT: All right. Is there before I ask the Monitor's view, is there anyone else that wants to speak to this stay extension?

MS. BUTTERY: My Lady, it's Mary Buttery, counsel for the Government of the Northwest Territories.

THE COURT: Good morning.

MS. BUTTERY: Good morning, how are you?

Submissions by Ms. Buttery (Stay Application)

MS. BUTTERY: We, as you know, the Government is in a unique position, because it speaks for the people of the north. And the Government is very supportive of the extension. But as has been forecast by Mr. Rubin, we are of the view that the Court should grant an extension past December 15th, to try to maximize the

possibility that a transaction can be concluded.

THE COURT: (INDISCERNIBLE) did you say September?

MS. BUTTERY: No, January. So we would like, we passed December 15th, to January 15th.

THE COURT: Right.

MS. BUTTERY: And there is a cash-flow that takes matters out to January 15th, it does involve the sale of diamonds, but there have been sales previously.

Our position is this: Both mines, as we have stated numerous times, are of extreme significance to the people of the north. They're a source of revenue. You heard Mr. Rubin about the number of people that are employed, and it's not just the people who are employed, it's the ancillary businesses that support these mines that are important. The Government wants to make sure that every effort is made to preserve the jobs.

THE COURT: Right.

MS. BUTTERY: With all due respect to my friend, Mr. Wasserman, the first lien lenders are complaining about the cost of the process. Part of that -- in fact, I think it's been north of $3 million -- has been paid to their client as their legal fees and that of their advisor.

The smaller creditors, and that of the Government, fees aren't being paid.

Meanwhile, the first lean holders, were also supportive of the exclusive process that was granted to the Washington group for many months. Despite that, they now refuse to consider anything longer than a five-week extension. It's very -- as Your Ladyship has already noted -- it's very time-consuming and expensive to come to Court.

There's been no explanation by either Mr. Rubin or Mr. Wasserman as to why coming to Court versus a further reporting mechanism -- such as Mr. Wasserman has already described -- wouldn't be preferable. And I think Mr. Rubin, in fairness to him, I think he was, you know, they obviously are in a difficult position, because he also needs the continued support of the first lien holders. And I believe that the December -- I don't know -- but my suspicion is that the December date was likely a negotiated date as between them. Mr. Wasserman wanted less, and the company probably wanted more, and that's where they landed, and that's probably why, frankly, My Lady, there is the

cash-flow actually goes out to January 15th and not December 15th.

Given the significant liabilities that would be incurred when, if this mine were to be closed and not -- these mines were to be closed -- and the Diavik mine not sold as going concern, we would think that everyone, including this Court, would want to see a transaction as a going concern as its first priority.

We say it makes sense to get over that holiday period and into January, because it really doesn't provide the parties that much more time, but it does get them through the holiday period, and it does provide a little bit more time for this to happen.

THE COURT: Okay. But Ms. Buttery, you have not really answered the question that he has brought up.

MS. BUTTERY: Oh.

THE COURT: That Mr. Wasserman has brought up, that there is only really a few parties. There has not, so far, been any, you know, independent third parties or other companies that have come and bid, that we know of, like, maybe they have snooped around a bit, I don't know.

So really, it boils down to a few options: Whether or not -- and as Mr. Wasserman set out, there is not a whole lot of options here -- so whether you extend it or not, really, push is going to have to come to shove here eventually, sadly. Despite the facts that nobody is disputing of the importance of the Ekati, and -- well, their interest in the Diavik mine as well, frankly.

So I don't hear anybody arguing against that, and I don't hear anybody arguing against trying to push, you know, push along to try to get a solution here. But it is obvious, I think, based on the evidence. So what he is sort of saying is, Well, there is only a few solutions here. We are past assist deadlines, right? So at the end of the day, push is going to have to come to shove.

So I sort of hear what you are saying, Ms. Buttery, and I don't think anybody is arguing against the importance or the need for that, but what is your views about trying to get something sorted out? And in fact, he threw out that Northwest Territories has even been known to buy mines -- I don't know anything about that -- but you know, ultimately that is the balancing act. Like, either it is going to go ahead, or it is not in the end, regardless of this very seriousness --

MS. BUTTERY: Right.

THE COURT: -- you know, the serious consequences of having to liquidate this company.

MS. BUTTERY: M-hm, yes, My Lady.

Our point mostly relates to let's give -- and frankly, it probably is the second lien lenders, and we haven't heard from them yet about a possibility of a transaction, and I'm sure we'll from Mr. Kashuba about that -- but we think, having regard to all of the stakeholders, and the fact that, you know, they thought -- they, the one lean holders, the Washington group, the company, sought the protection of the Court when it suited them, and now when we're asking for four more weeks to -- it is, if something does happen, but --

THE COURT: Well, six more weeks, actually, six more weeks, just so we're clear.

MS. BUTTERY: Six more weeks.

THE COURT: Right.

MS. BUTTERY: But, My Lady, the last -- I can't even imagine how expensive it was to have everybody prepare for Court today. And if there is, if there is to be a reporting, a two-week reporting period, I would say in our submission, it would be important to provide -- it's four more weeks over the holiday period -- to provide four more weeks, try to let the two Ls -- or frankly, anyone else -- come to the table with a transaction.

THE COURT: Okay.

MS. BUTTERY: I am concerned that if we're not (INDISCERNIBLE) six weeks, because by the time people start to prepare, in addition to the reporting that they're doing, it really isn't very much time, My Lady, so move forward. And --

THE COURT: I hear you. But on the other hand, you saw the numbers of what the burn rate is of this whole deal too. So anyways, there is lots of --

MS. BUTTERY: Yes, and it has been huge --

THE COURT: Right, from the beginning.

MS. BUTTERY: -- My Lady. It has been huge while they wanted the protection of the Court, and now they're complaining, frankly, about how expensive it is. They did have the protection of Court for numerous months, and a lot of that time there was a exclusivity in place with respect to Washington group. So they didn't complain about the cost since April, and now all of a sudden, because it suits their purposes -- with the greatest of respect -- now all of a sudden they're complaining about the cost. And our submission is having regard to all of the stakeholders, it just, you know, in our submission, any effort, a few more weeks, to try to allow people to come to a consummation, a deal, versus preparing for another large Court application in December, would be something the Northwest Territories would urge upon, Your Ladyship.

THE COURT: Thank you, Ms. Buttery.

MS. BUTTERY: Thank you.

THE COURT: I hear you loud and clear.

MS. BUTTERY: Thank you.

MR. WASSERMAN: My Lady, can I clarify one point that Ms. Buttery made.

THE COURT: Okay.

MR. WASSERMAN: Because I think it was, it is incorrect.

Submissions by Mr. Wasserman (Stay Application)

MR. WASSERMAN: We did not seek the protection of the Court. The company sought the protection of the Court. We would be very happy to realize on the diamond inventory and how that diamond inventory got a secured LLCs our obligations.

We supported the process with the Washington group because, and the company, because we thought that was the best way to achieve going concern outcome, and we didn't think this Court was going to accept anything but that when the company came and sought the protection in April of this year.

But rest-assured, if there was a way for us to attempt to monetize the diamond inventory as a secured creditor, we would have gladly done that.

THE COURT: All right, thank you.

Is there anyone else who wants to speak to this application?

MR. KASHUBA: Yes, My Lady. For the record, Kashuba, initial K., with Torys LLP. We're counsel, as you know, to the ad hoc group of bond holders.

Submissions by Mr. Kashub (Stay Application)

MR. KASHUBA: As Your Ladyship is aware, the Global Bond Holder Group has secured over all the property of Dominion. They are in a second position, behind the first lien, and they are major creditor in these proceedings, to the tune of well over $800 million Canadian.

To begin with, to be clear, My Lady, my clients -- as do Ms. Buttery's clients -- believe that a stay of proceeding extension beyond the December 15th date, would be appropriate in these circumstances. Now, why is this, you ask? Well, it's not just that things have changed. It's not just the Washington stalking-horse bid is out of the picture. Everything has changed. As the evidence before you suggests, diamond markets have opened up considerably. The company is fresh off a $90 million-plus diamond deal.
The company does not even seem to need financing at the present point in time.

As my friend, Mr. Rubin, mentioned, the ad hoc group brought forward a debt proposal, and we were told it's not needed at present.

Now, this is a multi-stakeholder situation. There is diverging issues and positions, but my client's position is clear: We think that the lights should stay on, but we do appreciate what my friend, Mr. Wasserman, is stating. The bond holders do not think it's in the first liens or anyone's interest to even talk about liquidation at this point. This would be the worst-case scenario, and a horrendous result.

The outcome is chalk full of issues as to who gets what priority to what proceeds as a starting point. It's a path we don't want to venture down, and a discussion around it at this point serves no good purpose. I appreciate the first Ls position, but we are still in a position where the ad hoc group has been dealing with a potential purchase, a potential transaction, and supporting them. And there's time that's going to be needed to put that together.

The --

THE COURT: Well, you have been -- okay, can I just interrupt

you on that point?

MR. KASHUBA: Yes, My Lady.

THE COURT: Your client has been working on that for a while now. It got sort of sidelined because of the stalking-horse bid, right?

MR. KASHUBA: That's correct.

THE COURT: And that's all the material that you filed earlier, about how that was all coming along.

So can you, or are you in the position to tell the Court as to where you are at? Did you pick it up where you left off? So, I mean, all to say that during the SISP process, your client had done a lot of work. So I don't know why you need another few months, or multiple more weeks? Like, what is it that, you said things have changed. Fair enough, this is a moving target in terms of, you know, pandemic, how it affects the economy, et cetera, so I understand that. I just would appreciate a little more clarity about that, as to where your client is and why it needs more time , since it has had, you know, we had a SISP process there. So...

MR. KASHUBA: Yes, My Lady. And I am hearing the first Ls' position, that we've had lots of time and lots of opportunity to make a deal happen.

As we submitted in the June 19th application, we believe the process was skewed for Washington, it kept other bids away, and it did not allow the ad hoc group to come forward with the bid that they wanted to. We believe that process was skewed, and it's not that we have been given a fair opportunity until now.

In four weeks, six weeks, my client does believe that they can put forward a position that will sponsor our process. We are ready and willing and able to sponsor a dip, and the company's materials say this.

We've been here all along. There are discussions -- and we are -- and I heard the submissions of my friends, Mr. Rubin and Mr. Wasserman and Ms. Buttery, the ad hoc group more than ever, is reaching out to the other key stakeholders here -- including those parties, as well as other parties that are key to these proceedings, including the Monitor.

We can't go into it at today's application exactly where those negotiations stand and what the offer on the table is, but I think it's beyond question that there are, there is going to be a path forward. My client is a part of that path forward, and we are going to be working

very hard in the next few weeks to get together to a deal that is going to preserve jobs, that keeps the business as a going concern, and it is ultimately in the interest of all stakeholders.

What I'm concerned about is putting on our liquidation hats. Is that the plan right now? And we're hearing a lot of, well, it sounds like the anxiety button is getting hit. If we go down a liquidation path, and if that's where the discussion is going, we're going to have a multitude of issues, claims, and cross-claims, and set-offs, and other end-of-day problems that come with a bankruptcy or receivership scenario. Environmental claims get crystallized, and creditors are going to battle out where they fall in the waterfall.

Where does this get us? Nowhere. It kills relationships, and we still have a sales process to deal with.

Now, my client can't get into the details of where those discussions are, but I believe many of the parties on this morning's application are aware that these discussions continue. And as Ms. Buttery mentioned, in four weeks, in six weeks, will we have a deal? We're going to have progress. We're going to have a lot of discussions, and we're not going anywhere. We have a significant stake in these proceedings.

We would submit that January 15th is not too far off for this Court to extend the stay of proceedings. It seems like it was discussed at some point amongst the parties.

The ad hoc group supports the extension until December 15th. We would be happy and we would seek a further extension beyond that date, if it is open to the Court.

THE COURT: Okay.

MR. KASHUBA: Those conclude my submissions, My Lady, subject to any questions.

THE COURT: Okay, thank you.

Anybody else like to speak to this?

MR. ASTRITIS: Yes, it's Andrew Astritis, on behalf of the Public Service Alliance of Canada and the Union of Northern Workers, it's component.

THE COURT: Okay.

Submissions by Mr. Astritis (Stay Application)

MR. ASTRITIS: PSAC and UNW have made clear from the beginning of this process, My Lady, the importance of this for the workers that are involved, and that's over 400 unionized employees. And I know that conceptually, that's not in dispute, and what we're trying to do is find a way forward at this point that allows those interests to be protected, while being fair to all the stakeholders here.

We know that a tremendous amount of effort and time went into the SISP process, the stalking-horse bid, and one of the things that, as an entity that was not involved in that process, that we see is how quickly things can unravel, and how complicated they are.

And one of the concerns that we have is that if we're, there's a broad agreement, it appears, at all tables, to move forward with this. But we need to give it the time that it takes to be able to see that through. And I heard Mr. Wasserman's concerns earlier. It seems that his client is satisfied in the short-term that reporting by the Monitor is an appropriate answer to deal with concerns. And what we might propose just in response to some of the questions that you had raised earlier was an on going monitoring process that allows the extension of the stay to last until January the 15th, but provides the information to the one Ls and others who may be impacted. To be able to attempt to bring an application, or to come before this Court before that if the circumstances change, and there is sufficient evidence that would allow them to, in their view, justify moving forward. And then we can deal with it at that point.

But I think one of the things that we're very cognizant of is the amount of time that it takes to prepare the materials for the parties who are attempting to negotiate a deal here. And we want to make sure -- it's critically important to the workers involved -- that there is as much time available as possible for this to play out.

And as you mentioned, if the evidence, if it becomes clear that we cannot head in that direction, well maybe then bringing your conclusion to this at an earlier date is appropriate.

The other point that I would note, My Lady, is to echo the points of my friend, Mr. Kashuba, just made. It is very premature at this point to be discussing liquidation. And one of the reasons why I say that is that the union has been very interested in understanding and having the data necessary to properly assess this situation. And we've been told -- and I understand this -- that as long as the efforts are being focussed on a going concern, that it's important that that information be as limited as possible. And that's understandable.

But if we're going to take that position that we're not going to be providing information

more broadly, then it's important, I think, that we focus first and foremost all the attentions on a going concern sale. And then at that point after that, if that fails, we can transition into dealing with liquidation.

The final point I would make is that the reports that the Monitor puts forward, in our submission -- and I assume this to be the case, but just to be clear -- those reports and that information should be available to all stakeholder, so that we can all be jointly assessing and analyzing this, what is obviously a very fluid situation, as it accepts over time.

Those are my submissions.

THE COURT: Okay, thank you very much.

Anybody else before I go to the Monitor?

MR. WARNER: Terry Warner, we are on for Dene Dyno, and relate parties.

Submissions by Mr. Warner (Stay Application)

MR. WARNER: Just for everybody's, I guess, information, we take the position that as a miner's lien claimant -- significant miner's lien claimant -- we have a priority position over the first note holders and second note holders, over half the production of the mine, and the infrastructure. Just so that everybody is clear on our position.

But just to comment on the stay extension, we are one of the parties that believes that a longer stay extension is warranted under the circumstances. We recognize the burn rate. There is also a significant cost to Dyno from an extension. We have an explosives plant on the site that we've been keeping the lights on -- so to speak -- over this period of time, and there is a cost to Dyno for doing that. And there is going to be increased costs to Dyno keeping the plant going over the next few months.

But be that as it may, we think that it's in everybody's interest that we do everything that we can to ensure that this mine gets sold as a going concern.

I can't even imagine what would happen if this mine was liquidated, if this company was liquidated. And I know Mr. Wasserman suggests, Well, maybe the Government of the Northwest Territories will buy it. But the reality is liquidation is the only viable scenario to a going concern purchase. And if there is talks that are ongoing -- and there appear to be -- I think we should give that every opportunity to come to a conclusion. I, you know,

I recognize Mr. Wasserman's position, but I do think that December 15th is too short.

And there's an incredible cost to everybody -- including the company -- of these stay applications. And I think that a stay to January 15th is warranted. It's not that much extra. It's only four weeks extra. And I think if that amount of time is necessary to get a going concern offer on the table, then we should do it. Because the alternative is scary, quite frankly. Because I think everyone loses in a liquidation.

Those are my submissions.

THE COURT: Okay. Thank you, Mr. Warner.

All right. Anybody else?

Okay. Mr. Wasserman, can I just ask you a couple of questions? If I could get you back.

MR. WASSERMAN: Yes, of course. Let me just, I will move my screen so I am not looking sideways.

THE COURT: There you go.

It seems to me, in terms of you have heard some opposition to your request here.

MR. WASSERMAN: Not my request, the company's request.

THE COURT: Correct, okay, but who you are representing. One of the things that strikes me --

UNIDENTIFIED SPEAKER: Keep on lying, right? And --

THE COURT: Pardon me?

UNIDENTIFIED SPEAKER: -- look, you're going to get the master --

THE COURT: Sorry, whoever is speaking --

UNIDENTIFIED SPEAKER: -- of the lie coming in --

THE COURT: Hello? Hello? Hello? Somebody is speaking there. Is that Mr. (INDISCERNIBLE)? Okay. Anyways, it looks like somebody, maybe they came in on this, I don't know.

Anyways, I was just wondering about the SISP process. You have asked for extra Monitor, and I am going to ask the Monitor about their position --

UNIDENTIFIED SPEAKER: I just unmuted myself --

THE COURT: Hello? Whoever is speaking, I don't know who that is --

MR. WASSERMAN: I think that may be Mr. McLelland (phonetic).

UNIDENTIFIED SPEAKER: Sorry.

THE COURT: Okay. All right.

One of the things I noticed, I mean, as I was speaking to one of the parties here, is the SISP process has now run out, right?

MR. WASSERMAN: Yes.

THE COURT: Like, the (INDISCERNIBLE) are all done? Would your clients feel more comfort if there was some sort of, more deadlines? Because, I mean, clearly the bottom line of what they are seeking -- from what I am hearing from you, and that is why I wanted to ask you -- is that they want to make sure that there is, you know, pedal to the metal in terms of getting these, any potential deal finalized.

Usually a SISP process sets out those deadlines, which forces people to deal with things, but that is all expired now. I don't know if a renewed, or with some deadlines about the SISP process would be helpful to your client?

I mean, in terms of the stay application itself, like really, all that does is really keeps, you know, the review of whatever the matter should continue or move to liquidation. But it sounds like -- and even from what you are saying -- by December 15th, that would not probably -- unless thinkings really go off the rails -- be a realistic decision.

So anyways, I just throw that out there.

Submissions by Mr. Wasserman (Stay Application)

MR. WASSERMAN: Yes, so, I mean, I think it's a helpful comment,

and I appreciate you coming back and asking a question of me. I mean, I think the reason why I think December 15th is appropriate, and it's partially to keep people's feet to fire. But this is not an ordinary situation, because of the fact the company is in care and maintenance, and there is such a high cost associated with it. So this one-month extension ends up costing $20 million. And if the going concern outcome, you know, is not achievable, that's $20 million that we don't get back.

So the December 15th day, and requiring people to come to Court and seek another extension and giving you the opportunity to make the decision on the 15th of December as to what you want to do, right? It may be we're all in agreement. It may be that between now and December 15th, you know, we get to a consensual resolution with the two Ls -- I mean, it's a very simple -- it's complicated, but simple at the same time.

THE COURT: Right.

MR. WASSERMAN: The two Ls need to get to a deal with us, the two Ls need to provide financing so that the mine can operate going forward, and the two Ls need to get to the deal with the surety providers.

THE COURT: M-hm.

MR. WASSERMAN: That's the transaction, right? So there's three main parties that need to be sort of negotiated and figured out. You said yourself that they've been looking at this for a better part of a few months. I'm not disputing whether they were given access or they weren't given access. Ms. Buttery's comments around this process being exclusive to Washington is just not correct. It was a stalking-horse process. Anybody could have bid on that process. There wasn't any exclusivity. This Court is not going to grant exclusivity in a CCAA, in any event.

I think it's important that people come, and you make the decision. You may disagree with whatever it is we want to do, and you may agree with everybody else, but incurring $20 million more -- whether it's three parties, maybe there's four parties, that have been to be negotiated -- we'll know where we are, we'll have a better sense of where we are. If you let it go to January 15th, I can guarantee you that wherever we would have been on November 15th, or November 30th -- if you put the stay on December 15th -- we won't be there. Because people will have more time. And there's been a lot of time spent, right?

THE COURT: Okay.

MR. WASSERMAN: And just to say it, we're not --

THE COURT: So a different SISP process is not interesting to you?

MR. WASSERMAN: No, it's not. I think the only party that came part in the SISP was the 2 Ls. They went out, Evercore went out, they marketed the asset. Nobody came forward. Just the two Ls. So let's see if we can get a deal with the two Ls. I don't think going back to market on a failed stalking-horse, with an equity sponsor, where the two Ls -- Mr. Kashuba said they will have a deal -- is going to generate a better response, given the quantum of the amount that is owed to two Ls.

So I think we should go with a short extension, see where we get to, people before the winter break, Christmas break, can report to you. This is your process. You should be the one that makes these decisions, nobody else. And I think you should hear what everybody has to say.

And the hope is -- and I sincerely hope this -- there will be a consensual path forward, and we're going to say, you know what? We need another four weeks -- or six weeks -- because we want to close the transaction. I sincerely hope that is the case.

THE COURT: All right. Thank you, Mr. Wasserman.

Okay. Subject to anybody else wanting to speak, I will ask the Monitor, Ms. Meyer, right, who is with us today?

MS. MEYER: Yes.

THE COURT: All right.

MS. MEYER: Thank you, My Lady.

THE COURT: Counsel for the --

MS. MEYER: Can you hear me?

THE COURT: Yes, I can hear you.

MS. MEYER: Okay.

THE COURT: Counsel for the Monitor, obviously.

MS. MEYER: Yes, thank you, My Lady. And to that point, I

should note that Mr. Helcum (phonetic), Mr. Chaw (phonetic), and Ms. Sheerman (phonetic) are also in attendance today.

THE COURT: Okay.

Submissions by Ms. Meyer (Stay Application)

MS. MEYER: My Lady, I wanted to start with reference to something Mr. Rubin had said at the outset of his comments, and that is that Dominion is not opposed to a longer extension, but understands that the first lien lenders are opposed, and that Dominion is trying to balance the interests of all stakeholders.

That, as well, is the position of the Monitor, in that the Monitor has considered the positions of all the various stakeholders and their interests in evaluating the extension period. And on that basis, has determined that an extension to December 15th would be appropriate.

There is a January 15th cash-flow forecast included in the Monitor's seventh report -- which I should note is at document 4-387 in the report's file. You have mentioned that you have read that already, My Lady, so I won't take you through it in detail.

But in any event, in that report, there is a 13-week cash-flow forecast that also shows an extension through to January 15th, and involves the sale of diamonds to get to that point. In other words, if we pass the December 15th stay extension date, then the company will not be able to rely on cash-on-hand, but would have to sell diamonds to continue on past that point. We don't understand the first lien lenders to be in support of that, and so that again, goes back to a balancing of the interests of all stakeholders with respect to what is a reasonable and appropriate stay extension.

We believe that the December -- or I believe say our submission is that the December 15th stay extension balances the interests of the various stakeholders, and provides a window of time to determine if a going concern transaction can be completed. While it isn't a significant period of time, the relevant parties have been fully involved in the SISP all the way along.

Just to confirm our understanding of the positions, My Lady, we understand that the one Ls -- the first lien lenders -- support the stay extension, provided that there are certain reporting conditions in place. The Monitor is fine with the requested reporting on November 15th, and at the end of November. The Monitor already reports on the budget, as compared to the actuals in terms of the cost, every two weeks, and so it would be a matter of just adding in some additional facts with respect to the progress of the going

concern transaction, to then report to all parties in that regard.

THE COURT: Right.

MS. MEYER: You are aware, of course, as per the submissions today that certain other creditors -- including Government of Northwest Territories, the Public Service Alliance of Canada, the ad hoc committee for the second lien lenders -- all prefer an extension to January 15th of 2021.

Also, as Mr. Rubin mentioned, Appendix C to the seventh report of the Monitor includes a letter from members of the business community in the Northwest Territories. Essentially their letter sets out the reasons why they support the company having an opportunity to pursue an orderly restructuring.

The Monitor is aware of the first lien lenders' concerns with respect to the erosion of their security during the stay extension period up to December 15th, as is requested by the company. And certainly is aware of the high burn rate which Mr. Wasserman has noted. There's also concern references in the first lien lenders' materials that that a going concern transaction may not happen. While it is certainly in all stakeholders' interests that that does occur, there is uncertainty that that will occur.

And so again, the Monitor recognizes that in terms of determining its view as to what would be an appropriate extension, we do submit that the test is met in terms of an extension of the stay to December 15th, and that the company has been acting in good faith and with due diligence. We submit that the stay is appropriate and will enhance the prospect of reaching a going concern transaction, if the stay is granted.

We submit that the stay extension to December 15th is reasonable in that it allows the parties time to develop a restructuring strategy, and we note that the company and various stakeholders have been acting in good faith toward that. We are aware of negotiations involving the various parties, including the ad hoc committee of the second lien lenders.

And we know as well that a stay extension to December 15th would involve the company operating within the available liquidity from the existing cash-flow, without the need to sell additional diamonds.

As I mentioned there is insufficient cash-flow to support an extension to January 15th, without realizing on diamond sales, and we're not aware of any indication that first lien lenders would be supportive of diamond sales.

My Lady, you had asked Mr. Kashuba as to why it is that the ad hoc committee is of the

view they need more time to get to a deal. And we really didn't hear a response to that -- and I recognize that Mr. Kashuba indicated that he can't really disclose where his client is at with respect to that -- but we really didn't hear an answer as to why it is that they specifically believe they need more time than December 15th to reach a transaction -- particularly where there has already been a sale of investment solicitation process ongoing. And as Your Ladyship has noted, the ad hoc committee has previously filed materials earlier this month indicating that they were pursuing a transaction.

So while we're aware of good-faith efforts being made by the second lien ad hoc committee, and negotiations have been ongoing, and the Monitor has been involved in those, at the end of the day, the concern is that the parties do need to get to the deal in the circumstances, where there is a very high burn rate.

Without the certainty, or a higher degree of certainty of a going concern transaction materializing, the Monitor's view is that an extension to December 15th is reasonable and appropriate, in that it balances the interests of the various stakeholders in allowing enough time to reach a going concern transaction, with the concern of the erosion of the secured creditor's positions.

I just wanted to -- oh, and one other point I wanted to note as well, My Lady, is that if there isn't a deal reached by December 15th, considering the holidays then intervening between then and January 15th, the Monitor doesn't have a high degree of certainty that a deal would then materialize by January 15th either. Considering, in particular that the holidays intervene in that period. It doesn't give the Monitor anymore certainty that a deal will materialize if the stay is extended to January 15th than if it was extended to December 15th.

Those are my submissions, My Lady, subject to any questions you have.

THE COURT: Okay.

MS. MEYER: Thank you.

THE COURT: Thanks very much.

Is there any reply requested? If so, please keep it very short. No? Okay.

So what I suggest we do is we have a brief break -- ten minutes -- just to grab a coffee or whatever, and I will give you -- well, I will either give you my decision, or we will start in with the application from Mr. Collins and DDMI. But one way or another, we will get this solved, okay?

So we are going to break until -- it is 11:27, according to my watch -- until 11:40, okay? So I will see you back at that point.

(ADJOURNMENT)

THE COURT: Okay, thank you.

Well, thank you, everyone. I don't know if you are back or not, it is hard for me to tell, but in any event, hopefully you are.

Decision

THE COURT: With respect -- I am going to give a very brief decision with respect to the stay application, Mr. Rubin, and the company.

It is clear that everyone is on the same page, that the stay should be extended. The test under the CCAA has certainly been met. The company, Dominion, has been working in good faith and making the necessary steps to try to resolve the situation, and to come up with a viable restructuring transaction with respect to the Ekati mine. So, and of course, there is also issues with the Diavik mine, which we will come to briefly here.

So certainly the test has been met. It seems to be the reasonable way to go.

The main issue is whether or not the extension should be to December 15th or January 15th. I have heard various representations by the various parties that are very concerned that an appropriate restructured transaction is completed, and they want as much time as possible to allow that to happen.

I don't believe, however, that this is a one-or-another, it is an all-or-nothing type of proposition, frankly. I note that the Monitor has done their best to ensure that all of the different stakeholders' positions have been heard and balanced in terms of the timeline to extend, and they recommended December 15th.

Importantly, the cash-flow to December 15th does not require any diamond sales, and as we are heading into the next application, it is obvious that there is a lot of issues when it comes to diamond sales. So to the extent that we can avoid that issue would be better obviously, in my view.

Also at issue are updates as to where the status is and some transparency. I am hearing some issues -- I would not want to put them as complaints -- but some requests that there

be some more transparency as to what is going on, and the Monitor has agreed in that regard, to the request to report on November 15th and December 1st. So that is excellent. I think that will help with some more transparency issues.

All to say that I am going to allow the stay extension to December 15th. Then the Court will be reviewing the status as well as that time.

Why I said this is not an all-or-nothing stay extension. Obviously at that point, I presume there will be another stay extension application.

I recognize that it is expensive to bring, these stay extension applications requires work; however, we are balancing a lot of other matters, including the burn rate of what is going on here. So -- and other factors, as I have already outlined.

So in my view, I would, Mr. Rubin, if you could put in the order that the stay is extended to December 15th. That the Monitor is to report on November 15th and December 1st. And at that time, hopefully we will have a better feeling about what is going on in terms of the potential sale of the Ekati mine in particular.

In terms of timing for the next stay application -- we could perhaps talk about this later -- but I just wanted to point out that I am in commercial Calgary duty work the week of the 7th of December, so I would suggest that the application, the possible, could be done in the afternoon of the 11th, the Friday the 11th. The next week I am not sitting, and then after that, we are into holidays. So if we could do it, say, 2 PM on the 11th, that would be appreciated.

I notice right now that I have time in my schedule for that, but our commercial coordinator may have other things that are pending, I don't know. But Mr. Rubin, you can check with our commercial coordinator and see if that could work, if that works for you.

The other thing I note is the week of December 14th, in terms of commercial matters is going to be very very busy. We are trying to see if we can get another Judge to sit that week. There is one, obviously, already sitting that week, but we're trying to see if we can get someone else. Because I know that week before Christmas is always overrun.

So if we can get this one done on the 11th, that would be better for the Court. And it is close. The 15th is actually the Tuesday of the next week, looking at the calendar.

MR. RUBIN: My Lady, could I just repeat that. I had a little trouble hearing you, and maybe my speakers are low, I just want to make sure I have got it correct, if that is okay?

THE COURT: Okay.

MR. RUBIN: Stay extended to December 15th. You would like in the order a provision that the Monitor report on November 15th and December 1st. And you would like us to appear back before you for the next application on Friday, December 11th, at 2 PM?

THE COURT: Right.

MR. RUBIN: All right, thank you.

THE COURT: And in terms of the, what the Monitor can do, the Monitor just needs -- well, of course, the Monitor has a weapon site, so they can upload it on the website -- but importantly, if they could upload it on CaseLines, and that's been working very well. I mean, the bonus of uploading on CaseLines is everybody gets -- at least I get a note -- any time anything is uploaded there, so it gives everybody notice about it, so that's been working well.

MR. RUBIN: Very good.

MS. MEYER: We'll do that, My Lady.

THE COURT: Okay. Thank you, Ms. Meyer.

Okay. So if we can move on, then, to Mr. Collins' application. Mr. Collins, I have not seen you yet this morning. You have been saving your breath until now?

MR. COLLINS: I have indeed, My Lady. And for the record, it's Sean Collins, counsel to DDMI.

Submissions by Mr. Collins (Application)

MR. COLLINS: My Lady, this is DDMI's application for orders permitting it to commence a monetization process with respect to the diamond collateral it holds as security for repayment of the cover payments, and also for an order in the nature that will permit it to remain in possession of the collateral that it holds until such time as the cover payments are repaid in full, My Lady.

My Lady, there's a lot of material that has been filed in connection with this application. Mr. Rubin correctly indicated that the primary parties' interest have reached an agreement

on virtually everything, My Lady, and I hope that that comes as good news to Your Ladyship and the Court and other counsel on the phone. That we've significantly narrowed, My Lady, the issues in dispute before Your Ladyship this morning.

THE COURT: Nice.

MR. COLLINS: In particular, My Lady, the monetization proposal, I believe -- although we have not yet had a chance to speak with everybody that we spoke with last night -- I believe the only issue outstanding on the monetization proposal is the proposed fee to be paid to DDMI. My Lady, there are others who weren't involved in the discussions that we had last night, late into the evening last night: Counsel to Sandstorm, Mr. Bellisimo, a private royalty holder. Our submission will be that the realization process addresses Sandstorm's concerns, My Lady, as well as any concerns that the Government of the Northwest Territories may have with respect to royalties.

I heard late this morning, My Lady -- candidly, too late for me to speak with him -- Mr. Astritis, with respect to the union and a position on pensions as well, and we'll have to deal with that. But as I say, My Lady, a great volume of materials for the purposes of getting through what is at issue, which is the percentage fee, and then the issue of holding the collateral. I'm not sure how much of that is longer relevant to the determination for your Court.

The issues, as DDMI sees them, My Lady, are remarkably simple. The fee issue will be one where we'll simply be calling upon Your Ladyship to make a determination. DDMI subjects a fee of 2.5 percent. Dominion has indicated that it opposes a fee higher than 1 percent. With respect to collateral holds, My Lady, as we will submit in a moment, taking this matter from the dynamic of a situation where cover payments were being made without the ability to realize on security, into a situation now where we are in a security realization, what DDMI will submit, My Lady, and what the law supports, is the simple fact that now we are in a realization scenario, the law is clear that there is no requirement -- and it would indeed, be opposite to the law, My Lady, to require and enforce a secured creditor to turn over any of the collateral that it holds until such time as it has completed its realization, My Lady.

So that's just a bit of a way to set the table.

Throughout this piece, My Lady -- and I know there is a lot of disappointment expressed in submissions surrounding the stay extension, you know, it was in the nature of bad news -- if there has been any good news throughout this process, My Lady, spousal support that the Diavik mine has continued to operate, has continued to employ the close

to 900 employees, My Lady, continues to produce diamonds during not only Dominion's insolvency and its inability and/or refusal to pay its share of joint venture payments, My Lady, but also during these unprecedented times in a global pandemic. A good-news story, I would submit.

With that, My Lady, the current cover payment indebtedness is $119.52 million Canadian. That's exclusive of interest, My Lady, of $2.37 million, and also exclusive of the costs and expenses. My Lady, if you would like a reference to that, that's Croese Affidavit Number 4 -- I can take the Court there, if you would like, My Lady, or if it's sufficient, I can move on?

THE COURT: That is okay. There is a lot of numbers here today, so let us focus on the one -- this is very important, but I don't know that it is controversial, that number. There are a lot of other numbers that are controversial, so --

MR. COLLINS: Sure, and I --

THE COURT: -- focus on those ones.

MR. COLLINS: Yes. Let's call the cover payments $120 million, for the sake of rounding.

I think it's helpful to level set as well -- particularly as it pertains to the realization process, or the monetization process, as it's been called, My Lady -- and to the relief with respect to holding diamonds, just a bit of background as to what has happened and where we are today.

I think it's important to recall, My Lady, that there's never been any intention on the part of Dominion to pay its proportionate share of the Diavik joint operating, joint venture costs, in relation to the continued operation of the Diavik mine. Your Ladyship categorized this situation in the early days of the proceedings as being somewhat akin to DDMI being an interim lender, albeit an involuntary interim lender. It seems like a long time ago, My Lady -- and the world has changed a lot since then -- but at the commencement of these proceedings, there was a contest as to whether DDMI should be able to make the cover payments and whether DDMI should be allowed to hold the diamonds as collateral.

Back then, My Lady, part of the argument that was being advanced in opposition to DDMI holding the collateral was that there was a stay of proceedings, and parties opposite in interest noted in their submission that it was extraordinary relief that DDMI was seeking to hold collateral, and DDMI requesting an exemption from the stay was

extraordinary.

The argument that was also then advanced by Dominion and Credit Suisse, My Lady, was that DDMI should have to turn over the collateral it produced to Dominion, despite the fact that Dominion wasn't making the cover payments and paying for its share of production. Part of that, which was the foundational basis for that argument -- which happily, Your Ladyship rejected -- a part of that which was the foundational basis for the argument was that DDMI was over collateralized because it had security, among other things, over not just the diamonds being produced, but Dominion's 40 percent joint venture interest in the Diavik mine.

The other factor, My Lady -- which if I may say, obtained some traction -- was the fact that we were just launching into the stalking-horse bid process, and the SISP. And the goal of the SISP -- among other things, was to secure an arms-length purchase of Dominion's 40 percent interest in Diavik. And it was intended, My Lady , that there would be a purchaser of the 40 percent interest in Diavik. The purchaser would then cure the cover payments, and everything would be good in that respect, My Lady.

So by the time we got to the June 25th application to approve the stalking-horse bid, SISP, and get financing, DDMI was very concerned, and it wanted to manage the risk that there would be no purchaser of Diavik, and the risk that it would be out of pocket for the cover payments that it was making and continues to make.

You will recall, My Lady, that DDMI did not oppose the granting of the SISP or the stalking-horse bid. It simply submitted in June, at the time that the SARIO was granted, that it should be entitled to hold all production. And at that hearing, at that application, My Lady, the contest was over whether DDMI holds all production, or simply production in an amount equal to the cover payments, based on the DICAN valuation.

And Your Ladyship ordered in that case that DDMI could hold production up to the value of the DICAN valuation.

THE COURT: Right.

MR. COLLINS: Happily, My Lady, there was no tipping point over the course of the summer and into the fall with respect to the DICAN valuation, so DDMI was not required, and is not required, under the formulation of that order to return any collateral to Dominion.

Now, My Lady, on September 25th there was a moratorium ordered by Your Ladyship with respect to that provision, and that moratorium continues in force today.

Of course, where we're at today, My Lady, is that the SISP was unsuccessful. You know, candidly, DDMI was always of the view that there would not be a buyer for the Diavik joint venture interest. It did seem at the time that there was, you know, a good news story on the caddy to have purchased, and it was surprising -- and somewhat disappointing -- that the Ekati stalking-horse purchase did not close.

But the reason it was not surprising to Diavik at the time, and the reason why it's not surprising now that there was no purchase for the 40 percent joint venture interest is because there is no value, My Lady, in DDMI's submission, to the Diavik interest.

The value --

THE COURT: Okay. So I didn't see -- in fact, I had that sort of, what is the value of the 40 percent interest -- I did not see much evidence on that.

MR. COLLINS: Yes, because there is no valuation interest in it.

THE COURT: Okay.

MR. COLLINS: But the best evidence of value is what the market, in a robust process that's been run by global experts in marketing mines, what a robust process has brought to bear. Not even the stalking-horse bidder, My Lady, was willing to pay and assume the obligations under the Diavik mine.

THE COURT: Okay --

MR. COLLINS: Nobody else stepped up --

THE COURT: -- fair enough, Mr. Collins.

MR. COLLINS: Yes.

THE COURT: But, I mean, you could have -- let us say you had a beautiful Ferrari sitting outside -- which I do not, by the way -- but if I did, just because it did not sell in four months does not mean there is no value to this beautiful Ferrari, okay?

So I am just saying I hear your submission that there is no value. But you say "no value, "they say "lots of value." I have not seen any valuation.

And I can understand that the mine has all kinds of, that the Diavik mine has all kinds of issues with it in terms of reclamation, it is only going to be operating for a few more years -- 2025, apparently, right -- and so I understand that there is going to be ups and downs. But I just find it a bit difficult to accept that there is value -- one side is saying there is value -- and the other side is saying no value. And really, there is little evidence, other than, I hear from what you are saying, nobody has made an offer to purchase it, which is some evidence of value, clearly.

MR. COLLINS: We say it's everything, My Lady. And at the time I had to agree with the submissions that were made been Mr. O'Neill on behalf of Washington Corp. I mean, at the time, what Mr. O'Neill submitted to this Court was, Your Ladyship, it's impossible for this Court to value that interest, and the way that we're going to get a baseline value for the interest is what the market is willing to pay for it.

And that is not something that is a unique feature, My Lady, to this case. You know, this Court, and insolvency Courts across Canada and across the common law world utilize marketing processes to divine, attempt to divine, what something is worth. Because there can be no better indication of value, My Lady, as to what an arms-length purchaser is willing to pay for an asset in an arms-length transaction.

In your Ferrari example, My Lady -- because it goes to what the issue is here with Diavik -- I mean, say it's a Ferrari that's 20 years old, and we know it has a book value of $100,000. If, on the other hand, though, that Ferrari requires a new motor, a new transmission, and new brakes, and the cost of that work to be done is $200,000, nobody is going to pay $100,000 for that Ferrari. That's it at its most simple.

The point --

THE COURT: You are correct, but there would be evidence of, you know, having to do work on the brakes, et cetera. Anyways, so I don't want to get too far down on the Ferrari example, but all I am saying is the fact that there is not an offer to purchase is not the only factor in how you value. I mean, I hear you are saying that that is the number one factor, so I hear you on that, okay.

MR. COLLINS: Well, let's continue with that, though, because really, in terms of the valuation, what it is, what it has to come down to, My Lady, is the value of the Diavik joint venture interest will be net of the positive operating cash-flow, while the mine is operating -- which it currently is -- and less the negative cash-flows for closure and rehabilitation of the mine. Like, there's no secret, My Lady. It's been out there that this mine is at or near the end of its production, at the end of its useful life.

And when we produce the last carat, it's not like we get to throw up our hands and say, Well, gee, this was a good 20-year run up in the Northwest Territories. Goodbye, Canada, and we leave this big pit in the ground. We have reclamation and closure obligations that have to be paid for, and the purchaser of that interest, My Lady, has to assume those obligations.

THE COURT: Right.

MR. COLLINS: And what we know from Croese affidavit number 3, My Lady, is those numbers amount to $365.3 million. Dominion's share is 146.2 million, My Lady, for which there is 105 million of letters of credit that have been posted, and another 35 million of letters that are supposed to come in January. Absent the transaction, they're not going to come.

So if I'm a purchaser of this interest, what am I weighing against? In order to step into the interests of Dominion, right off the bat I've got to come up with a way to cover at least, at least, $146.2 million in closure liabilities. And I say "at least" (INDISCERNIBLE) because the evidence of Mr. Croese in affidavit number 3 is that we're in the process of updating the pre-feasibility study with respect to those closure obligations, My Lady. And what Mr. Croese deposes to in affidavit number 3 of his is that the expectation is that those costs will be higher.

THE COURT: Okay.

MR. COLLINS: So that's where we're at in terms of, you know, the fact the it's good fortune that we have diamonds available to satisfy the cover payment indebtedness, and that, you know, that the parties opposite in interest have agreed, My Lady, that the time is nigh to allow DDMI to monetize those diamonds -- as it rightly should be able to -- to repay those cover payments.

And I'm not certain the extent to which -- if at all -- the dispute that's, you know, been raised by Dominion in its Bench brief that was filed yesterday, I believe, with respect to the value of the interest is engaged, given where we've gotten to in terms of the consensual resolution to the issue.

THE COURT: Do you want to hear from Mr. Rubin on that, or finish what you are going to say?

MR. COLLINS: Yes, I think it would be helpful just to get through.

THE COURT: Okay.

MR. COLLINS: Because we'll hear from, obviously, my friends on the points that we are joint at issue on. I am hopeful that a lot of that which has been put forward to the Court -- which was there to support the record to oppose the realization process in the first instance -- and to oppose the whole collateral. I am hopeful that a lot of that falls away for the purpose of this application. Because it simply isn't necessary.

Now, My Lady, the other pertinent fact, as you have heard, is that, you know, we have this situation where Dominion -- unlike in April -- is receiving revenue. They've been selling diamonds, and in the Monitor's seventh report, My Lady, it's noted that there will be $37 million of cash on hand for Dominion, as at January 15th.

Still no intention to pay anything on account of joint venture billings, but I suppose that is what it is. You know, we have our exposure of $120 million. We have the security for the cover payments. Importantly, My Lady, the Monitor has opined that that security is valid and enforceable.

THE COURT: Right. That is what I have.

MR. COLLINS: Okay. There is a dispute in the materials with respect to an allegation that budget has been exceeded, but the cover payments, as you correctly noted, My Lady, they are what they are. And so I don't know how much we have to get into this, but perhaps we can just quickly touch on Mr. Croese's most recent evidence, which was filed yesterday in reply to the contention that there's been, the budget has been exceeded. And I can direct to the particular point of the evidence that I'm referring to, My Lady, if you like? And I have done so, I believe.

THE COURT: Yes, thank you.

MR. COLLINS: Okay. So this is Mr. Croese's affidavit from yesterday, and so contrary to the assertion that we're over budget in the magnitude of the amount, as alleged by Ms. Kaye, what Mr. Croese has deposed to is when you take an annual snapshot of where we're at -- rather than just sort of picking out a period during that annual reporting period, you know, and picking out a period when we're operating during a global pandemic -- that the budget will be over by approximately .6 percent for 2020. And Dominion's 40 percent share of that is approximately $1.3 million. And Mr. Croese sets out in tabular form -- and I don't think it necessary to go through it any longer, My Lady -- the amounts.

Helpfully as well, though, I've scrolled down to paragraph 6 of the affidavit. You know,

Mr. Croese, you know, provides the Court and stakeholders information with respect to cost increases over Q2 and Q3. Notably, there was $11 million in increased operating costs that are directly attribute to COVID, relating to overtime from changing shift patterns, external services, and temporary labourers to offset the effects of having personnel who were unable to work due to community and safety precautions.

There was $4.4 million in severance costs associated with the restructuring of the mine to reduce the operating costs over the long-term, and there was $2 million in annual leave pay-out as a result of the need to cancel annual leave for certain workers.

Mr. Croese goes on in paragraph 7, My Lady, to simply note that those costs have been offset by reduced capital expenditures and exploration costs. So we have a situation where the mine is operating in accordance with -- in DDMI's submission -- the budget that's been approved.

And, you know, that should be sufficient in and of itself, but there's an allocation of risk with respect to exceeding budget in the joint venture agreement, and I'll take you there in a moment, My Lady. And, you know, the reason behind that is obviously the exploration and production of diamonds in a northern climate outside of a global pandemic is a risky endeavour. And so the join venture agreement that was entered into all those years ago accepted that proposition and allocated the risk in a fashion that didn't allow Dominion to not pay amounts that were in excess of budget. And that is provided for, My Lady -- and I have to go to the confidential site, My Lady -- because the joint venture agreement is Confidential Exhibit Number 1 to the affidavit of Mr. Croese -- and I can direct, this is an interesting process because apparently if I direct to that only the people who have clearance -- if I can use that turn of phrase -- will see this, My Lady.

Do you have that in front of you --

THE COURT: Yes, if you open, I have opened Confidential Exhibit Number 1, is that the one?

MR. COLLINS: Yes. And have I directed you to the right page? I guess I will now do that.

THE COURT: It hasn't come up -- oh, there it is. Okay, good.

MR. COLLINS: Yes. So it's Article 8.6 --

THE COURT: Sorry, did somebody want to say something?

MR. COLLINS: It doesn't seem like it.

So Article 8.6, the second sentence, My Lady: (as read)

> If the manager exceeds budget, then the excess shall be for the account of the participants in proportion to their respective participating interest, unless the overrun is due to the gross negligence or willful default of the manager.

THE COURT: Just give me a minute, okay? Hold on, I just need to catch up here.

Okay, all right. So the manager shall immediately notify the (INDISCERNIBLE). If the manager exceeds a budget, then the excess shall be for the account of participants, unless it is due to gross negligence or willful default. Okay.

MR. COLLINS: Right. I mean, perhaps this is just simply fortifying that which Your Ladyship mentioned right at the start of the application, but you know, it's not an answer to the quantum of the cover payments to say , well, they're over budget, we don't have to pay them. Because that's not the deal, right? And I've given the context for the deal. It's completely understandable in a risky mining venture, why the parties allocated risk in that fashion. And there's absolutely nothing in DDMI's submission, My Lady, on the record that would support a finding -- it's not before Your Ladyship today, incidentally -- that DDMI has been grossly negligent or has willfully defaulted in its duties. Quite to the contrary. It has done an admirable job in running this mine in a midst of a global pandemic.

And in terms of --

THE COURT: To be fair, Mr. Collins, I understood the submissions that were made in writing was that just it was being set out there as a matter of context. That clearly it is not in front of me to determine whether or not the overruns are appropriate or not. And I do understand there is a lawsuit in British Columbia that, as you pointed out in a recent affidavit , has not progressed very far at this point.

But in any event, that is not before me. But I do, I think the parties were just saying, Look, as a matter of background, there were some overruns. And then you are saying, Well, let us look at this on an annual basis. It is not so bad, right? So, okay, I have been keeping up with the various material coming back and forth.

MR. COLLINS: No, I wonder if I have been broadcasting my

notes, because the next point I was going to make was the fact that this matter is not before the Court for determination. And, in fact, Dominion has elected to have this matter determined by the BC Court, and that is where, you know, on the basis of their election, it will be determined. And interestingly, they love to talk about this lawsuit, My Lady, but they don't right to advance it. Because they have done nothing to advance it since they threatened it in May, and since they served it on us less than 36 hours before the June application. They've done nothing --

THE COURT: There is a security for costs application there --

MR. COLLINS: Correct.

THE COURT: -- that could affect all of that. And so anyways, let us not get too much into the BC action. I know that it certainly has not answered the question at this point. So I take all this into account in terms of context, if I can put it that way.

MR. COLLINS: That's right . It's just, it's contextual background.

THE COURT: Right.

MR. COLLINS: Now, after all of that -- and, you know, Your Ladyship has mentioned in past occasions more than once -- that it is unfortunate, the one unfortunate thing about these video conferences is we do not get together in the hallways afterward.

THE COURT: Right.

MR. COLLINS: And, you know, the Credit Suisse, Dominion, and the Monitor had a very very productive conversation last night.

THE COURT: Good.

MR. COLLINS: With respect to the monetization process. And it's resulted in a significant narrowing of the issues. And what we have done, My Lady, is just very recently -- I think as the case was proceeding -- is we've uploaded the monetization process to CaseLines -- and again, I'll direct everyone to it. It's 14.4-340, but I will direct people to it, because as I understand it -- and I could stand to be corrected, but at least as amongst Dominion and Credit Suisse and DDMI, the only matter in issue in this entire monetization process is the fee.

THE COURT: Okay. Well, I am very grateful for that, because it just does not seem to be the role of the Court to try to arrange, try to monetize diamonds, quite frankly. But anyways, so...

MR. COLLINS: Yes, it is a complex complex undertaking. You know, while we're subject to realization against personality -- because diamonds extracted represent personal property -- I don't think the *Personal Property Security Act* of the Northwest Territories -- or in any jurisdiction, you know -- was intended to, chapter and verse, deal with it -- although the principles behind it are transferrable to complex realizations such as this, and including for the reasons that it gives the Court the overarching jurisdiction to give directions.

But there was no way that we would have gotten through this today, if we had to fight line by line over what the proposed monetization process is.

Would it be helpful, My Lady -- and I suggest it might -- if not for Your Ladyship, but other for other interested stakeholders, for me to briefly highlight the monetization process and how it is proposed to proceed, should Your Ladyship be inclined to grant the relief?

THE COURT: Yes, I think that would be very helpful. There is a lot of people online here, and so some may be interested in knowing. I mean, I have seen many, and maybe many have looked at them, and there has been a lot of revisions, et cetera. So if you could just highlight, that would be great.

MR. COLLINS: Yes. Here, I have put up on the screen, then, the most recent version of the monetization process. So paragraphs 1 and 2, we don't have to worry about too much.

You know, paragraph 3, it has a statement that we want to optimize the value for all stakeholders, and that it has to be disposed of in a commercially reasonable manner, in a fair and transparent process. And also importantly, that other than product that's already been sold -- you know, that DDMI is selling its own product -- we're intending to treat the Dominion product in a manner that is no less favourable than DDMI's production, wherever possible.

Saying "commercially reasonable," My Lady, is not a big give. It is a baseline for any secured party realization. It's codified in all personal property security legislation in the uniform commercial code. Of course, the secured creditor has a duty and is guided by that duty to act in a commercially reasonable fashion.

And so paragraph 4 then gets into more detail as to what DDMI will do in connection with the realization, you know. And in the first point, 4(a), is a recognition that there is no market in Yellowknife for these diamonds. That the global marketing process, as is being done by Dominion -- as you've seen, My Lady -- is really the seat of this in the world is Antwerp. So, you know, the collateral will be moved from the Northwest Territories to Antwerp.

(b), we can hire people to assist us to clean, sort, and value the collateral. And then we'll sell in accordance with Schedule A. You know, to the extent Dominion had amounts owing it to from anyone with respect to this collateral, then we could enforce that security on behalf of Dominion. And then, of course, once proceeds start to come in -- and this may be a little bit more of a contest with respect to those that were not involved in these discussions -- but we will disburse them in accordance with the waterfall, and that's what paragraph 4 deals with.

Paragraph 5, My Lady, is a statement of the law, certainly at the site of the collateral, which is when you dispose of collateral, that it is free and clear of all encumbrances and charges. You know, we want to ensure that we are able to convey to the arms-length purchasers, or to purchasers in general, any encumbrance against them. So that's what paragraph 5 does.

Paragraph 6, My Lady, is confirmation of the fact that this is a, this is a realization by a secured creditor other security that it holds. So Dominion is not -- or rather -- DDMI is not an agent. And as such, it doesn't become obligated for any liability, indebtedness, or obligation of Dominion, and that's an important point. You know, there's discretion afforded to DDMI in the second sentence, you know, allowing it to sell in one or more transactions, including DDMI being able to time the process. And that's made subject to Schedule A, which we'll get to in a moment.

And then there is an exculpatory provision here that excludes liability to DDMI for certain things, and those are set out in paragraphs (a), (b), and (c). And that is people cannot claim against DDMI that DDMI owes them anything other than that which it expressly agreed to occur in writing in respect of a sale, that's an exception, that DDMI did not comply with the provisions of Schedule A, or claims that DDMI did not act in good faith in a commercially reasonable manner.

And then there's a carve-out that nothing affects the application in the BC litigation.

THE COURT: Okay.

MR. COLLINS: Following on that agency provision in paragraph 7, My Lady, Dominion shall have and shall continue to have, you know, it continues to own the collateral until the completion of the sale. And this was an important point raised by Dominion just with respect to, you know, for the treatment of tax and accounting purposes -- even though it's a realization, of course, it's a realization of assets owned by Dominion, and the treatment of tax accounting will still fall with Dominion.

We next get then to, My Lady, importantly -- perhaps most importantly, out of all of this -- paragraph 8. Which is the proposed waterfall.

THE COURT: Okay.

MR. COLLINS: And so after receiving proceeds from monetization, My Lady, here is the proposed waterfall.

The first is towards all taxes or royalties applicable to the DDMI collateral that rank in priority to the security provided for in Article 9.4 of the JVA. So it's very short, but a very important provision. You know, to the extent that there are taxes or royalties that rank in priority -- and that is key to this, because we are undertaking a realization to the security -- then those, of course, get paid before the cover payments.

We will hear from counsel to Sandstorm. You know, to preview that issue and to perhaps shorten any reply, you know, the submission is that to the extent there has to be a determination whether or not that interest ranks in priority, then we'll have that determination made. We'll have to call upon this Court, Your Ladyship, or perhaps another Justice -- I'd be happy for Your Ladyship to hear it, because it's a discrete issue -- of course, that could be determined.

THE COURT: Right.

MR. COLLINS: The next payment out of the waterfall then goes to the reasonable and documented fees, costs, and expenses incurred by or on behalf of DDMI, in the implementation of this process, and including the fee of bullet-point percent of the gross value. And that's what we're going to ask the Court to determine today, and I'll make a submission on that. And the parties opposite in interest will likewise make submissions.

You know, the good news is we're talking about a difference of 1.5 percent, you know, and if you use the current metric, 1 percent of $120 million, 1.2 million, you know, 2.5, 3 million, we're talking about $1.8 million in terms of the delta. And, you know, while I don't want to be fast and loose with the dollars involved in this case, compared against the

professional fees and other amounts that are required in this case, it's a relatively immaterial question, in DDMI's submission.

The next, you know, the waterfall would then flow to anything that are due and payable, and not satisfied at the time of the sale, in respect of the admin. charge and the director's charge, subject to an allocation that's either agreed or ordered by the Court.

At present, there's nothing owing under those charges, and with $36 million in cash projected to be in a bank on January 15th -- which includes continued payment of professional fees -- there should never be anything owing under these charges. But in recognition of the fact that these amounts rank in priority to the cover payment security, it's appropriate that it be mentioned. But I hope it's the last we ever have to speak of it. It will be a failing on the part of this process if for some reason there are moneys owing on account of those charges. And I know the Monitor will have a keen eye in terms of its ongoing monitoring and reporting to ensure that there is nothing that becomes outstanding under those charges.

Then we get to payment of the outstanding cover payments and interest, pursuant to 9.4, you know, in addition to the reasonable legal fees and other reasonable costs of DDMI. That's taken right out of Article 9.4 of the joint venture agreement, My Lady, so the amounts will flow after the first three to reduce the cover payment indebtedness.

To the extent there is anything outstanding -- and I don't believe there is -- it would go to the current financial advisor charge. And then after that, to Credit Suisse, on account of amounts owing under the first lien. After that, to Wilmington Trust, the second lien trustee. And then after that, to Dominion, to be held pending further order of the Court.

So fairly standard and, you know, it follows the procedure mandated by the Northwest Territories PPSA with respect to payment of prior and junior charges from proceeds of realization, from a secured creditor realization.

Paragraph 9 just indicates that nothing prevents us -- subject to complying with orders in these proceedings -- from exercising all other rights and remedies that are available to DDMI, under applicable law.

Paragraph 10 is a reporting provision. Very important to stakeholders to monitor, and as well as the first lien lenders. And this is a matter to be agreed, as reporting -- yes, in a manner to be agreed by each of DDMI, Dominion, the Monitor, and the administrative agent. There is, to the extent that information is provided, there's no liability on the part of DDMI to Credit Suisse resulting from their utilization of information we give to them. 11 is a catch-all advising, you know, ability for people to apply for advice and direction.

THE COURT: Okay.

MR. COLLINS: Any questions on the process, My Lady, before I go to Schedule A?

THE COURT: No. That is fine.

MR. COLLINS: I will now go to Schedule A.

THE COURT: Okay, I am there.

MR. COLLINS: All right. So we set out some key principles, and there's three: You know, the product must be fully cleaned and sorted, in the wide variety of categories, to be able to offer the right products to the right customers. And it needs to be done in a safe and secure operation. Timing needs to be aligned to market cycles, placing the right volume of product aligned with market demand. And that a professional and well-equipped team is required to execute the sales process, optimize the sales proceeds, and collect cash in a fast and cost-efficient manner.

We looked into --

THE COURT: Okay. So -- can I just interrupt you there? In terms of the market cycles, when do you anticipate that this might happen? Do you know?

MR. COLLINS: We anticipate -- yes, yes, we do.

THE COURT: Okay.

MR. COLLINS: There are auctions occurring, as you have seen from the materials, so it is anticipated to get going in earnest once this, if this process is granted, My Lady, to attempt to, you know, to take advantage of the fact that there seemingly is some liquidity in the market, some demand, because I mean, we don't know where the world is going, and the increase that the second wave -- you know, notably in Europe, but candidly across the world -- could land us back in a circumstance that we found ourselves in in April and May, where there was, where there simply was no market.

THE COURT: Okay. Can I just interrupt again? And in terms of that, before, I understood that the diamonds were (INDISCERNIBLE) India, like, in part, right? So I don't see them going to India. These diamonds are going to straight to

Antwerp?

MR. COLLINS: Yes, that's the difference between, you know, the process that DDMI employs through its affiliates in part of the Rio Tinto mining group, Global Mining Group, his product does not go to India. It goes directly to Antwerp from the production (INDISCERNIBLE).

THE COURT: Okay. So (INDISCERNIBLE) then, in terms of COVID, because I mean, India is not doing so great, and I understand Europe is doing more poorly. Nonetheless, I do see an effort from all the governments, trying to keep markets alive -- perhaps a little more than the last time around. But who knows?

MR. COLLINS: Yes, who knows? And that's why we leave it to the pros; right? And Rio Tinto in this case are the pros in terms of, you know, making the determination as to how to optimize the realization.

THE COURT: Okay . But if all goes well, and they hopefully will start to optimize it sooner rather than later.

MR. COLLINS: Yes, right away, right away.

THE COURT: Okay.

MR. COLLINS: They're out $120 million, so --

THE COURT: Right.

MR. COLLINS: And they're, this is where everyone is aligned, is to optimize the value. I cannot accept -- DDMI cannot accept any suggestions made that Rio Tinto/DDMI would in any way try to game the system. I mean, this is first and foremost about getting this $120 million back.

THE COURT: Right, okay.

MR. COLLINS: Disclosure to first lien lenders. This is a provision that was important to Credit Suisse, and it was solved, you know, simply but us noting that Dominion has obligations to Credit Suisse under its credit agreement to provide it with reporting, so this is a direction to Dominion and the Monitor to provide to Credit Suisse, you know, that which DDMI already provides to the Dominion .

THE COURT: Okay.

MR. COLLINS: You know, Credit Suisse was concerned, you know, what if, what if, and what if Dominion is no longer around? And we've solved for that, and you know, I think it was an elegant solution, and it was suggested by counsel to Credit Suisse that if Credit Suisse succeeds to or is assigned the rights of Dominion under the JVA, then we'll provide that information to Credit Suisse qua successor.

So perhaps not as important to the rest of the people on the phone, but this was an important point. And again, I think, you know, credit where credit is due. An elegant fix by counsel, Mr. Lawson and his team, to get us here on this point.

THE COURT: Okay.

MR. COLLINS: Procedure for the sale of DDMI collateral, these again are statements are respect to how it's going to happen. DDMI or its affiliates will handle the collateral in a commercially reasonable manner and generally apply the same processes, audits, and analysis that such persons utilize with respect to DDMI's own production, My Lady. It only seems fair, but it's not a big give, candidly, but there is some distrust admittedly between the parties, but it was not a significant give.

You know, paragraph 2, again, gets into, you know, nuts and bolts, as does paragraph 3. And paragraph 4 relates a bit to timing that's going into the market. You know, there's a lot of matters on the record that speak to the current state of the global diamond market. Diamonds, as Your Ladyship knows, are not a commodity. It's not like we can go to a (INDISCERNIBLE) or a scene and say this much for a carat. This is, this quantity of diamonds is enough that to sort of flood the market with it could impact the ultimate valuation. So we're trying to leak, to a certain extent, or at least be strategic, the amount and the volume that will be offered for sale over Q4 -- you know, Q1, Q2, 2021.

Paragraph 5 does speak to the method of the realization, which will be an auction process. You know, other than something called -- and there's a lot of detail that goes into this, My Lady -- but the selected diamonds, which are the large stones that aren't splitted. They go to Antwerp, they are not splitted at the production sorting facility. And in connection with that process, there's only a handful of qualified buyers who would buy those larger stones.

And then there's an outlet there that permits DDMI to sell the collateral on agreement between, you know, itself, Dominion, Credit Suisse, and the monitor. Or ultimately it might be determined by the Court.

THE COURT: Okay.

MR. COLLINS: We finish with, you know, a heading called Transparent Process. Transparency was a stated concern of Dominion and Credit Suisse. And we've said our interest in those are the Diavik stakeholders are fully aligned, as both are seeking to optimize returns for the sales of split product and a safe operation of the asset.

And work constructively with the parties, providing full transparency into the status of monetization, subject to regulatory constraints, and to name that, you know, we're talking about anti-trust provisions. Again, a very small small universe of people involved in the marketing and sale of rough diamonds in the world, My Lady, so we have to make sure that we don't run afoul trust provisions, both as applicable here and abroad.

But at minimum, we are going to provide a detailed listing of inventory offered for sale, we're going to provide the diamond-sorting results. You know , we sort, and then you have sizes, by carat, and of course, the quality analysis as well.

And then Schedule B is something that has to be resolved. We don't think -- and the parties on the call last night don't expect this to be an issue -- but we just simply, given the time that was available, we could not get there with respect to the form of reporting.

A little more context, DDMI had proposed a certain form of reporting by way of spreadsheet. Dominion had provided a form of its own. DDMI had indicated that the form that Dominion was advocating that we utilize doesn't match with its business model. So we think this is a technical issue to be sorted out by the technical people. If we can't sort it out, then we'll have to come back. But again, the issue will be very narrow, and at that point, we would expect it would be, Here's Spreadsheet A, here's Spreadsheet B, we require a direction and a determination as to which one to use.

THE COURT: Okay.

MR. COLLINS: Unsold inventory is stored and insured, and then there's audit rights, and audit rights are a feature of this arrangement, right? Because of the confidential, or the sensitive business information that relates to pricing and the anti-trust concerns -- to the extent that people have, want to check what's done -- then they have audit rights. And we have an independent auditor to come in to assist with that process.

And finally, My Lady, you know, DDMI will again facilitate half-yearly meetings with Dominion, the Monitor, and Credit Suisse to review the market and sale results, and permit on-site or virtual wall tours and meetings to talk to people and the like.

So that is what we have arrived upon, My Lady. Again, at the risk of repeating, a great deal of work went into this. The parties had to flex -- their clients, in particular -- had to flex to get to this place. It represents significant significant progress in this proceeding. And as I've said, the only thing that remains to be determined -- at least as between the principal parties -- is the fee and an ancillary Schedule B.

I'm in your hands, My Lady. Looking at the time, I can now turn to some brief submissions on the fee.

THE COURT: I think we should leave on a positive note there, Mr. Collins, and leave for lunch, because we are booked for the day. And it is quarter to 1 now. I would subject we do a short lunch, if that is all right with you?

MR. COLLINS: That sounds great for me.

THE COURT: Okay. So maybe half an hour, three-quarters of an hour, what do you think?

MR. COLLINS: You know, the cafeteria is two floors below me here in my home, so I only need a half-hour.

THE COURT: Okay. Yes, mine too, but it might be different for other people.

How about we give it three-quarters of an hour, until 1:30?

MR. COLLINS: 1:30 Mountain, My Lady.

THE COURT: Okay. And 1:30 Mountain, yes. You and I are -- I am in the mountains, actually, so there you go.

All right. So we will leave it at that, and we will come back and carry on, because I know there is other parties that might want to speak to this, but I want to congratulate everyone that worked hard and late into the night, because I did read all of the different schedules and the highlighted ones with all the differences that had to be sorted out. So good for you. That is great progress.

Okay. So we will come back at 1:30. Is that all right, Madam Clerk?

THE COURT CLERK: That is fine, Ma'am.

THE COURT: Good, okay. We will adjourn until then.

PROCEEDINGS ADJOURNED UNTIL 1:30 PM

Certificate of Record

I, Elena Kay, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in Courtroom 1502, at Calgary, Alberta, on the 30th day of October, 2020, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, J. Aubé, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

690512 NB Inc.
Order Number: AL3842
Dated: November 4, 2020

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

---

October 30, 2020	Afternoon Session
The Honourable Madam Justice Eidsvik (remote appearance)	Court of Queen's Bench of Alberta
P. Rubin (remote appearance)	For Dominion Diamond Mines ULC
S. Collins (remote appearance)	For Diavik Diamond Mines (2012) Inc.
J. Bellisimo (remote appearance)	For Sandstorm Gold
M. Buttery (remote appearance)	For the Government of North West Territories
K. Meyer (remote appearance)	For FTI Consulting
A. Astritis (remote appearance)	For Public Service Alliance of Canada, Union of Northern Workers
K. Kashuba (remote appearance)	For the Ad Hoc Group of Bondholders
T. Warner (remote appearance)	For Dyno Nobel Canada & Dene Dyno Nobel
J. Salmas (remote appearance)	For Wilmington Trust
M. Wasserman (remote appearance)	For Credit Suisse AG, Cayman Islands Branch - First Lien Credit Agreement
E. Paplawski (remote appearance)	For Credit Suisse AG, Cayman Islands Branch - First Lien Credit Agreement
B. O' Neill (remote appearance)	For Washington Group of Companies
E. Kay	Court Clerk

THE COURT: Great.

All right, Mr. Collins?

Submissions by Mr. Collins (Application)

MR. COLLINS: Just on the fee issue, My Lady, DDMI asserts it is entitled to receive a sales and marketing fee of 2.5 percent. We understand that Dominion asserts that the fee should be no more than 1 percent. The record beyond that is somewhat scant, but I will take it to you. In DDMI's submission, it supports a fee for, the amount that they requested.

I am going to Croese Affidavit Number 4, I have just directed everyone to it.

THE COURT: Right.

MR. COLLINS: Right. This is at paragraph 9. Mr. Croese, in subparagraph (f) of that, it's a paragraph speaking of the process. It speaks of deducting a 2.5 percent handling, sorting, sales, and cash collection fee, and (INDISCERNIBLE) fee in the next sentence, the handling, sorting, sales, cash collection fee is consistent with fees charged by affiliates of Rio Tinto to arms-length party for similar services.

Again, so that statement is obvious, My Lady, this is what Rio Tinto charges to the market, and it would create commercial issues for it if it were to come to light that it's charging less than market in this case.

In respect of other, you know, there's obviously not a broad survey available, My Lady, but the Croese Affidavit Number 3 -- and I will take everyone to that now -- you know, he spoke of a fee that was being charged, you know, in respect of the De Beers, Skachute (phonetic), Kuwi (phonetic) diamond mine -- and has that come up, paragraph 29?

THE COURT: Yes, it has. Thank you.

MR. COLLINS: Yes. So -- and again, this is back when we were dealing with other issues on the file -- but at the time, Mountain Province entered into an agreement with the joint venture party to monetize interest in diamonds, and it was a $50 million liquidity facility. And the fee charged by the related party, Doonbridge Worldwide Ltd. (phonetic), was calculated at the fee of 10 percent for each sale -- My Lady, and just for clarity, we'll go to the press release at the back as well -- in the second paragraph, the fees were calculated 10 percent of the value for, you know, throughout years one, two, and three. And those fees were in addition to out-of-pocket costs.

Ms. Kaye, in her affidavit, My Lady, provides the following, and I will go to it -- I'm sorry, it doesn't appear to be coming up.

THE COURT: Yes, her affidavit of October 28th, you are looking for?

MR. COLLINS: Yes, I have a page reference -- there we go -- paragraph 61. You know, the evidence is there. It's, you know, she would expect the fee would not be more than 1 percent, and you know, indicating in opposition to -- among other thing -- DDMI conducting the monetization process, so that's off the table. You know, indicating that Dominion was prepared to sell, and will be able to do so for a 1 percent fee.

A bald statement should be viewed contextually, in DDMI's submission. The matter in

controversy was whether DDMI should be permitted to monetize. The simple fact of the matter is, My Lady, is that, you know, on the basis of that evidence, and the evidence before you, DDMI has, you know, submits, My Lady, that the fee in the circumstances is reasonable on the basis of the best evidence available. It seems to be below market in respect of another transaction in the Northwest Territories, My Lady. And again, in terms of the market and the fees that are being earned on this file -- and forgive Rio Tinto for wondering how other advisors might feel, and we recognize that there aren't other advisors who are trying to grind the fee here -- but if their market fees were being, you know, called into question -- you know, particularly what DDMI says -- we spoke of the delta here being $1.8 million, or relatively diminimous fashion.

THE COURT: Okay.

MR. COLLINS: So we're asking for the 2.5 percent fee.

THE COURT: All right.

MR. COLLINS: All right. So that's, I had hoped Your Ladyship agrees, mercifully short on that front.

We now get into the issue of holding the collateral that's subject to the joint venture agreement security, My Lady.

And there's a preliminary issue that, you know, I hope is disposed of quickly, because I am candidly having difficultly understanding the position of counsel to -- Dominion and counsel -- to Credit Suisse, just given, you know -- and I say this issue has been determined, subject of a non-appealable order. And it's not as if we've been hiding this from parties. We have what was said in Court in June, at the time when DDMI was asserting that it should not have to hand back any collateral, and Your Ladyship utilized the DICAN valuation as the metric. And I have got an excerpt of the transcript in our Bench brief, is probably the best place to go, and I have directed people to it.

THE COURT: Okay.

MR. COLLINS: That's in paragraph 9 of our Bench brief. So we speak of the application to hold the entirety, this was Your Ladyship's judgment. DDMI has argued they should have the ability to hold the whole 40 percent of production that is coming, in light of the cover payments that they're making -- which is sort of like a dip, as I indicated in my prior judgment on this -- but it seems to be right now, based on the evidence that I have in front of me, that it's not necessary for DDMI to have the ability to hold all of the 40 percent of the diamonds. And just the amounts that could be

determined by the independent evaluator should be held.

The amounts should cover the cover payments. And I understand that this is a moving target. So to the extent that we need to revisit this issue down the road, well then, DDMI, when it's appropriate -- because we'll come to that -- can raise this as an issue.

So in terms of the threshold issue, My Lady, you know, Your Ladyship has expressly provided leave to DDMI to come back and revisit the issue. And I am not certain that anymore needs to be said about the threshold issue. I think we can get to the substance, if I may, with respect to the collateral hold. Because circumstances, as we all know, have changed vastly, My Lady. And the issue of holding back the collateral now engages the fact that we're not talking about where we were in June, where DDMI was, you know, urging the Court to grant it relief from the stay to hold collateral so that it wouldn't be left holding the bag, if you will. We've now transitioned into a place where the Court, if it grants the monetization process, is allowing DDMI to realize on its security, and that the only mean that DDMI is realizing on its security with the agreement of Dominion and the first lien lenders in its capacity as a secured lender -- as a secured creditor.

And, My Lady, it's black-letter law that a secured party is entitled to hold the entirety of the collateral, subject to its security, and that's okay. And I'll get to that. But it just, there is, the law does not recognize a request by a debtor or subordinate secured creditors to say, Hey, we think you're over collateralized -- even though we're in default of our obligations to you -- you should give us back some of our collateral. It's just not a concept that's known in security realization.

Secondly, My Lady, there is no prejudice to any party with respect to DDMI continuing to hold all of the collateral until the cover payments are repaid. We've seen the cash flow, the cash forecast for Dominion Diamonds. It's flush with cash through to January 15th. You know, the next in line in Credit Suisse. They're being paid interest, and they have LC exposure of $105 million, My Lady. Those LCs have not been called upon. That continues to be contingent exposure, and so trying to get their hands on collateral now, versus waiting for an accounting of proceeds, does not prejudice them in the least.

The process, My Lady, of realizing on security -- and I'm sure Your Ladyship, I know Your Ladyship is well acquainted with this -- is it requires an accounting. And surplus from the realization after payment of the amounts covered by the security get paid to the next in line. And that concept, My Lady, is manifest in the PPSA. And I can quickly take the Court to Section 59 of the Northwest Territories PPSA. It's in the brief that we're in, and it's paragraph 17. And we can see that -- I don't have to read the entire section.

You dispose of it, you deduct your expenses, and you deal with the collateral. Any excess

in accordance with Section 60, that feeds into paragraph 18, where we dealt with the collateral. The surplus gets paid to, first, people with a subordinate interest in the collateral who have perfected that interest. Anybody who has given notification that they have an interest, and then to the debtor.

So there's protections built into this process, among others, that the surplus gets handed back after the realization. And it makes sense, My Lady, this formulation of the law. It's a codify occasion of the ancient common law with respect to dealing with security. A secured party, My Lady, is never required to return collateral that's charged by its security in these circumstances.

If that were the case, in every realization, a debtor could come to the secured party on some valuation metric and say, Hey, give me back some of my collateral, even though you haven't been repaid for my underlying debt. And that which --

THE COURT: But are we not just jumping ahead though? The collateral here was, the collateral here, you are (INDISCERNIBLE) that it is the whole 40 percent, but it has not been the whole 40 percent. The collateral here was the amount that would cover the cover payments, that is what was ordered ultimately, right?

MR. COLLINS: That's correct.

THE COURT: But that submission of collateral, I do not know if all of this gets you anywhere, in terms of this argument. I do not quite, I am not following you there.

MR. COLLINS: Well, the collateral is all of the production, not just the --

THE COURT: Well, is it?

MR. COLLINS: The collateral is all of the production -- yes.

THE COURT: Who says that?

MR. COLLINS: Well, it's in the joint venture agreement, I can take you there, My Lady.

THE COURT: Okay.

MR. COLLINS: And I just think for the benefit of all of the

parties -- I am looking for my reference -- we might have --

THE COURT: Okay. So it would be in the confidential folder.

MR. COLLINS: No, I think we've referenced it as well.

THE COURT: Okay.

MR. COLLINS: I think just for the interests of time, we will go to the confidential folder, My Lady.

THE COURT: Okay.

MR. COLLINS: I will go to the definition of what's covered by the security.

THE COURT: Okay. That would be helpful.

MR. COLLINS: I'm sorry, My Lady, if you just bear with me for a minute. As you know, CaseLines, the pages don't come up immediately. I have it in PDF, My Lady. I am just going to pull it up on my end, and then we can direct to the proper page.

THE COURT: Okay. I am scrolling through it right now.

MR. COLLINS: Yes.

So it's amending agreement number 2, and it's page, yes, 115, 117 out of 24 [sic] -- here we go, maybe I can share this with you now, I am sorry, My Lady.

THE COURT: No problem. There is a lot of paper here.

MR. COLLINS: Yes. So this is the charging provision from the JVA: (as read)

> Each participant hereby grants to the other a security for repayment of the indebtedness, and that includes interest, reasonable legal fees, all other reasonable costs and expenses incurred. And collecting payment of such (INDISCERNIBLE) security interest, a mortgage of and a security interest in such participants right, title, and interests to under, and were ever acquired arising its participating interest and the assets.

And assets, My Lady, we can go to the definition if you would like -- I don't think we need to -- it's broadly defined as everything. It's the joint venture interest, and it's the production from the interest as well: (as read)

> And each participant represents to the other that the security interest ranks, and will rank at all times, in priority to all other security interests.

So it's very clear, My Lady, that the security for the indebtedness is everything, including all of the production. Does that answer the question? I want to make sure, because it is an important point.

THE COURT: So -- but that wasn't what was ordered, right?

MR. COLLINS: No, that's correct. What was ordered, it was subject to the moratorium, was that you could hold up to 40 percent, you could hold -- of the 40 percent of production, up to the value of the cover payments outstanding, as valued by the DICAN valuation.

THE COURT: Right.

MR. COLLINS: What we're saying -- okay, precisely. What we're saying now, My Lady, is the circumstances -- you granted us leave to come back, My Lady, to discuss this point. And we're now, we're no longer in a situation where we're stayed -- assuming the monetization process goes -- we're no longer in a process where we're stayed in terms of realizing on the security. And the point that we're making, My Lady, is that it is a fundamental tenant of secured transaction law, My Lady, that a secured party is entitled to retain all of the collateral over which it has security over. Not just an amount that equates to the amount that's secured, that's owed to it.

THE COURT: Okay. So what has changed since the order? And then I guess that's what your friends have said, right, in terms of, like, you are now selling some of the diamonds, based on the process that you've managed to work out -- for the most part, other than this one issue -- but what all has changed since the order? I mean, there is an order in place about what your security was. It does not align exactly with the JVA, but thank you for reminding me about that section.

MR. COLLINS: Yes. Well, a lot has changed. In June, we were proceeding down a path where there was proposed to be a purchaser of the joint venture interest who was going to step in and satisfy the cover payment indebtedness.

THE COURT: Right.

MR. COLLINS: That is not going to happen now, My Lady. It is reasonable to conclude there is not going to be a purchaser. We are in a realization scenario, where in DDMI's submission, there must be respect for the priority, as well as for the nature of the security that is granted. And if we follow this through, My Lady, if you value the collateral -- and we'll get to the contractual provision in a moment as well, where Dominion has waived the requirement to call for a valuation of the collateral -- but say you did that. So we were owed $120 million, and on some formulation, DDMI comes and says, Go ahead, do your realization, but DICAN values this collateral at $130 million, please give us $10 million worth of diamonds, right?

THE COURT: Right.

MR. COLLINS: So that goes away.

We conduct our realization, and say we only realize $110 million. We will never be able to recover that $10 million, My Lady. That money will flow to the first, to Credit Suisse, who will utilize it and apply it to their security. And there's a priority agreement between DDMI and Credit Suisse that says DDMI has absolute priority over Credit Suisse with respect to the cover payments.

So this notion of having to hand back collateral is extremely prejudicial to DDMI. But it's also, My Lady, as we say -- and we'll go through the authorities -- it's inconsistent, entirely inconsistent, with the law on the point.

THE COURT: Okay.

MR. COLLINS: And if you go to, if we go to our brief, so we'll go back into the case --

THE COURT: But, I mean, will you not continue to get diamonds out of the Diavik mine? So that is why I do not understand the prejudice part. Let us say all of a sudden -- and there is conflicting evidence about whether this is, in fact, true -- but let us say you are right, that the sale of these diamonds is less than what the $120 million is presently owed, you are going to be, you are working, it is a working mine, you will have other diamonds that will come up, right?

MR. COLLINS: But they're not paying us for the production of those, so the debt is going to go up at the same time, so you know, we're always going to be trying to catch up, and now that we're in a realization -- remember, we're realizing to

pay money that Dominion is refusing to pay -- you know, Dominion, flush with cash, isn't going to pay any of its joint venture billings going forward, My Lady.

THE COURT: Right.

MR. COLLINS: So you might increase the collateral base in terms of production. You are also going to increase the indebtedness. That's the answer to that point, My Lady.

THE COURT: Well, I know. But all I am saying is do we really need to guess about this? I mean --

MR. COLLINS: No.

THE COURT: -- why wouldn't we look to see what you effect in terms of cash at the end of the day, because there's quite a fight over whether or not you are going to be in any deficit, in any event. They say no, you say yes, possibly. And so, I mean, at the end of the day, if there is a deficit like you say, let's say $10 million, using that number, well, could that not be corrected at the end of the day?

MR. COLLINS: I don't think so, My Lady . I haven't heard anything from Credit Suisse that says hand us $10 million in collateral. And if you are short at the end of the day, we will give it back. But we shouldn't have to get into that analysis, because we are senior on this collateral. And it is not correct in law to say that we now have to handsome of that collateral back in the context of a realization.

THE COURT: Well, okay. Except that that is what the order says, right? That is what the order says. So in order to change that order, you have to show that something has changed, right? So I go back to that.

MR. COLLINS: Yes.

THE COURT: And you say, Well, things have changed because now, you know, there's not going to be a sale, right? But we knew that before, that there possibly wouldn't be a sale yet, right?

MR. COLLINS: But before, were weren't entitled to realize on the collateral, and the lens which we would suggest the Court was viewing matters then was that I had a stay of proceedings here, I am balancing, I am delicately balancing the interests between DDMI -- who is making these cover payments, who is continuing to fund the operation of this mine for the benefit of estate -- and I am hearing what the other

stakeholders, including Dominion, are saying, that granting relief from the stay is an extraordinary remedy.

We now have security -- and we always did -- over the entirety of the diamond production, My Lady. And now, this is what's changed: Is we now are in the position to start realizing and working that debt down. And because we're in the realization process, more than ever, the absolute priority between the respective interests must be respected. And in we are forced to seed collateral to junior creditors that we don't get back, that's what's changed. That's --

THE COURT: Well, okay. So let us fast-forward a bit. Because basically you are saying I want to be able to sell all the 40 percent, and then pay back any difference, right? Is that what you are saying?

MR. COLLINS: Well, I'm saying until --

THE COURT: Right.

MR. COLLINS: -- we're -- I'm saying this: Until we are repaid in full, we ought not have to release any of the diamonds. And that is the law. But the law recognizes that, My Lady, and we'll get to it in terms of the protections that are available. They get the surplus.

Also, a fundamental aspect of secured enforcement, My Lady -- I mean, it goes back to ancient Courts of Equity are -- if you are a subordinate, or you're the owner of the collateral, and you wish to get the collateral back, how do you get it back? You redeem. You redeem by paying the full amount of the debt. You can't go and say I'm just going to take a little bit of this collateral away because I think you're over secured. It wrongly, in our submission, My Lady, allocates the risk of deficiency to the party who, when they entered into the transaction, underwrote that risk by taking security over the entirety of an asset. That goes to things like counter-party risk, to pricing, and the like.

But perhaps it's helpful to get into the law of the point as well, because again, it's a principle that's, it is the common law, and it is reflected in the statute. So I am wondering if we should go there next, My Lady?

THE COURT: All right, if you would like.

MR. COLLINS: All right. So I am now at page 5 of our reply brief. Have you been directed to that, My Lady?

THE COURT: Okay.

MR. COLLINS: So we've cited, you know, leading authority on the topic: *McLarin* (phonetic), on secured transactions. And you'll see the quote: (as read)

> A secured party may take possession of collateral before default, pursuant to the terms of the security agreement, or after default, as the first step towards pursuing its remedies. If the loan is repaid at maturity, or if the delinquent borrower cures its default or paying down, the property will have to be returned.

And that gets to the fundamental nature of redemption, My Lady. The borrower -- here, the debtor party -- and those that are subordinate have the absolute right, if they think that we are over secured and want to take control of the process, to pay us out. And they get the collateral back.

Paragraph 15 of the brief --

THE COURT: Well, I think their main problem, though, Mr. Collins, from what I read -- and you can hear from them in due course -- is that, well, that's not what the order said. So you want a change in the order, right?

MR. COLLINS: Yes, but let's address that?

THE COURT: Right? I am just saying I think that is what they are arguing, right?

MR. COLLINS: Well --

THE COURT: (INDISCERNIBLE).

MR. COLLINS: But, My Lady, again, with great reluctance, I read this, what the Judge said was if you want to revisit this down the road, recognizing where we're then at, you have leave to do that, right?

THE COURT: Right.

MR. COLLINS: Right? And so we -- and again, that's, I don't expect that we're hung up on the jurisdictional basis for the Court to say, You can hold all of the collateral now. Because the alternative is to move this into a liquidation

proceeding, My Lady, where there would be to dispute whatsoever with respect to the ability of the party liquidating to hold all of the collateral.

THE COURT: Okay. No, I am with you on that point, with respect to what normally happens. This is an unusual situation.

MR. COLLINS: But not so much anymore, because this is a secured party realizing on a security interest, My Lady.

THE COURT: Okay. So at base, you want to have the 40 percent of all the diamonds. You do not want to have to give back any diamonds out of that part, right?

MR. COLLINS: Once we're repaid, yes. But once we're repaid, then parties get the diamonds, and they flow in accordance with the legal priority.

THE COURT: So really, it's a timing thing? I mean, if your friends are right that you are over collateralized, they'll eventually get their diamonds back?

MR. COLLINS: That's right.

THE COURT: Right?

MR. COLLINS: Yes, absolutely . But who should bear the risk of that today, My Lady? Like, the party that's owed the money, or a party who has contractually agreed -- in the case of Dominion -- that we may enforce our security by holding the security. Or in the case of Credit Suisse, who indicates -- and we'll get to this in a moment, My Lady -- that we are in priority, and that they agreed to the provisions of the joint venture agreement that don't require us to value collateral prior to enforcing on it.

THE COURT: Okay.

MR. COLLINS: And if we go to our brief, My Lady, it was filed in May. The authority for the ability to retain the collateral is found in the PPSA as well, which is, again, a statement of the common law.

So at paragraph 16 of the Northwest Territories PPSA, we cite Section 58. So: (as read)

> On default under a security agreement --

And let's be clear, we have a default here:

-- the secured party has, unless otherwise agreed --

And there is no agreement otherwise:

-- the right to take possession of the collateral.

And we are in possession of the collateral, and the legislation recognizes, My Lady, the requirement and the ability to take possession of it.

But again, this flows through -- and it makes a lot of sense, if we consider the relative priority here. And if we go down to paragraph 19 of the brief -- which is Section 62, My Lady -- I mean, this speaks of redemption.

And I am certain today, in foreclosure matters, more than one Court, you know, dealing with this has said to subordinate creditors, foreclose down, redeem up. And, you know, it was a turn of phrase that Master Funduk you heard virtually every day in chambers, dealing with securities. And this is what Section 62 says. At any time before we sell the collateral, right, any person who is entitled to receive notice of the disposition may, by tendering payment of the monetary obligations secured -- plus expenses -- and agreeing to fill other obligations of the collateral, redeems the collateral. I mean, it's a fundamental tenant of realization and respecting the relative priority between parties.

If we're required to hand back collateral before we realize upon it, we are shifting the risk of loss from us -- who negotiated a senior security position, you are negotiating that risk on to us and giving a windfall to the subordinate creditors, My Lady.

And again, there's no prejudice to these creditors. You have got to a place where you have agreed that we are going to monetize the collateral as quickly as possible, to maximize, to optimize the sale proceeds. And once that is repaid, then (INDISCERNIBLE), and the security no longer attaches to any of the collateral.

THE COURT: So what we are talking about is just a matter of a few months?

MR. COLLINS: Correct.

THE COURT: (INDISCERNIBLE).

MR. COLLINS: Well, for us --

THE COURT: If I agree with what you are saying, right?

MR. COLLINS: That's right, yes, I'd say so, My Lady, I would say so.

And again, not that it should ever be dispositive, but in this case, if you look at the Monitor's seventh report and the cash flows -- and I can take you there, but I think you've heard -- that the ending cash balance is $36 million.

Contractually, My Lady, in this case, Dominion and Credit Suisse have agreed with DDMI to not require a valuation of the security, and I'll take you to the provisions of the joint venture agreement in that regard.

THE COURT: That is okay. I will take your word for it -- or whatever, you can take me to it. What section is it?

MR. COLLINS: It's in our brief, and I'll take you right to it now. So this is paragraph 24. So it's again, and we're back to Section 9.4 of the joint venture agreement.

THE COURT: Okay.

MR. COLLINS: (as read)

> In the event the non-defaulting participant --

In this case, DDMI:

> -- enforces the security interest, pursuant to the terms of this section, the defaulting participant --

i.e., Dominion:

> -- waives any required valuation or appraisement of the mortgage or secured property prior to sale.

And really, that's what Dominion is saying. Is we think you should appraise the collateral on the basis of a valuation that we say doesn't act as a proper proxy for value, in any event, but that's what Dominion is saying. But they've waived that. Contractually they've

agreed not to call for a valuation of the security.

And that waiver not only extends to Dominion, but it also extends to a secured lender to Dominion.

THE COURT: Right, okay.

MR. COLLINS: So in this case, Credit Suisse.

THE COURT: Right.

MR. COLLINS: Credit Suisse, and then Credit Suisse is not a party to the joint venture agreement. But if you go down, next the is Credit Suisse subordination agreement. And Credit Suisse has fully subordinated its interest to the security interests granted by Dominion, and its agreed that that subordination is fully subordinate to the terms of the JVA and the respective rights thereunder.

So to require a valuation of the collateral today, in addition to being contrary to common law and the PPSA, is also countenancing a breach of the joint venture agreement, and the subordination agreement, negotiated and entered into by sophisticated commercial parties, My Lady. We're not dealing with consumer security here and the like.

THE COURT: Right.

MR. COLLINS: And again, just to summarize the point, what's changed is we're now under the single-proceeding model, we would submit, My Lady. As propounded by the Supreme Court of Canada in *Century Services*, rather than having a multiplicity of proceedings, in the context of it being desirable, wherever possible, to keep everything under a single proceeding.

You've got Ekati, they're out trying to find a buyer for Ekati. They've agreed that we can sell our diamonds -- as they should, My Lady, by the way, as they should, and it was the right decision on the part of Dominion and Dominion's directors to agree to this. Like, we're $120 million in. We're not being paid, we're the only senior creditor not being paid, and they've agreed to that. We are in a realization scenario with respect to those diamonds.

The law says we're entitled to take possession of that collateral, and the law does not say that we have to give up the collateral on the basis of an assertion by the debtor or a junior creditor that, Hey, we think you're over collateralized. It would turn secured lending on its head, if that were the outcome. Because a secured lender in first position, who has

security, who has bargained for a bundle of rights, could never be assured that it would be entitled to rely upon all of these rights, My Lady, in the event of non-payment.

THE COURT: Okay. All right, I get your position.

MR. COLLINS: Thank you, My Lady.

And so that, really, to DDMI, the point of the DICAN valuation and the evidence that's been brought forward as to whether or not the DICAN valuation should be the basis upon the amount of collateral to be held, that was in anticipation of protecting against the scenario where we weren't permitted to realize.

Now that we're permitted to realize, you know, that evidence is largely, largely, no longer pertinent -- we would say -- to the narrow narrow legal issue that you have been asked to determine.

Having said that, I take it you've read the Croese affidavit number 4 with respect to the DICAN valuation?

THE COURT: Right.

MR. COLLINS: And our Bench brief on the point.

THE COURT: Yes.

MR. COLLINS: Right? DICAN has overstated the value of production, save and except September and October of this year. Historically, the DICAN valuation overstates, in the evidence of Mr. Croese, the valuation.

The DICAN valuation is not a point-in-sale valuation.

THE COURT: No, I understand that.

MR. COLLINS: Okay.

THE COURT: And there is different evidence on that, but at the end of the day, if it's going on realized, it's going to be realized, right?

MR. COLLINS: Right. But, yes, and we say, we can't, you know, we say in the first instance, of course, we should not be forced to hand any of this collateral back; but if we are, you know, that if the Court were inclined to do so, it's still

impossible to make a determination as to what the stuff is worth. DICAN is a gross valuation as well, and while there's a dispute as between what the number comes off the top -- you know, whether it is 11, 13, or 20 -- we know at a minimum that Ms. Kaye says it's 11 percent, right? So the DICAN valuation in and of itself, you know, would be understated by at least 11 percent, because it doesn't account for the cost of disposition and the like.

More to the point on the valuation and the environment within which we live -- and it goes back to the valuation of the underlying joint venture interest -- it's impossible for this Court, on the basis of the evidence before it today, but probably on the basis of any evidence -- to make a determination as to what that value is.

The way to determine what that value is, My Lady, is when we go out to market and start to receive proceeds.

THE COURT: Yes, that is what I just said.

MR. COLLINS: Right. So I don't know if --

THE COURT: So why should we spend a whole lot of time on this argument, about what the DICAN valuation is, if they are being sold? So...

MR. COLLINS: Well, we shouldn't. We should only spend time on it if the Court is inclined to say, you know, despite the submissions, and despite the law to the contrary, we still have to hand back collateral.

THE COURT: Okay.

MR. COLLINS: There's no point, we would agree wholeheartedly, My Lady.

THE COURT: Okay.

MR. COLLINS: Just add to that, as well, the fact of the priority charges and the like. But I think I have said enough on the point, and Your Ladyship has apprehended the nature of the argument, and I appreciate that.

So subject to any further questions that you may have, we'll reserve our right to reply to anything that comes up.

THE COURT: Okay. Good stuff.

MR. COLLINS: Thank you.

THE COURT: Thank you.

So who wants to reply? Mr. Rubin, do you want to start there?

MR. RUBIN: Yes, thank you, My Lady.

Submissions by Mr. Rubin (Application)

MR. RUBIN: I think I'll start with some preliminary comments, and before turning to our materials. Again, I think the context is important, as you referenced earlier. The Court is obviously very alive to the concerns that -- and complaints, I will say -- that Dominion has had historically -- and continues to have, to be frank -- in relation to DDMI and Diavik.

And I say that because these are not trivial complaints.

THE COURT: Right.

MR. RUBIN: There are substantive issues that first arose as a result of, you know, the way in which Dominion perceived DDMI to be operating the joint venture. And of course, as Your Ladyship is well aware, Dominion has a 40 percent stake in this mine. This is not a trivial stake. This is a significant ownership stake, in which billions and billions of dollars have been invested in this mine.

And in Dominion's view, their complaints have fallen on deaf ears, and you have heard a lot about that in Ms. Kaye's sworn affidavit, evidence about that related to the refusal of (INDISCERNIBLE) information -- and again, these are Dominion's allegations -- operational performance, you have heard all of that. And that is important background.

But we've also seen a theme -- and I think you have heard me say this before -- a theme in this CCAA proceedings, where DDMI makes a request, they make an ask. Then they ask for more, and you've heard this, and then they come back and they ask for something different. And then they want an order changed, and you see that again and again.

And this, in our submission, continues today. That they've already made an ask. They've already asked for an order that they be permitted to hold diamonds. This Court has already made an order on June 19th. And as Your Ladyship has alluded to, the issues that have been raised on this hearing are, in fact -- I am not going to say identical -- but very

very similar to the arguments that were raised on June 19th.

Your Ladyship will a recall that on June 19th, Mr. Collins made the same argument that DICAN wasn't the proper way to estimate value. It wasn't the best metric. Those arguments have already been made. And we are -- and I appreciate that Mr. Collins has focussed a great deal on the PPSA, and I understand why he's done that, but what that submission fails to appreciate is this is not a PPSA enforcement. This is a CCAA proceeding in which there are a variety of stakeholder interests -- and not just Dominion, but the first lien lenders, the ad hoc group, lien holders, pension entitlements, you have heard all of that.

And so what that Court has to do, and I submit what this Court did do on June 19th, was to balance the competing interests. And so what the application of DDMI today seeks to do is to simply have Your Ladyship make a different order than you made on June 19th. And you asked, of course, one of the very pertinent questions, which is what has changed since the June 19th order?

And what has changed? Well, Mr. Collins has said, well, what's changed is now Dominion and the first lien lenders have consented to us going out to monetize diamonds. Well, that's not a change that would impact your June 19th order.

So what has actually changed since June 19th? Well, you will recall on June 19th, Mr. Collins made the same argument, that it is unlikely that there will ever be a purchase of the Diavik interest. He made that argument June 19th, and he makes it again today.

But what has actually changed since June 19th? Well, there's two things that have changed: Number one, Dominion has actually sold diamonds in September and October. We didn't have that evidence in June. And the evidence before you is Dominion has sold diamonds in excess of the DICAN values. So Dominion is selling diamonds for values greater than DICAN. That evidence is squarely before the Court.

Secondly, what's the second thing that's changed? DDMI, Mr. Collins' client, has also sold diamonds in September and October, for more than the DICAN valuation. We actually have that evidence now.

Now, what's interesting is -- and I will take you to the evidence -- Dominion has provided the exact numbers and information related to what we sold diamonds for. DDMI has not. You have heard us repeatedly say that there is a lack of information. And so what DDMI has done is they have, in the middle of paragraph 13 -- so if you are making a note -- paragraph 13 of Mr. Croese's affidavit. In the middle of that paragraph there is a one-liner which says that, "DDMI has sold diamonds in excess of DICAN valuations." But they

don't give any price. They don't tell us by how much.

So in that context -- oh, sorry, if I could just make two other comments there. Why is DDMI bringing the application now? The reason they're bringing this application now to amend your June 19th order, is because never mind the fact that DICAN is undervalued right now, but in fact, the swing is now such that even on DICAN valuations, they are over secured. Never mind the fact that DICAN has valued diamonds too low -- because we know that from both DDMI and Dominion -- but the swing now is they're holding excess diamonds right now, and they don't want to give them back. They don't want to give diamonds back, in accordance with your June 19th order.

And so that is why they are bringing the application now.

THE COURT: Well, the order, I don't know, said that they had to give them back. I think they had to hold them. Isn't that exactly what the order says?

MR. RUBIN: No. The order says they get to hold diamonds --

THE COURT: Okay, I will take a look.

MR. RUBIN: -- up to the amount of their cover payments --

THE COURT: Right.

MR. RUBIN: -- based on the DICAN. So if they are holding diamonds in excess of their cover payments, the diamonds come back to Dominion.

THE COURT: I don't know if it said that. I thought they were just holding them. Because at the time there was no sales going on, no nothing.

MR. RUBIN: That's right.

THE COURT: You know, so it did not really matter. Just hold on a second.

MR. RUBIN: So in paragraph 16 of the June 19th order, and it says, it simply says that they are permitted to hold diamonds in an amount of Dominion's share of production, equal to the total value of the JVA cover payments made by DDMI, based on the value of what essentially is Diavik.

THE COURT: Okay. Just so we're all on the same page, we

are at page 3-68. We are looking at the order, right?

MR. RUBIN: Yes. Paragraph 16 of the June 19th order.

THE COURT: Okay: (as read)

> To hold an amount of Dominion share production from the (INDISCERNIBLE) equal to the total value.

Right?

MR. RUBIN: Right. So the order they are entitled to hold diamonds, but only up to the amount of the cover payments that they make, based on the DICAN valuation.

And so what they're seeking now is an amendment to that order that says they get to hold all of the diamonds, regardless of whether they are over secured, based on the DICAN valuation.

And so both us and the first lien lenders oppose an amendment to your June 19th order.

THE COURT: Yes. I am just reading this. They had the right to, they had to let you go and take a look at the product.

MR. RUBIN: Yes. So for --

THE COURT: Right? So --

MR. RUBIN: -- whatever they were holding, yes, it was segregated. They had to keep it safe. They would report to us, they had the permitted as ever access. And on the happening of certain events, they could bring an application to sell the diamonds. And these are the events. These are some of the negotiated terms, that on that date, if for instance, there had of been a sale, they could bring an application to permit them to realize on the diamonds they were holding.

And so they're bringing two applications today: One is to allow them to sell, that's demonetization; and then second, they're bringing an application to amend your paragraph 16 to allow them to keep all of the diamonds, without reference to the valuation, and without reference to their cover payment.

And so that's the dispute today, which is should they be entitled to keep all of the

diamonds, without reference to the DICAN valuation? And in our submission, what they are seeking to do is prejudicial. To not just Dominion, but our creditors. And, you know, contrary to what Mr. Collins has suggested, I don't think it's fair to say that Dominion is flush with cash. We're insolvent, and you heard the Monitor saying there may not be enough money to get us through to January 15th. And you heard the Monitor saying that was one of the reasons why they supported a December 15th stay extension.

THE COURT: Right, yes, I heard that.

MR. RUBIN: And so in our submission, the approach that's being suggested by counsel to DDMI and by DDMI has not achieved the balance that is necessary in a CCAA proceeding, and that balance was achieved by your June 19th order, made on very similar arguments.

THE COURT: Okay. But if you can go back to why is there prejudice? Like, let's say they sold all of the diamonds, they would have to pay back any amount -- I mean, you have issues with the cover payments, but any way, setting that aside, because I cannot decide that today -- but you get paid back any amounts over their cover payments.

MR. RUBIN: Right, but -- sure, but what they're seeking --

THE COURT: So where is the prejudice?

MR. RUBIN: So right now, as I mentioned, and that's why I mentioned the lack of cash, and again, how we're not flush with cash. But of course, there are timing issues with respect to any potential sale.

What we don't know at this point in time is how long it might take DDMI, or how long DDMI might take to sell diamonds. And so the balance that's been achieved provides them with appropriate security, in our view, because the security being achieved -- or, excuse me -- pursuant to your order, gives them, in our submission, access security on the diamonds. Because again, the DICAN valuations are underestimating the value, so they're already over secured on the diamonds, and then on top of it -- and I will take you to the evidence -- but in our submission they are holding cash in the joint venture cash account -- you may have seen that -- in excess of what they historically have held. So they've got extra cash than they did a year ago.

THE COURT: Yes, there was some reply to that in Mr. Croese's affidavit.

MR. RUBIN: There was, yes. There was reply, and there was reply by Ms. Kaye in the material as well, and Ms. Kaye provides a helpful table which shows how, starting in September, the cash in the account went from about 5 million up to 17 million, and you can see it in a graphic format. So this is not a recent issue.

And then more importantly, the question about the 40 percent interest.

THE COURT: M-hm.

MR. RUBIN: Because DDMI has security in our 40 percent stake in the mine. Now, I appreciate what from Collins has said, and I also took note of your comment, which is, well, just because it didn't sell doesn't mean it isn't worth anything.

THE COURT: Right.

MR. RUBIN: And of course that's accurate. Because if the 40 percent, if the interest in the mine was worthless, was worth nothing, and this business were losing money, I think we can fairly assume that DDMI and Rio Tinto are not in the business of losing money, and they would not be continuing to operate the mine for the next three or four years simply to lose money. So clearly there is value there.

But in addition, we have to remember that this is a significant operating mine, in which billions of dollars have been poured into. So the 40 percent interest isn't just in the value of the diamonds to be produced over the next number of years, but in the property and the equipment and the trucks, the plants. This is a substantial operation.

So what we've got is we have DDMI being secured on diamonds. According to the DICAN valuation -- which the evidence before you is DICAN undervalues the diamonds -- so they've got excess security on the diamonds alone. They've got excess security in the cash account. They've got additional security in the 40 percent interest. And our submission is your June 19th order found the correct balance, and it was excess diamonds. Because they're only excess diamonds, the excess diamonds should be returned to Dominion, as per your June 19th order.

So there is one other matter -- and I think I'll just, I'll mention it now, so I've put it on the record. And it's a bit of a tangent, but I don't want to lose sight of it. Your Ladyship may recall that back in April, or in May, there were contested applications between Dominion and DDMI, in which we had sought an order of what we called the April 1st to April 15th diamonds be returned to Dominion.

THE COURT: Right.

MR. RUBIN: You may recall at that time -- it may have been your May 8th order -- that you ordered that those diamonds be made available for pick up by Dominion.

THE COURT: Right.

MR. RUBIN: The theory, I think, being Dominion had paid its cash calls for the first two weeks of April; and as such, Dominion had, quotes, you know, paid for those diamonds. Because we had made the cash call payments.

THE COURT: Right.

MR. RUBIN: And you ordered that they be permitted to pick up those diamonds. Those diamonds were picked up.

There is an outstanding issue between DDMI and Dominion related to what I would call the larger stones. And there is a live dispute -- and there has been for a number of months, and Mr. Collins and I have talked about that, and the mine is alive to it, and I have sent Mr. Collins an email last night as well -- I just want to make sure and put on the record that nothing that is happening today prejudices or affects either Mr. Collins' clients or ours -- or the first lien lenders, for that matter -- with respect to those larger stones in the April 1st to 15th production cycle.

I don't believe that's in issue, but I want to make sure I put that on the record, because we wouldn't want anyone's rights to be prejudiced inadvertently through this proceeding. So I'll leave that.

And then, of course, I think I'll go to Ms. Kaye's affidavit, and then turn to the monetization process.

And so if I could turn to Ms. Kaye's affidavit, and that is at page 14.2-134, and this is Ms. Kaye's affidavit. And I'll start with paragraph 5 -- and this relates in part to the monetization proposal -- and in paragraph 5, this was before we had come to an agreement on almost all items except for, I think, Mr. Collins said two -- or excuse me -- one. I think that's actually two outstanding issues. But DDMI had -- excuse me -- Dominion had offered to sell the diamonds instead of DDMI.

Of course, Dominion is in the business of producing and selling diamonds, so is DDMI. And so I simply mention paragraph 5 because Dominion had put forward a potential sales

process with the one Ls and said, We will sell the diamonds. And as part of that process, we said, Here is the type of reporting that we would like, and we will give you, DDMI, and it was detailed reporting. And in addition, we will sell for 1 percent.

And so we've now moved past that, and we've now come to an agreement. But I think it's important to understand that Dominion did say, and was prepared to sell those diamonds for that 1 percent fee, and I'll come back to that.

If I turn in Ms. Kaye's affidavit forward, to paragraph 8, 9, and 10, I won't spend a lot of time on this, but paragraphs 8, 9, and 10 talk about this budget issue that you've heard a little bit about. And what I want to say is this table here talks and sets out the budget -- this is the approved budget, and the budget was approved in November, before the 2020 calendar year -- and as you can see here, Ms. Kaye sets out a very helpful summary.

And what it shows -- and I'll just use the Canadian numbers -- but it shows the cash calls -- and there's usually two cash calls a month. It shows the budgeted amounts, and then it shows the actual cash calls that were made on Dominion. And you can see for most months, the cash calls were in excess of the budget.

So, for instance, on May 1st, the cash call that was made on Dominion was $6.3 million for that two-week period more than the budget. So that's in one two-week period. And so if you're able to scroll down to page 4, what you can see at the end of the table is that up until the end of September, in the fourth column, you can see the total, and the amount that was cash called on Dominion was $19 million more than the budget.

And then in paragraph 11, if you add in October, the cash calls being made by DDMI on Dominion were $21 million over budget.

Now, Mr. Croese says, Well, this isn't the right budget.

THE COURT: Right.

MR. RUBIN: Ms. Kaye has filed a reply affidavit, and what the reply affidavit provides is this --

THE COURT: Where is the reply affidavit?

MR. RUBIN: It is in, I think it is 14.2 -- I will try and direct you to it -- 14.2-7.

THE COURT: Oh, okay. Oh, I had not seen that. When did

that get sent?

MR. RUBIN: Well, that did not come until very early this morning. I think Ms. Kaye was up, I think at either 3 this morning or 5 this morning.

THE COURT: Oh, all right.

MR. RUBIN: But the point of that is this: What she says in this affidavit is -- and this is at paragraph 6 and 7 -- is that there was a budget that was agreed to in paragraph 6, in November, in the amount of 274 million. And then what happened is that $274 million amount -- this is in paragraph 7 -- this included what were called closure securitization costs, and there was 66.4 million that was attributed to Dominion for closure securitization costs.

And in paragraph 8, at the time the November budget was agreed to, the parties were negotiating a security agreement to deal with those closure costs. And what Ms. Kaye says in paragraph 8 is that if Dominion provided a letter of credit to secure those closure costs, and you've heard something about closure costs already, then Mr. Croese noted, and here is a quote from him in paragraph 8: (as read)

> Please also note that the closure securitization cash calls have included, but will be removed subject to finalization of the security agreement.

And then at paragraph 9, what it says is: (as read)

> Dominion provided the letter of credit --

That's Mr. Wasserman's client's letter of credit to cover these securitization costs. And therefore, the amount of the budget had to be decreased by -- this is in paragraph 10 -- the 66 million.

So what happened was they agreed on a budget, it included closure costs. A letter of credit was provided to deal with the closure costs, so the budget had to come down to, by 66 million. Those are the numbers that Ms. Kaye uses.

And then what happened in paragraph 11 is in April, Dominion -- or excuse me -- DDMI unilaterally added cash reclamation obligations, and added $56 million to the budget. So there is the dispute on the budget, is that they unilaterally, in the middle of the year, added a $56 million number.

So I guess what the point here is the budget issue isn't determinative of the issue before

you. But it's indicative of the issues that our client has been facing, and in dealing with the matters before the Court, which relates to cash calls and cover payments, we are not taking the position that the cover payments don't include these increased budget amounts, and even though they are increased budget amounts, and they weren't approved in the budget. But the point is that even including all of these amounts, they are over secured.

And so what I will do is take you back to Ms. Kaye's affidavit that we were previously looking at. And that is 14.2-4. And I can direct you to paragraph 15, if that's helpful.

THE COURT: Sorry, where you are going now, Mr. Rubin?

MR. RUBIN: Yes, I'm at Ms. Kaye's affidavit. It's 14.24, but the page number, if that's easier, is 14.2-138.

THE COURT: So there must be another affidavit?

MR. RUBIN: That's the affidavit we were just looking at earlier, and I think you have already read this affidavit. This is the one we were just talking about, the cash, the joint venture budget --

THE COURT: Oh, okay, right.

MR. RUBIN: Yes. And so this is Ms. Kaye's main affidavit on this.

THE COURT: Okay.

MR. RUBIN: And at paragraph 15, she talks about the cash account -- I won't get into the details there, except to say again, Ms. Kaye's affidavit is that the joint venture cash account is now much larger than it used to be, and so there is excess cash being held in that account. So again, these are cash calls that are being made by DDMI to hold a cash balance -- as Ms. Kaye said -- of approximately $17 million at the end of September.

The next paragraph, paragraph (b), talks about the Canadian Emergency Wage Subsidy. Why does this matter? Well, this paragraph talks about how the CEWS is a program that, in fact, obviously many businesses have used, including Dominion, and Dominion has asked DDMI to apply under this program. And she references meetings held in April of this year, and of course, in October of this year. And DDMI has confirmed they haven't yet applied for it. And Ms. Kaye says this could be in the tens of millions of dollars, and again they haven't applied for this. But that would reduce the cash calls and would reduce

their exposure.

Now, Mr. Croese says, he doesn't provide much detail, but he says, Well, I dispute how much it might be. But again, there's no detail provided.

THE COURT: But I thought his reply was also, we're in the process of looking at this, because it's complicated.

MR. RUBIN: Yes, he's in the process of looking at it.

THE COURT: But they have until February 2021, to make that application.

MR. RUBIN: Absolutely. And starting in April, our client had asked item to start doing it in April. And so it's been taking them -- well, it's been six months now, and they still haven't applied. In circumstances where, as the 40 percent partner, we would like them to do this. And it would reduce the cash calls, and it would reduce the cover payments.

And of course, to the extent that they receive this money, it's a windfall to the joint venture, and would reduce their exposure. So we can expect they are going to apply, but they just haven't. But it impacts whether they're actually exposed or not. Because again, they're still holding diamonds for the full cover payment amount, and they have excess cash in their joint venture bank account, they still haven't applied for CEWS. All of that gives them additional protection.

In the next section of the affidavit, it talks about how DDMI is over secured, and they're not under secured. And so at paragraph 17 of Ms. Kaye's affidavit, she notes again -- to be fair to Mr. Croese -- that in prior years, DICAN has overvalued the diamonds. But that isn't the way things are working now: (as read)

> All of the diamonds --

This is in paragraph 17:

> -- that Dominion has sold in 2020 --

And again, these are diamonds that we sold in January, not just recently, but even the ones we sold in January, before COVID, before CCAA, and lately, have sold at higher values than DICAN.

So DICAN, the best evidence is DICAN isn't the best approximate, it actually undervalues the diamonds. And so in paragraph 18, she notes that Mr. Croese himself says that DDMI has sold diamonds in September and October in excess of the DICAN. So both parties are selling diamonds at more than DICAN values.

And so what she does is again, open and transparent in paragraph 19. And what she does is she identifies the sales. So in paragraph 19, diamonds that were produced in November, DICAN valued them at $90.82 a carat. They were sold in January -- because there is always a bit of a, you know, a couple-month lag while they're cleaned or move and they're sold -- you can see what they were sold for, and so they were sold at 7 percent greater than DICAN values.

Then the December and January diamonds were sold in February, 11 percent more than DICAN.

In February, they were sold at 5 percent than -- excuse me -- the February diamonds were sold in September were sold at 5 percent more than DICAN.

So we have a full range here, going back a year. And then what Ms. Kaye has done in paragraph 21, is she -- excuse me -- in paragraph 20, is she has said that if the DICAN values are applied at the time of evaluation -- so each month when DICAN applies the values -- and they're applied to the diamonds that DDMI is holding, those diamonds are worth 92 U.S., on the low DICAN valuations.

So that's what table 20 says, is that if you go up to September 30th, using the DICAN valuations on a month-by-month basis, the diamonds are worth $92 million. So that's September 30th, and these are U.S., so that's a little bit of a difference between Mr. Collins and myself.

So what this shows is using the DICAN on the month-to-month valuations -- and you can see some of them are pretty low in May and June, if you look at the table in paragraph 20 -- to DICAN was valuing diamonds as low as $71 a carat. And even if you use those really low number, DDMI is still holding 92 million U.S. of diamonds.

And then paragraph 21 is important, because what she says is that as of September 30th, what were the cover payments that DDMI has made? Well, it's 83 U.S. So we're just picks dates, because we have to pick dates to compare. So on September 30th, DDMI has made cover payments of 83 million, and the low DICAN valuations -- and you can see how low they are in the table -- 92 million.

So on that --

THE COURT: So ultimately, Mr. Rubin, these are going to be sold, right? So...

MR. RUBIN: Yes.

THE COURT: Right? And you guys have come to an agreement more or less, with a few details, on how they are going to be sold, and they are going to be sold. And I mean, to the extent that they pay off the your cover payments, then that will be the end of it.

But in the meantime, they are just wanting to sell more, basically. It is as simple as that. I mean, you are making this incredibly complicated, but you know, what is the problem with that? And I go back to the prejudice. If you agree to, you know, perhaps the one difference would be this fee, because if they sell them versus you selling them, it's going to cost more, right? But other than that, what is the difference?

And you know, let us just be practical here in terms of all of this.

MR. RUBIN: Absolutely , agree on the practicality and agree on finding the right balance. And so what -- and I'll ask you to just look at paragraph 23, because you know, we want to find that right balance, and that was the argument on June 19th, and it's the argument today. And so what paragraph 23 says is we have just sold diamonds. We know what we sold diamonds for. That is good evidence of what we just sold diamonds for. We are selling them for $90 a carat.

And if you use that, the diamonds that DDMI is holding, based on your order, the diamonds that they're holding based on your order, they're worth $109 million, based on the recent sales. So that's $26 million of over security.

So based on the best evidence of what diamonds are selling for now, DDMI is over secured by 26 million U.S., so I don't know, 32, 33, $34 million U.S.

THE COURT: Okay. Well, right now -- okay, I see that, thank you -- but right now the diamonds, when we looked back in June, the diamonds weren't going anywhere. They are just being held in a separate pile basically, right?

MR. RUBIN: Right.

THE COURT: A fancy pile, but a pile nonetheless.

But now we're talking about, you know, realizing on these piles of diamonds. What do you want to do with them? Like, they are saying, Look, we do not want to take a risk that the diamonds you say we are going to make all this extra money, tremendous. Why don't we sell them and then see? Basically that is what they are saying.

And you are saying, No, no, we want you to send us over our diamonds, the ones that were being kept in the separate pile, right? But I do not see application for you to send those diamonds so you can sell them right now, right?

MR. RUBIN: So there's no application on the April diamonds before you, so that's fine.

THE COURT: No, no, the April diamonds, set that aside. I understand that's a different issue.

MR. RUBIN: Correct.

THE COURT: I am talking about the -- out of the 40 percent, the ones that are not covered by the cover payment.

MR. RUBIN: Yes.

THE COURT: Because you already went over how much the cover payment is, like, basically -- or the cover payment diamonds -- right? The ones excess to that. You say there's excess diamonds to that. But I do not see an application saying those excess diamonds need to be sent to you.

MR. RUBIN: Well --

THE COURT: They will still be held. Like, under the order, they would be held. They would sitting there.

MR. RUBIN: Well, they would be -- well, My Lady, I think --

THE COURT: Well, I am just saying.

MR. RUBIN: Yes, well, the order says that DDMI only gets to hold enough diamonds to cover their cover payments. That is what your order says -- and in fact, that is how everyone has been operating on that view.

THE COURT: Right.

MR. RUBIN: So what we're saying, right, the excess -- I'll call them the excess diamonds -- the excess diamonds be delivered to Dominion.

THE COURT: But they have just been sitting there. They have not been delivered?

MR. RUBIN: They have not yet been delivered. Because you may recall that Mr. Collins wanted to bring this application -- we tried to bring it on an earlier date, we couldn't find an appropriate date, so you provided a temporary record -- I think it might have been September 25th -- that simply --

THE COURT: My order?

THE COURT: -- suspend the delivery of those diamonds, excess diamonds to us, until we could bring this motion, until Mr. Collins could bring his motion. But he has now brought his motion.

So the diamonds haven't yet, the excess diamonds haven't yet been delivered to us, and that's obviously, you know, this motion today.

THE COURT: Right.

MR. RUBIN: And so --

THE COURT: Because you would like to get them delivered?

MR. RUBIN: We would, yes. We would like your June 19th order to continue to apply.

THE COURT: Well, there is nothing in the June 19th order about them being delivered, is there? Or maybe that's what I am wondering. I don't know that there was. Because it was not at issue. There was nothing happening, right, at the time. Everything was at a stand still.

MR. RUBIN: Well, I think the way the June 19th order came about, My Lady, was the issue was whether DDMI could, I am going to call them, whether they would relieved from the stay, because them holding diamonds would be a type of enforcement. And so --

THE COURT: Right.

MR. RUBIN: -- what we did on June 19th was to say, well, the stay applies; however, an exception to the stay is to allow DDMI to hold diamonds in an amount equal to the cover payments, based on the DICAN valuation. So it is a limited exception to the stay, so the way the order is drafted, and what Your Ladyship had ordered was that they get to, an exemption from the stay only in respect of the diamonds up to the cover payments. And then the rest would have to be delivered back. That's the structure of the order.

THE COURT: It would have to be stayed? Okay.

MR. RUBIN: Because, yes, because they can't, DDMI is prevented from keeping our diamonds. The only exception they have to the stay is paragraph 16. And of course, you may recall that on that prior application, where the issue was, well, should they be entitled to enforce or partially enforce by keeping diamonds? And the argument at that point from DDMI was they should be able to keep all of the diamonds, and we had argued no, they should only be able to keep diamonds up to the value of the cover payment amount, and you agreed. You had said, yes, they only keep diamonds up to the Diavik cover payment amount.

And that's why the issue before you today is, well, have circumstances really changed such that that order should be varied? It hasn't been appealed, and in our submission, nothing has changed that affects the holding of diamonds or the value of those diamonds, other than the recent sales from both DDMI and us. Which, in effect, the evidence before you is -- because again, on June 19th, we had, you know, it was unclear what the diamonds might be worth -- now we have evidence from both parties that, in fact, DICAN is really under valuing the diamonds.

So in our submission, DDMI is very much over secured. And again, not just on the diamonds, but on the joint venture, cash account, based on the 40 percent interest, et cetera. And so in our submission, there is no basis in which to amend your June 19th order.

And so, My Lady, I think what I -- I am happy -- I don't have any further submissions. I know that Ms. Paplawski has submissions on this same issue -- but I might, with your leave, just simply turn to the monetization proposal.

THE COURT: Okay.

MR. RUBIN: I believe there is two issues. But I think before that, I might just take you in Ms. Kaye's affidavit, ask you to scroll down -- I think we're

in the documents -- at paragraph 59 of her affidavit.

And so paragraph 59, there's three paragraphs that deal with this fee of the 1 percent, or the 2 1/2 percent, as sought by DDMI. And so at 59, Ms. Kaye says that, she references that DDMI will deduct 2 1/2 percent from the net sale proceeds for handling, sorting, sales, and cash collection. And Mr. Croese states this fee is consistent with fees charged by affiliates.

So two comments here: The first is I appreciate Mr. Croese's affidavit evidence that this is consistent. I'm always interested in that word, "consistent." I don't know if that means that it's high or low or consistent. I don't know what that means, and maybe it's not wildly different from what they charge, but I do not read Mr. Croese's affidavit as saying this is is what we charge in every circumstance. He says it's consistent.

The second point I would make on this is it is important for Your Ladyship to understand this is a fee on top of expenses and costs. This is not intended to cover all of those costs and expenses, there is a separate paragraph in the monetization proposal whereby all those of costs are covered. This is just an additional fee.

So it's important to realize that this is not intended to cover all of their costs. To the extent they have costs in selling and sorting, I am quite confident that DDMI will claim those under the monetization process. This is just an extra fee.

I know Mr. Collins made the point that his client wouldn't want others to know if they are doing matters -- or excuse me -- of selling diamonds for a lower fee. Well, with respect, if the Court orders a different fee than something that is, quote, "consistent with prior transactions," I don't think any of DDMI's counter parties can use that against DDMI, if the Court orders a different fee.

Turning over to paragraph 60 of Ms. Kaye's affidavit, she says that in her view, the fee is too high, and this is at paragraph 60: (as read)

> Many of the costs associated with selling diamonds are fixed and should not change in any material way, if DDMI sells the additional diamond collateral.

And of course, DDMI sells diamonds. So we're not talking about an increase or having to incur additional or new costs. This is what they do, just as this is what Dominion does.

Indeed, as Mr. Croese notes: (as read)

> DDMI has already existing security, and will establish infrastructure in place to sell the diamonds.

And then at paragraph 61, Mr. Collins took you to this paragraph, where Ms. Kaye says: (as read)

> I would expect the fee charged for handling, sorting, sales, and collection, it would be not more than 1 percent.

And she states that Dominion was prepared to -- and is prepared -- to sell diamonds, charging a fee of only 1 percent.

My final comment, My Lady, relates to the diamond monetization proposal --

THE COURT: Okay. But your friend said, well, where does she come up with the 1 percent?

MR. RUBIN: Well, she's the CFO --

THE COURT: He says the market price is 2.5. And she says 1. And that Dominion would do it for 1, and so therefore...

MR. RUBIN: Well, I'm not sure if he actually said that's what the market price is. I think what he said is 2.5 percent would be consistent with fees charged by affiliates of Rio Tinto, which is DDMI's parent company.

Again, I don't know what "consistent" means. Does that mean that the fee normally charged is 1 1/2 percent, but 2 1/2 is consistent? I don't know what that means.

And so what Ms. Kaye says is, based on the fact that they're already getting all of their costs paid -- because remember that, so this is just gravy, this is just icing -- and given all of the procedures, the infrastructure, is all right in place, how much should DDMI get as just an additional fee? Again, understanding all other fees are being paid.

And I would add this: DDMI is also claiming interest on the monetization process, I think it might be 5 percent. So while this $100 million Canadian, or 90 million U.S., it's incurring interest , and they're charging interest at 5 percent as well. So DDMI is getting their fees paid, they're getting their costs paid, they're getting their interest paid. And so what we're talking about is how much extra --

THE COURT: Well, the interest on the cover payments, right?

MR. RUBIN: Yes, that's right.

THE COURT: Well, Dominion could go out and get the money to pay them back, and you would get all the diamonds, right?

MR. RUBIN: I don't think we could, My Lady. I don't know how we could --

THE COURT: Well, maybe not. Like, maybe you will not be able to get that money, but I am just saying, so this, DDMI has basically, you know, put that money forward so that they can continue with this Diavik mine and all the rest of it. So -- and now they have to realize on the security that they had to pay the cover payments, which is what they're doing, right? So normally if they were selling diamonds, they would get somewhere in the range of, consistent with 2.5 percent?

MR. RUBIN: Yes. And in our client's evidence, is that the fee should be 1 percent, and for the reasons that I mentioned.

THE COURT: Okay. All right, anyways, okay.

MR. RUBIN: Absolutely, there's a disagreement here.

THE COURT: Right.

MR. RUBIN: And I guess when we're looking at, you know, I think selling diamonds and claiming a fee in the context of CCAA proceeding, when you know, these fees and these additional costs and amounts are coming out of someone's hide -- and it may be Mr. Wasserman and Ms. Paplawski's hide --

THE COURT: Right. Oh, I understand that --

MR. RUBIN: -- I question whether it is the right amount. Because again, these are not cost recoveries. This is just simply an additional fee.

And, you know, Mr. Collins references the PPSA. There was no reference in the PPSA or any reference to a secured creditor being entitled to additional fees for selling collateral. What they're entitled to is their reasonable costs, and they're entitled to recover their debt. There's no fee in that context yet. DDMI wants to recover an additional fee here. And so we're not objecting to it. We're just saying it shouldn't be that high.

THE COURT: Okay.

MR. RUBIN: The last thing I would like to take you to is the monetization document. I would ask you to kindly turn to page 14.43-0. I'll just make sure I have the right document. I do. And turning to paragraph 8, so this is on page 14.4-343, My Lady, in you are there?

THE COURT: 14 point -- sorry?

MR. RUBIN: 14.4-343. And so this is the, Mr. Collins took you to this, paragraph 8(b), this is the percentage number in the bullet, in paragraph 8(b).

THE COURT: Okay. I am not there yet.

MR. RUBIN: I'll try and direct you.

THE COURT: 14.4-33 --

MR. RUBIN: 14.4-343. I will try and direct you to it.

THE COURT: Okay. The monetization process, okay. Okay, right.

MR. RUBIN: And so I think there are probably two issues, subject to comments of others on this document. The first is 8(b), that was the one that Mr. Collins referenced, and that is the percentage on the fee I'm talking about.

THE COURT: Right.

MR. RUBIN: You can see the bullet in 8(b) -- okay.

The second is paragraph 8(c).

THE COURT: Okay.

MR. RUBIN: Because the issue is this -- and again, this was something that actually Mr. Simard alerted me to a couple days ago. And you can see that in the waterfall, the third-ranking charge says: (as read)

Third --

So this is once diamonds are sold, first will be paid out, second will be paid out, and 8(c): (as read)

> Third, towards any amounts due payable and not satisfied at the time of the sale on the admin. charge and the director's charge, subject to an allocation of such amounts.

So I guess the point here is there is an admin. charge, and there is a DNO charge. That charge ranks on all of the Dominion assets, including this collateral. And that was an order that was made early on in these proceedings, with notice to everybody.

So the CCAA charges charge all of the collateral. I guess the question and concern I have with 8(c) is the way 8(c) is structured is the only amount of the admin. charge or the DNO charge that can be allocated to this collateral is amounts that are due payable and not satisfied , and I'm not sure that's correct.

Because as Your Ladyship is aware -- and Mr. Simard raised this with me -- frequently there are allocation issues that have to be dealt with near the end of the proceeding to determine where costs should be allocated, if indeed, they should be allocated to any of this collateral. Not an issue for today as to whether it should be allocated, but the concern with the drafting is the only way those charges can be allocated is if they're unpaid, which I don't think is correct at law. Because the admin. charges and the CCAA charges -- whether they're for the Monitor or Monitor's counsel or us -- are paid on a, you know, bi-weekly basis. And so this would prevent an allocation to his collateral, which I don't think is fair to the CCAA stakeholders.

And so --

THE COURT: Is there a big fight on this? Mr. Collins did not even raise this as an issue.

MR. RUBIN: No, I --

THE COURT: I think that it was an issue.

MR. RUBIN: Yes. I don't know that it's an issue -- I'll wait to hear from him -- but I did send an email, but it was -- again, it was last night or this morning -- and I'm sure Mr. Collins didn't have a chance to read it. But we'll make have the Monitor, Kelsey Meyer can weigh in on this, but I think we need a more standard form of allocation charge here, rather than simply saying that it only applies if the amounts have not been paid. Again, just a matter of CCAA fairness.

THE COURT: Okay.

MR. RUBIN: So, My Lady, those are my submissions, subject to any questions you may have.

THE COURT: No, that is okay.

MR. RUBIN: And I think Ms. Paplawski, on behalf of the first lien lenders, I think also has submissions. And I think she may be making them instead of Mr. Wasserman.

THE COURT: Okay.

MR. RUBIN: Thank you, My Lady.

MS. PAPLAWSKI: My Lady. E. Paplawski, for the record.

Mr. Rubin is correct. I will be making the submissions on behalf of the agent today, in response to DDMI's application. Mr. Wasserman may have some concluding comments he may wish to make at the end, so I leave that open as a possibility.

THE COURT: Okay.

Submissions by Ms. Paplawski (Application)

MS. PAPLAWSKI: I had intended today to follow the order of our brief, to talk about why the June 19th order is a final binding order of this Court, and what it says, and how DDMI doesn't have any right to re-visit the relief that's sought in that order, and that this Court has no jurisdiction to vary that order.

But after Mr. Collins made his submissions, and based on comments that Your Ladyship asked Mr. Rubin, I want to start in the second part of the application and address -- or excuse me -- the second part of my submissions, and come back to that earlier point, and address head-on this question that you asked about prejudice. What is the prejudice?

Mr. Collins submitted to you that it's just a timing issue. That the --

THE COURT: No, I submitted that it was just a timing issue, but any way, okay.

MS. PAPLAWSKI: Right.

THE COURT: Is this just not a timing issue?

MS. PAPLAWSKI: Is it not just a matter of timing.

THE COURT: Right.

MS. PAPLAWSKI: And in our submission, it is not just a matter of timing. It is high prejudicial to the act and to the other first lien lenders, and to the other stakeholders of Dominion, the relief that DDMI is seeking today. It is not a matter of letting them sell 100 percent of the production, and the excess will flow to the other creditors of Dominion.

And the reason for this prejudice is a matter of timing. You will have, you will recall that there was significant evidence put on the record during the initial, the various initial applications that Your Ladyship heard about the cycle of cash calls that are made in this industry. Cash calls are very high during the first half of the year, and then they drop off significantly during June or July.

During these latter months, the value of diamond production from the Diavik mine should exceed the outstanding cash calls that have been made. And we've already seen that -- or at least the forecast was made when we were last before you on September 25th -- that that would happen mid-October. It was for that very reason that Mr. Collins sought a moratorium on Section 16 of the SARIO, requiring that DDMI is only entitled to hold diamond collateral up to the amount of DICAN. Because as of mid-October, it was forecasted to exceed that amount.

And so that goes to the timing issue. If DDMI is permitted to hold 100 percent of Dominion's production, it will just be, it will just continue rolling this value over month by month, and year by year, to the prejudice of every other stakeholder of Dominion.

And apart from the fact that this is obviously highly problematic from the perspective of Section 11 of the CCAA -- which we discuss at length in our Bench brief -- there's two other highly problematic aspects to the relief that DDMI is seeking.

The first is under the joint venture agreement. If I can take you to page 7 of DDMI's reply Bench brief, which in CaseLines I believe starts with the number 14.4290. And in particular, to page 7 of that reply brief.

THE COURT: Okay. So are you taking me there? Are you

taking me there now?

MS. PAPLAWSKI: I'm trying.

THE COURT: Okay. Oh, under Find, I think it is. If you go to Find, and then you say Direct Others to Page, you can take everybody to the page you want us to go to. There you go. Okay, good work.

MS. PAPLAWSKI: Thank you.

THE COURT: Okay.

MS. PAPLAWSKI: All right. Do you see --

THE COURT: Do you want page 178 or page 298?

MS. PAPLAWSKI: Just bear with me. What I want is page 299. Do I have that displayed, or no?

THE COURT: No, you have 178. Oh, there we go, okay. We'll try that, June --

MS. PAPLAWSKI: Excuse me, bear with me.

THE COURT: There we go, okay, good. So we are at page 8 of his brief.

MS. PAPLAWSKI: 298.

THE COURT: 298.

MS. PAPLAWSKI: I went one page too far.

THE COURT: Okay, no problem.

MS. PAPLAWSKI: So at paragraph 18 is the paragraph of the JVA that Mr. Collins discussed at length today. The security section, the realization section, of the joint venture agreement.

THE COURT: Right.

MS. PAPLAWSKI: But if you look at what Section 9.4(c) says, it says that upon default being made in the payments of indebtedness referred to in Section 9.4(b), and that default under 9.4(b) is the cover payment, when due, the non-defaulting participants may, on 30-days notice, to the defaulting participant, exercise any or all of the rights and remedies available as a secured creditor.

So under the terms of the JV, DDMI only has a right to a remedy. So it only has a right to retain diamond production, retain diamond collateral to the extent that cover payments are due, and to the extent that Dominion has defaulted in making those cover payments.

So unlike a typical security agreement, in the banking context, there's no acceleration clause. There's no ability for DDMI to hold Dominion's production to cover future amounts not yet due and owing. That concept is entirely absent from the terms of JV agreement.

And so permitting DDMI to hold 100 percent of Dominion's production in the fall and early winter, when cover payments decline, and diamond values exceed the amount of cover payments, would be to permit DDMI to do indirectly what it cannot do distinctly under the joint venture agreement. And that is simply a matter of timing.

I want to address quickly, before moving on to what I say, or what we submit is the second fundamental issue with the relief that DDMI is seeking, is that DDMI spends a significant portion of its written argument, and a significant portion of my friend's oral argument before you today, with discussing the remedies that DDMI would have under the PPSA, in a typical security enforcement scenario.

I would have thought this would have gone without saying, but it should be repeated. This is not a typical enforcement scenario. There's a stay in place, and there's an ongoing CCAA proceeding, in which a company is attempting to affect a going concern outcome. Every other secured creditor of Dominion is stayed from enforcing their security.

When Mr. Rubin noted when discussing the discrepancies in the evidence between whether and to what extent DDMI is, in fact, over budget, that the big difference between Mr. Croese's evidence and Ms. Kaye's evidence is that one takes into account the reduction of the annual budget, because of the posting of LCs. And those letters of credit were posted by the first lien lenders.

THE COURT: Okay.

MS. PAPLAWSKI: And so the effect of what Mr. Collins' client is seeking is to allow one creditor, who has paid, collateralized, to the benefit of Diavik,

amounts, to realize and to recover those amounts by enforcement of security during a CCAA proceeding, while the first lien lenders are not entitled to do so. And the whole reason the budget was reduced was because of the posting of $105 million in letters of credit this March.

And so it treats creditors differently.

And the first lien lenders are prepared to agree, of course, to the monetization proposal. You heard that today, the monetization process. But there needs to be checks and balances in the process, in the relief that this Court grants, and in the oversight that this Court exercises of DDMI, and of its realization of the security under the process, recognizing that they are in a continuing CCAA proceeding.

Which takes me to my second, our second submitted issue with the relief that DDMI is seeking. Unlike a typical security arrangement, there's not a static quantifiable debt that is simply accruing interest. Here, DDMI controls both the input in the form of the cash calls it makes -- and directly related to that, the cover payments it then makes -- and it also controls the output -- the diamonds it sells, the timing for those sales, who it sells to, at what price it sells to.

This arrangement is patently unfair to every other stakeholder of Dominion, as it effectively creates a feedback loop without any checks or balances whatsoever. In a normal security realization process, the debtor -- or excuse me -- the secured creditor will control one aspect, will control one input, the realization. They won't also control the debt. The debt is not moving. DDMI controls here both the input and the output.

And so while the agent is not saying that DDMI has mismanaged the joint venture, the agent has no information on that. It's important to note that the allegation has been made, and is the subject of ongoing litigation between DDMI and Dominion.

And so allowing DDMI to control both the input and the output would be to permit DDMI, to the extent there is mismanagement, to fund that mismanagement with the assets of Dominion, in which other stakeholders of Dominion have an interest.

And so in our submission, My Lady, including DICAN as a limitation in the order, provided a limited but a necessary protection for Dominion's other stakeholders, who are stayed from protecting their own interests and enforcing their own security, while Dominion attempts to restructure.

And you have seen in Mr. Bell's evidence -- I believe it was in his third affidavit -- that Dominion continues to work with the Government of the Northwest Territories. It

continues to work with the first lien lenders, and the note holders, and the ad hoc committee of note holders, to try to find a going concern solution for the company. And these creditors -- the Government, the first lien lenders, the note holders -- are all facing significant losses if a going concern cannot be found.

And there's absolutely no evidence before this Court that DDMI is not fully protected under the terms of the SARIO. And Mr. Rubin spoke to that, and the evidence is provided in Ms. Kaye's affidavit.

And so in our submission, recognizing that this is a CCAA proceeding, and recognizing the extraordinary relief that DDMI is seeking, and recognizing the very unique situation of DDMI controlling both the input and the output -- not a typical security situation -- there has to be some Court oversight. There has to be some checks and balances. And those checks and balances were made by this Court by inclusion of DICAN in the June 19th order -- or excuse me -- in the June 19th order, by the inclusion of DICAN.

And I want to go now very quickly to the June 19th order. Because I think the language of paragraph 16 is indicative. And for the CaseLines, I am going to do my best again here, it starts at page 3-60.

THE COURT: I go to paragraph 16? Okay, good. So it is page 3.68? Okay, good.

MS. PAPLAWSKI: Correct.

THE COURT: Okay. We are all there.

MS. PAPLAWSKI: So if you look at the way paragraph 16 is drafted, if you start halfway through that paragraph, it says: (as read)

> DDMI, in its capacity as manager under the Diavik JVA.
>
> > (b), and is hereby authorized to hold an amount of Dominion diamond share of production from the Diavik mine equal to the total value of the JVA cover payments made by DDMI.

And that's defined as the "Dominion Products."

So built into this definition of Dominion Products is the notion of quantum. And the quantum is defined in the very next sentence as: (as read)

> To be determined based on the royalty valuations performed from time to time at the PSA by the Government of the Northwest Territories.

And so the idea of the DICAN valuation dictating quantum is, by definition, built into Section 16.

And so when you turn to Section 16 --

THE COURT: You mean paragraph, but anyways.

MS. PAPLAWSKI: Sorry, my bad, paragraph 16(e).

THE COURT: Right.

MS. PAPLAWSKI: This Court will recall that this was included to protect DDMI. Mr. Collins noted today -- just let me find my notes -- he noted two things. The first, he said, in June, everyone thought there was going to be a purchaser that would assume or pay -- I'm not sure -- the cover payments.

And yet he said earlier in his submissions DDMI was always of the view that there would be no purchaser of Diavik. "Always of the view."

And at the transcript of the June 19th hearing, he identified the risk that there would be no purchaser of Diavik as a "real and material risk."

THE COURT: Right.

MS. PAPLAWSKI: And so because of that, Section 16(e) was included in the order -- or in the order, excuse me -- and I'm saying "Section" again -- paragraph 16(e) was included in the order. And paragraph 16(e) is crystal clear: (as read)

> On the happening of any of the following dates, events, occurrences, or with leave of the Court, DDMI shall be entitled to apply to this Honourable Court to seek an order allowing it to exercise rights and remedies as against the Dominion Products.

We know from the earlier portion of paragraph 16 that Dominion Products includes, by definition the concept of quantum and the limitation on quantum. And that quantum is determined based on the DICAN valuation.

And so there is nothing about Section -- paragraph 16(e) that would permit Mr. Collins --

or his clients, excuse me, DDMI -- to revisit that concept. Paragraph 16(e) expressly contemplates that they will be entitled to seek rights and remedies. But the universe of security that they are allowed to access is expressly limited by paragraph 16.

And I submit to you, My Lady, that that's not a happy happenstance. It's not a mistake. It was done because this Court was faced with different evidence on value, different interest, different claims, and a balancing was done based on that evidence to include DICAN. And my friend took you to the transcript where you gave your reasons for decision, and this is at page 8 of DDMI's reply Bench brief. I will go there again.

All right, sorry, do you have page 8 in front of you?

THE COURT: Right, I do.

MS. PAPLAWSKI: At the very top is the section of the transcript, and there's two key concepts that I want to highlight in that section. Your Ladyship had this to say: (as read)

> DDMI has argued that they should have the ability to hold the whole 40 percent production. Right now, based on the evidence that I have in front of me, that is not necessary for DDMI to have the ability to hold all of the 40 percent.

And so this Court looked at the evidence that was before it in June, and the evidence was the evidence of DDMI that DICAN was independent, it had been used by the Government of the Northwest Territories for years, and held that there was no evidence that would support DDMI holding a greater portion of the diamonds than DICAN would allow, or DICAN was dictate.

And DDMI has brought this application now, and they haven't provided any evidence to the contrary. You noted today they haven't provided any evidence as to the value of the 40 percent interest, except for advising that there was no buyer. And they haven't provided any evidence showing that DICAN leaves them under secured. There's nothing here that would change that assessment.

And in fact, Dominion has put in evidence which would expressly support the assessment that Your Ladyship made in June: That there's nothing here that would, there's no evidence that it's necessary for DDMI to have the ability to hold more than 40 percent.

The evidence that Dominion produced is that they're, in fact, over secured. And it's DDMI's application. DDMI has the onus of showing that the relief that it's seeking is

appropriate. And they have not put into evidence any alternative valuation evidence that would alter the assessment that Your Ladyship made in June.

The other part of the discussion that's important for today's purposes is Your Ladyship said to the extent that we need to revisit this issue down the road, well then, DDMI, when it's appropriate, can raise this as an issue. And DDMI has submitted that this Court granted it leave to revisit this issue.

First, there is nothing in the issue that says DDMI has leave to seek a redetermination of the quantum of diamonds that can be held under the definition of Dominion Products. There's nothing. The order is completely silent.

But more importantly, there's nothing about this --

THE COURT: Sorry --

MS. PAPLAWSKI: -- section, or this discussion, this statement that would contradict or broaden or depart in any manner from the concept of a come back and a come back provision. This Court held that they could revisit the issue when it's appropriate, and they could revisit the issue to the extent that they have to.

And DDMI appears to have agreed with this on some level, because in their Bench brief they cite the come back provision. They cite Section 65 of the SARIO. And they cite to Madam Justice Topolniski's decision in *Canada North*, discussing the circumstances under which a party has access to the come back provision to revisit a prior order of this Court.

And in particular, they cite to Justice Topolniski's review of the jurisprudence that a party has access to the come back provision when it can be shown that circumstances change. And that is entirely in accordance with what Your Ladyship held, to the extent it's necessary.

And in our submission, it is not necessary to revisit that today because there's no evidence before you that would change the earlier part of your discussion. That there's absolutely any necessity for DDMI to hold all the 40 percent interest. The order is final, it's binding. It balances the interests of all creditors, recognizing that this is an ongoing CCAA proceeding. Dominion isn't trying, attempting to restructure as a going concern. And the evidence, in fact, now establishes that DDMI is over secured.

And so in our submission, My Lady -- and just bear with me for one moment, because I have departed completely from my notes, I just want to make sure I am not missing

anything.

THE COURT: Okay.

MS. PAPLAWSKI: So in our submission, My Lady, the agent does not have a concern with DDMI having brought the process, or brought the application it did today in respect of approval of the monetization process. That was expressly provided for under paragraph 16(e) of the order.

And the agent does not have any concern with DDMI realizing on the Dominion Products, as defined in the June 19th SARIO.

But there must be a balancing of interest, and there must be some protections for other stakeholders of Dominion, recognizing that this is a CCAA, recognizing that Dominion is attempting to restructure, and recognizing that this is a very unique situation in the sense that DDMI controls both the input and the output, and there must be some sort of checks and balances incorporated into that otherwise perfect feedback loop, to protect the other stakeholders of Dominion who are trying to work cooperatively with the company to affect a going concern restructuring for the benefit of all stakeholders.

And in our submission, your order of June 19th does that. It balanced those interests, and it's a final and binding order, and it is not open to DDMI to seek a revisiting of that issue today.

THE COURT: Okay, thank you.

All right. Well, we have been sitting here for over two hours, so why don't we take a short break, and then I will hear from the next person, whoever that may be.

But I presume, Mr. Collins, you will want to reply. So let's -- sorry?

MR. WASSERMAN: My Lady, it's Marc Wasserman. I just have one small thing to add to Ms. Paplawski's submissions.

THE COURT: Okay. Well, hold that thought, Mr. Wasserman.

MR. WASSERMAN: I will.

THE COURT: Let us take a ten-minute break. We all need a break. It's been two hours and ten minutes, okay? We all need a break, okay?

MR. WASSERMAN: Okay, fair enough.

THE COURT: Not that your submissions are not fantastic, all of you.

MR. WASSERMAN: They were excellent. I have a completely unrelated thing to say.

THE COURT: All right, okay.

MR. WASSERMAN: Thank you.

THE COURT: So we will come back in ten minutes, and I will start with you.

MR. WASSERMAN: Okay. Thank you.

(ADJOURNMENT)

THE COURT: Okay. Mr. Wasserman?

MR. WASSERMAN: Actually, Ms. Paplawski is just going to make the comments I was going to make, if that's okay. So she'll just -- I don't think how long it is going to take, but it shouldn't take more than a couple of minutes.

THE COURT: Okay.

MR. WASSERMAN: So hopefully she is there. Okay, great.

THE COURT: Okay, good stuff.

MS. PAPLAWSKI: There was, Mr. Wasserman reminded me, one thing that I had intended to speak to, and I forgot.

THE COURT: All right, no problem.

MS. PAPLAWSKI: (INDISCERNIBLE) is that the agent is seeking the two things be included in the form of order, and the order that this Court grants today, if DDMI's application is, of course, dismissed in respect of the various of the SARIO.

The first is that the proceeds of any of the diamonds which DDMI returns to Dominion --

so the diamonds over and above the DICAN valuation -- the proceeds of those be put and a segregated account, is the first thing.

And the second thing is that they be distributed in accordance with the same waterfall provided in the monetization process, except of course, excluding payment of the cover payments. That subsection of the waterfall will be excluded, but the reminder should govern the distribution of the proceeds realized from the returned diamonds that DDMI -- or excuse me -- that Dominion segregates.

And Mr. Rubin raised that there might be an allocation issue with that waterfall. There may be, there may not be. If there's no amounts owing under the charges, no allocation will need to be done. So we don't disagree with Mr. Rubin, we're just not sure whether or not an allocation would have to be done. And we propose that that issue can largely be parked for now.

And lastly, we anticipate that you may hear from other stakeholders today that they have concerns with that waterfall. They have concerns with the waterfall in the monetization analysis, and they'll have concerns, the same concerns, with the distribution, or the payment to, of the proceeds from the additional diamonds in accordance with the same waterfall.

And we want to make one point which ties into something that I had touched on earlier, and I'm not sure I touched on it in the most lucid of fashions. The point was that the agent and the first lien lenders advanced $105 million of LCs in March.

THE COURT: Right.

MS. PAPLAWSKI: The effect of the post of those LCs was to reduce the annual budget. And in reducing the annual budget, it in turn should reduce the cash calls and the cover payments which would otherwise have this first priority security under the JVA.

Without those LCs, Dominion would have had to have either obtained other financing, filed, or taken a larger dip, obtained a larger dip. The postings of the LCs provide a direct and immediate reduction of amounts that would otherwise be secured under the DDMI charge.

And so we submit to you that the waterfall is entirely appropriate, and that that factor needs to be kept in mind when considering any concerns that other stakeholders may raise with the allocation of the proceeds under that waterfall.

THE COURT: Okay.

MS. PAPLAWSKI: So those are all of our submissions today, unless you have any questions, My Lady. And I, again, I apologize if the concept wasn't as clear as I am attempting to be.

THE COURT: Oh, no problem. Thank you very much for your submissions.

So who else would like to make submissions on this application before I hear a reply from Mr. Collins?

MR. KASHUBA: Kashuba here for the ad hoc group.

THE COURT: Okay, Mr. Kashuba.

Submissions by Mr. Kashuba (Application)

MR. KASHUBA: My submissions will be brief. I am mindful of time, and I see there is other counsel that do want to speak to (a), the waterfall; the monetization process; and the issues as between DDMI and the first lien lenders.

So first we do commend a deal having, for the most part, having been reached, apparently last night, by certain parties on the monetization issue. That being said, we heard for the first time in Mr. Collins' earlier submissions about this. We were unaware that a deal had been reached, and the bond holders were left out of last night's discussions. They were left out of any discussions.

We don't want to derail a potential deal, but we need to understand better what has changed since last night. Given the length of submissions this afternoon, perhaps a deal is not as close as the agreeing parties thought it was.

So we're not only a significant secured creditor, My Lady, but the bondholders are also the most likely possible purchaser of the property, if there's a sale that can be reached. So we need to be a part of this discussion, and we're in the dark as to how this agreement came to be.

We need at least some opportunity to digest what exactly what come to in the way of an agreement by the one Ls, the company, and DDMI. And you might be asking, Well, what is the problem, then, Mr. Kashuba, with the monetization process? Well, on a preliminary basis, as Ms. Paplawski suggested, my client has questions about the new changes to the

proposed waterfall, in paragraph 8 of the monetization process document.

Now, this is a concern because this is a CCAA proceeding, and the starting assumption would be that any receivable paid to Dominion Diamond should go to Dominion Diamond, and not to stakeholders. This perpetuates a process or payment to stakeholders. It's like a liquidation scenario, where we see where the moneys are going, instead of keeping moneys with the company as it restructures.

We submit that the Court should resist requests for these interim and pre-emptive remedies. For some stakeholders, it might compromise the company's ability to successfully restructure.

These sort of, in the middle of CCAA priority waterfalls predetermine rightful priorities that might be different in different circumstances. For example, in a going concern CCAA versus a liquidation sort of process -- we don't want to go there -- but if we do, that priority analysis could be incorrect. And what this does, and what paragraph 8 does, is sets that in advance.

THE COURT: So what would you prefer? That it just goes to the Monitor, and the Monitor holds on to the money pending restructuring?

MR. KASHUBA: The company --

THE COURT: Or a further order? Or further application?

MR. KASHUBA: Most likely, My Lady, just to the company. If we're looking at paragraph 8 presently, we have 8(a) refers to --

THE COURT: Okay. Go to the company, and obviously then -- all right. And then the Monitor would oversee any change -- well, it would have to be on order, obviously?

MR. KASHUBA: That's correct, My Lady. And in paragraph 8(a), we're talking about the taxes and royalties applicable to DDMI collateral, that makes sense.

As does (b), with respect to the reasonable and documented fees related to the realization process.

But then I'm looking at paragraphs (c), paragraph (e), (f), and (g), and that includes payments to, on the admin. charge, the director's charge, the (INDISCERNIBLE) to the

one Ls, and to my clients. The bondholders. I would suggest that following the payments to the royalty holders in taxes, the fees, the cover payments, the funds should go to the company.

At a later point, when a distribution comes into issue, the company can apply for that distribution. The predetermination by way of a priority waterfall is not appropriate at this point.

THE COURT: Okay.

MR. KASHUBA: At the end of the day, it's still a creditor protection process, with a stay of proceedings. That's designed to keep the company's assets and enterprise intact, with the overriding purpose of pursuing a going concern restructuring, and that's in the best interests of the stakeholders as a whole.

THE COURT: All right.

MR. KASHUBA: I did want to make a couple of comments just on the fundamental issue that DDMI and the one Ls and company don't see eye to eye on. In that respect, we are supportive of the one Ls, (INDISCERNIBLE) company. So that's the question should DDMI be permitted to withhold Dominion's share production in excess of a cover payment? No, they should not. Those funds should also come back to the company, to Dominion.

And that ties into the earlier point, if Dominion's inventory is sold, where should the funds go? They shouldn't go to the stakeholders, they shouldn't go to DDMI. They should come back to the company, and the determination of priority should be dealt with following that process, following the funds being brought back into the company. And not in advance by a priority waterfall.

I did mention my position and submissions would be brief, and that concludes my further submissions on this process.

THE COURT: Okay. Thank you, Mr. Kashuba.

Mr. Bellisimo?

MR. BELLISIMO: Thank you, My Lady, good afternoon. For the record, Joseph Bellisimo, on behalf of Sandstorm Gold.

Submissions by Mr. Bellisimo (Application)

MR. BELLISIMO: As Mr. Collins indicated at the outset of his submissions, my client is a royalty holder and has some concerns with the proposed monetization process; specifically, My Lady, we have a royalty interest in all diamonds produced from the Diavik mine from both DDMI and Dominion.

Concerns are more a matter of technicality. I take Mr. Collins' submissions, particularly given the time of day, that we're not going to have a determination today of whether or not my royalty interests or my client's royalty interests should, in fact, be paid. And that submission is for another day, and we accept that.

However, our concern with the proposed monetization process is two-fold. One, it, in paragraph 8(a) that Mr. Kashuba was just referring to, in our submission, that too narrowly focuses, or too narrowly frames the determination of what is to be paid as a competition between security interests. What it doesn't do is preserve my client's potential arguments that by the nature of its royalty, by the nature of its contractual claims, or by the nature of what's going on in this whole monetization process, it should be paid off the top.

So it's maybe more of a drafting issue, but my concern in that respect is that the language that says it's first towards all taxes, royalties applicable to the DDMI collateral, that rank in priority to the security provided in Article 9.4 of the JVA, just simply just actually preserve my client's potential arguments, which I understand is the intent here, that we're not making determinations on what royalties should be paid, but simply deferring that to another day.

THE COURT: What are you saying it should say then?

MR. BELLISIMO: I would suggest, My Lady, that at the end of that it should also say, "Or which the Court otherwise determines should be paid from the proceeds." That kind of generic language which allows my client, and potentially other (INDISCERNIBLE) or royalty parties to be able to assert its claims, again, without-prejudice to any of the parties for making submissions on what should be paid and when.

THE COURT: Okay.

MR. BELLISIMO: One additional minor comment, My Lady. And if we scroll back up to paragraph 6. This is the provision that includes a release in favour of DDMI. Again, I have no particular objection to the release generally, but the, there should be an exclusion, in my submission, in any claims that Sandstorm has under to

royalty agreement against DDMI specifically. Without getting too far into the detail -- I know there's a number of counsel that wanted to speak on these issues -- my client is a party to an agreement with both DDMI and Dominion, and to the extent that DDMI has direct contractual liabilities or obligations to my client, then those should not be released as part of this process, and my client should be able to continue to assert those claims.

So in terms of a suggestion, I would suggest another enumerated exclusion that includes claims of Sandstorm Gold Ltd., under the -- and I can give you the spelling of this -- but it's under the Repadre, R-E-P-A-D-R-E -- royalty agreement. And again, that's just to simply preserve our ability to assert any direct contractual claims that we might have against DDMI.

THE COURT: Okay.

MR. BELLISIMO: So with that, My Lady, unless you have any questions, those would be my submissions.

THE COURT: Okay. So have you spoken with anybody about this, or are you like others --

MR. BELLISIMO: I was not included --

THE COURT: -- that have not had a chance to talk to them about it. Because you do not know whether they have a problem with that or not?

MR. BELLISIMO: So I was not part of the group that apparently spoke last night -- and that's not a criticism to counsel, I take it from the day-long submissions there are much bigger issues.

I did very briefly speak to Mr. Collins at the lunch break -- but admittedly that was only a short period, and I don't think he was going to be able to get any kind of instructions, I assume, given that he had to come back and make further submissions so...

THE COURT: Okay, all right. Thank you.

MR. BELLISIMO: Thank you, My Lady.

THE COURT: Others?

MS. BUTTERY: Buttery, initial M., counsel for the Government of the Northwest Territories.

THE COURT: Okay.

Submissions by Ms. Buttery (Application)

MS. BUTTERY: We have similar concerns. The Government has royalties that came due in June, after the CCAA filing, but accrued prior to the CCAA filing. We didn't assert over the course of these months that it was a post-filing claim. We have had some discussions with counsel for the Washington group and the company early on, and we agreed to park that extant issue because, of course, pursuant to the deal with Washington, the Government's royalties were going to be paid. But now they're not.

And so we have the same concern largely that Mr. Bellisimo has, that the language in 8(a) should not in any way limit the nature of the claim of royalties that ought to be made. And I know that counsel for the agent, Ms. Paplawski, circulated a draft last night, because we weren't also included -- and again, no criticism of counsel at all -- but we weren't included in the late-night discussions about this , so I'm not sure if the language is still in there. But at one point they had language in 8(a) that said, "provided for in law."

And my concern is that there may be an equitable right to royalties being paid, certainly in a CCAA proceeding, and I don't want to the term "at law," or whatever language they find, if Your Ladyship is inclined to make the order, to any way limit any royalty claims that my clients may make to the royalties.

And secondly, we also agree that in the event that Your Ladyship is inclined to make this order, that it would be premature to provide for any distribution. It comes as no surprise, I'm sure, to anyone that my client, as a government entity, may have a Redwater type claim that may rank in priority to absolutely anyone for any reclamation obligations relating to either mine. And you have heard today that the closure and reclamation obligations for the Diavik mine are expected to be $365 million.

So Dominion's share of that would be -- just doing rough math -- would be $140 million. I'm not sure there's security in place, reclamation security in place enough for that. To the extent there wasn't, that would have to be paid before payment, for example, to the secured creditors.

And so we agree that if Your Ladyship is inclined to make the order, that any distributions to creditors should not be done at this time. We're not saying it's not appropriate, we're just saying that people's rights ought to be preserved. It's supposed to be a holding pattern during the CCAA, for distribution to creditors. So we submit that no distribution ought to be made.

Those are my brief submissions, My Lady.

THE COURT: Okay, thank you.

MS. BUTTERY: Thank you.

MR. ASTRITIS: My Lady, it's Andrew Astritis, on behalf of the Public Service Alliance of Canada.

THE COURT: Go ahead.

Submissions by Mr. Astritis (Application)

MR. ASTRITIS: I just want to identify and make relatively brief submissions that echo the submissions that Ms. Buttery just made, and Mr. Kashuba just made about the distribution of any proceeds to creditors.

We're not dealing with a liquidation situation here, and we're not dealing with a distribution. DDMI has come here to attempt to secure the collateral, the realization of the collateral that they had previously been awarded in the SARIO. And a concern that we raise is with respect to the monetization process that has been put in place. And specifically paragraph 8 of the monetization process -- and that's at page 14.4-343, we've been there a number of times today.

THE COURT: I am right there.

MR. ASTRITIS: And so, My Lady, the concerns that we have have been previously identified.

This situation today, DDMI, as I mentioned, is coming forward before the Court in an attempt to realize its security. So that step of the process takes place at fourth, by the end of fourth, DDMI is done at the end of fourth. It says, "in satisfaction of cover payments."

From that point on, we have fifth, we have the (INDISCERNIBLE) charge. But of particular concern to PSAC is the sixth point about additional proceeds being paid immediately to Credit Suisse, who are the first lien lenders. And under (g), to Wilmington Trust, the second lien lenders.

And so --

THE COURT: Okay. So you have problems with -- sorry -- fifth, which is (e)?

MR. ASTRITIS: Sorry, our primary problems are with sixth, which is (f).

THE COURT: Oh, okay, sixth.

MR. ASTRITIS: And seventh, which is (g). And the reason I raise this -- and to be honest, I'm quite surprised to have found these in here in some regards, because we're dealing with an application by DDMI to realize its security. I'm surprised that, you know, tucked into a document that was just recently there, that we wouldn't have been given some formal notice that these kinds of issues were going to be raised.

And our position is that it's entirely premature for them to be dealt with. The JVA, the order, all of this is subject to the architecture of the CCAA. And there's a very narrow and limited exception that this Court has caverned out in the SARIO that allows DDMI to secure itself in a particular manner.

Nothing beyond that has been addressed by this Court, nor should it be. Everyone else is stayed, and everyone else should be holding firm. And I know that one of the things we've heard extensively in the course of the last number of months has been the importance of the CCAA process, preserving the status quo while things move forward. And I note in Credit Suisse's brief that is before you on this very issue now, paragraphs 28, 29, 30, 34, they cite a number of authorities -- *Century Services*, *U.S. Steel*, *Light Stream, Boutique San Francisco* -- all those authorities they put to you for proposition that we're in a holding pattern. Nobody should be jockeying for a different position.

And what's happened here -- and I think that in principle, Ms. Paplawski has accepted that -- but she has pointed to the fact that in March some LCs were issued by the first lien lenders. But those are wholly irrelevant to the issues that we're dealing with today.

And there's no, obviously this is an application that's been brought by DDMI. Nothing that we're putting forward here in any way prejudices DDMI's position. We're acknowledging that DDMI can take the cover payments that you have granted to it, should you decide to order that's been sought. Our primary concern is that once we are done with paragraph (d) and (e) of this process, (f) and (g) should be struck, and any remaining money, as Mr. Kashuba had indicated, should go straight to Dominion.

And that's actually critical because Dominion, we are attempting to affect a going

concern, and we have heard from numerous parties the importance of prioritizing that at this point, above all else. And taking any money, allowing any money to escape under (f) and (g), to either the first lien or the second lien creditors, secured creditors, raises issues.

And I note that because PSAC's concern -- and I recall the first time we appeared before you in these proceedings -- we flagged specifically our pension interest, and that's been identified by Mr. Wasserman today, as well as I believe by Mr. Collins, the interest that we have in our pension, and the fact that PSAC's position is that its pension interest and any liability in that interest will rank above the one L and the two L claims.

But that issue is something that we have not looked at, touched, or gone anywhere near, because our focus completely up until this point, of all the parties , has been to deal with the fact that we are trying to affect a going concern sale. And so anything that doesn't deal with that -- like, anything that deals with liquidation or distribution -- should be dealt with at a separate proceeding, proper notice should be given, we can have fulsome arguments on that. But that's not appropriate for today to in any way compromise our rights or anyone else's rights that may be affected, that may be affected by these issues.

And so -- just let me see if there was anything else that I wanted to -- I will note that these materials -- and again, I am not faulting the parties, I know that this was very complex. The main parties, it's very complex, there are a lot of things they are trying to sort out. But some of these materials are obviously being distributed. As the brief indicate ahead of time, we're not seeing them until the last instance. It's critically important that nothing that is being done to affect DDMI's interest in any way compromises the rights of PSAC's members, as they may be argued in the future.

So subject to any questions that you may have, My Lady, those are my submissions.

THE COURT: Okay, thank you very much.

MR. ASTRITIS: Thank you.

MR. WASSERMAN: Can I just make an observation, please.

THE COURT: All right.

Submissions by Mr. Wasserman (Application)

MR. WASSERMAN: To the extent that this Court is prepared --

THE COURT: Okay. We just want to make sure you are

identified for the record.

MR. WASSERMAN: Oh, sorry, I apologize. It's Marc Wasserman, counsel for the agent Credit Suisse.

THE COURT: Okay.

MR. WASSERMAN: To the extent that the Court determines that the diamond inventory in excess of DICAN be returned to the company, and the Court determines, you know, that the waterfall that we propose is not appropriate -- notwithstanding that the effect of the LLCs was that less cash was needed to fund cash calls, so all of my friends that are against that waterfall receive a direct benefit, because it meant that there was less cash needed by the company to fund it as a result of these LCs. But to the extent that on the basis of what's before you, you're not prepared to make that order, then what should happen, in my submission, is that you should require the diamond inventory to be held in a segregated space from the other diamond inventory.

And in the same way that inventory is not sold and converted to cash to be used in the operation of the business, the way you made the comments with respect to the stay extension on the basis of what the Monitor's report says. That should exist as well.

Because otherwise all we are doing is bringing more furniture into the store to burn, right? So it's the same point. So if people want to have a comprehensive argument on the priority, and I don't fault any of my friends, you know, for saying that they want to maybe have that record on a full record, the only way to preserve everybody's interests is for that excess inventory or cash that's paid over with respect to these assets be held, be segregated, and nothing can happen with it until either there's an agreement among the parties, or this Court makes a decision.

Now, I'm not advocates that that is the right thing to do. I think the right thing do is impose the waterfall. But if you're not prepared to do that, the only other fair option is what I have subjected, in my view.

THE COURT: Okay. As opposed to paying, having them sold and having the cash given to the company? Is that what you're saying?

MR. WASSERMAN: I'm saying that the company shouldn't be able to monetize the asset, convert it to cash, and use that cash in the operation of its business, until we know, (a), whether there is a going concern, and you know, what the implications of a going concern are; or whether we're into another scenario -- which we all hope won't be liquidation, but there's a possibility that it may be liquidation. Because that will have

the effect, of course, of just reducing collateral that would be available, or cash that would be available to collateralize those LCs, which are going to be remaining outstanding, and nobody is going to pay, and there's going to be nobody to satisfy them.

And every dollar that would otherwise, every dollar of those LCs -- this was the point that Ms. Paplawski was trying to make at the end of her submissions -- if the LC was granted, the dollar of LC was granted, that meant that a dollar of cash call didn't have to get paid, which meant that that dollar went in to operate the business.

THE COURT: Right.

MR. WASSERMAN: Went to pay Ms. Buttery's client, went to pay Mr. Astritis' clients, so on and so forth.

So there's a real imbalance there, but that's for another day -- to the extent you're not prepared to argue, you're not prepared to grant the waterfall.

Thank you.

THE COURT: Okay, thank you.

MS. MEYER: My Lady, Kelsey Meyer on behalf of the Monitor. I'm not sure if there's anyone else who wanted to speak before I proceed? There doesn't appear to be.

THE COURT: No. I will hear from Mr. Collins in reply.

MS. MEYER: Certainly.

THE COURT: And I will probably like to hear back from, I don't know, we are sort of running out of time here, but from Mr. Rubin. Anyways, because there are certain things that have been raised that deal with the company, right? So I don't know if you want to deal with those first, but I am happy to hear from you, Ms. Meyer, if you want to go ahead.

MS. MEYER: Certainly, My Lady, I can do that now.

Submissions by Ms. Meyer (Application)

MS. MEYER: My Lady, the Monitor is generally supportive of the DDMI collateral being monetized, and we've addressed that in paragraph 24 of the

Monitor's eighth report, which was circulated to you very late last night. It is document 4-412. The parties, as Mr. Collins has noted, worked late last night -- or some of the parties worked late last night and this morning to resolve a number of the issues, and did make considerable progress in that regard.

With respect to Mr. Kashuba's comments --

THE COURT: Okay. So, sorry, just because we are short of time does not mean you have to go so fast.

MS. MEYER: Oh, sorry, my apologies.

THE COURT: Anyways, okay.

So you should saying you support DDMI, right? I am just looking -- I read it this morning, of course, so --

MS. MEYER: Right. Yes, so generally supportive of the DDMI collateral being monetized. And certainly the parties have made considerable efforts to narrow down the issues, you are obviously aware of now.

THE COURT: And you are talking about, when you are talking about collateral, you are talking about the amount to cover the cover payments, right?

MS. MEYER: Yes. And the Monitor is not advocating a position with respect to what it supports DDMI's application or not, as to whether the DDMI collateral should be delivered to Dominion, to the extent that the DICAN valuation exceeds the outstanding amount for the cover payments. Or the basis on which the valuation should be made.

Certainly we pointed out in our report that the interests of other stakeholders, including those that were mentioned by Mr. Bellisimo on behalf of Sandstorm, and Ms. Buttery on behalf Northwest Territories, as well as Mr. Astritis on behalf of the PSAC, do also need to be taken into account.

Specifically to that point, My Lady, both Mr. Bellisimo and Ms. Buttery have indicated that paragraph 8(a) of the proposed monetization process -- and that is, if I understand the document numbering properly -- document 14.4 340, with 8(a) showing up on 14.4 343? There you go. And what Mr. Bellisimo had said -- do you have that, My Lady?

THE COURT: Yes, I have that, thank you.

MS. MEYER: Okay. Is that paragraph 8(a) does not preserve royalty claimants right to make potential arguments they have as to whether they have a royalty claim that ranks in priority to the security. And the Monitor is of the view that it would be appropriate to include language to clarify that right. Which again, reflects the point also made by Ms. Buttery that the language in paragraph 8(a) should not limit claims that may be made by royalty claimants.

With respect to the comment raised by Mr. Kashuba, Mr. Bellisimo, Ms. Buttery, and Mr. Astritis, regarding that it would be premature for distributions to be made to Credit Suisse and the parties subordinate thereto in the waterfall, the Monitor agrees with the comments of Mr. Wasserman, in that to the extent that the Court is not prepared to grant a distribution at this time, that the excess inventory and cash should be held and segregated, as Mr. Wasserman had suggested.

Otherwise, with respect to the administration charge and the director's charge and the priorities of those, My Lady, again, that is one point that is reflected in the monetization process now, at paragraph 8(c), and as have been addressed earlier, that was a point that was discussed and negotiated over the course of yesterday evening and into this morning.

The Monitor is of the view that those charges do take priority, which of course is what is reflected in paragraph 8(c) of the monetization process.

The Monitor --

THE COURT: There was a discussion about the wording of that.

MS. MEYER: Right. And so the point being does there need to be an allocation done? The Monitor does not foreclose off the possibility that there may need to be a crossed allocation done at some point, but at this point, the Monitor's view is that a cost allocation is not necessary in the circumstances where there is adequate security at this time.

THE COURT: Okay.

MS. MEYER: And my apologies if I have gone through that too quickly, My Lady. Those are essentially are submissions on this aspect of the application.

THE COURT: So you have no position on this excess beyond

cover payments issue, if I can put it that way?

MS. MEYER: The Monitor isn't in a position to evaluate what would be the proper evaluation of the diamonds. So no, no position with respect to that.

One other point, My Lady, I should note -- and it is referenced in the eighth report -- is that the Monitor has attained a security opinion with respect to DDMI's security, and has found that suggest to the normal qualifications, it is valid security.

THE COURT: Right. Thank you for that.

All right, thank you.

MS. MEYER: Thank you, My Lady.

THE COURT: Okay. Who would like to go next? Did you want to add anything, Mr. Rubin, perhaps? You have heard, or does Mr. Collins want to reply? I don't know which order.

MR. COLLINS: From my perspective, My Lady, I would like to go last.

THE COURT: Yes.

MR. COLLINS: In terms of reply.

THE COURT: Exactly.

So, Mr. Rubin, why don't I hear from you as to whether there is, you have heard a few more things about the waterfall the company had agreed to, for instance, and other issues you might want to discuss.

MR. RUBIN: Thank you, My Lady. I know there is a lot there.

Submissions by Mr. Rubin (Application)

MR. RUBIN: I actually don't know that I have a lot to add here. You know, I think it is a fair comment that a number of the parties have referenced with respect to not being involved in the discussions. I know they weren't critical of counsel, but what I can say is Mr. Collins and Mr. Wasserman and our firm have

obviously tried to move matters forward on the monetization process. I can't be critical, obviously, of the concerns that they have raised -- again, trying to find that middle ground.

Again, to the extent that, as Mr. Wasserman said, to the extent that, or the excess inventory does make its way to Dominion, I understand Mr. Wasserman's position, which is to the extent there is that excess diamond inventory that is correct it should segregated. I think that is a fair comment. I think the Monitor said the same thing. So I think that is a fair position to take on behalf of the one Ls, and now it's supported by the Monitor.

I guess the one comment, the only comment I would make in terms of the monetization, you know, to the extent that there is going to be a priority, or at least a partial priority order with respect of the initial paragraphs of paragraph 8 -- there's (a), (b), and (c).

THE COURT: Right.

MR. RUBIN: Just so I understood, my comment on 8(c) -- and maybe it wasn't clear -- as the Monitor said, it's clear that the admin. charge has priority. That has been ordered for many many months. The concern that I had in 8(c) was the way that it is drafted is that the only allocation that can occur relates to amounts that have not been paid for the admin. charges.

So meaning, let's assume for the moment that for seven months there have been admin-related charges that have been paid to the various parties. The way 8(c) is drafted, those amounts cannot be allocated to the amounts -- excuse me -- to the diamond sales. Let me just read it for you.

So third, this is in the priority: (as read)

> The proceeds result of any sales should be distributed by DDMI in the following order:
>
> > Third, towards any amounts that are due and payable and not satisfied at the time of the sale on the admin. charge.

So meaning that if admin. charges have been previously paid, there is no ability in 8(c) to allocate those to this DDMI (INDISCERNIBLE) as the collateral here.

And so my concern, of course, is -- again, it's just from a fairness perspective -- is frequently these allocations are crafted after the fact, and with the Monitor's assistance. And frequently it's the Monitor that has to allocate the overall costs of the CCAA. My

concern with the way this is drafted is if there are no amounts outstanding because they have been paid on as they go, there's no ability to allocate in 8(c).

So that was my suggested amendment.

THE COURT: Okay. I am sorry, you have lost me. I think it is too late in the day.

MR. RUBIN: Yes. So with 8(c) -- no, it is my fault.

THE COURT: I don't know what you are talking about there.

MR. RUBIN: Yes, so let's assume that, you know, there are millions of dollars of admin-related-type charges. So, for instance, amounts that would fall under the admin. charge are paid during the course of the CCAA.

THE COURT: Right.

MR. RUBIN: And let's assume that in four months from now, or three months from now, or two months from now, there has to be an allocation of those charges.

THE COURT: Right.

MR. RUBIN: But of course, they have all been paid. Like, all the amounts that fall under the charges have been paid.

THE COURT: Right.

MR. RUBIN: So there's actually zero owing to the Monitor or the Monitor's counsel. But the Monitor says, we need to allocate those CCAA costs, because they are first rank in priority. And the Monitor might say -- yes, I say only might -- might say we think some of those costs should be allocated to this collateral, the Diavik Islands. That's a possibility, because again, the SISP was invoked in order to try to find a sale of the 40 percent interest.

THE COURT: Right.

MR. RUBIN: And so if the Monitor determines that there should be some allocation to Diavik, then we turn to 8(c), and what does 8(c) say? Well, what 8(c) says is that: (as read)

> The proceeds from any sale shall be distributed in accordance with this waterfall:
>
> > Third, towards any amount that are due, payable, and not satisfied at the time of the sale on the admin. charge and the (INDISCERNIBLE).

So that's my concern, that there wouldn't be any amounts that are due and payable, because they've been paid all right. And so my concern was that this prevents an allocation down the road.

Now, if other parties don't read it that way, and they think there can be an allocation, then I don't take issue with it. My concern was just a CCAA allocation fairness issue at the end of the day.

MR. WASSERMAN: And, My Lady, it's Marc Wasserman again.

Submissions by Mr. Wasserman (Application)

MR. WASSERMAN: Isn't the point that if you're prepared to make the -- and I don't want to take away from Mr. Collins, it's unfair that he hasn't had a chance to reply yet -- but isn't the point that if you're going to make an order that moves the inventory to Dominion, and you're going to put a hold on it, this allocation is sort of irrelevant, because none of the proceeds are going to get paid, in any event, from that inventory until there is an agreement or we're coming back to Court.

So this issue will get dealt with at some point in the future. Because the proceeds aren't going to be, they're not going anywhere. They're going to be held by the company or the Monitor, to the extent you make the order, and you don't make the order on the waterfall.

MR. RUBIN: That's correct, provide -- in that scenario, that's correct. I would agree with that.

THE COURT: Okay, all right.

Okay. Anything else, Mr. Rubin?

MR. RUBIN: No, My Lady. I signed off too early. I apologize.

THE COURT: Okay, thank you.

Mr. Collins?

Submissions by Mr. Collins (Application)

MR. COLLINS: Thank you, My Lady.

By way of reply, starting with this issue on waterfall 8(c) -- and by the way, My Lady, I think we're just going to have to leave much of this in Your Ladyship's hands, just given the hour -- but DDMI, with respect to 8(c), you know, observes that the Monitor is fine with the wording as proposed. And DDMI does encourage that that wording be followed, and the Monitor's recommendation be implemented.

With respect to 8(a), My Lady, and the claims of Sandstorm with respect to its royalty claim, DDMI's view is that the provision is broad enough to deal with any potential claim that Sandstorm could possibly have. We're dealing with priority vis-à-vis security, is DDMI's submission, My Lady, and we'll be guided by Your Ladyship's decision on the point.

Similarly, the same applies to GNWT royalties, My Lady. Again, to the extent that they rank in priority to the security, it couldn't be any more clear than that, and we are in Your Ladyship's hands on the point.

The release issue raised by counsel to Sandstorm, again, the way DDMI reads the release is that the release only relates to sales of product under the joint venture agreement. And again, DDMI submits that the rights of Sandstorm are not circumscribed in any fashion.

My Lady, in overall reply to the valuation on DICAN -- and this is an alternative submission, My Lady, if Your Ladyship is not inclined to permit DDMI to hold all of the production -- DDMI would nevertheless submit that what we now know, that wasn't before this Court, is that -- and we talked about this in the main submission -- is that DDMI represents a gross -- or, sorry -- that DICAN represents a gross number, and it's not factored into paragraph 16, My Lady . And DDMI says it could be as high as 20 percent. We will accept in terms of the expense portion, Ms. Kaye's statement that it would be 11 percent, if Your Ladyship is inclined to go that way. But to be clear, it's an alternative submission.

My Lady, this evidence before you today does not establish that DDMI is over secured with respect to the cover payment indebtedness. A carat is not a carat is not a carat. There are, as Mr. Croese testified in his third affidavit, thousands of different valuation

points and metrics to be employed with respect to the character and quality of diamonds.

And so to simply go and take, as a proxy, some sales that were realized by Dominion in the month of October, and to utilize that as a basis for saying that the over-secured position is $26 million, simply doesn't stand up to scrutiny. And we made that point in submissions in the main, My Lady, and we won't go much further than that. Your Ladyship understood the point when we made it the first time.

(INDISCERNIBLE) said it the patently unfair that DDMI should be allowed and controls the input and the output. And --

THE COURT: Right. I thought you might have something to say about that, Mr. Collins.

MR. COLLINS: Yes, thank you, My Lady. Because what wasn't addressed in that submission -- because there is no answer to it -- is the contract. This is the nature of the joint venture agreement, and this is the nature of Credit Suisse's agreement to subordinate its claim the those interests and to the provisions of the joint venture agreement. There's been no mention as to why the parties should be able to resile from their contractual promise to DDMI, that they would not call for a valuation or marshalling of the collateral.

We're dealing with a situation, My Lady, quite frankly, where DDMI continued to operate the mine as created value for all stakeholders. And that value continues to be created, and that value will be available for stakeholders after DDMI has been repaid in full. But that is value in and of itself, because it is only fair, given the priority waterfall and the security held, that DDMI be paid.

A point we did not make in submission today, My Lady, but it was raised by Ms. Paplawski on behalf of Credit Suisse, was the fact that amounts were not owed because of the 30-day period. That's a mistake, My Lady, and I can direct you to the provision of the joint, of the amended joint venture agreement, and I'll -- I can share that with you right now.

THE COURT: Are you in the confidential file?

MR. COLLINS: I am in the confidential file.

THE COURT: Okay, all right. I am there too now.

MR. COLLINS: Okay. And it is page 4, Abridgment of Notice

Periods. Notwithstanding anything to the contrary or in this agreement, or in this original JVA, all of the periods of notice required in Section 9.4 of the original JVA shall be abridged such that no advanced notice is required under any of the provisions of 9.4(a), in the event (INDISCERNIBLE) seeks protection under the *Companies Creditors Arrangement Act*. That was actually raised in April, My Lady, but I think it's a complete answer to the submission made by Credit Suisse on the point.

Mr. Croese, My Lady, in his reply affidavit testified as to the reasons as to why the Canadian Emergency Wage Subsidy has not yet been applied for. It rests within the discretion of the manager, including for reasons as to the appropriateness of making that application for government subsidies in a circumstance where DDMI was continuing to sell its diamonds. I don't think it's at all an answer to the amount of the alleged over collateralization. And as indicated, that's a matter that is still under consideration.

As well, My Lady, we did not get an opportunity, obviously, to reply to the affidavit of Ms. Kaye that came in early this morning. But Mr. Croese said in his affidavit is that the excess cash has been normalized. We were in excess cash because of a timing difference with respect to an insurance payment in October. The excess cash is $5 million. And that, My Lady, is part of normal course operations.

With respect to the contention of the value of the underlying joint venture agreement, I don't want to belabour the point, but this submission that billions and billions of dollars have been invested into this asset surely means it's worth something more than negative, My Lady. It's illogical, and it just doesn't withstand scrutiny.

This is like any natural resource, a depleting asset that is on its last legs. So it would be much like Suncor coming to you and saying, we've invested $30 million in our oil sands plant 40 years ago, surely it must be worth billions and billions of dollars. Well, it just isn't the case. The resource is extracted, it's produced, and it's life is limited. And this Court should give absolutely no weight to the fact and the contention and the argument that billions of dollars -- if that's what it is -- have been invested into the mine over the years.

You know, just quickly on the fee point -- and I won't take you there, My Lady -- but in the cash flow that's attached to the Monitor's report, flip note 1 speaks to the fact that the amounts reported on the top line revenue from the sale by Dominion of its production includes profit. So they don't tell us how much that profit is, how much their sales and marketing fee is, and that fact in and of itself, My Lady, should be telling. That there is probably something more to this than meets the eye.

The contention by Credit Suisse that with respect to collateral, if you don't allow DDMI to

take possession of all of the collateral, that the collateral be monetized and the money be put in trust, is a surprising admission as to precisely what's at play here. Is fact of the matter is is that Credit Suisse has agreed that they are subordinate to DDMI for all amounts owing to DDMI under that joint venture agreement. They are utilizing the stay and the CCAA proceedings themselves as an opportunity to get something that they can't otherwise get, because they're saying put it in cash and take out of the waterfall any ability for DDMI to get that money.

So there you go, we've named it. They have $105 million exposure on the letters of credit, and every dollar that they can claw out of diamond sales in priority to DDMI, after DDMI having in good faith continued to operate the mine and create value for the estate, ever dollar that they can pry away reduces their exposure in violation of the agreed-upon priority.

The Government of the Northwest Territories, My Lady, has sought as well that there be no distributions on account of, of other things, reclamation obligations. And for the first time in the six months of these proceedings, has uttered the word "Redwater," My Lady. And there has been no suggestion whatsoever that DDMI is going to do anything other than comply with the closure and remediation obligations, My Lady, that fall to it as manager and as permit holder.

You've seen that the prefeasibility study is being done. That arrangements have been made to ensure that the closure obligations will be satisfied. This is not a liquidation of the Diavik interest. I am not certain if it was intended to have the potential impact that it would have, but if Your Ladyship were to accept that submission and not allow DDMI to receive any of the proceeds from realization on account of a heretofore unasserted position, then it will have, I can expect, serious and far-reaching consequences with respect to the ongoing ability of DDMI to call upon its shareholder, its affiliate to continue to fund it to operate the mine.

In my --

THE COURT: Well, Mr. Collins, I did not hear anybody say that the cover payments would fall, or that the money should be held in cover payments not be paid. I did not hear anybody say that. I heard people say later down the curve with Credit Suisse --

MR. COLLINS: Okay.

THE COURT: -- the Wilmington Trust. Like, I might have misheard there, but I did not hear anybody say that -- it might be I misunderstood that,

but...

MR. COLLINS: All right. I may have misheard --

THE COURT: (INDISCERNIBLE) cover payment get paid.

MR. COLLINS: Yes. I may have misheard that as well, My Lady, but then it's a non-issue.

MS. BUTTERY: Hi, correct, My Lady. It was to secured creditors down the waterfall.

THE COURT: Right. It is later ones.

MR. COLLINS: Thank you.

THE COURT: So just relax, Mr. Collins.

MR. COLLINS: I heard --

THE COURT: On that point, on that point.

MR. COLLINS: On that point, just chill. It is Friday afternoon.

THE COURT: Yes.

MR. COLLINS: I mean, this gets down to just that fundamental issue of priority and what the remedy is. And Your Ladyship has touched on it, and you know, earlier on in this proceeding, Mr. O'Neill -- and it is too bad that we did not hear from him today, because I enjoy hearing from him, and he's colourful -- he spoke of what Justice LoVecchio said to him in a recent CCAA, which is, Did you bring your cheque book?

If subordinate creditors today, including Dominion, including Credit Suisse, including the second lien lenders, if they really think that this is such a good deal, and that we're over collateralized, if they have such a simple simple remedy, pay us. Bring your cheque book. But they won't, and they won't in the face of a contractual commitment not to do what they are doing. And DDMI would accordingly urge this Court to reject the submissions and accept the application of DDMI, not only on the realization process, but with respect to its ability to continue to hold the collateral and to deal with it in accordance with the proposed waterfall.

Those are all of my submissions, My Lady.

THE COURT: Okay, good. Thank you.

MS. MEYER: My apologies -- it's Kelsey Meyer on behalf of the Monitor.

THE COURT: Yes.

Submissions by Ms. Meyer (Application)

MS. MEYER: There was one point that Mr. Collins made that I would like to respond to, if I might?

THE COURT: Okay.

MS. MEYER: Thank you.

Mr. Collins had said with respect to paragraph 8(c) of the waterfall and the monetization process -- and I will direct you to that, it is 13.4 343 -- that the Monitor was fine with the current wording and should stand -- that the wording should stand. That was in response to submissions from Mr. Rubin about the administration charge and the director's charge and his concern that he raised that at the end of the proceedings, if there is need to allocate, then does the wording limit it to just if there's something outstanding on those charges at the time of the sale, as compared to the amounts incurred over the course of the proceedings?

And so the Monitor has a comment with respect to wording that, we think -- subject to Mr. Rubin's comments -- who may perhaps address the Monitor's -- or, sorry -- Mr. Rubin's concern in that regard. Do you have the wording of 8(c) before you, My Lady?

THE COURT: Yes.

MS. MEYER: So at present, it says: (as read)

> Third, towards any amounts due, payable, and not satisfied at the time of the sale on the administration charge and the director's charge.

If the words, if the person saying, "due, payable, and not satisfied at the time of the sale," was removed. So that instead the clause said:

> Third, towards any amounts incurred --

So the word "incurred" being added in:

> -- on the administration charge, on the director's charge, as such terms are defined in the SARIO, subject to an allocation of such amounts, as agreed to by each of the Monitor, DDMI, and Dominion, and the administrative agent, or as otherwise ordered by the Court.

Again, doing this in real time, so I don't know what Mr. Rubin's thoughts are on that wording, but it seems to me, and the Monitor is of the view that that would be workable and would address the concern that Mr. Rubin had raised.

THE COURT: Okay. I am not going to have time to give my decision today. So I would suggest that with respect to these bits , if you can continue to work on it, and then just send to me the writing that you agree to -- or not -- or at least give me your suggestion in writing in a quick email, that would be nice.

MS. MEYER: Thank you, My Lady. I see Mr. Rubin has popped up on the screen as well.

THE COURT: Mr. Rubin?

Submissions by Mr. Rubin (Sealing Order)

MR. RUBIN: The last thing, My Lady, I was going to say was just as Mr. Collins and I are always in agreement, we are in agreement on this point, and I didn't want to forget the fact that both Mr. Collins and our client both sought a sealing order in respect of the confidential exhibits to Mr. Croese's affidavit, and then to Ms. Kaye's affidavit.

So on behalf of Mr. Collins and myself -- and I hadn't spoken with him -- but I think it would be helpful if both of us were able to have our sealing orders in respect of those confidential exhibits. I just didn't want to lose track of that.

THE COURT: Okay. I don't know that there is any issue with that.

Submissions by Mr. Collins (Sealing Order)

MR. COLLINS: As you often do -- I am sorry, My Lady -- including Exhibit 1 to the Croese fourth affidavit, which speaks at a point in time of DDMI still being unsecured, but anyways.

MR. RUBIN: Yes.

MR. COLLINS: We agree.

THE COURT: Okay. So the application should have the appropriate exhibits that you are seeking, right?

MR. RUBIN: Yes. I think there is material, there is an application from both Mr. Collins and myself on these issues. I can give you the references.

Our application materials are 14.2(5), and the page number, if you're looking at page number -- it's 14.2-153.

And then I believe that Mr. Collins' application -- sorry, I don't, maybe Mr. Collins can help -- I'm having trouble seeing the page number for Mr. Collins' application.

THE COURT: That is okay. I don't know that there is any issue with either of those applications for the sealing orders.

MR. RUBIN: Yes, okay. No, I don't think there are --

THE COURT: I just thought if there is no issue with them, I am mean, obviously if it is confidential information I have read, and some of the information was provided on the basis that you made the sealing order application, so I have no issue with issuing both of those orders.

MR. RUBIN: Okay, thank you, My Lady.

MR. COLLINS: Thank you, My Lady, and again, as always on these lengthy days, let me express the appreciation of counsel to Your Ladyship's patience and accommodation and hearing, again, a very lengthy and at times complicated application.

Discussion

THE COURT: No problem. Well, we will have to thank the clerk who is staying late. As you know, the courtroom is open, even though we are not all in there, thanks to the clerk for staying open and keeping things going.

So let me, I would like to take a look at this, and let me just see and talk to you about when we can come back, and I can give a decision. Just a second, I need to get my calendar up. I noted, for instance -- and perhaps you can enlighten me -- why, maybe it has just gone out of my system again. I had an application for some reason on November 10th. I am sitting commercial that week.

MR. RUBIN: Yes, My Lady. That was an application set by one of the suppliers to resolve some supplier issues. Those matters have been resolved, so as I understand it, that application will not be proceeding. We will touch base with counsel on that and make sure that -- they're the booked it -- that they contact the register.

THE COURT: Right. It looks like they must have, because it is no longer in my calendar. It had been there -- the Webex link is still there, but that application is not there anymore. Okay.

MR. RUBIN: Great.

THE COURT: Okay. I did not know what that was about, but I mean, sometimes I don't, right? And they just, everything just gets booked. I don't have anything to do with most of my schedule, as you know.

Next week, unfortunately, I have a really busy week. The week after that, I have got commercial again. I have got commercial the week of the 9th. I mean, why don't we actually use that time, the 10th. Is that too late? I don't know if it is going to make that much difference, ten days? We had that booked in there on November 10th, at 10 -- no, at 2.

The only other alternative is if I get reassigned next week. I know that we just have an incredibly busy week -- I know the schedule just came out for next week while we were our hearing this afternoon -- but it is (INDISCERNIBLE) for me.

MR. RUBIN: From our perspective, My Lady, the 10th is fine. But it's really Mr. Collins', I think, and his client that would probably want to understand the situation more urgently. So I don't know how Mr. Collins...

MR. COLLINS: Well, My Lady, Mr. Wasserman has, yes, identified the issue. I imagine if my client had a right of attendance to speak personally, they would request, respectfully, if the matter could be dealt with earlier.

But again, we're in your hands. We have the moratorium order, you know, that hasn't been vacated. It haven't been formally entered, but I am certain I have an understanding with my friends that that order is in place. And so that's, I am not going to say anything more than that.

THE COURT: Because it is a double problem, because I need time to -- I have all these applications next week -- I am in criminal duty all week.

Wednesday afternoon possibly, at like, 3. I have got my commercial town hall meeting at 12:30, which I hope you all come to, at least the Calgary counsel. But I could do it maybe at 3:00 that afternoon. What does that look like, the 4th.

MR. RUBIN: Again, My Lady, that would be fine, again, we'll accommodate the Court.

THE COURT: Yes, I don't plan to give you long reasons, quite frankly, but I will give you some reasoning, and a decision -- mainly a decision. Because --

MR. COLLINS: Sorry, My Lady --

THE COURT: (INDISCERNIBLE) a long judgment, I just won't have time to do it.

MR. RUBIN: Sorry, My Lady, the suggestion November 4th, at 3 PM?

THE COURT: So there is November 4th, at 3 PM; November 10th, at 2 PM. Those are the two suggestions we are working with.

MR. RUBIN: Again, as Mr. Collins said, I think we're in your hands, My Lady.

THE COURT: Okay. Well, let us try November 4th, at 3 PM.

Another problem we are having more and more, is we do not have enough Webex links. So I always have to do this subject to us being able to get a Webex link at that time, which

I don't know.

So right now we will put it for November 4th, at 3 PM, to be confirmed. Of course, everybody has gone home now, so I cannot confirm this until Monday.

And otherwise, it will be November 10th, at 2 PM. And I know we have a link that day, because we already had one for this application that was booked quite a while ago. So it will be one or the other, okay? So we will confirm on Monday morning.

MR. COLLINS: Thank you, My Lady.

MR. RUBIN: Thank you.

THE COURT: Okay.

THE COURT CLERK: And this is the clerk in the courtroom. For your November 4th, will you need an hour?

THE COURT: Yes.

THE COURT CLERK: All right. And for the December 11th, how long did you want?

THE COURT: 10th, the 10th, November 10th.

THE COURT CLERK: November 10th.

MR. RUBIN: Sorry, My Lady, I think there's some confusion.

THE COURT: It's one or the other, Madam Clerk. So --

MR. RUBIN: I think the clerk -- sorry, My Lady -- I think the clerk must be referencing the December 11th potential stay application that you referenced at 2 PM.

THE COURT: No. I was talking about November 10th, there was something.

December 11th, do I have something in here?

MR. RUBIN: No, that was the date you gave to us for the

(INDISCERNIBLE) date.

THE COURT: Oh, right, yes. December 11th is for the stay application. That is something different. But yes, for the clerk, you should put that in December 11th, at 2 PM.

THE COURT CLERK: For how long?

THE COURT: For the stay application. I would book the whole two and a half hours.

THE COURT CLERK: Yes, Ma'am.

THE COURT: And if we need, like, if some things start to become contentious, you should let me know, and we could try to book the whole day, okay? So just we know.

MR. COLLINS: Yes, My Lady.

THE COURT: Okay.

All right. So that is it for now. Thank you, Madam Clerk, I very much appreciate you staying, and thank you, counsel, for all your hard work you have been doing over the last while getting ready for today's application. And we will get back together next week, hopefully, on the 4th, unless you hear otherwise, okay?

MR. RUBIN: Thank you, good evening, My Lady.

THE COURT: All right. Everyone have a nice weekend.

MR. COLLINS: You too.

MS. BUTTERY: Thank you, My Lady.

PROCEEDINGS ADJOURNED UNTIL 3:00 PM, NOVEMBER 4, 2020

Certificate of Record

I, Elena Kay, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in Courtroom 1502, at Calgary, Alberta, on the 30th day of October, 2020, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, J. Aubé, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

690512 NB Inc.
Order Number: AL3842
Dated: November 4, 2020

This is Exhibit "I" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 22, 2023

Action No.: 2001-05630
E-File Name: CVQ20DOMINION
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

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, LCC and DOMINION FINCO INC.

Applicants

P R O C E E D I N G S

Calgary, Alberta
November 4, 2020

Transcript Management Services
1901-N, 601 - 5 Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@csadm.just.gov.ab.ca

TABLE OF CONTENTS

Description		Page
November 4, 2020	Afternoon Session	1
Decision		2
Certificate of Transcript		12

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

November 4, 2020	Afternoon Session
The Honourable	Court of Queen's Bench
Madam Justice Eidsvik	of Alberta
S.F. Collins (remote appearance)	For McCarthy Tetrault
W. McLeod (remote appearance)	For McCarthy Tetrault
P. Rubin (remote appearance)	For Dominion Diamond
J. Bellissimo (remote appearance)	For Sandstorm Gold
K. Kashuba (remote appearance)	For AD HOC Holders
K.J. Meyer (remote appearance)	Monitor
L. William (remote appearance)	Government of Northwest Territories
J. Peterson	Court Clerk

THE COURT: Hello everyone

MR. RUBIN: Good morning, My Lady. Or, afternoon.

THE COURT: Good afternoon. Yes. Okay, Mr. Rubin, do you want to just -- we'll call -- I plan today to just read the decision from the application that was heard last Friday.

MR. RUBIN: Very good. Thank you, My Lady.

THE COURT: I see that there's quite a few parties on-line. I don't know whether we need to enumerate them all, there's so many of them.

MR. RUBIN: Yeah, there are quite a few. I might also suggest, I think the court clerk may not be on mute, I think there may be some typing that --

THE COURT: Right. Mister clerk, would you mind just putting yourself on mute? Thank you. Appreciate that. Okay. All right, okay, so Mr. Rubin, we have the main parties here I think, when I look at the participant list?

MR. RUBIN: We do, My lady. Mr. Collins is on the line as well as counsel for the first lien lenders and various of the other parties that made submissions last week, or on Friday, I should say.

Decision

THE COURT: Okay. Good. Okay, well I read you the reasons that I have set out. I've done it in the form of endorsement, not in a judgment. As I mentioned on Friday, there was no way that I'd be able to work out a written judgment on this thing with the short timelines. But anyways I'll read out what I have managed to draft.

Okay, Diavik Diamond Mines 2021 (sic) Inc, which I'll call DDMI, applies for an order that would allow it to hold all of Dominion Diamond Mines' share of diamond production from the Diavik Mine. And approve a process to realize on these diamonds in order to reimburse the amounts DDMI has been paying on Dominion's behalf, which I'll call the cover payments to continue to operate, the Diavik Mine, since approximately April, 2020.

The cover payments to date total US dollar 83.2 million, or approximately Canadian dollar $120 million. Dominion and other parties object to this application and argue that DDMI should continue to only be allowed to hold the amount of Dominion's share of diamonds from the Diavik Mine that equates to the amount owing for cover payments, based on what is known as the DICAN evaluation.

Although initially, Dominion argued that all diamonds should be delivered to them and they would manage their sale and pay back DDMI what is owed in cover payments. Ultimately, DDMI and Dominion agreed that DDMI could sell the diamonds, based on a realization process. This, for the most part, agreed to except for one issue. The outstanding issue is that the amount of fee that should be paid to DDMI for undergoing this process on top of its expenses, 2.5 percent or 1 percent.

The diamonds in excess of the cover payments owed, based on the DICAN evaluation, should be delivered immediately to Dominion. Background: on April 22, 2020, I granted Dominion and other related parties an initial order under the CCAA. The order established a stay of proceedings in favour of Dominion and other related parties until May 2, 2020.

On May 15, 2020, DDMI was granted an order granting an exception to the general stay and allowing DDMI to make cover payments on behalf of Dominion. DDMI had also sought at that application that it be able to hold Dominion's share or production "based on royalty evaluations performed from time to time", at the production splitting facility in Yellowknife, by the Government of the Northwest Territories.

Dominion objected vehemently to Dominion holding its share of diamond production and had concerns about the Diavik Mine remaining open at all. I ordered that the May, 2020, plan delivery of Dominion's share of diamonds could be held back by DDMI with certain conditions. I agreed with DDMI that it was not a "reckless decision" to keep the mine open as alleged and accepted that, in any event, there would be significant cause to keep the mine in care and maintenance mode.

I noted that the JVA allowed only security over the diamonds, not a delivery holdback. At the time, the value of diamonds was uncertain. The (INDISCERNIBLE) was only contemplated and not yet in place and in balance, considering the COVID situation, I allowed a temporary holdback.

In June, I heard a further application by DDMI seeking to continue to hold back delivery of all of Dominion Diamond's share of the Diavik Mine diamond production as security for the cover payments it was making on Dominion's behalf. Dominion and other secured parties continued to object on the basis that the terms of the joint venture agreement entered into between the parties and their predecessors did not allow for DDMI to withhold delivery of the diamonds.

This potentially altered the security arrangement with many parties. Alternatively, it argued that DDMI should only be able to hold back the amount of diamonds that equaled the amount of the cover payments, as determined by DICAN.

On June 19, 2020, I ordered that DDMI could hold back the portion of Dominion's share of diamond production equal to the total value of the cover payments made by DDMI, the Dominion products. And the value of the Dominion products shall be determined based on the royalty evaluations performed from time to time at the PSF by the Government of the Northwest Territories. Further, I allowed DDMI to seek a further order "to exercise rights and remedies as against the Dominion products" with leave of the Court or on certain happenings.

On September 25, 2020, I allowed a temporary order so that pending this application, DDMI did not have to deliver the excess diamonds beyond those allowed to be held. DDMI seeks an order continuing this moratorium and the further ability to sell diamonds and pay back any difference between the sale price they obtain and the amount of the cover payments, plus interest and expenses.

Discussion

After hearing further extensive arguments reviewing the evidence led by DDMI and Dominion, I am not persuaded that I should amend the basics of my June 19, 2020 order

so that DDMI can hold back or sell any more of Dominion's diamonds beyond the amount that is determined normally by DICAN.

Firstly, DDMI argues that the DICAN evaluation method to divide the Diavik diamonds is not appropriate since its value may not match the sale value of these diamonds. Indeed, DDMI is concerned that the DICAN value of the diamonds presently held by them exceeds the amount that they may obtain in the market considering the volatile conditions for diamond sales. And does not take into account fees or expenses of any type.

Normally, if there was not a stay in place, DDMI would be able to sell all Dominion's share of the diamonds and pay Dominion back anything in excess. Returning part of its collateral here is potentially prejudicial to DDMI and of no prejudice to Dominion. Dominion on the other hand, led evidence to show that based on recent sales of diamonds, DDMI will not be undersecured if it is left with the amount of diamonds as determined by DICAN.

It pointed out that the DICAN evaluation is the method that has been used for years to determine their respective share. And it was indeed the manner in which DDMI initially proposed that the diamond share be evaluated. All of the diamonds that Dominion has sold in 2020 have sold at a higher realized value than the DICAN evaluation.

DDMI's affiant also confirmed that DDMI's have sold recently for more than the DICAN evaluation, although DDMI did not proffer any evidence about what that value was. Dominion also disagreed about the percentage of the amount of costs that should be deducted from the gross DICAN amount. Their costs are 11 percent versus DDMI's suggestion of 13 to 20 percent.

Dominion also pointed out that in terms of future forecasting, there were differing views in the market. Finally, Dominion argued that DDMI also has security in Dominion's 40 percent ownership of the Diavik Mine.

My June order attempted to balance DDMI's right to decision to continue to operate the Diavik Mine in face of the pandemic. And over the initial objections of its 40 percent partner Dominion, which has meant ongoing high expenses being faced by Dominion while it is trying to restructure its business and keep its operation in the Ekati Mine as a future viable operation.

Dominion continues to have serious concerns about DDMI is running the Diavik Mine and complains about the mine being overbudget and mismanaged. It has started an action in this regard in B.C. which is presently stayed.

Further, normally, the ability for parties to realize when the security or claims against the party protected by a stay in CCAA proceedings are affected. I have allowed a limited waiver of this stay with respect to DDMI considering this unusual situation, but with some limits, i.e. that the normal collateral is limited to the amount of the cover payments owed. This is a balance that I have attempted to achieve to allow for the Diavik Mine to remain operational and allow Dominion to continue to attempt to restructure.

In terms of the value of the limited collateral, the DICAN evaluation was proposed by DDMI in the first place. Likely, because it is the method that has been used for years between the parties to divide the diamond production. The evidence in front of me does not convince me that it is unfair or has changed since the parties both agreed to this method a few months back.

I recognize that there is a difference between splitting diamonds and selling them. However, based on the limited evidence in place, this independent evaluation method is a fair way to continue to proceed.

DDMI argues that it will be prejudiced if it cannot hold onto the whole of Dominion's share of the diamond collateral. However, I also note that DDMI has security in the 40 percent ownership of Dominion in the Diavik Mine. Again, I had arguments of both sides about the value of this interest, but no professional evidence of value. I don't accept that just because there have been no bids to buy Dominion's 40 percent share in the Diavik Mine recently that it is valueless.

However, I also take DDMI's point that the mine is near the end of its life and it has serious reclamation costs that will have to be paid ultimately. So the value does not equate to the enormous amounts of funds that have been invested in it in the last few years. Ultimately, my view, this mine has some value and DDMI has priority security in it.

Notably, the monitor in June did not support DDMI's request to hold all of Dominion's share of the Diavik Diamonds. Presently, the monitor is generally supportive of DDMI's proposition to sell Dominion's diamonds to pay off the cover payments, but he took no position about what amount of diamonds should be sold. He pointed out that there was "conflicting evidence" and positions on the method of evaluation of the diamonds and the accuracy or appropriateness of the DICAN evaluation and whether the excess diamonds beyond the DICAN valuations should be delivered to Dominion.

I understand DDMI's concerns. However, on balance, I am not convinced that it is appropriate to deviate from the terms of my June 19, 2020, order. The fact that we now have more information about the recent value of diamonds is actually in favour of

keeping the order in place as it is, as opposed to an adverse change of circumstances that would require an amendment.

Further, the fact that the stalking horse (INDISCERNIBLE) was not ultimately successful in finding a buyer of diamonds are (INDISCERNIBLE) Dominion's 40 percent in the Diavik Mine does not change the underlying reason to limit the exception to the general stay. I understand that presently there is no future prospect that a cash infusion will be made so that the cover payments are repaid by a new purchaser. But this was one of the reasons that I allowed the Dominion's share to be held back in the first place.

The monetization process:

Thanks to the hard work of all the parties, most of the details about the sales process for the diamonds have been ironed out between the parties. It is set out in the monetization process with Schedules A and B. One remaining issue was the fee that DDMI wanted to charge on top of the deduction for interests and other fees. Another is a few tweaks to the waterfall distribution with respect to the surplus from the diamond sales.

The fees:

DDMI seeks a 2.5 percent fee as a handling, sorting, sales, and cash collecting fee. It argued that this is "consistent" with what is charged to third parties for these services. Dominion, on the other hand, argued that the evidence shows that this fee is too high. Many costs associated with the sales of diamonds are fixed and Dominion would expect that the fees for such services would only be 1 percent. It is prepared to sell its diamonds with this fee structure. The difference in costs according to DDMI's counsel would be in the range of $1.8 million.

Section 9.4(C) of the JBA indicates that "all other reasonable costs and expenses incurred in collecting payment" beyond legal fees and interest can be deducted from the security interest (INDISCERNIBLE) the diamond sales.

It is reasonable for DDMI to charge a fee, but since Dominion is prepared to do this for 1 percent versus 2.5 percent. It is better of all of the creditors if this is done in the least expensive way. DDMI can elect to do it themselves for 1 percent, or it can have Dominion sell the diamonds on the same terms that have been worked out for 1 percent. I leave it to DDMI to elect.

The distribution waterfall:

The waterfall distribution is found in paragraph 8 of the monetization process. Many

parties had not had a chance to review this final proposed process prior to the application on Friday and had concerns about the distribution proposals. Most suggestions were likely acceptable but the parties had not had time to agree one way or another. The monitor had some helpful suggestions at the hearing, but I note that overall, he was not taking a position one way or another on DDMI's application, as discussed earlier.

I would appreciate it if the parties could make another effort to clear up the waterfall distribution or otherwise and I can hear any discrete issues that remain. In the meantime, I make the following comments. Firstly, with respect to the diamonds that are to be delivered to Dominion, it was agreed that they would keep them secure and segregated for now.

Secondly, there was some concern about the wording of paragraph 8(A), about the royalty and tax provision that might be able to be worked out. Similarly, some last-minute concerns arose with paragraph 8(C) about the administration cost. There was no concern that once these were paid, the cover payments could be made, as noted in 8(D). But there was then concern about whether any payments should be made to other creditors, et cetera, before being sent to Dominion.

I would like to hear more about these discrete issues before I decide on them one way or another, if they cannot be resolved. So I'll leave that issue to another day, which can be quite soon, or whenever we can manage to get back together.

So those complete my reasons.

MR. RUBIN: Thank you, My Lady. Just a couple of comments or questions. The first is, as you noted in your decision, you had delivered a decision or an order, I think you called it the moratorium order on September 25th. Can I assume that that order has been spent and is now terminated?

THE COURT: Yes, I never actually saw the draft of that order. But I went back and reviewed my notes and it was referenced of course by Mr. Collins in his material. The September 25th order didn't have that provision in the actual draft order, but I did order it. But right now, yes, that would just be a temporary suspension of the delivery requirements pending the hearing of this application, which has now been decided, so.

MR. RUBIN: Yes, now -- and I think Mr. Collins did actually deliver a form of order. I think it may be sitting with -- with my friends at Osler. But, in any respect --

THE COURT: Okay.

MR. RUBIN: -- (INDISCERNIBLE) have the order here.

THE COURT: I just never saw it. But anyways, okay.

MR. RUBIN: In terms of the issues that you raised concerning some of the priority waterfalls in 8(C), et cetera.

THE COURT: Okay.

MR. RUBIN: As I understood Mr. Collins, they would like to move forward with the monetization as quickly as possible. And so --

THE COURT: Right.

MR. RUBIN: -- it might be helpful if you have some availability over the next, sort of, number of days just to make sure that our feet are kept to the fire, we resolve those issues and to the extent that we don't -- we're back before you so that, again on the assumption that DDMI, you know, will want to sell the diamonds for the 1 percent that -- that they can get moving on that front.

THE COURT: Right. Absolutely. Well they can get going in terms of selling; there's nothing slowing them down in terms of that. But in terms of what happens afterwards, let me take a look. It just seemed -- like, I took as close notes as I could from the various parties that had little tweaks of that paragraph 8 in the monetization document. And you can see it was the one that was sent on October 30th.

MR. RUBIN: Yes. I think what we might do is --

THE COURT: But it's -- yeah --

MR. RUBIN: Yeah.

THE COURT: -- document 14 -- well, it starts at page 14.4-342 in the case lines filed. But it just seemed that most of these things were quite -- nobody was really arguing with each other, but it was just that nobody had seen this at the last minute since some of you were working on it until the last minute, which was great. But it just didn't seem to be that many disputes about it, frankly. I just thought, well --

MR. RUBIN: Yeah.

THE COURT: I didn't want to all of a sudden issue an order that didn't comply with exactly what they said and none of it was in writing, so I couldn't be crystal clear about exactly (INDISCERNIBLE). So I am throwing the ball back into your hands to try to get that paragraph 8 sorted out and then I'm happy, if there is a discrete issue that you want me to decide on, I'm happy to make a determination. I just, I didn't hear too many arguments other than whether or not the secured creditors get paid out. Like, if I pull up this --

MR. RUBIN: No, I understood -- I understand, My Lady.

THE COURT: Right.

MR. RUBIN: Maybe the suggestion is we can -- perhaps we'll, it'll just be one of those cases where we'll invoke the assistance of the monitor and of course with Mr. Collins and the other parties and try to come to a resolution on that in the next couple of days. And if not, perhaps we'll circle back with your -- with the court coordinator to see if we can get some assistance from Your Ladyship.

THE COURT: Yeah, that would be fine. Next week, I am in commercial all week; I'm just looking at my schedule. So if you talk to the coordinator, to Brent Dufault, he'll be able to squeeze you in. I think at one point we had a scheduled matter at 2:00 on the 10th for instance. That's still open at 2, I see that I have another matter that's been put in at 3 now. I have an incredibly busy week next week.

MR. RUBIN: Right.

THE COURT: But anyways. Whatever --

MR. RUBIN: And if we can just --

THE COURT: -- c'est la vie.

MR. RUBIN: Yes. No, and I think it is helpful, My Lady, your comment that the DDMI is free to commence, you know, monetizing the diamonds because that --

THE COURT: Right.

MR. RUBIN: -- process will take a period of time. So that can get going in the meantime. Thank you.

UNIDENTIFIED SPEAKER: Nothing further -- nothing further from me, My Lady.

THE COURT: Okay. I did receive a couple of orders that I signed just before I got online here and sent back. And so, I presume it will be Mr. Collins who will prepare this order. It was Mr. Collins's application, right, Mr. Collins?

MR. COLLINS: That's correct, My Lady. We will -- we will, indeed, do so. And thank you, My Lady, for your time and decision.

THE COURT: Okay. Now, I've typed out this endorsement, but it's a bit of a mess. I'm not the best typist. I had to learn how to type when I became a judge, but that's a long time ago now. Anyways. I could issue this as an endorsement, like, file it on the file and then upload it into the case lines matter as opposed to publishing it, if you know what I mean? It would be a public document obviously because it's filed on the file. If that would be of assistance to you?

MR. RUBIN: It would be, My Lady. Thank you.

THE COURT: Okay. Well I'll work on it. What's today? Thursday? No, what's today? Wednesday.

MR. RUBIN: Today is Wednesday, yes.

THE COURT: Wednesday. Yeah just -- anyways, like you guys, been working straight through, so. Okay, so I'll try to clean it up and I'll just file it on the file as an endorsement and then you'll have, sort of, an outline of what I've just read, which I read I know quite quickly. Me and Justice Horner, we have that bad habit. All right, do you have any other questions, Mr. Collins?

MR. COLLINS: No, My Lady.

THE COURT: Or anybody else? Okay.

MR. RUBIN: No, My Lady.

THE COURT: Good. So if you need me to sort out anything in that paragraph 8, just get a hold of Brent, he'll find a discrete time for you. Otherwise, I will be seeing you again, I think in December with respect to the extension application,

right?

MR. RUBIN: Correct. Thank you, My Lady.

THE COURT: Okay. Thank you.

UNIDENTIFIED SPEAKER: Thanks, My Lady.

THE COURT: All right. Thanks, mister clerk.

PROCEEDINGS CONCLUDED

Certificate of Transcript

I, Cindy Taylor, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was not included orally on the record.

Royal Reporting, A Veritext Company
Order Number: AL4019
Dated: November 6, 2020

This is Exhibit "J" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

Karen Anderson

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 27, 2023

Court of Queen's Bench of Alberta

Date: November 4, 2020
Docket: 2001 05630
Registry: Calgary

In the Matter of The *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

And In The Matter 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.

Between:

Diavik Diamond Mines (2012) Inc

Applicant

- and -

Dominion Diamond Mines ULC et al

Respondents

Endorsement
of the
Honourable Madam Justice K.M. Eidsvik

---

[1] Diavik Diamond Mines (2021) Inc. ("DDMI") applies for an Order that would allow it to hold *all* of Dominion Diamond Mines's ("Dominion") share of diamond production from the Diavik Mine and approve a process to realize on these diamonds in order to reimburse the amounts DDMI has been paying on Dominion's behalf (the "Cover Payments") to continue to operate the Diavik Mine since approximately April, 2020. The Cover Payment to date totals US$83.2 M or approximately Can$120 M.

[2] Dominion, and other parties, object to this application and argue that DDMI should continue to only be allowed to hold the amount of Dominion's share of diamonds from the Diavik Mine that equates to the amount owing for Cover Payments (based on what is known as the DICAN evaluation).

[3] Although initially Dominion argued that all diamonds should be delivered to them and they would manage their sale and pay DDMI back what is owed in Cover Payments, ultimately, DDMI and Dominion agreed that DDMI could sell the diamonds based on an agreed realization process, with one issue to be determined in this process. The outstanding issue is the amount of fee that should be paid to DDMI for undergoing this process on top of its expenses (2.5% or 1%?). The diamonds in excess of the Cover Payments owed, based on the DICAN evaluation, should be delivered immediately to Dominion.

Background

[4] On April 22, 2020 I granted Dominion, and other related parties, an initial Order under the CCAA. The Order established a stay of proceedings in favour of Dominion until May 2, 2020.

[5] On May 15, 2020, I granted DDMI an Order allowing an exception to the general stay, and allowing DDMI to make Cover Payments on behalf of Dominion.

[6] DDMI had also sought at that application that it be able to hold Dominion's share of production "based on royalty valuations performed from time to time" at the Production Splitting Facility in Yellowknife by the Government of NWT. Dominion objected vehemently to Dominion holding its share of diamond production and had concerns about the Diavik Mine remaining open at all.

[7] I ordered that the May 20, 2020 planned delivery of Dominion's share of diamonds could be held back by DDMI with certain conditions. I agreed with DDMI that it was not a "reckless decision" to keep the mine open as alleged and accepted that in any event, there would be significant costs to keep the mine in "care and maintenance". I noted that the Joint Venture Agreement ("JVA") allowed only security over the diamonds – not a delivery holdback. At the time, the value of diamonds was uncertain, the SISP was only contemplated and not yet in place, and in balance, considering the Covid situation, I allowed a temporary holdback.

[8] In June, I heard a further application by DDMI seeking to continue to hold back delivery of all of Dominion Diamond's share of the Diavik Mine diamond production as security for the Cover Payments it was making on Dominion's behalf.

[9] Dominion, and other secured parties, continued to object on the basis that the terms of the JVA entered into between the parties (and their predecessors) did not allow for DDMI to withhold delivery of the diamonds. This potentially altered the security arrangement with many parties. Alternatively, it argued that DDMI should only be able to hold back the amount of diamonds that equaled the amount of the Cover Payments (as determined by DICAN).

[10] On June 19, 2020, I ordered that DDMI could hold back the portion of Dominion's share of diamond production equal to the total value of the Cover Payments made by DDMI (the "Dominion Products") "and the value of the Dominion Products shall be determined based on royalty evaluations performed from time to time at the PSF by the Government of the Northwest Territories.". Further, I allowed DDMI to seek a further Order "to exercise rights and remedies as against the Dominion Products" with leave of the Court, or on certain happenings.

[11] On September 25, 2020, I allowed a temporary Order so that, pending this application, DDMI did not have to deliver the excess diamonds beyond those allowed to be held. DDMI seeks an Order continuing this moratorium and the further ability to sell the diamonds and pay back any difference between the sale price they obtain and the amount of the Cover Payments (plus interest and expenses).

Discussion re amount of Dominion's share of diamonds that can held back

[12] After hearing further extensive arguments, and reviewing the evidence led by DDMI and Dominion, I am not persuaded that I should amend the basics of my June 19, 2020 Order so that DDMI can hold back, or sell, anymore of Dominion's diamonds beyond the amount that is determined normally by DICAN as equal to the Cover Payments. My reasons are as follows.

[13] Firstly, DDMI argues that the DICAN evaluation method to divide the Diavik diamonds is not appropriate since this value may not match the sale value of these diamonds. Indeed, DDMI is concerned that the DICAN value of the diamonds presently held by them exceeds the amount that they may obtain in the market considering the volatile conditions for diamond sales and does not take into account fees or expenses of any type. Normally, if there was not a stay in place, DDMI would be able to sell all of Dominion's share of the diamonds and pay Dominion back anything in excess. Returning part of its collateral here is potentially prejudicial to DDMI and of no prejudice to Dominion.

[14] Dominion on the other hand, led evidence to show that based on recent sales of diamonds, DDMI will not be under secured if it is left with the amount of diamonds as determined by DICAN. It pointed out that the DICAN evaluation is the method that has been used for years to determine their respective share and it was indeed the manner in which DDMI initially proposed that the diamond share be evaluated. All of the diamonds that Dominion has sold in 2020 have sold at a higher realized value than the DICAN evaluation. DDMI's affiant also confirmed that DDMI's diamonds have sold recently for more than the DICAN evaluation – although DDMI did not proffer any evidence about what the value was.

[15] Dominion also disagreed about the percentage of the amount of costs that should be deducted from the gross DICAN amount. Their costs are 11% vs. DDMI's suggestion of 13-20%.

[16] Dominion also pointed out that in terms of future forecasting – there are differing views in the market.

[17] Finally, Dominion argued that DDMI also has security in Dominion's 40% share ownership of the Diavik Mine.

[18] My June Order attempted to balance DDMI's rights and decision to continue to operate the Diavik Mine in face of the pandemic, and over the initial objections of its 40% partner, Dominion, which has meant ongoing high expenses being faced by Dominion while it is trying to restructure its business and keep its operation in the Ekati Mine as a future viable operation. Dominion continues to have serious concerns about how DDMI is running the Diavik Mine and complains about the Mine being over budget and mismanaged. It has started an action in this regard in B.C. (which is presently stayed).

[19] Further, normally, the ability for parties to realize on their security or claims against a party protected by a stay in CCAA proceedings are affected. I have allowed a limited waiver of this stay with respect to DDMI considering this unusual situation – but with some limits – i.e. that the normal collateral is limited to the amount of the Cover Payments owed. This is a balance that I have attempted to achieve to allow for the Diavik Mine to remain operational and allow Dominion to continue to attempt to restructure.

[20] In terms of the value of the limited collateral, the DICAN evaluation was proposed by DDMI in the first place likely because it is the method that has been used for years between the parties to divide the diamond production. The evidence in front of me does not convince me that it is unfair – or has changed since the parties both agreed to this method a few months back. I recognize that there is a difference between splitting diamonds and selling them – however based on the limited evidence in place, this independent evaluation method is a fair way to continue to proceed.

[21] DDMI argues that it will be prejudiced if it cannot hold on to the whole of Dominions share of the diamond collateral. However, I also note that DDMI has security in the 40% ownership of Dominion in the Diavik Mine. Again, I had arguments on both sides about the value of this interest but no professional evidence of value. I don't accept that just because there have been no bids to buy Dominion's 40% share in the Diavik Mine recently, that it is valueless. However, I also take DDMI's point that the Mine is near the end of its life and it has serious reclamation costs that will have to be paid ultimately, so that the value does not equate to the enormous amounts of funds that have been invested in it in the last few years. Ultimately, in my view this Mine has some value, and DDMI has priority security in it.

[22] Notably, the Monitor in June did not support DDMI's request to hold all of Dominion's share of the Diavik diamonds. Presently, the Monitor is generally supportive of DDMI's proposition to sell Dominion's diamonds to pay off the Cover Payments, but he took no position about what amount of diamonds should be sold. He pointed out that there is "conflicting evidence" and positions on the method of evaluation of the diamonds and the accuracy or appropriateness of the DICAN valuation and whether the excess diamonds beyond the DICAN valuation should be delivered to Dominion.

[23] I understand DDMI's concerns, however, on balance, I am not convinced that it is appropriate to deviate from the terms of my June 19, 2020 Order. The fact that we now have more information about the recent value of diamonds is actually in favour of keeping the Order in place as it is, as opposed to an adverse change of circumstances that would require an amendment.

[24] Further, the fact that the Stalking Horse Bid and SISP were not ultimately successful in finding a buyer of Dominions' 40% interest in the Diavik Mine does not change the underlying reason to limit the *exception* to the general stay. I understand that presently there is no near future prospect that a cash infusion will be made so that the Cover Payments are repaid by a new purchaser, but this was one of the reasons that I allowed the Dominion share to be held back in the first place.

The Monitization Process

[25] Thanks to the hard work of all parties, most of the details about the sales process for the diamonds have been ironed out between the parties. It is set out in the "Monitization Process" – with Schedules A and B. One remaining issue was the fee that DDMI wants to charge on top of the deduction for interest and other fees. Another is a few tweeks to the waterfall distribution with respect to the surplus from the diamond sales.

The Fees

[26] DDMI seeks a 2.5% fee as a handling, sorting, sales and cash collecting fee. It argued that this is "consistent" with what is charged to third parties for these services. Dominion on the other hand argued that the evidence shows that this fee is too high, many costs associated with the sales of diamonds are fixed, and Dominion would expect that the fess for such services would only be 1%. It is prepared to sell its diamonds with this fee structure. The difference in cost according to DDMI's counsel would be in the range of $1.8M.

[27] Section 9.4.(c) indicates that "all other reasonable costs and expenses incurred in collecting payment" beyond legal fees and interest can be deducted from the security interest (here the diamond sales). It is reasonable for DDMI to charge a fee, but since Dominion is prepared to do this for 1% vs. 2.5%, it is better for all of the creditors if it is done in the least expensive way. DDMI can elect to do it themselves for 1%, or it can have Dominion sell the diamonds, on the same terms that have been worked out, for 1%. I leave it to DDMI to elect.

The Distribution Waterfall

[28] The waterfall distribution is found in para 8 of the monetization process (at p. 14.4 – 342 in CaseLines). Many parties had not had a chance to review this final proposed process and had concerns about the distribution proposals. Most suggestions were likely acceptable, but the parties had not had time to agree one way or another. The Monitor had some helpful suggestions but I note that overall, he was not taking a position one way or another on DDMI's application as discussed earlier. I would appreciate it if the parties could make another effort to clear up the waterfall and otherwise, I can hear any discreet issues that remain.

[29] In the meantime, I make the following comments. Firstly, with respect to the diamonds that are to be delivered to Dominion, it agreed that it would keep then secure and segregated for now. Secondly, there was some concern about the wording of para 8(a) about the royalty and tax provision that may be able to be worked out. Similarly, some last minute concerns arose with paragraph 8.(c) about the administration costs. There was no concern that once these were paid, the Cover Payments could be made (para 8 (d)). There was then concern about whether any payments should be made to other creditors etc. before being sent to Dominion. I would like to hear more before I decide on these issues one way or another, if they cannot be resolved.

Heard on the 30th day of October, 2020.
Dated at the City of Calgary, Alberta this 4th day of November, 2020.

K.M. Eidsvik
J.C.Q.B.A.

Appearances:

Sean Collins
for the Applicant Diavik Diamond Mines (2012) Inc

Peter Rubin
for the Respondent Dominion Diamond Mines ULC

Kelsey Meyer
for the Monitor

Marc Wassernan and Emily Paplawski
for Credit Suisse AG, Cayman Islands Branch, as Administrative Agent
Under the First Lien Credit Agreement

Brendan O'Neill
for the Washington Group of Companies

Kyle Kashuba
for Ad Hoc Group of Bondholders

John Salmas
for Wilmington Trust, National Association

Mary L.A. Battery, Q.C
for the Northwest Territories

Terrence Warner
for Dyno Companies

Andrew Astritis
for Public Service Alliance of Canada and its component, the Union of Northern Workers

This is Exhibit "K" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

Karen Anderson

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires August 29, 2023

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

AFFIDAVIT OF THOMAS CROESE
Sworn on April 30th, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended pursuant to:

(a) Amending Agreement, dated as of December 1, 1995, between Kennecott Canada Inc. and Aber Resources Limited;

(b) Amending Agreement (NO.2), dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber Diamond Mines Limited; and,

(c) Amending Agreement (NO.3), dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber Diamond Mines Limited,

(collectively, the "**JVA**"). A copy of the JVA is attached hereto and marked as **Confidential Exhibit "1".**

3. In swearing this affidavit (the "**Affidavit**"), I have reviewed the JVA and the affidavit of Kristal Kaye sworn in the within proceedings on April 21, 2020 ("**Kaye Affidavit**"). I have also reviewed the stay-extension application served by Dominion on April 24, 2020 (the "**Stay Extension Application**"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Kaye Affidavit.

Summary of DDMI's Responding Position

4. In responding to the Stay Extension Application, DDMI seeks limited relief to preserve its rights and protect the interests of the Joint Venture as follows:

(a) a modification of the stay of proceedings contained in the Initial Order to permit DDMI to:

(i) make Diavik JVA Cover Payments as defined in and contemplated under Article 9.4 of the JVA, on an ongoing basis and in accordance with the terms and conditions therein; and

(ii) securely store a portion of Dominion's share of production from the Diavik Mine at the Diavik Product Splitting Facility in Yellowknife, Northwest Territories until such time that Dominion pays indebtedness owing to it on account of any Diavik JVA Cover Payments made by DDMI;

(b) sealing Confidential Exhibit 1.

CCAA Filing Background

5. DDMI and Dominion have been operating as joint-venture participants in the operation of the Diavik Mine (the "**Joint Venture**"), in accordance with and pursuant to the JVA, since Dominion was acquired by Washington in 2017. DDMI's sole material asset is its interest in the Diavik Mine and the Joint Venture, details of which are set out herein.

6. Dominion had previously requested that JVA billings be made payable on the first and fifteenth of the month to enable Dominion to manage cash requirements and complete forecast reconciliations. On April 13, 2020 (being four days after the issuance of the $16.0 million cash call invoice, and nine days before the commencement of Dominion's CCAA proceedings), Dominion requested that the payment schedule be altered such that the next payment would be deferred from April 15, 2020 to April 22, 2020. DDMI agreed to Dominion's request. A copy of the email correspondence between DDMI and Dominion is attached hereto and marked as **Exhibit "A"**.

7. DDMI and Dominion had a regularly scheduled Joint Venture meeting on Monday, April 20, 2020. Dominion did not advise DDMI of its intention to seek an initial order under the *Companies' Creditors Arrangement Act* ("**CCAA**") on Wednesday, April 22, 2020 (the "**Initial Order**") at the meeting of April 20, 2020 or on April 13, 2020 when Dominion requested that its payment schedule be altered and extended from April 15, 2020 to April 22, 2020. On the same day that it obtained the Initial Order, Dominion defaulted on the $16.0 million cash call that was originally due on April 15, 2020 and subsequently deferred until April 22, 2020. A copy of the cash call issued and not paid by Dominion is attached hereto and marked as **Exhibit "B"**.

Dominion's Projected Operational Shortfall

8. DDMI is aware of the impact of the COVID-19 pandemic on the global diamond industry. It also appreciates the liquidity crisis that the Applicants are currently experiencing and the need for them to stabilize their business operations for the benefit of their employees, vendors, and other stakeholders through the filing of their Application under the CCAA. The Initial Order and corresponding stay of proceedings have now provided Dominion with these benefits. Dominion's thirteen-week cash flow forecast for the period April 24 – July 17, 2020 (the "**Dominion Forecast**"), projects a $42.5 million operational shortfall. Dominion has not accounted for the payment of post-filing JVA billings in this forecast. Estimated JVA billings over the projection

period total $140.8 million, based on the anticipated invoice date and excluding the unpaid $16 million April billing. Dominion's 40% proportional share of such billings is $56.3 million.

9. The JVA accords DDMI the right to make Diavik JVA Cover Payments in the event of a Dominion cash call default. Upon making the Diavik JVA Cover Payment, DDMI acquires a first-lien security interest in Dominion's interest in the Diavik Mine, which ranks in priority to the claims of both the Credit Agreement Lenders and the Trustee. DDMI must make the $16.0 million Diavik JVA Cover Payment, and future Diavik JVA Cover Payments in respect of any additional Dominion defaults, in order to satisfy obligations of the Joint Venture and ensure the ongoing obligations of the Diavik Mine. Failing to make the Diavik JVA Cover Payments will place DDMI in default of its obligations to its employees, contractors, vendors and place the assets of the Joint Venture and the operation of the Diavik Mine at risk. If Dominion's stay extension application is granted, DDMI is seeking a limited modification to the stay in order to permit it to make Diavik JVA Cover Payments in respect of the $16.0 million default and any future defaults committed by Dominion under the JVA. These obligations will ultimately be required to continue funding JVA obligations and will preserve and enhance the value of the Joint Venture.

10. The Kaye Affidavit and the Dominion Forecast confirm that Dominion is unable to sell their share of diamonds at this time. Upon making the Diavik JVA Cover Payments, DDMI will obtain a first-lien priority position against Dominion's right, title and interest in, to and under, its Participating Interest and the Assets (as such terms are defined in the JVA), which includes, among others, all diamonds extracted from the Diavik Mine. DDMI is prepared to securely store a portion of Dominion's share of production, equal to the value of any Diavik JVA Cover Payments, at the Diavik Product Splitting Facility (the "**PSF**") in order to preserve the diamonds. Given Dominion's current inability to vend into the market, this relief does not prejudice Dominion in any fashion.

The Diavik Product Splitting Facility

11. The PSF is located in Yellowknife. Recovered diamonds from the Diavik Mine, are separated and packaged by size and grade and subsequently weighed and stored in a secured vault at the mine site. The diamonds are then securely flown to the PSF where the production undergoes further cleaning and processing. Following this the diamonds are "split" in accordance with agreements between the Participants.

12. The PSF quality management system earned the ISO 9001: 2015 certification, which certifies that all of the PSF's key processes have been monitored and reviewed for customer satisfaction towards quality objectives. The PSF also meets the stringent security standards of the diamond industry and has sufficient storage capacity to store Dominion's share of production from the Diavik Mine for the foreseeable future.

JVA and Security

13. The JVA governs operations between DDMI (a subsidiary of Rio Tinto plc) and Dominion in relation to the Diavik Diamond Mine and various surrounding exploration properties (collectively, the "**Diavik Mine**") in the North Slave Region. The Diavik Mine is located approximately three hundred kilometres northeast of Yellowknife, Northwest Territories and two hundred and twenty kilometres south of the Arctic Circle. Pursuant to the JVA, DDMI has a sixty percent (60%) interest in the Diavik Mine and Dominion has a forty (40%) interest. Commercial production commenced at the Diavik Mine in 2003, underground mining became operational in 2010, with an additional open pit becoming operational in 2018.

14. Under the JVA, DDMI is the manager of the Diavik Mine (the "**Manager**" when referenced in such capacity). In its capacity as Manager, DDMI is responsible for payment of 100% of all "Costs", defined in Article 1.8 of the JVA as:

> 1.8 "Costs" means all items of outlay and expense whatsoever, direct or indirect, with respect to Operations including without limitation those detailed in Sections 2.1 to 2.14 inclusive of the Accounting Procedures.

15. As a result, DDMI remits full payment, to all vendors, on behalf of the Joint Venture and then collects Dominion's 40% share of such obligations through bi-weekly invoices on the first and fifteenth day of each month, issued to Dominion in accordance with the JVA and customary practices. DDMI is therefore effectively obligated to supply credit to Dominion and then subsequently collect such amounts.

16. Article 9.2 of the JVA addresses cash call timing and billing requirements with respect to the operation of the Diavik Mine, to be conducted in accordance with an approved Program and Budget (as defined in the JVA). Articles 1.6, 1.27 and 9.2 of the JVA state:

> 1.6 "Budget" means a detailed estimate of all Costs to be incurred by the Participants with respect to a Program.
>
> ...

> 1.27 "Program" means a description in reasonable detail of the scope, direction and nature of the Operations to be conducted and objectives to be accomplished by the Manager for a year or any other reasonable period.
>
> ...
>
> 9.2 Cash Calls
>
> Prior to the last day of each month the Manager shall submit to each Participant which has elected to contribute to the Program and Budget then in effect a billing for such Participant's share of estimated Costs for the next month. Within 20 days after receipt of each billing, each Participant shall advance to the Manager such estimated amount. Time is of the essence of payment of such billings. If the amount billed for the estimated Costs was less than the actual Costs incurred or charged during that month, the Manager may bill the Participants for the difference at any time, which the Participants will pay within ten days following receipt of billing. With the concurrence of the Management Committee, the Manager may establish more frequent billing cycles to minimize account balances.

17. In a resolution dated effective December 22, 2008 the Management Committee established a change in the billing cycle such that on, or about the beginning and middle of each calendar month the Manager shall submit to each Participant a billing for such Participant's share of estimated Costs under the Program and Budget then in effect, for the ensuing period of approximately two weeks to be paid within seven days.

18. Article 9.4 of the JVA addresses cash call defaults by Participants under the JVA. Pursuant to Article 9.4, if there is a payment default following the making of a cash call, the non-defaulting Participant may satisfy such obligation by making a Diavik JVA Cover Payment, which then constitutes indebtedness owing by the defaulting participant to the non-defaulting participant. Specifically, Articles 9.4(a) and 9.4(b) of the JVA state:

> 9.4 Default in Making Contributions
>
> (a) If a Participant elects to contribute to an approved Program and Budget and then defaults in its obligation to pay a contribution or cash call hereunder, the [non-defaulting Participant], by notice to the defaulting Participant, may at any time, but shall not be obligated to, elect to make such contribution or meet such cash call on behalf of the defaulting Participant (a "Cover Payment").
>
> (b) Each Cover Payment shall constitute indebtedness due from the defaulting Participant to the [non-defaulting Participant], which indebtedness shall be payable upon demand and shall bear interest from the date incurred to the date of payment at the rate specified in Section 9.3.

19. The indebtedness owing by the defaulting Participant (in this instance, Dominion) to the non-defaulting Participant (in this instance, DDMI) for the making of any Diavik JVA Cover

Payments is secured pursuant to a security interest granted under Articles 9.4(c) of the JVA. Article 9.4(c) of the JVA, as amended by Amending Agreement (No. 2) made January 17, 2002, states:

> (c) Each Participant hereby grants to the other, as security for repayment of the indebtedness referred to in Section 9.4 (b) above together with interest thereon, reasonable legal fees and all other reasonable costs and expenses incurred in collecting payment of such indebtedness and enforcing such security interest, a mortgage of and security interest in such Participant's right, title and interest in, to and under, whenever acquired or arising, its Participating Interest and the Assets. Each Participant hereby represents and warrants to the other that such mortgage and security interest ranks and will rank at all times prior to any and all other mortgages and security interests granted by or charging the property of such Participant. Each Participant hereby agrees to take all action necessary to perfect such mortgage and security interest and irrevocably appoints the other Participant as its attorney-in-fact to execute, file and record all financing statements and any other documents necessary to perfect or maintain such mortgage and security interest or otherwise give effect to the provisions hereof. Upon default being made in the payment of the indebtedness referred to in Section 9.4 (b) when due the non-defaulting Participant may on 30 days' notice to the defaulting Participant exercise any or all of the rights and remedies available to it as a secured party at common law, by statute or hereunder including the right to sell the property subject to a mortgage and charge hereunder. The non-defaulting Participant shall remain liable for any deficiency after any sale by the defaulting Participant of the property subject to the mortgage and charge. In the event the non-defaulting Participant enforces the mortgage or security interest pursuant to the terms of this section, the defaulting Participant waives any available right of redemption from and after the date of judgment, any required valuation or appraisement of the mortgaged or secured property prior to sale, any available right to stay execution or to require a marshalling of assets and any required bond in the event a receiver is appointed. Nothing in this Section 9.4(c) shall constitute a waiver or abridgement of any right of a lender to whom a Participant has granted security, provided, however, that nothing in this sentence shall limit the effectiveness of that waiver as against the Participant, or as against such a secured lender to the Participant or any other person to the extent the secured lender or other person is asserting a right of the Participant which the Participant has waived.

20. DDMI's security interest for the Diavik JVA Cover Payments extends to the interest of Dominion in the Assets (as such term is defined in the JVA). The definition of Assets in the JVA, as amended by Amending Agreement (No. 2) made January 17, 2002, includes Dominion's share of diamonds currently held at the PSF, as well as all diamonds subsequently produced from the Diavik Mine and delivered thereto. Specifically, the JVA defines "Assets" as:

> 1.5 "Assets" means the Properties, Products and all other personal property (which for greater certainty shall include all goods, intangibles, securities, money, documents of title, instruments and chattel paper together with all proceeds of and

accessions to the foregoing) now or hereafter held by the Manager for the benefit of the Participants including without limitation all monies advanced from time to time by the Participants to the Manager pursuant to Section 9.2 hereof.

...

1.26 "Products" means all ores, minerals and mineral resources produced from the Properties under this Agreement including, without limitation, diamonds.

...

1.28 "Properties" means those mining claims described in Part 1 of Schedule A and all mining leases which may replace the same and all other interests in real property which are acquired and held subject to this Agreement, including without limitation the interests in, under and by virtue of the Underlying Agreements.

Intercreditor Arrangements and DDMI's Priority

21. Dominion is party to a credit agreement dated as of November 1, 2017, as amended (collectively, the "**Dominion Credit Agreement**"), between Dominion (as successor to Northwest Acquisition ULC), as borrower, the lenders party thereto from time to time (the "**Credit Agreement Lenders**"), as lenders, and Credit Suisse AG, Cayman Islands Branch (the "**Agent**"), as administrative agent for the Lenders.

22. Dominion is also party to a trust indenture dated as of October 23, 2017, as amended or supplemented (collectively, the "**Trust Indenture**"), between Dominion (as successor to Northwest Acquisition ULC) and Dominion Finco Inc., as co-issuers, and Wilmington Trust, National Association, as trustee (the "**Trustee**").

23. Dominion granted certain security interests to and in favour of the Agent (on behalf of the Credit Agreement Lenders) and the Trustee (on behalf of the noteholders under the Trust Indenture) to secure its obligations thereunder.

24. Each of the Agent (on behalf of the Credit Agreement Lenders) and the Trustee (on behalf of the noteholders under the Trust Indenture) have subordinated their security interests in the Assets to DDMI's security interest for the Diavik JVA Cover Payments pursuant to the Diavik Credit Agreement Subordination Agreement and the Diavik Trust Indenture Subordination Agreement, respectively.

No Prejudice to Dominion

25. The limited and commercially necessary modifications to the current stay of proceedings proposed by DDMI entail no prejudice to Dominion. Conversely, a failure to modify the stay by granting the requested relief would cause immediate and material prejudice to DDMI and the ongoing operation of the Diavik Mine.

26. Section 9.4 of the JVA requires the Non-Defaulting Participant to collect cash calls from the Defaulting Participants and disburse such payments on their behalf. Further, not only does Dominion's cash call default cause prejudice to the Joint Venture by depriving the Manager of funds to make payments in the ordinary course of business; but Dominion understands that the Diavik JVA Cover Payments for April – June are critically important as these are needed to pay vendors for consumables transported across the seasonal Tibbitt to Contwoyto winter ice road (the "**Winter Road**"), as is the case at Dominion's Ekati operations. Many of these materials and associated logistics services have already been received, and DDMI has a corresponding obligation to the relevant vendors for payment. In making these payments, DDMI – as both the Manager and non-defaulting Participant – is acting to ensure the continued operational viability of the Diavik Mine, all of which is to Dominion's immediate and ongoing financial benefit.

27. Dominion's own evidence clearly establishes that the modifications sought by DDMI to the Initial Order cannot reasonably be construed as prejudicial because:

(a) Ms. Kaye testifies, at paragraphs 12-17 of the Kaye Affidavit, that the COVID-19 pandemic has comprehensively impacted every stage of its business from the extraction to the processing and eventual sale of diamonds from the Ekati and Diavik Mines. Further, the Applicants acknowledge at paragraph 17 of the Kaye Affidavit that "there is currently no timeline for when Dominion's suspension of operations at the Ekati Mine may be lifted or when the company may be able to realize on the diamonds extracted from operations at the Ekati and Diavik Mines that are currently unable to be sorted and sold in the ordinary course (emphasis added);

(b) Dominion admits that it is in default of its April 2020 payment obligation under the JVA. Further, the Applicants advise that the cash call payments are "[o]ne of the most significant financial burdens faced by Dominion", and while they state they

are exploring interim financing, the current Dominion Forecast shows no capacity to make payment of post-filing obligations under the JVA; and

(c) by making the Diavik JVA Cover Payments on behalf of the defaulting Participant (Dominion), DDMI has a first-lien security on the diamonds which the Applicants admit they can neither sort nor sell.

Diavik Mine Operations

28. I did not expect to see testimony in the Kaye Affidavit suggesting that Dominion had concerns with respect to the immediacy of its ability to fund cash obligations associated with the Joint Venture and the contents of the correspondence, dated April 27, 2020 (the "**April 27 Correspondence**"), as sent by Dominion's counsel to DDMI's counsel. DDMI refutes and disagrees with the characterization of the Manager's operation of the Joint Venture and the various other accusations set out in the April 27 Correspondence. DDMI intends to issue a corresponding response shortly.

29. Diavik is a major economic contributor in the North, creating local jobs and business opportunities, working in respectful partnership with Indigenous communities and conducting its operations, and preparations for eventual closure and remediation, in a safe and both socially and environmentally responsible way. DDMI has successfully operated the Diavik Mine as a Joint Venture for over 16 years with the first priority being the health and safety of employees and the communities in which we operate. Specifically, the Diavik Mine began production in 2003 and has been underground mining since 2012. In 2018, DDMI opened a fourth diamond pipe at the Diavik Mine, as a method of maintaining production levels during the lifecycle of the mine. Total production at the Diavik Mine, in 2019, was 6,719,000 carats.

30. DDMI is a wholly-owned subsidiary of Rio Tinto plc, part of an international metals and mining corporate group with operations in thirty-six countries (collectively, "**Rio Tinto**"). Rio Tinto is a leading, innovative mining company, operating for more than 150 years, delivering superior returns to shareholders, meeting customers' needs, working closely with all stakeholders, allocating capital with discipline, and responsibly investing in high-quality projects and in industries with robust, long-term fundamentals. For over four decades, Rio Tinto has operated a global diamond mining and marketing business, from exploration through to closure.

31. The Diavik Mine has had a significant impact on northern communities and has created numerous local jobs and business opportunities, working in respectful partnership with Indigenous

communities and enabling mining to proceed in a safe and environmentally responsible way. As a result, Rio Tinto has committed to a significant number of community investment projects with respect to the Diavik Mine. Between 2000 and 2018, the Diavik Mine spent approximately $5.7 billion with Northern communities. Of the $5.7 billion spent in Northern communities, $3.0 billion was spent with Northern Indigenous partners and their joint ventures. Through the Diavik Mine, DDMI has committed to training apprentices in skilled trades, and also developed a northern leadership development program in partnership with SAIT Polytechnic and Aurora College, which is based on Rio Tinto leadership competencies. Other projects include community grants, scholarships, and donations to local non-profits in the Northwest Territories.

32. DDMI's and Rio Tinto's community involvement does not simply extend to the current operation of the Diavik Mine. DDMI also has a socio-economic monitoring agreement with the Government of the Northwest Territories, which was signed by Indigenous partners. The Environmental Monitoring Advisory Board, created under the socio-economic monitoring agreement and a separate environmental agreement, allows communities and governments to monitor Diavik's environmental commitments.

33. DDMI and Rio Tinto prioritize working with governments, Indigenous groups and local communities to plan the end of its operations at specific mine sites in a way that leaves lasting benefits for the host communities. DDMI projects that the Diavik Mine will cease production in 2025, at which point, there will be no diamonds left to economically mine. As part of the closure process, DDMI is currently undertaking detailed closure planning studies that cover not only site reclamation but also employees, communities and business transition planning. The closure costs, which are necessary for the safe remediation of environmental liabilities are included as part of the Manager's cash calls under the JVA, to the extent that progress remediation and closure study activities are currently underway.

34. DDMI not only operates the Diavik Mine with the first priority being the health and safety of the employees and communities affected by it, but does so in a sustainable manner. Rio Tinto's global expertise has been applied at the Diavik Mine in the construction of an award-winning wind farm that generates significant renewable energy for operations at the Diavik Mine. The Diavik Mine wind farm is one of the largest hybrid wind-diesel power facilities at a remote mine site and, since coming on line in 2012, has offset Diavik's diesel use by over 28 million liters and reduced the overall greenhouse gas emissions by 75,000 tonnes.

35. With respect to the Joint Venture's operations, the 2020-2025 program and budget was approved by both DDMI and Dominion, pursuant to the Management Committee Resolution, executed by Dominion on December 2, 2019. This took into account the Life of Mine plan, as at the end of 2019, and entailed an operating strategy to prioritize A154 North ore (being the highest quality diamonds, in a lower grade pipe) while accelerating mining rates to ensure that the maximum value was obtained by the Joint Venture.

36. DDMI and Dominion meet regularly on Joint Venture matters, with formal quarterly JV Management Meetings and regularly scheduled and ad hoc meetings between peers of both organisations. This includes a weekly reoccurring meeting between Mr. Richard Storrie (President and COO of DDMI) and Mr. Pat Merrin (Acting CEO for Dominion). The weekly recurring meetings are expected to continue, as scheduled. Dominion did not raise any specific expectation or request concerning the curtailment of operations until a April 20, 2020 meeting (being two days prior to the granting of the Initial Order).

37. As Dominion is well aware, the winter road through which the Diavik Mine is primarily supplied is only available for use during a planned 8 weeks in February and March. Accordingly, the cash calls made of the Participants are highest during the second quarter of each year, as it is in these months that the Manager must pay suppliers for a year's worth of consumables to be stored at the Mine and the logistics of transporting those consumables to the site. The total cash calls to the end of July represent approximately 70% of the total cash call obligations for the 2020 calendar year; thereby making ongoing production and operation economically beneficial.

38. The operational reality is that approximately 85% of all JVA obligations that will become due by Dominion over the next two months are unavoidable and will still be necessary and payable, even if the Diavik Mine is placed in care and maintenance. In addition, and while Dominion has suggested that the COVID-19 pandemic has effectively imposed a complete cessation of operations and commerce in the diamond industry, this is inconsistent with DDMI's information and commercial experience. In particular:

(a) multiple diamond mines continue to operate, while taking increased health-related precautions, including diamond mines in the Northwest Territories. Attached hereto and marked as **Exhibit "C"** is an April 22 news article describing how diamond mines in the Northwest Territories have been exempted from travel restrictions due to their economic importance;

(b) certain Indian-based companies continue to operate factories outside of India thereby offering customers alternative processing options. Furthermore, in Antwerp, Belgium, all diamond companies which have taken preventative health measures, such as physical distancing, have been permitted to continue to operate. Belgium's Diamond Office ("**DO**"), a supervisory entity and customs office acting on behalf of the Belgian government where diamonds must be declared for import and export outside of the European Union, has remained in operation throughout the COVID-19 pandemic, thereby permitting the import and export of diamonds;

(c) the Belgian offices of DDMI's corporate affiliate, Rio Tinto Diamonds, have been able to import rough diamonds from Canada, prepare rough diamonds for sale in Antwerp, and engage with its customers globally to remain in business and generate sales; and

(d) "diamond tenders" are not the only sales method presently accessible to sellers. Alternative sales methods, including contract sales and negotiated sales, are available to generate sales revenue. To compensate for the reduced physical availability of the rough diamond tender network, there are digital sales channels available to generate activity with willing buyers.

39. In regards to diamond sales, it is important to note that the Joint Venture does not include or contemplate the sale of any diamonds. Diamonds are split between the Participants based on a combination of grade and quality; this is in lieu of pricing. Once split, the diamonds are then sold by each of the Participants through their corresponding channels and networks. For clarity, an affiliate of DDMI has achieved material sales during March and April 2020.

40. The Manager has acted prudently in response to the COVID-19 pandemic at each step of the way. From January, 2020, the Manager began a formal Trigger Action Response Plan focussed on pandemic preparedness and tiered operational responses in order to maintain safe and stable operations, all in anticipation of an increasing threat from COVID-19. The formal business resilience program commenced in March 2020. These proactive preparations enabled additional health control measures to be developed and implemented in full consultation with the Government of the Northwest Territories, and other provincial and federal ministries; as well as

stakeholders, including employees, suppliers, northern communities and indigenous governing bodies.

41. With the onset of the COVID-19 pandemic, the Manager undertook a comprehensive review of the operating strategy at the Diavik Mine (the **"Operating Review"**). The Operating Review concluded that the best outcomes for the Participants, the Mine's workforce and their communities, and for stakeholders generally were most likely to be realized by continuing to operate in a manner that is consistent with the approved Diavik Program and Budget while simultaneously implementing additional health and safety controls, in order to enable stable operations and protect the wellbeing of vulnerable personnel and communities.

42. As part of the Operating Review, DDMI also undertook a careful analysis of alternative operating strategies during the COVID-19 pandemic, its key conclusions were as follows:

(a) the projected 2020 free cash flow benefit to the Participants associated with continued operations of the Diavik Mine - compared to entering care and maintenance status - is estimated to be materially favourable, and in the order of $100 million or more, based on reasonable diamond sales assumptions. Furthermore, the incremental EBITDA margin of continued operations, compared to care and maintenance, is estimated to be very positive;

(b) further, the analysis demonstrates there would be minimal differences in the near term cash outflows between continuing to operate and entering care and maintenance. For example, Dominion's share of the Cover Payments (to be disbursed on payments to employees, suppliers, and other stakeholders) in May and June would only be expected to reduce by approximately 15% if operations were to be curtailed from May 1, 2020. This is a consequence of the seasonal nature of the Diavik Mine's cash expenses such that approximately half of the annual outflows are either incurred or committed in the first quarter of the year, due primarily to the necessary build-up of stores inventories over the course of February and March, given the Winter Road season. Given continually agreed (typical and customary) payment terms, the financial commitments to materials, and freight and logistics suppliers from this period are paid out over the second quarter;

(c) accordingly, given the marginal benefit to near-term cash outflows and the significant uncertainty regarding the trajectory of the still functioning diamond market, it was determined that the most prudent course of action to protect the interests of the Joint Venture Participants would be to continue operations at the Diavik Mine, rather than crystallise projected lower free cash over 2020 by entering care and maintenance;

(d) continued operations will at all times be pursued consistent with the protective health measures proactively adopted by DDMI and the Operating Review. At the same time, the Manager and the Participants continue to monitor the development of the COVID-19 pandemic and its impacts on the diamond industry, pending a formal review point in June, 2020. Further cash conservation opportunities, including partial curtailment of operations, operating cost reductions where possible and prudent, further cost reduction opportunities and negotiated deferral of payments will also be evaluated and implemented in the interim.

43. The community benefits that result from continued operation of the Diavik Mine are also significant. DDMI is proud to be both a major contributor to the local economy and employer of local skilled labour, as the Diavik Mine employs more individuals than the Ekati Mine. In 2019, the Diavik Mine counted 1,124 employees and contractors, of whom 555 resided in the Northwest Territories and 242 of whom were indigenous workers from northern communities. Further, in the same year DDMI also disbursed $500.8 million in operating costs of which $370.6 million was spent with northern businesses and $166.7 million with northern indigenous enterprises and communities.

44. In order to ensure the health of its employees and contractors and the welfare of the northern communities in which they reside, in close collaboration with the Northwest Territories' Chief Public Health Office ("**NWT CPHO**"), DDMI has adopted a series of extensive precautionary measures. These measures include:

(a) temporarily removing vulnerable persons from the Diavik Mine, such as those from remote communities, those over 65 years of age, or those with underlying medical conditions;

(b) increasing the frequency of the cleaning of facilities, work stations, vehicles, lunchrooms, food prep, and other high-touch areas;

(c) requesting that all employees who can perform their responsibilities remotely, work from home;

(d) implementing increased physical distancing procedures and limiting necessary travel to smaller groups;

(e) an employee assistance program is available to support the Diavik Mine employees, contractors and their family members' mental health; and,

(f) chartering flights to ensure that all employees are not forced to travel on commercial flights, which has resulted in operating costs savings for the Joint Venture.

45. The NWT CPHO, Dr. Kami Kandola, has emphasized in public remarks that the welfare of workers and their communities also depends on continued employment and sustained investment. Unfortunately, not only does the effective closure of the Ekati Mine deprive its workers and the communities which they support of such benefits, but the proposed terms of the Initial Order show no regard for the welfare and vulnerability of stakeholders in the Northwest Territories – vendors, employees, contractors – and of the northern and indigenous communities reliant upon their incomes as it could have the effect of closing the Diavik Mine.

46. DDMI, as Manager and Participant, is presently of the view that continued operation and production of the Diavik Mine is the prudent and appropriate course of action for the Joint Venture and will ultimately be to the benefit of all stakeholders and parties, including affected northern communities. DDMI will continue to review and assess all relevant information, including market projection and related data, in making decisions relating to future operation and production

Sealing

47. The JVA contains confidentiality restrictions pertaining to the Joint Venture. DDMI seeks to seal the JVA that it has tendered as Confidential Exhibit 1. Disclosure of the JVA will cause serous and irreparable harm to the commercial interests of all of the participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the JVA or the terms contained therein.

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

SWORN BEFORE ME at the City of Yellowknife, Northwest Territories, this 30 day of April, 2020.

A COMMISSIONER FOR OATHS
in and for the Northwest Territories

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

THOMAS CROESE

This is Confidential Exhibit "1" referred to in the Affidavit of

Thomas Croese

sworn before me this 30th day of April, 2020.

A Commissioner for Oaths in and for the Northwest Territories

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

THIS DOCUMENT IS CONFIDENTIAL PURSUANT TO AN ORDER (SEALING), GRANTED BY THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK ON MAY 8, 2020

This is Exhibit "L" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 29, 2023

54323

COM

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**SUPPLEMENTAL AFFIDAVIT OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

SUPPLEMENTAL AFFIDAVIT OF THOMAS CROESE
Sworn on May 7th, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Supplemental Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. This Supplemental Affidavit is sworn in connection with my Affidavit, sworn on April 30, 2020 (the "**First Croese Affidavit**"), and filed in the within proceedings. All capitalized terms used herein and not otherwise defined shall have the same meaning as ascribed to such terms in the First Croese Affidavit.

JVA and Diavik Mine

3. DDMI and Dominion Diamond Mines ULC ("**Dominion**") are successors in interest to the JVA, attached as Confidential Exhibit 1 to the First Croese Affidavit.

4. Initially, the procedure for splitting diamonds produced by the Joint Venture, as between the Participants, was set out in Article 11.1 of the JVA.

Protocol Concerning Diamond Splitting

5. As part of the ongoing operation of the Joint Venture and the JVA, Diavik Diamond Mines Inc. and Aber Diamond Mines Limited, as predecessors to DDMI and Dominion, respectively, entered into the Agreement to Establish a Protocol for Diamond Production Splitting, dated as of January 7, 2003, between Diavik Diamond Mines Inc., and Aber Diamond Mines Limited (the "**Protocol Agreement**") which initially incorporated the Diamond Production Splitting Protocol, Version No. 1. (the "**Version 1 Protocol**"). Attached hereto and collectively marked as **Confidential Exhibit "1"** to this my Affidavit, is a true copy of the Protocol Agreement and the Version 1 Protocol.

6. The purpose of the Protocol Agreement was to establish a protocol for splitting the diamonds into shares, which was more appropriate and better adapted to the circumstances than the procedures set out in Article 11.1 of the JVA.

7. The Version 1 Protocol was subsequently amended and replaced pursuant to the Diamond Splitting Protocol, Version No. 2, dated November 4, 2011 (the "**Version 2 Protocol**"). Attached hereto and marked as **Confidential Exhibit "2"** to this my Affidavit, is a true copy of the Version 2 Protocol.

8. The Version 2 Protocol was terminated, on or around May 15, 2013. As a result, DDMI and Dominion Diamond Diavik Limited Partnership ("**DDDLP**"), the predecessor to Dominion, entered into the Protocol Amending Agreement (the "**Protocol Amendment Agreement**", the Protocol Agreement and the Protocol Amending Agreement are collectively referred to as, the "**Splitting Agreements**"), dated as of February 14, 2014, between DDMI and DDDLP, acting through its general partner, 6355137 Canada Inc.

9. The recitals to the Protocol Amending Agreement state that:

> **WHEREAS** each of DDMI and DDDLP (formerly known as Harry Winston Diamond Limited Partnership) is a "Participant" in the Diavik Joint Venture and party to an Agreement to Establish a Protocol for Diamond Production Splitting dated January 7, 2003 (the "Main Agreement") which incorporates a splitting protocol dated November 4, 2011 and identified as Schedule A, Version No. 2 (the "Protocol");
>
> **WHEREAS** DDDLP, pursuant to a notice of termination dated May 15, 2013, terminated the Protocol in accordance with Section 6(a) of the Main Agreement;
>
> **WHEREAS** the parties have agreed to reinstate and amend the Protocol in order for Selected Diamonds (as defined in the Protocol) to be split between them in Yellowknife, NT at DDMI's Production Sorting Facility (the "PSF") (or at such other location in Yellowknife, NT, as the parties may from time to time agree) instead of London, UK and at a reduced frequency of five (5) times per year;

10. Pursuant to the Protocol Amending Agreement, the Version 2 Protocol was reinstated and amended in accordance with the updated version of the Amended Protocol, Diamond Splitting Protocol, Version No. 3, attached as Schedule "A" to the Protocol Amending Agreement (the "**Version 3 Protocol**"). Attached hereto and collectively marked as **Confidential Exhibit "3"** to this my Affidavit, is a true copy of the Protocol Amending Agreement, including the Version 3 Protocol.

11. The Version 3 Protocol was subsequently replaced pursuant to the Diamond Production Splitting Protocol, Version No. 4, dated July 2, 2019, as initialled and executed by both DDMI and Dominion (the "**Version 4 Protocol**", the Version 1 Protocol, the Version 2 Protocol, the Version 3 Protocol, and the Version 4 Protocol are all collectively referred to as, the "**Protocols**"). Attached hereto and marked as **Confidential Exhibit "4"** to this my Affidavit, is a true copy of the Version 4 Protocol.

12. The Version 4 Protocol currently governs the procedure for splitting diamonds produced at the Diavik Mine, as between the Participants.

Intercreditor Agreements

13. As set out in the First Croese Affidavit, each of the Agent (on behalf of the Credit Agreement Lenders) and the Trustee (on behalf of the noteholders under the Trust Indenture) entered into the Diavik Credit Agreement Subordination Agreement and the Diavik Trust Indenture Subordination Agreement (collectively, the "**Subordination Agreements**"), respectively. Pursuant to the Subordination Agreements, each of the Agent, for and on behalf of the Credit

Agreement Lenders, and the Trustee, for and on behalf of the noteholders under the Trust Indenture (each such group respectively referred to as, the "**Secured Parties**"), acknowledged, confirmed, and agreed, that:

(a) the mortgages, charges, assignments and security interests in Dominion's (as successor in interest to DDDLP) Participating Interest, Net Profit Royalty and the Assets (as such terms are defined in the Subordination Agreements) pursuant to: (i) the JVA; (ii) the Splitting Agreements and the corresponding Protocols; and, (iii) the Environmental Security Agreement, dated August 25, 2015, as amended on November 5, 2015 and June 30, 2017 (collectively, the "**JVA Agreements**") created by such Secured Parties' security (the "**Secured Parties' Charge**") are fully subordinate to the terms of the JVA Agreements (and the respective rights of the parties thereunder) and that such Secured Parties' Charge shall be fully subordinate in priority to any mortgage, security interest or other security held by DDMI (the "**DDMI Charge**") in Dominion's Participating Interest, Net Profit Royalty, and Assets pursuant to the JVA Agreements; and,

(b) notwithstanding anything to the contrary contained in the Secured Parties' security, the Secured Parties agreed that the enforcement rights of the Secured Parties, with respect to the Secured Parties' Charge, must be exercised in accordance and in compliance with the applicable terms of the JVA Agreements, including without limitation paragraph 15.2(d) of the JVA.

Attached hereto and marked as **Exhibits "A"** and **"B"** to this my Affidavit, is a true copy of the Diavik Credit Agreement Subordination Agreement and the Diavik Trust Indenture Subordination Agreement, respectively.

Sealing

14. The Splitting Agreements and the Protocols are subject to the JVA and the corresponding confidentiality restrictions. The JVA, the Splitting Agreements, and the Protocols contain confidential information with respect to the ongoing operations of both Dominion and DDMI, including confidential financial information, procedures, asset valuations, and other sensitive commercial information which is subject to confidentiality restrictions. The disclosure of such information, as contained in the JVA, the Splitting Agreements, and the Protocols, would cause

serous and irreparable harm to the commercial interests of all Participants, especially considering the impact that the public disclosure of any financial or asset valuation information could have.

15. Furthermore, other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the JVA, the Splitting Agreements, the Protocols, or the terms contained therein.

16. I make this Supplemental Affidavit to supplement the First Croese Affidavit, in response to Dominion's Application originally returnable on May 1, 2020, as subsequently adjourned in part and rescheduled to be heard May 8, 2020.

SWORN BEFORE ME at the City of Yellowknife, Northwest Territories, this 7th day of May, 2020.

A COMMISSIONER FOR OATHS
in and for the Northwest Territories

SHEILA M. MacPHERSON
Notary Public in and for the
Northwest Territories. My commission
does not expire being a solicitor

THOMAS CROESE

This is Exhibit "A" referred to in the Affidavit of

Thomas Croese

sworn before me this 7th day of ~~April~~ May, 2020.

A Commissioner for Oaths in and for the Northwest Territories

SHEILA M. MacPHERSON
Notary Public in and for the
Northwest Territories. My commission
does not expire being a solicitor

SUBORDINATION AGREEMENT/
ACKNOWLEDGMENT OF LIEN

This Agreement made the 1st day of November, 2017.

BETWEEN:

DIAVIK DIAMOND MINES (2012) INC., in its capacity as Participant

(hereinafter called "**DDMI (2012)**")

OF THE FIRST PART;

- and -

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, in its capacity as agent for and on behalf of the Lenders and the other secured parties

(hereinafter referred to as the "**Agent**")

OF THE SECOND PART;

- and -

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP,

(hereinafter called the "**DDDLP**")

OF THE THIRD PART;

- and -

NORTHWEST ACQUISITIONS ULC

(hereinafter called the "**Borrower**")

OF THE FOURTH PART

WHEREAS Kennecott Canada Inc. ("**Kennecott**") and Aber Resources Limited ("**ARL**") entered into the Diavik Joint Venture Agreement dated March 23, 1995, as amended by an Amending Agreement dated December 1, 1995 (the "**Original JVA**");

AND WHEREAS Kennecott assigned all of its rights under the Original JVA to Diavik Diamond Mines Inc. ("**DDMI**") and ARL assigned all of its rights under the Original JVA to Aber Diamond Mines Ltd. ("**ADM**") (a predecessor of the Dominion Diamond Corporation);

AND WHEREAS DDMI and ADM entered into the Diavik Joint Venture Amending Agreement (No. 2) dated as of the 17th day of January, 2002 (the "**JVA Amending Agreement No. 2**");

AND WHEREAS DDMI and ADM entered into the agreement to establish a protocol for diamond splitting dated as of January 7, 2003 (the "**Original Protocol Agreement**"), further amending the Original JVA as amended by the JVA Amending Agreement No. 2;

AND WHEREAS DDMI and ADM entered into the Diavik Joint Venture Amending Agreement (No. 3) dated as of March 3, 2004 (the "**JVA Amending Agreement No. 3**") to further amend the Original JVA by deleting certain of the provisions of the JVA Amending Agreement No. 2;

AND WHEREAS ADM assigned all of its rights under the Original JVA, as amended, to Aber Diamond Limited Partnership (a predecessor of Harry Winston Diamond Limited Partnership "**HWDLP**", which is in turn a predecessor of DDDLP) effective as of March 11, 2005;

AND WHEREAS DDMI assigned all of its rights under the Original JVA, as amended and supplemented by the JVA Amending Agreement No. 2 and the JVA Amending Agreement No. 3, to DDMI (2012), effective as of January 7, 2014;

AND WHEREAS DDMI and HWDLP entered into an amendment to the Protocol Agreement dated as of November 4, 2011, and a further amendment dated as of February 14, 2014 (together the "**Protocol Agreement Amendments**", and together with the Original Protocol Agreement, the "**Protocol Agreement**");

AND WHEREAS DDMI and DDDLP entered into an Environmental Security Agreement dated August 25, 2015, amended on November 5, 2015 and June 30, 2017 (the "**ESA**");

AND WHEREAS the Original JVA, as amended and supplemented by the JVA Amending Agreement No. 2, the JVA Amending Agreement No. 3, the Protocol Agreement and the ESA, in each case as in effect on the date hereof, are hereinafter referred to as the "**JVA**";

AND WHEREAS the Borrower, as borrower, the Agent, as agent, the banks and other financial institutions named on the execution pages thereof and such other banks and financial institutions as may become lenders from time to time, as lenders (the "**Lenders**"), entered into a Senior Secured Credit Agreement on or about November 1, 2017 (including as the same may be amended, restated, amended and restated, revised, supplemented or replaced from time to time, the "**Credit Agreement**");

AND WHEREAS, pursuant to the Credit Agreement, the Lenders have agreed to make available to the Borrower certain credit facilities in an aggregate principal amount of US$200,000,000 (as it may be increased from time to time pursuant to the terms of the Credit Agreement);

AND WHEREAS, DDDLP has agreed to guarantee the principal, interest and other obligations of the Borrower (collectively, the "**Obligations**") owing to the Lenders and other secured parties (the Lenders and other secured parties referred to herein as the "**Secured Parties**"), and as security for the obligations of DDDLP pursuant to such guarantee, DDDLP has agreed to grant to the Agent for the benefit of the Secured Parties by way of a general security agreement substantially in the form attached hereto as Schedule "A" a mortgage, charge, assignment and security interest over, inter alios, DDDLP's Participating Interest, any Net Profit Royalty to which DDDLP may become entitled pursuant to Article 10 of the JVA and all of DDDLP's right, title and interest to the Assets (as defined under the JVA) (collectively and including as same may be amended, restated, revised, supplemented or replaced from time to time, the "**Secured Parties' Security**");

AND WHEREAS, for the purpose of delineating their respective rights and obligations in relation to one another, the parties hereto have agreed to enter into this Agreement;

NOW THEREFORE, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto) the parties hereto hereby covenant and agree with each other as follows:

1. **Subordination**

The Agent, for itself and on behalf of the Secured Parties, hereby agrees that the mortgages, charges, assignments and security interests in DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA created by the Secured Parties' Security (the "**Secured Parties' Charge**") are fully subordinate to the terms of the JVA (and the respective rights of the parties thereunder) and the Secured Parties' Charge shall be fully subordinate in priority to any mortgage, security interest or other security now or hereafter held by DDMI (2012) in DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA (as in effect on the date hereof, or as amended from time to time with the consent of the Agent) (the "**DDMI (2012) Charge**"). The foregoing acknowledgement and grant of priority shall be effective notwithstanding the respective dates of execution of, advance of monies under, registration or perfection of, notice or demand under, enforcement of the Secured Parties' Charge and the DDMI (2012) Charge. The parties hereto agree that the Secured Parties' security interest in any other assets or property (other than DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA) is not subordinated, affected, diminished or otherwise compromised hereby.

2. **Notice and Acknowledgement of Security**

(a) The Agent hereby gives written notice of the Secured Parties' Security.

(b) DDMI (2012) hereby acknowledges that the Agent and DDDLP have delivered to DDMI (2012) written notice of the Secured Parties' Security and DDMI (2012) acknowledges that the granting of the Secured Parties' Security is a permitted transfer under Section 15.2(d) of the JVA.

3. **Confirmation**

Pursuant to Section 2.4 of the JVA, DDMI (2012) and DDDLP hereby acknowledge and confirm that, as of the date hereof:

(a) DDDLP's Participating Interest is 40%; and

(b) DDMI (2012)'s Participating Interest is 60%.

4. **Joint Venture Agreement**

Notwithstanding anything to the contrary contained in the Secured Parties' Security, the Agent agrees for itself and on behalf of the Secured Parties that the enforcement rights of the Agent and the Secured Parties with respect to the Secured Parties' Charge must be exercised in accordance and in compliance with the applicable terms of the JVA including without limitation paragraph 15.2(d) thereof. Without limiting the generality of the foregoing, to the extent the Agent becomes entitled to a share of diamond production from the Diavik project, the Agent will be bound by, and entitled to the benefit of, the Protocol Agreement.

5. **Notices**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by telecopier, electronic mail or other electronic communication addressed:

(a) in the case of DDMI (2012) to:

Diavik Diamond Mines (2012) Inc.
P.O. Box 2498
5201 – 50th Avenue, Suite 300
Yellowknife, NT X1A 2P8
Attention: Vice President, Finance
Telecopier: (867) 336-9058
Email: jon.brennan@riotinto.com

(b) in the case of the Agent to:

Credit Suisse AG, Cayman Islands Branch, as Agent
Eleven Madison Avenue, 6th Floor
New York, New York 10010
Attention: Agency Manager
Email: agency.loanops@credit-suisse.com

(c) in the case of DDDLP to:

c/o Dominion Diamond Holdings Ltd.
900 – 6064 Street SW
Calgary, Alberta T2P 1T1
Attention: Ron Cameron
Telecopier: (416) 362-2230
Email: ron.cameron@ekati.ddcorp.ca

with a copy to:

Dominion Diamond Corporation
900-6064 Street SW
Calgary, Alberta T2P 1T1
Attention: Ron Cameron
Telecopier: (416) 362-2230
Email: ron.cameron@ekati.ddcorp.ca

(d) in the case of the Borrower to:

Northwest Acquisitions ULC
900 - 606 4 Street SW
Calgary, Alberta T2P 1T1
Canada
Attention: Finance
Telecopier: (403) 910-1933

or to such other address as any party hereto may, from time to time designate in writing to the other parties hereto. Any communication shall be considered to have been received on the date of delivery if delivered during business hours by courier or electronic mail, or on the first business day following delivery if delivered after business hours or by telecopier.

6. **Defined Terms**

Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the JVA.

7. **Further Assurances**

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

8. **Successors and Assigns**

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

9. **Governing Law**

This Agreement shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

10. **Counterparts**

This Agreement may be executed by facsimile or electronic signature and in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first noted above.

DIAVIK DIAMOND MINES (2012) INC., as Participant

louis.beland

Digitally signed by louis.beland
DN: dc=org, dc=riotinto, dc=corp, ou=PROD, ou=AMER, ou=CA-Montreal_Maison, ou=People, cn=louis.beland, email=Louis.Beland@riotinto.com
Date: 2017.10.27 09:47:28 -04'00'

By: Thenua, Sandeep (DDMI)

Digitally signed by Thenua, Sandeep (DDMI)
DN: dc=org, dc=riotinto, dc=corp, ou=PROD, ou=AMER, ou=CA-Yellowknife_HO, ou=People, cn=Thenua, Sandeep (DDMI), email=Sandeep.Thenua@riotinto.com
Date: 2017.10.26 17:14:07 -06'00'

Name:
Title:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Agent

By: _____

Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first noted above.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Agent

By: _____
Name: Mikhail Faybusovich
Title: Authorized Signatory

By: _____
Name: Andrew Griffin
Title: Authorized Signatory

S - 2

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner, DOMINION DIAMOND HOLDINGS LTD.

By: _____

Name: Matt Quinlan
Title: Chief Financial Officer.

NORTHWEST ACQUISITIONS ULC

By: _____

Name:
Title:

S - 2

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner, DOMINION DIAMOND HOLDINGS LTD.

By: _____
Name:
Title:

NORTHWEST ACQUISITIONS ULC

By: _____
Name: JOSEPH M. RACICOT
Title: SECRETARY

SCHEDULE "A"
GENERAL SECURITY AGREEMENT

See attached.

Execution Version

CANADIAN PLEDGE AND SECURITY AGREEMENT

This Agreement is made as of November 1, 2017 by and among the Debtors (as hereinafter defined) and the Agent (as hereinafter defined).

RECITALS:

A. Northwest Acquisitions ULC (which, promptly after the consummation of the Acquisition, will be amalgamated with Dominion Diamond ULC, which amalgamated company, promptly after such amalgamation, will be amalgamated with Dominion Diamond Holdings ULC, with the amalgamated company being called Dominion Diamond ULC), as Borrower (the "**Borrower**"), Washington Diamond Investments B.V., as Parent, the Agent, and the financial institutions from time to time party thereto, as Lenders, are parties to a revolving credit agreement dated as of the date hereof (as amended, supplemented, restated, amended and restated, replaced or modified from time to time, the "**Credit Agreement**").

B. Each Guarantor has executed and delivered to the Agent (for its own benefit and for the benefit of the other Secured Parties) that certain First Lien Loan Guaranty, dated as of the date hereof, pursuant to which it has guaranteed the Guaranteed Obligations (as defined therein).

C. To secure the payment and performance of its Secured Liabilities, each Debtor has agreed to grant to the Agent (for its own benefit and for the benefit of the other Secured Parties) the Security Interests with respect to its Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by each Debtor, each Debtor severally (and not jointly or jointly and severally) agrees with and in favour of the Agent (for its own benefit and for the benefit of the other Secured Parties) as follows:

1. **Definitions**. In this Agreement capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Credit Agreement, and the following terms have the following meanings:

"**Accessions**", "**Account**", "**Certificated Security**", "**Chattel Paper**", "**Consumer Goods**", "**Document of Title**", "**Equipment**", "**Financial Asset**" "**Futures Account**", "**Futures Contract**", "**Futures Intermediary**", "**Goods**", "**Instrument**", "**Intangible**", "**Inventory**", "**Investment Property**", "**Money**", "**Proceeds**", "**Securities Account**", "**Securities Intermediary**" "**Security**", "**Security Certificate**", "**Security Entitlement**", and "**Uncertificated Security**" have the meanings given to them in the PPSA.

"**Agent**" means Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under the Credit Agreement, or any successor administrative agent appointed pursuant to the Credit Agreement.

"**Agreement**" means this Canadian pledge and security agreement, including the exhibits and recitals to this agreement, the Supplements and the Schedules, as it or they may be amended, supplemented, restated, amended and restated, replaced or modified from time to time, and the

expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.

"**Books and Records**" means, with respect to any Debtor, all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Personal Property of such Debtor which are at any time owned by such Debtor or to which such Debtor (or any Person on such Debtor's behalf) has access.

"**Business**" means the exploration, development and operation of diamond deposits and diamond mines and the polishing, sorting, marketing and wholesale sale of diamonds.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

"**Collateral**" means, with respect to any Debtor, any and all and any part of each Debtor's present and after acquired personal property, including all of the present and future:

(a) undertaking;

(b) Personal Property (including any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that such Debtor may from time to time provide to the Agent in connection with this Agreement);

(c) real property (including any real property that may be described in any Schedule to this Agreement or any schedules, documents or listings that such Debtor may from time to time provide to the Agent in connection with this Agreement and including all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property); and

(d) without limiting the generality of the foregoing, all right, title and interest in and to any and all mineral claims, mining rights, mining claims (whether patented or unpatented), mining leases (including the leasehold or other interest created pursuant to any such mining lease and all rights or options of the lessee under each such mining lease to purchase or acquire the leasehold estate of the landlord or any right or option of termination, renewal, extension or first offer or first refusal for the same), including, without limitation, those described in Schedule B to this Agreement,

of such Debtor, including Books and Records, Contracts, Intellectual Property Rights and Permits, and including all such property in which such Debtor now or in the future has any right, title or interest whatsoever, whether owned, leased, licensed, possessed or otherwise held by

such Debtor, and all Proceeds of any of the foregoing, wherever located; provided, however, that the term "Collateral" shall not include any Excluded Assets

"**Contracts**" means, with respect to any Debtor, all contracts and agreements to which such Debtor is at any time a party or pursuant to which such Debtor has at any time acquired rights, and includes (i) all rights of such Debtor to receive money due and to become due to it in connection with a contract or agreement, (ii) all rights of such Debtor to damages arising out of, or for breach or default with respect to, a contract or agreement, and (iii) all rights of such Debtor to perform and exercise all remedies in connection with a contract or agreement.

"**Debtors**" means the Persons executing a signature page to this Agreement as a "Debtor" and any other Person which hereafter delivers a Supplement in the capacity of a "Debtor", and "**Debtor**" means any one of them.

"Exhibits" means the exhibits to this Agreement.

"**Insurance**" means any and all insurance policies covering any or all of any other Collateral (regardless of whether the Agent is the loss payee or an additional insured or named insured thereof).

"**Intellectual Property Rights**" means, with respect to any Debtor, all industrial and intellectual property rights of such Debtor or in which such Debtor has any right, title or interest, including copyrights, patents, inventions (whether or not patented or patentable), trade-marks, tradenames, get-up trade dress and other business indicia, industrial designs, integrated circuit topographies, know how, processes, business methods, methods of production, scientific and technical information and data and trade secrets, registrations and applications for registration for any such industrial and intellectual property rights, and all Contracts related to any such industrial and intellectual property rights.

"**Issuer**" has the meaning given to that term in the STA.

"**Permits**" means, with respect to any Debtor, all permits, licences, waivers, exemptions, consents, certificates, authorizations, approvals, franchises, rights-of-way, easements and entitlements that such Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business.

"**Personal Property**" means personal property and includes Accounts, Chattel Paper, Documents of Title, Financial Assets, Equipment, Goods, Instruments, Insurance, Intangibles, Inventory, Investment Property, Money and Pledged Indebtedness.

"**Pledged Certificated Securities**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Certificated Security.

"**Pledged Futures Accounts**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Futures Account.

"**Pledged Futures Contracts**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Futures Contract.

"**Pledged Futures Intermediary**" means, at any time, any Person which is at such time is a Futures Intermediary at which a Pledged Futures Account is maintained.

"**Pledged Futures Intermediary's Jurisdiction**" means, with respect to any Pledged Futures Intermediary, its jurisdiction as determined under section 7.1(4) of the PPSA.

"**Pledged Indebtedness**" means any and all and any part of present and future Indebtedness owed to any Debtor by any Person.

"**Pledged Issuer**" means, with respect to any Debtor at any time, any Person which is an Issuer of, or with respect to, any Pledged Shares of such Debtor at such time.

"**Pledged Issuer's Jurisdiction**" means, with respect to any Pledged Issuer, its jurisdiction as determined under section 44 of the STA.

"**Pledged Securities**" means, with respect to any Debtor, any and all issued and outstanding Capital Stock held by such Debtor on the date hereof (including of each issuer set forth on the Schedules hereto) or hereafter acquired, together with all rights, privileges, authority and powers of such Debtor relating to such Capital Stock in each issuer of such Capital Stock or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such Capital Stock and any and all interest of such Debtor in the entries on the books of any financial intermediary pertaining to such Capital Stock, and including all Capital Stock issued in respect of any of the foregoing upon any consolidation, amalgamation or merger.

"**Pledged Securities Accounts**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Securities Account.

"**Pledged Securities Intermediary**" means, at any time, any Person which is at such time a Securities Intermediary at which a Pledged Securities Account is maintained.

"**Pledged Securities Intermediary's Jurisdiction**" means, with respect to any Pledged Securities Intermediary, its jurisdiction as determined under section 45(2) of the STA.

"**Pledged Security Certificates**" means, with respect to any Debtor, any and all certificates representing the Pledged Securities of such Debtor.

"**Pledged Security Entitlements**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Security Entitlement.

"**Pledged Shares**" means, with respect to any Debtor, all Pledged Securities and Pledged Security Entitlements of such Debtor.

"**Pledged Uncertificated Securities**" means, with respect to any Debtor, any and all Collateral of such Debtor that is an Uncertificated Security.

"**Receiver**" means a receiver, a manager, a receiver and manager, interim receiver or similar official for any Debtor.

"**Release Date**" means the date on which all the Secured Liabilities of each Debtor have been paid and discharged in full in accordance with Section 9.21(a)(i)(B) of the Credit Agreement.

"**Schedules**" means the schedules to this Agreement.

"**Secured Liabilities**" means, with respect to any Debtor, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of such Debtor to the Secured Parties (or any of them) under, in connection with or with respect to the Loan Documents, and any unpaid balance thereof, including all of the Obligations, together with (a) all Banking Services Obligations and (b) all Secured Hedging Obligations.

"**Security Interests**" means, with respect to any Debtor, the Liens created or granted by such Debtor in favour of the Agent (for its own benefit and for the benefit of the other Secured Parties) under this Agreement.

"**STA**" means the *Securities Transfer Act* (Ontario), including the regulations thereto and related Minister's Orders; provided that, if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Loan Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in a jurisdiction in Canada other than the Province of Ontario, "STA" means the Securities Transfer Act or such other applicable legislation in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Supplement**" has the meaning given to that term in Section 40.

"**ULC**" means an Issuer that is an unlimited company, unlimited liability corporation or unlimited liability company or any similar body corporate or other business entity formed under the laws of any jurisdiction whose members, shareholders or other equity holders are, or may at any time become, responsible for any of the obligations of that entity whether such responsibility is to the entity or any creditor of the entity or any other person.

"**ULC Laws**" means the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future laws governing ULCs.

"**ULC Shares**" means shares or other equity interests in the capital stock of a ULC.

2. **Entire Agreement.** This Agreement and the other Loan Documents constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the other Loan Documents.

3. **Currency Matters**. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Canadian Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts denominated in other currencies shall be converted into the equivalent amount (as such term is used in Section 1.07) of the Credit Agreement) of Canadian Dollars on the date of calculation, comparison, measurement or determination.

4. **Grant of Security Interests**. As general and continuing collateral security for the due payment and performance of its Secured Liabilities, each Debtor pledges, mortgages, charges and grants to the Agent for its own benefit and for the benefit of the other Secured Parties a continuing, specific and fixed security interest in all of such Debtor's right, title and interest in and to its Collateral.

5. **Fixed Nature of Security Interest**. The Security Interests are intended to operate as a fixed and specific charge of all of the Collateral presently existing, and with respect to all future Collateral, to operate as a fixed and specific charge of such future Collateral.

6. **Limitations on Grant of Security Interests**. The Security Interests do not attach to Consumer Goods or extend to the last day of the term of any lease or agreement for lease of real property. Such last day shall be held by the applicable Debtor in trust for the Agent (for its own benefit and for the benefit of the other Secured Parties) and, on the exercise by the Agent of any of its rights or remedies under this Agreement following an Event of Default which is continuing, shall be assigned by such Debtor as directed by the Agent.

7. **Attachment; No Obligation to Advance**. Each Debtor confirms that value has been given by the Secured Parties to such Debtor, that such Debtor has rights in its Collateral existing at the date of this Agreement or the date of any Supplement, as applicable, and that such Debtor and the Agent have not agreed to postpone the time for attachment of the Security Interests to any of the Collateral of such Debtor. The Security Interests with respect to the Collateral of each Debtor created by this Agreement shall have effect and be deemed to be effective whether or not the Secured Liabilities of such Debtor or any part thereof are owing or in existence before or after or upon the date of this Agreement or the date of any Supplement, as applicable. Neither the execution and delivery of this Agreement or any Supplement nor the provision of any financial accommodation by any Secured Party shall oblige any Secured Party to make any financial accommodation or further financial accommodation available to any Debtor or any other Person.

8. **Representations and Warranties**. Each Debtor represents and warrants to the Agent (for its own benefit and for the benefit of the other Secured Parties) that, as of the date of this Agreement and the date of each credit event under Section 4.02 of the Credit Agreement, as applicable:

(a) Debtor Information. All of the information set out in the Schedules and Supplements, as applicable, with respect to such Debtor is accurate and complete.

(b) Authority. Such Debtor has full power and authority to grant to the Agent (for its own benefit and for the benefit of the other Secured Parties) the Security Interests

granted by such Debtor and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of such Debtor's Organizational Documents or any agreement, instrument or restriction to which such Debtor is a party or by which such Debtor or any of its Collateral is bound.

(c) Security Interest. Each Debtor's Security Interest constitutes a legal, valid and perfected security interest in all of such Debtor's Collateral securing the payment and performance of its Secured Liabilities.

(d) Necessary Filings/PPSA Matters. All filings, recordings and registrations which are necessary or desirable to preserve, perfect or protect the Security Interests have been made. No further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any jurisdiction, except as provided under applicable law with respect to the filing of continuation statements.

(e) Consents. Except for any consent that has been obtained and is in full force and effect, no material consent of any Person (including any counterparty with respect to any Contract, any account debtor with respect to any Account, or any Governmental Authority with respect to any Permit) is required, or is purported to be required, for the execution, delivery, performance and enforcement of this Agreement (this representation being given with reference to the exclusions contained in Section 6). For the purposes of complying with any transfer restrictions contained in the Organizational Documents of any Pledged Issuer, such Debtor hereby irrevocably consents to any transfer of such Debtor's Pledged Securities of such Pledged Issuer.

(f) Execution and Delivery. This Agreement has been duly authorized, executed and delivered by such Debtor and is a valid and binding obligation of such Debtor enforceable against such Debtor in accordance with its terms, subject only to bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws generally affecting the enforcement of creditors' rights, and to the fact that equitable remedies (such as specific performance and injunction) are discretionary remedies.

(g) No Consumer Goods. Such Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of such Debtor.

(h) Intellectual Property Rights. The Schedules and Supplements set forth a complete list and a description at the date hereof of all registrations and applications for Intellectual Property Rights owned by each Debtor. Each Debtor owns such Intellectual Property Rights free and clear of any Liens (other than Permitted Liens). Each Debtor owns or licenses all Intellectual Property Rights required to be able to carry on its Business and all material licenses included in such Intellectual Property Rights are in full force and effect.

(a) Pledged Certificated Securities. Subject to the final paragraph of Section 4.01 of the Credit Agreement, each Debtor has delivered to the Agent all Pledged Security Certificates evidencing Pledged Securities held by such Debtor as at the date of this Agreement, together with duly executed instruments of transfer or assignment in blank and all other necessary documents and effective endorsements to enable Agent or its agent or nominee, as the Agent may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Agent's rights and remedies.

(b) Pledged Indebtedness. Each Debtor has delivered to the Agent all Instruments evidencing Pledged Indebtedness held by such Debtor as at the date of this Agreement, together with duly executed instruments of transfer or assignment in blank and all other necessary documents and effective endorsements to enable Agent or its agent or nominee, as the Agent may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Indebtedness upon any enforcement of the Agent's rights and remedies.

(c) Partnerships, Limited Liability Companies. The terms of any interest in a partnership or limited liability company that is Collateral of such Debtor expressly provide that such interest is a "security" for the purposes of the STA or the UCC, as applicable.

(d) Due Authorization. The Pledged Securities of such Debtor have been, where applicable, duly authorized and validly issued and are fully paid and non-assessable.

(e) Warrants, Options, etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Shares of such Debtor.

(f) No Required Disposition. There is no existing agreement, option, right or privilege capable of becoming an agreement or option pursuant to which such Debtor would be required to sell, redeem or otherwise dispose of any Pledged Shares of such Debtor or under which any Pledged Issuer has any obligation to issue any Securities of such Pledged Issuer to any Person.

(g) No Restrictions. Except for restrictions and limitations imposed by the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement the Loan Documents, the Secured Documents (as defined in the Second Lien Notes Indenture) or securities laws generally, or customary restrictions on transfer contained in its Organizational Documents, all of the Pledged Securities are and will continue to be freely transferable and assignable, and none of the Pledged Securities are or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit the Secured Parties the pledge of such Pledged Securities

hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Agent of its rights and remedies hereunder.

9. **Survival of Representations and Warranties**. All representations and warranties made by each Debtor in this Agreement (a) are material, (b) shall be considered to have been relied on by the Secured Parties, and (c) shall survive the execution and delivery of this Agreement and any Supplement or any investigation made at any time by or on behalf of any Secured Party and any disposition or payment of the Secured Liabilities.

10. **Covenants.** Each Debtor covenants and agrees with the Agent (for its own benefit and for the benefit of the other Secured Parties) that:

(a) Further Documentation. Such Debtor shall from time to time, at the expense of such Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Agent may reasonably request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests). Such Debtor acknowledges that this Agreement has been prepared based on the existing laws in the Province referred to in the "Governing Law" section of this Agreement and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, such Debtor agrees that the Agent shall have the right to require that this Agreement be amended, supplemented, restated or replaced, and that such Debtor shall immediately on request by the Agent authorize, execute and deliver any such amendment, supplement, restatement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if such Debtor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Agent Liens similar to, and having the same effect as, the Security Interests. Each Debtor hereby irrevocably authorizes the Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by the UCC or the PPSA of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including the filing of a financing statement describing the Collateral as "all assets now owned or hereafter acquired by the Debtor or in which Debtor otherwise has rights" or using words of similar meaning.

(b) Maintenance of Records. Such Debtor shall keep and maintain accurate and complete records of the Collateral of such Debtor, including a record of all payments received and all credits granted with respect to the Accounts and Contracts of such Debtor. At the written request of the Agent, acting reasonably, such Debtor shall mark any Collateral of such Debtor specified by the Agent to evidence the existence of the Security Interests.

(c) Right of Inspection. Such Debtor shall permit the Agent and, at the request of the Required Lenders, the Lenders, and their respective representatives and consultants to visit and inspect any of its Collateral, at such reasonable times as the Agent or the Required Lenders, as applicable, may reasonably request upon reasonable prior notice to such Debtor by the Agent, provided that prior to the occurrence of an Event of Default which is continuing, no more than one such visit and inspection shall be permitted in any calendar year and all such visits, inspections, examinations and discussions shall be at the sole cost and expense of the Agent or the Lenders, as applicable. Such inspections shall not interfere with the operations of such Debtor and the persons performing such inspections shall at all times comply with the applicable safety and security rules of such Debtor.

(d) Limitations on Other Liens. Such Debtor shall not create, incur or permit to exist, and shall use commercially reasonable efforts to defend the Collateral of such Debtor against, and shall take such other action as is reasonably necessary to remove, any and all Liens in and other claims affecting the Collateral of such Debtor, other than the Permitted Liens, and such Debtor shall use commercially reasonable efforts to defend the right, title and interest of the Secured Parties in and to the Collateral of such Debtor against the claims and demands of all Persons.

(e) Limitations on Dispositions of Collateral. Such Debtor shall not, except as would be permitted by the Credit Agreement, sell, lease or otherwise dispose of any of its Collateral. Following an Event of Default that is continuing, all Proceeds of the Collateral of such Debtor (including all amounts received with respect to Accounts) received by or on behalf of such Debtor, whether or not arising in the ordinary course of such Debtor's business, shall be received by such Debtor as trustee for the Agent and shall be immediately paid to the Agent.

(f) Maintenance of Collateral. Such Debtor shall maintain and preserve, all of its respective Collateral in all material respects in good repair, working order and condition, as applicable (other than ordinary wear and tear and in the case of casualty or condemnation), maintain, renew and keep in effect all Intellectual Property Rights in all material respects and in material compliance with all applicable laws (except where failure to so comply would not reasonably be expected to have a Material Adverse Effect) and, from time to time, make all needful and proper repairs, renewals, replacements, additions and improvements thereto, so that the Business may be properly and advantageously conducted at all times in accordance with prudent business management, provided that this Section shall not prevent any Debtor from discontinuing, in whole or in part, the operation or the maintenance of any of its properties if such discontinuance is desirable in the conduct of the Business and the Borrower has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(g) Insurance. Such Debtor shall keep the Collateral of such Debtor insured in accordance with Section 5.09 of the Credit Agreement.

(h) Further Identification of Collateral. Such Debtor shall promptly furnish to the Agent such statements and schedules further identifying and describing the Collateral of such Debtor, and such other reports in connection with the Collateral of such Debtor, as the Agent may from time to time reasonably request.

(i) Amalgamation, Merger or Consolidation. Except as permitted by the Credit Agreement, such Debtor shall not permit any Pledged Issuer of such Debtor to amalgamate, merge or consolidate unless all of the outstanding capital stock held by such Debtor of the surviving or resulting corporation is, upon such amalgamation, merger or consolidation, pledged under this Agreement, and no cash, securities or other property is distributed with respect to the outstanding shares of any other constituent corporation.

(j) Agreements re Intellectual Property Rights. Promptly (and in any event within 30 days) after the Agent requests, such Debtor shall authorize, execute, file and deliver any and all agreements, instruments, documents and papers that the Agent may reasonably request to evidence, perfect and record the Security Interests in any such Intellectual Property Rights of such Debtor notified to the Agent in accordance with Section 10(p), including, filings with the Canadian Intellectual Property Office or any successor office or any similar office in any other country, as applicable, and, where applicable, the goodwill of the business of such Debtor connected with the use of, and symbolized by, any such Intellectual Property Rights.

(k) Instruments; Documents of Title; Chattel Paper. Promptly (and in any event within 30 days) upon receipt thereof, such Debtor shall deliver to the Agent, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Agent may reasonably request, any and all Instruments, Documents of Title and Chattel Paper of such Debtor included in or relating to the Collateral of such Debtor.

(l) Pledged Certificated Securities. Such Debtor shall promptly (and in any event within 30 days) upon receipt thereof, deliver to the Agent any and all Pledged Security Certificates of such Debtor and other materials as may be required from time to time to provide the Agent with control over all Pledged Certificated Securities of such Debtor in the manner provided under section 23 of the STA. Upon the occurrence of an Event of Default that is continuing, such Debtor shall cause all Pledged Security Certificates (subject, in the case of ULC Shares, to Section 19) of such Debtor to be registered in the name of the Agent or its nominee. If the Pledged Certificated Securities of such Debtor are issued in the predecessor name of such Debtor or the applicable issuer, such Debtor shall, within 30 days after the date hereof, (i) cause the applicable issuer of such Pledged Certificated Securities to issue the Pledged Certificated Securities in the current name of itself and such Debtor (the "**Replacement Certificates**"); and (ii) deliver the Replacement Certificates of such Debtor to the Agent.

(m) Partnerships, Limited Liability Companies. Such Debtor shall ensure that the terms of any interest in a partnership or limited liability company that is Collateral of such Debtor shall expressly provide that such interest is a "security" for the purposes of the STA or the UCC, as applicable.

(n) Transfer Restrictions. If the Organizational Documents of any Pledged Issuer (other than a ULC) restrict the transfer of the Securities of such Pledged Issuer, then such Debtor shall (or, in the case of a Pledged Issuer that is not wholly owned by the Debtor, make commercially reasonable efforts to) deliver to the Agent a certified copy of a resolution of the directors, shareholders, unitholders or partners of such Pledged Issuer, as applicable, consenting to the transfer(s) contemplated by this Agreement, including any prospective transfer of the Collateral of such Debtor by the Agent upon a realization on the Security Interests.

(o) Mineral Interests. Such Debtor shall ensure that this Agreement, and the first priority Security Interest granted to the Agent (for its own benefit and for the benefit of the other Secured Parties) pursuant to this Agreement, are promptly registered against any material lease, claim or mining register entry relating to the mineral interests of such Debtor. As of the date of this Agreement, a list of all material leases, claims or mining register entries in respect of the Diavik Diamond Mine and the Ekati Buffer Zone is attached as Schedule B.

(p) Notices. Each Debtor shall advise the Agent promptly (and in any event within 30 days), in reasonable detail, of any:

(i) change to a Pledged Securities Intermediary's Jurisdiction, Pledged Issuer's Jurisdiction or Pledged Future Intermediary's Jurisdiction;

(ii) merger, consolidation or amalgamation of such Debtor with any other Person;

(iii) acquisition of any right, title or interest in a Material Real Estate Asset by such Debtor;

(iv) acquisition of any Intellectual Property Rights which are the subject of a registration or application with any governmental intellectual property or other governing body or registry, and which are material to such Debtor's business;

(v) acquisition of any Instrument, Document of Title or Chattel Paper;

(vi) Lien (other than Permitted Liens) on, or claim asserted against, any of the Collateral which is material to such Debtor's business; or

(vii) occurrence of any event, claim or occurrence that could reasonably be expected to have a Material Adverse Effect on the value of the Collateral of such Debtor or on the Security Interests.

Such Debtor shall not effect or permit any of the changes referred to in clauses (ii) through (iv) above unless all filings are made and all other actions taken that are required within the time period required under applicable laws in order for the Agent to continue at all times following such change to have a valid and perfected first priority Security Interest with respect to all of the Collateral of such Debtor, subject to Permitted Liens.

(q) Changes and Other Names. It shall not, without giving 30 days prior written notice to the Agent, (i) change its name nor add a French form of name as it appears in official filings in the jurisdiction of its organization; (ii) change its registered office, head office, chief executive office, places of business, domicile, corporate offices or warehouses or locations at which any Collateral is held or stored, or the physical location of its books and records; (iii) change the type of entity that it is; or (iv) change its jurisdiction of incorporation or organization. It shall, at its own expense, promptly upon any change described in this Section 10(q) taking effect provide such further documents or instruments required by the Agent as may be necessary or desirable to confirm or perfect the Security Interest and the priority accorded to the Agent by law or under this Agreement.

11. **Rights before Default.** Until the occurrence of an Event of Default and subject to the terms of this Agreement, each Debtor shall be entitled to deal with the Collateral in accordance with the Credit Agreement, provided that no such action shall be taken which would impair the effectiveness of the Security Interests or materially impair the value of the Collateral or which would be inconsistent with or violate the provisions of this Agreement, any other Loan Document, any other written agreement between the Agent and any Debtor. Upon the occurrence of an Event of Default, each Debtor shall and shall be deemed to hold all Proceeds in trust, separate and apart from other property, for the benefit of the Agent, until all amounts owing by Debtors to the Secured Parties have been paid in full.

12. **Pledged Shares.**

(a) Voting Rights. Unless an Event of Default has occurred and is continuing, each Debtor shall be entitled to exercise all voting power from time to time exercisable with respect to the Pledged Shares of such Debtor and give consents, waivers and ratifications with respect thereto; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would be, or would have a reasonable likelihood of being, materially prejudicial to the interests of the Secured Parties or which would have the effect of imposing any restriction on the transferability of any of the Collateral of such Debtor. Unless an Event of Default has occurred and is continuing, the Agent shall, from time to time at the request and expense of the applicable Debtor, execute or cause to be executed, with respect to all Pledged Securities of such Debtor that are registered in the name of the Agent or its nominee, valid proxies appointing such Debtor as its (or its nominee's) proxy to attend, vote and act for and on behalf of the Agent or such nominee, as the case may be, at any and all meetings of the applicable Pledged Issuer's shareholders or debt holders, all Pledged Securities that are registered in the name of the Agent or such nominee, as the case may be, and to execute and

deliver, consent to or approve or disapprove of or withhold consent to any resolutions in writing of shareholders or debt holders of the applicable Pledged Issuer for and on behalf of the Agent or such nominee, as the case may be. Immediately upon the occurrence and during the continuance of any Event of Default, all such rights of the applicable Debtor to vote and give consents, waivers and ratifications shall cease and the Agent or its nominee shall be entitled to exercise all such voting rights and to give all such consents, waivers and ratifications.

(b) Dividends; Interest. Unless an Event of Default has occurred and is continuing, each Debtor shall be entitled to receive any and all cash dividends, interest, principal payments and other forms of cash distribution on the Pledged Shares of such Debtor which it is otherwise entitled to receive, but any and all stock and/or liquidating dividends, distributions of property, returns of capital or other distributions made on or with respect to the Pledged Shares of such Debtor, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of any Pledged Issuer of such Debtor or received in exchange for such Pledged Shares or any part thereof or as a result of any amalgamation, merger, consolidation, acquisition or other exchange of property to which any Pledged Issuer of such Debtor may be a party or otherwise, and any and all cash and other property received in exchange for any Pledged Shares of such Debtor shall be and become part of the Collateral of such Debtor subject to the Security Interests and, if received by such Debtor, shall forthwith be delivered to the Agent or its nominee (accompanied, if appropriate, by proper instruments of assignment and/or stock powers of attorney executed by such Debtor in accordance with the Agent's instructions) to be held subject to the terms of this Agreement; and if any of the Pledged Security Certificates have been registered in the name of the Agent or its nominee, the Agent shall execute and deliver (or cause to be executed and delivered) to such Debtor all such dividend orders and other instruments as such Debtor may request for the purpose of enabling such Debtor to receive the dividends, distributions or other payments which such Debtor is authorized to receive and retain pursuant to this Section. If an Event of Default has occurred and is continuing, all rights of such Debtor pursuant to this Section shall cease and the Agent shall have the sole and exclusive right and authority to receive and retain the cash dividends, interest, principal payments and other forms of cash distribution which such Debtor would otherwise be authorized to retain pursuant to this Section. Any money and other property paid over to or received by the Agent pursuant to the provisions of this Section shall be retained by the Agent as additional Collateral hereunder and be applied in accordance with the provisions of this Agreement.

(c) Agent's Rights. Upon the occurrence of an Event of Default that is continuing, all of the Debtors' rights pursuant to Sections 12(a) and 12(b) shall cease and the Agent may enforce any Debtor's rights with respect to the Pledged Shares held by such Debtor. Upon an Event of Default that is continuing, such Debtor shall and shall be deemed to hold all Pledged Shares not under the control of the Agent in trust, separate and apart from other property and assets of such Debtor, for the

benefit of the Agent until the termination of the commitments in respect of all Secured Liabilities and the payment in full of all Secured Liabilities, and shall forthwith transfer control of such Pledged Shares to the Agent, or its nominee or agent, as the Agent may direct. The Agent and its nominee shall not have any duty of care with respect to the Pledged Shares other than to use the same care in the custody and preservation of the Pledged Shares as it would with its own property. The Agent or its nominee may take no steps to defend or preserve any Debtor's rights against the claims or demands of others. The Agent or its nominee, however, shall use reasonable efforts to give the applicable Debtor notice of any claim or demand of which it becomes aware to permit such Debtor to have a reasonable opportunity to defend or contest the claim or demand.

13. **Rights on Event of Default**. If an Event of Default has occurred that is continuing, then and in every such case all of the Secured Liabilities shall, at the Agent's option and without notice to any Debtor, become immediately due and payable and the Security Interests of each Debtor shall become enforceable and the Agent, in addition to any rights now or hereafter existing under applicable law may, personally or by agent, at such time or times as the Agent in its discretion may determine and in accordance with the Credit Agreement, do any one or more of the following:

(a) Rights under PPSA, etc. Exercise against any or all Debtors all of the rights and remedies granted to secured parties under the PPSA and any other applicable law, or otherwise available to the Agent by contract, at law or in equity.

(b) Demand Possession. Demand possession of any or all of the Collateral of any or all Debtors, in which event each such Debtor shall, at the expense of such Debtor, immediately cause the Collateral of such Debtor designated by the Agent to be assembled and made available or delivered to the Agent at any place designated by the Agent.

(c) Take Possession. Enter on any premises where any Collateral of any or all Debtors is located and take possession of, disable or remove such Collateral by any method permitted by law.

(d) Deal with Collateral. Hold, store and keep idle, or operate, lease or otherwise use or permit the use of, any or all of the Collateral of any or all Debtors for such time and on such terms as the Agent may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person with respect to any of the Collateral of any or all Debtors.

(e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of any or all Debtors and enter on, occupy and use (without charge by such Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, any or all Debtors.

(f) Enforce Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral of any or all Debtors in such manner, on such terms and conditions and at such times as the Agent deems advisable.

(g) Dispose of Collateral. Realize on any or all of the Collateral of any or all Debtors and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral of any or all Debtors (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Agent or elsewhere, with or without advertising or other formality, except as required by applicable law, on such terms and conditions as the Agent may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.

(h) Court-Approved Disposition of Collateral. Obtain from any court of competent jurisdiction an order for the sale or foreclosure of any or all of the Collateral of any or all Debtors.

(i) Purchase by Agent. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral of any or all Debtors offered for sale and, upon compliance with the terms of such sale, hold, retain, sell or otherwise dispose of such Collateral without any further accountability to any Debtor or any other Person with respect to such holding, retention, sale or other disposition, except as required by law. In any such sale to the Agent, the Agent may, for the purpose of making payment for all or any part of the Collateral of any Debtor so purchased, use any claim for any or all of the Secured Liabilities of such Debtor then due and payable to it as a credit against the purchase price.

(j) Collect Accounts. Notify (whether in its own name or in the name of any Debtor) the account debtors under any Accounts of any or all Debtors of the assignment of such Accounts to the Agent and direct such account debtors to make payment of all amounts due or to become due to any or all Debtors with respect to such Accounts directly to the Agent and, upon such notification and at the expense of any such Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Agent deems appropriate in the circumstances.

(k) Transfer of Collateral. Transfer any Collateral of any or all Debtors that is Pledged Shares into the name of the Agent or its nominee.

(l) Voting. Vote with respect to any or all of the Pledged Shares of any or all Debtors (whether or not transferred to the Agent or its nominee) and give or withhold all consents, waivers and ratifications with respect thereto and otherwise act with respect thereto as though it were the outright owner thereof.

(m) Exercise Other Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Collateral of any or all Debtors that is Pledged Shares as if the Agent were the absolute owner of such Pledged Shares.

(n) Dealing with Contracts and Permits. Deal with any and all Contracts and Permits of any or all Debtors to the same extent as any such Debtor might (including the enforcement, realization, sale, assignment, transfer, and requirement for continued performance), all on such terms and conditions and at such time or times as may seem advisable to the Agent.

(o) Payment of Liabilities. Pay any liability secured by any Lien against any Collateral of any or all Debtors. Each such Debtor shall immediately on demand reimburse the Agent for all such payments and, until paid, any such reimbursement obligation shall form part of the Secured Liabilities of such Debtor and shall be secured by the Security Interests of such Debtor.

(p) Borrow and Grant Liens. Borrow money for the maintenance, preservation or protection of any Collateral of any or all Debtors or for carrying on any of the business or undertaking of any or all Debtors and grant Liens on any Collateral of any or all Debtors (in priority to the Security Interests of any or all Debtors or otherwise) as security for the money so borrowed. Each such Debtor shall immediately on demand reimburse the Agent for all such borrowings and, until paid, any such reimbursement obligations shall form part of the Secured Liabilities of such Debtor and shall be secured by the Security Interests of such Debtor.

(q) Appoint Receiver. Appoint by instrument in writing one or more Receivers of any or all Debtors or any or all of the Collateral of any or all Debtors with such rights, powers and authority (including any or all of the rights, powers and authority of the Agent under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Agent shall (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of any such Debtor and not of the Agent or any of the other Secured Parties.

(r) Court-Appointed Receiver. Obtain from any court of competent jurisdiction an order for the appointment of a Receiver of any or all Debtors or of any or all of the Collateral of any or all Debtors.

(s) Consultants. Require any or all Debtors to engage a consultant of the Agent's choice, or engage a consultant on its own behalf, such consultant to receive the full cooperation and support of each such Debtor and its agents and employees, including unrestricted access to the premises of each such Debtor and the Books and Records of each such Debtor; all reasonable fees and expenses of such consultant shall be for the account of each such Debtor and each such Debtor hereby authorizes any such consultant to report directly to the Agent and to disclose to the Agent any and all information obtained in the course of such consultant's employment.

The Agent may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on any Debtor or any other Person, and each Debtor hereby waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies shall be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Each Debtor acknowledges and agrees that any action taken by the Agent hereunder following the occurrence and during the continuance of an Event of Default shall not be rendered invalid or ineffective as a result of the curing of the Event of Default on which such action was based.

14. **Waivers and Extensions by the Agent.** The Agent may waive default or any breach by any Debtor of any of the provisions contained in this Agreement pursuant to and subject to the terms of the Credit Agreement. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived and no act or omission of any Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of any Debtor or the rights of any Secured Party resulting therefrom. Any such waiver must be in writing and signed by the Agent and other Secured Parties as required pursuant to the terms of the Credit Agreement to be effective. The Agent may also grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Collateral to third parties and otherwise deal with any Debtor's guarantors or sureties and others and with the Collateral and other securities as the Agent may see fit without prejudice to the liability of such Debtor to the Secured Parties, or the Agent's rights, remedies and powers under this Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Agent to any Debtor shall operate as a waiver, alteration or amendment of the rights of the Agent or otherwise preclude the Agent from enforcing such rights.

15. **Realization Standards**. Each Debtor acknowledges and agrees that, to the extent notice of sale or other disposition of the Collateral or any part thereof shall be required by law, fifteen (15) days' prior notice to such Debtor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Debtor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition. To the extent that applicable law imposes duties on the Agent to exercise remedies in a commercially reasonable manner and without prejudice to the ability of the Agent to dispose of the Collateral in any such manner, each Debtor acknowledges and agrees that it is not commercially unreasonable for the Agent to (or not to) (a) incur expenses reasonably deemed significant by the Agent to prepare the Collateral of such Debtor for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) fail to obtain third party consents for access to the Collateral of such Debtor to be disposed of, (c) fail to exercise collection remedies against account debtors or other Persons obligated on the Collateral of such Debtor or to remove Liens against the Collateral of such Debtor, (d) exercise collection remedies against account debtors and other Persons obligated on the Collateral of such Debtor directly or through the use of collection agencies and other collection specialists, (e) dispose of Collateral of such Debtor by way of public auction, public tender or private contract, with or without advertising

and without any other formality, (f) contact other Persons, whether or not in the same business of such Debtor, for expressions of interest in acquiring all or any portion of the Collateral of such Debtor, (g) hire one or more professional auctioneers to assist in the disposition of the Collateral of such Debtor, whether or not such Collateral is of a specialized nature or an upset or reserve bid or price is established, (h) dispose of the Collateral of such Debtor by utilizing internet sites that provide for the auction of assets of the types included in such Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) dispose of assets in wholesale rather than retail markets, (j) disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) purchase insurance or credit enhancements to insure the Agent against risks of loss, collection or disposition of the Collateral of such Debtor or to provide to the Agent a guaranteed return from the collection or disposition of such Collateral, (l) to the extent deemed appropriate by the Agent, obtain the services of other brokers, investment bankers, consultants and other professionals, as is reasonably necessary, to assist the Agent in the collection or disposition of any of the Collateral of such Debtor, (m) dispose of Collateral of such Debtor in whole or in part, (n) dispose of Collateral of such Debtor to a customer of the Agent, (o) establish an upset or reserve bid price with respect to Collateral of such Debtor and (p) accept an assignment of any Collateral in lieu of foreclosure.

16. **Grant of Licence**. For the purpose of enabling the Agent to exercise its rights and remedies under this Agreement when the Agent is entitled to exercise such rights and remedies upon the occurrence and during the continuance of an Event of Default, and for no other purpose, each Debtor grants to the Agent an irrevocable (during the term of this Agreement), non-exclusive licence (exercisable without payment of royalty or other compensation to such Debtor) to use or sublicense any or all of the Intellectual Property Rights of such Debtor, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same. For any trade-marks, tradenames, get up and trade dress and other business indicia, such licence includes an obligation on the part of the Agent to maintain the standards of quality with respect to products and/or services maintained by such Debtor or, in the case of trade-marks, tradenames, get-up and trade dress or other business indicia licensed to such Debtor, the standards of quality with respect to products and/or services imposed upon such Debtor by the relevant licence, and such Debtor shall have a right to inspect any such services and/or products to monitor compliance with such standards. For copyright works, such licence shall include the benefit of any waivers of moral rights and similar rights.

17. **Sale of Pledged Investment Property.** Without limiting the generality of Section 13(g), each Debtor acknowledges that when disposing of any Investment Property, the Agent may be unable to effect a public sale of any or all of the Investment Property, or to sell any or all of the securities as a control block sale at more than a stated premium to the "market price" of any shares, stock, instruments, warrants, bonds, debenture stock and other securities forming part of the Investment Property, by reason of certain prohibitions contained in the *Securities Act* (Ontario) and applicable laws of other jurisdictions, but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Investment Property as principal and to comply with other resale restrictions provided for in the *Securities Act* (Ontario) and other applicable laws. Each Debtor acknowledges and agrees that any such private sale may result in prices and other terms less favourable to the seller than if such sale were a public sale or a control block sale and,

notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by reason of its being a private sale. The Agent shall be under no obligation to delay a sale of any of the Investment Property for the period of time necessary to permit the issuer of such securities to qualify such Investment Property for public sale under the *Securities Act* (Ontario) or under applicable securities laws of other jurisdictions, even if the issuer would agree to do so, or to permit a prospective purchaser to make a formal offer to all or substantially all holders of any class of securities forming any part of the Investment Property.

18. **Securities Laws**. The Agent is authorized, in connection with any offer or sale of any Pledged Shares of any Debtor, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with Requirements of Law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. In addition to and without limiting Section 15, each Debtor further agrees that compliance with any such limitation or restriction shall not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Agent shall not be liable or accountable to such Debtor for any discount allowed by reason of the fact that such Pledged Shares are sold in compliance with any such limitation or restriction. If the Agent chooses to exercise its right to sell any or all Pledged Shares of any Debtor, upon written request, such Debtor shall cause each applicable Pledged Issuer to furnish to the Agent all such information as the Agent may request in order to determine the number of shares and other instruments included in the Collateral of such Debtor which may be sold by the Agent in exempt transactions under any laws governing securities, and the rules and regulations of any applicable securities regulatory body thereunder, as the same are from time to time in effect.

19. **ULC Shares**. Notwithstanding any other provision in this Agreement or any other document or agreement among all or some of the parties hereto, to the extent that any ULC Shares constitute Collateral, each Debtor thereof is the sole registered and beneficial holder of any such ULC Shares and will remain so until such time as such ULC Shares are effectively transferred into the name of the Agent, any other Secured Party or any other person on the books and records of the issuer of such pledged ULC Shares. Accordingly, each such Debtor shall be entitled to receive and retain for its own account any dividends, property or other distributions, if any, in respect of such ULC Shares (except insofar as the Debtor has granted a security interest in such dividends, property or other distributions, and any shares which are ULC Shares shall be delivered to the Agent to hold as Collateral hereunder) and shall have the right to vote such ULC Shares and to control the direction, management and policies of the issuer of such ULC Shares to the same extent as the Debtor would if such ULC Shares were not pledged to the Agent pursuant to this Agreement. Nothing in this Agreement, the Credit Agreement, any Loan Document or any other document or agreement among all or some of the parties hereto is intended to, and nothing in this Agreement, the Credit Agreement, any Loan Document or any other document or agreement among all or some of the parties hereto shall constitute the Agent nor any other Secured Party as a member, shareholder or other equity holder for the purposes of ULC Laws or provide to them the right to obtain any other indicia of ownership of any ULC until such time as notice is given to the Debtor and further steps are taken thereunder so as to register the Agent, or

any other person as holder of Collateral which are ULC Shares. No provision in this Agreement (except this Section 19) or actions taken by the Agent pursuant to this Agreement which might provide or be deemed to provide otherwise, in whole or in part, shall, without the express written consent of the Agent, apply in respect of ULC Shares. To the extent any provision hereof or of any other document or agreement would have the effect of constituting the Agent, any other Secured Party, or any other person as a shareholder or member of an issuer of ULC Shares for the purposes of the ULC Laws prior to such time, such provision shall be severed herefrom or therefrom and ineffective with respect to the Collateral which are ULC Shares without otherwise invalidating or rendering unenforceable this Agreement or such other agreement or invalidating or rendering unenforceable such provision insofar as it relates to Collateral which is not ULC Shares. Notwithstanding anything contained herein, in the Credit Agreement or any other Collateral Document to the contrary (except to the extent, if any, that the Agent, the Secured Parties or any of their successors or assigns hereafter expressly becomes a registered member or shareholder of a ULC), neither the Agent, the Secured Parties nor any of their respective successors or assigns shall be deemed to have assumed or otherwise become liable for any debts or obligations of any ULC. For the avoidance of doubt, and except as otherwise provided in the last sentence of this Section 19, no provision of this Agreement or actions taken by the Agent pursuant to this Agreement shall apply, or be deemed to apply, so as to cause the Agent or any other Secured Party to be, and the Agent and each other Secured Party shall not be or be deemed to be or entitled to, and no Debtor shall cause or permit the Agent or any other Secured Party to:

(a) be registered as a shareholder, member or other equity holder, or apply to be registered as a shareholder, member or other equity holder, of any ULC;

(b) have a notation, or request or assent to a notation, being entered in its favour in the share or equity register in respect of ULC Shares;

(c) be held out, or hold itself out, as a shareholder, member or other equity holder of any ULC;

(d) receive, directly or indirectly, any dividends, property or other distributions from such ULC by reason of the Agent or any other Secured Party holding a security interest in such ULC; or

(e) act or purport to act as a shareholder, member or other equity holder of any ULC, or obtain, exercise or attempt to exercise any rights of a shareholder, member or other equity holder, including the right to attend a meeting of, or to vote any ULC Shares or to be entitled to receive or receive any dividend, property or other distribution in respect of ULC Shares.

The foregoing limitation shall not restrict the Agent from exercising the rights which it is entitled to exercise hereunder in respect of any ULC Shares constituting Collateral at any time that the Agent shall be entitled to realize on all or any portion of the Collateral and upon notice being given of the intention to realize upon such Collateral and in the course of exercising upon such Collateral on the occurrence of an Event of Default that is continuing.

20. **Application of Proceeds**. Any amounts received on account of the Secured Liabilities shall be applied by the Agent pursuant to Section 2.18 of the Credit Agreement.

21. **Continuing Liability of Debtor**. Subject to applicable law, each Debtor shall remain liable for any Secured Liabilities of such Debtor that are outstanding following realization of all or any part of the Collateral of such Debtor and the application of the Proceeds thereof.

22. **Agent's Appointment as Attorney-in-Fact**. Each Debtor constitutes and appoints the Agent and any officer or agent of the Agent, with full power of substitution, as such Debtor's true and lawful attorney-in-fact with full power and authority in the place of such Debtor and in the name of such Debtor or in its own name, from time to time in the Agent's discretion, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney, may be necessary or desirable to accomplish the purposes of this Agreement, or to exercise its rights and remedies, provided that such power of attorney shall not be exercised until an Event of Default has occurred. Without limiting the effect of this Section, each Debtor grants the Agent an irrevocable proxy to vote the Pledged Shares of such Debtor and to exercise all other rights, powers, privileges and remedies to which a holder thereof would be entitled (including giving or withholding written consents of shareholders, calling special meetings of shareholders and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Shares of such Debtor on the books and records of a Pledged Issuer or Pledged Securities Intermediary, as applicable), upon the occurrence and during the continuance of an Event of Default. These powers are coupled with an interest and shall not be revoked or terminated until the Release Date. Nothing in this Section affects the right of the Agent as secured party or any other Person on the Agent's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as the Agent or such other Person considers appropriate. Each Debtor hereby ratifies and confirms, and agrees to ratify and confirm, whatever lawful acts the Agent or any of the Agent's sub-agents, nominees or attorneys do or purport to do in exercise of the power of attorney granted to the Agent pursuant to this Section.

23. **Performance by Agent of Debtor's Obligations**. Upon the occurrence and during the continuance of an Event of Default, if any Debtor fails to perform or comply with any of the obligations of such Debtor under this Agreement, the Agent may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance shall not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Agent incurred in connection with any such performance or compliance shall be payable by such Debtor to the Agent immediately on demand, and until paid, any such expenses shall form part of the Secured Liabilities of such Debtor and shall be secured by the Security Interests of such Debtor.

24. **[Reserved].**

25. **Severability**. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting

the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

26. **Rights of Agent; Limitations on Agent's Obligations**.

(a) Limitations on Liability of Secured Parties. Neither the Agent nor any other Secured Party shall be liable to any Debtor or any other Person for any failure or delay in exercising any of the rights of such Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral of such Debtor, or to preserve rights against prior parties). Neither the Agent, any other Secured Party, a Receiver, nor any agent thereof (including, in Alberta or British Columbia, any sheriff) is required to take, or shall have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral of any Debtor in its possession. Neither the Agent, any other Secured Party, any Receiver, nor any agent thereof shall be liable for any, and each Debtor shall bear the full risk of all, loss or damage to any and all of the Collateral of such Debtor (including any Collateral of such Debtor in the possession of the Agent, any other Secured Party, any Receiver, or any agent thereof) caused for any reason other than the gross negligence or wilful misconduct of the Agent, such other Secured Party, such Receiver or such agent thereof, as determined by a final non-appealable order of a court of competent jurisdiction.

(b) Debtors Remain Liable under Accounts and Contracts. Notwithstanding any provision of this Agreement, each Debtor shall remain liable under each of the documents giving rise to the Accounts of such Debtor and under each of the Contracts of such Debtor to observe and perform all the conditions and obligations to be observed and performed by such Debtor thereunder, all in accordance with the terms of each such document and Contract. Neither the Agent nor any other Secured Party shall have any obligation or liability under any Account of any Debtor (or any document giving rise thereto) or Contract of any Debtor by reason of or arising out of this Agreement or the receipt by the Agent of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), neither the Agent nor any other Secured Party shall be obligated in any manner to perform any of the obligations of any Debtor under or pursuant to any Account of such Debtor (or any document giving rise thereto) or under or pursuant to any Contract of such Debtor, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account of such Debtor (or any document giving rise thereto) or under any Contract of such Debtor, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

(c) Collections on Accounts and Contracts. Each Debtor shall be authorized to, at any time that an Event of Default is not continuing, collect the Accounts of such Debtor and payments under the Contracts of such Debtor in the normal course of

the business of such Debtor and for the purpose of carrying on the same. If required by the Agent at any time following the occurrence of an Event of Default that is continuing, any payments of Accounts of such Debtor or under Contracts of such Debtor, when collected by such Debtor, shall be forthwith (and, in any event, within two Business Days) deposited by such Debtor in the exact form received, duly endorsed by such Debtor to the Agent if required, in a special collateral account maintained by the Agent, and until so deposited, will be held by such Debtor in trust for the Agent, segregated from the other funds of such Debtor. All such amounts while held by the Agent (or by such Debtor in trust for the Agent) and all income with respect thereto shall continue to be collateral security for the Secured Liabilities and shall not constitute payment thereof until applied as hereinafter provided. If an Event of Default has occurred and is continuing, the Agent may apply all or any part of the amounts on deposit with respect to such Debtor in said special collateral account on account of the Secured Liabilities of such Debtor in such order as the Agent may elect. At the Agent's request, such Debtor shall deliver to the Agent any documents evidencing and relating to the agreements and transactions which gave rise to the Accounts and the Contracts of such Debtor, including all original orders, invoices and shipping receipts.

(d) Use of Agents. The Agent may perform any of its rights or duties under this Agreement by or through agents and is entitled to retain counsel and to act in reliance on the advice of such counsel concerning all matters pertaining to its rights and duties under this Agreement.

The Agent shall be deemed to have exercised reasonable care in the custody and preservation of pledged Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Agent or any other Secured Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any person with respect to any Collateral.

27. **Dealings by Agent**. The Agent shall not be obliged to exhaust its recourse against any Debtor or any other Person or against any other security it may hold with respect to the Secured Liabilities of such Debtor or any part thereof before realizing upon or otherwise dealing with the Collateral of such Debtor in such manner as the Agent may consider desirable. The Agent and the other Secured Parties may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with any Debtor and any other Person, and with any or all of the Collateral of any Debtor, and with other security and sureties, as they may see fit, all without prejudice to the Secured Liabilities of any Debtor or to the rights and remedies of the Agent under this Agreement. The powers conferred on the Agent under this Agreement are solely to protect the interests of the Agent in the Collateral of each Debtor and shall not impose any duty upon the Agent to exercise any such powers.

28. **Communication.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be effectively given if made in accordance with Section 9.01 of the Credit Agreement.

29. **Release of Information**. Each Debtor authorizes the Agent to provide a copy of this Agreement and such other information as may be requested of the Agent (i) to the extent necessary to enforce the Agent's rights, remedies and entitlements under this Agreement, (ii) to any assignee or prospective assignee of all or any part of its Secured Liabilities, and (iii) as required by Requirements of Law.

30. **Expenses; Indemnity; Waiver**.

(a) Each Debtor hereby agrees that the Agent shall be entitled to reimbursement of its expenses incurred hereunder as provided in 9.03(a) of the Credit Agreement as if such section were set out in full herein and references to "the Borrower" therein were references to the Debtors and references to the "Administrative Agent" therein were references to the Agent.

(b) Each Debtor shall indemnify the Indemnitees in accordance with Section 9.03(b) of the Credit Agreement as if such section were set out in full herein and references to "the Borrower" therein were references to the Debtors.

(c) All amounts due under this Section shall be payable to the Agent for the benefit of the applicable Secured Parties promptly after demand therefor with documented particulars thereof.

(d) The indemnifications set out in this Section shall survive the Release Date and the release or extinguishment of the Security Interests.

31. **Release of Debtor**. The Agent shall, without recourse or warranty, release any Debtor and its Collateral in accordance with Section 9.21 of the Credit Agreement.

32. **Additional Security**. This Agreement is in addition to, and not in substitution of, any and all other security previously or concurrently delivered by any Debtor or any other Person to any Secured Party, all of which other security shall remain in full force and effect.

33. **Alteration or Waiver**. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Agent and the Debtors. The Secured Parties shall not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Agent would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale shall extinguish the liability of any Debtor to pay the Secured Liabilities of

such Debtor, nor shall the same operate as a merger of any covenant contained in this Agreement or of any other liability, nor shall the acceptance of any payment or other security constitute or create any novation.

34. **Environmental Licence and Indemnity**. Each Debtor hereby grants to the Agent and its employees and agents, upon the occurrence and during the continuation of an Event of Default, an irrevocable and non-exclusive licence, subject to the rights of tenants, to enter any of the premises of such Debtor, upon advance written notice to such Debtor and during regular business hours, to conduct audits, investigations, assessments, sampling, testing and monitoring with respect to hazardous substances or contaminants and to collect, remove and analyze any Hazardous Materials at the cost and expense of such Debtor (which cost and expense shall form part of the Secured Liabilities of such Debtor and shall be payable immediately on demand and secured by the Security Interests created by this Agreement). Other than due to the gross negligence, willful misconduct or bad faith, in the case of indemnification of the Agent, the Agent or, in the case of indemnification of a Secured Party, such Secured Party or its agent, each Debtor shall indemnify the Secured Parties and hold the Secured Parties harmless against and from all losses, costs, damages, penalties, fines and expenses which any Secured Party may sustain, incur or be or become liable at any time whatsoever for by reason of or arising from the past, present or future existence, migration, spill, seepage, escape, leak, emission, clean-up, removal or disposal of any Hazardous Materials on or about any property owned by any Debtor or compliance with Environmental Laws or environmental orders relating thereto, including any investigation, assessment, delineation, monitoring, clean-up, decommissioning, reclamation, closure, restoration or remediation of any premises owned by such Debtor or other affected lands or property. This indemnification shall survive the Release Date.

35. **Amalgamation**. If any Debtor is a corporation, such Debtor acknowledges that if it amalgamates or merges with any other corporation or corporations, then (i) the Collateral and the Security Interests of such Debtor shall extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired in each case that constitutes Collateral, (ii) the term "Debtor", where used in this Agreement, shall extend to and include the amalgamated corporation, and (iii) the term "Secured Liabilities", where used in this Agreement, shall extend to and include the Secured Liabilities of the amalgamated corporation.

36. **Governing Law; Attornment**. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province. Without prejudice to the ability of the Agent to enforce this Agreement in any other proper jurisdiction, each Debtor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable law, each Debtor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.

37. **Interpretation**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "or" is

disjunctive; the word "and" is conjunctive. The word "shall" is mandatory; the word "may" is permissive. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set out herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (e) all references herein to Sections and Schedules shall be construed to refer to Sections and Schedules to, this Agreement, Section headings are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. Any reference in this Agreement to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Security Interest to any Permitted Lien. In accordance with the *Property Law Act* (British Columbia), the doctrine of consolidation applies to this Agreement.

38. **Paramountcy.** In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement then, notwithstanding anything contained in this Agreement, the provisions contained in the Credit Agreement shall prevail to the extent of such conflict or inconsistency and the provisions of this Agreement shall be deemed to be amended to the extent necessary to eliminate such conflict or inconsistency, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to the Agent (for its own benefit and for the benefit of the other Secured Parties) under the Credit Agreement. If any act or omission of any or all Debtors is expressly permitted under the Credit Agreement but is expressly prohibited under this Agreement, such act or omission shall be permitted. If any act or omission is expressly prohibited under this Agreement, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed under this Agreement but the Credit Agreement does not expressly relieve any or all Debtors from such performance, such circumstance shall not constitute a conflict or inconsistency between the applicable provisions of this Agreement and the provisions of the Credit Agreement.

39. **Successors and Assigns**. This Agreement shall enure to the benefit of, and be binding on, each Debtor and its successors and permitted assigns, and shall enure to the benefit of, and be binding on, the Agent and its successors and assigns. No Debtor may assign this Agreement, or any of its rights or obligations under this Agreement. The Agent may assign this Agreement and any of its rights and obligations hereunder to any Person that replaces it in its capacity as such in accordance with the Credit Agreement.

40. **Additional Debtors**. Additional Persons may from time to time after the date of this Agreement become Debtors under this Agreement by executing and delivering to the Agent a supplemental agreement (together with all schedules thereto, a "**Supplement**") to this

Agreement, in substantially the form attached hereto as Exhibit A. Effective from and after the date of the execution and delivery by any Person to the Agent of a Supplement:

(a) such Person shall be, and shall be deemed for all purposes to be, a Debtor under this Agreement with the same force and effect, and subject to the same agreements, representations, indemnities, liabilities, obligations and Security Interests, as if such Person had been an original signatory to this Agreement as a Debtor; and

(b) all Collateral of such Person shall be subject to the Security Interest from such Person as security for the due payment and performance of the "Secured Liabilities" of such Person in accordance with the provisions of this Agreement.

The execution and delivery of a Supplement by any additional Person shall not require the consent of any Debtor and all of the Secured Liabilities of each Debtor and the Security Interests granted thereby shall remain in full force and effect, notwithstanding the addition of any new Debtor to this Agreement.

41. **Acknowledgment of Receipt/Waiver**. Each Debtor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement or financing change statement registered in connection with this Agreement or any verification statement issued with respect to any such financing statement or financing change statement.

42. **Enforcement by Agent**. This Agreement and the Security Interests may be enforced only by the action of the Agent acting on behalf of the Secured Parties and no other Secured Party shall have any rights individually to enforce or seek to enforce this Agreement or any of the Security Interests, it being understood and agreed that such rights and remedies may be exercised by the Agent for the benefit of the Secured Parties upon the terms of this Agreement.

43. **Electronic Signature and Counterparts**. Delivery of an executed signature page to this Agreement by any Debtor by facsimile or other electronic form of transmission shall be as effective as delivery by such Debtor of a manually executed copy of this Agreement by such Debtor. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

44. **Intercreditor Agreement Governs.** Notwithstanding anything herein to the contrary, the priority of the Security Interests granted to the Agent, for the benefit of the Secured Parties, pursuant to this Agreement and the exercise of any right or remedy by the Agent are subject to the provisions of the Intercreditor Agreement and any other acceptable intercreditor agreement. In the event of any conflict between the provisions of the Intercreditor Agreement or any other acceptable intercreditor agreement, on the one hand, and this Agreement, on the other hand, with respect to the priority of any liens and security interests and the exercise of rights and remedies, the provisions of such intercreditor agreement or other acceptable intercreditor agreement, as applicable, shall govern and control.

[signatures on the next following pages]

IN WITNESS WHEREOF each of the undersigned have caused this Agreement to be duly executed as of the date first written above.

NORTHWEST ACQUISITIONS ULC, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND CORPORATION,
as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND HOLDINGS LTD.,
as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND NY CORPORATION, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND EKATI CORPORATION, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

6355137 CANADA INC., as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner DOMINION DIAMOND HOLDINGS LTD., as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND DELAWARE COMPANY LLC, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

NORTHWEST ACQUISITIONS PLEDGE B.V., as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, AS ADMINISTRATIVE AGENT

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A-1

DEBTOR INFORMATION

1. **Full legal name:** Northwest Acquisitions ULC

   Prior names: Nil.

   Predecessor companies: Nil

   Jurisdiction of incorporation or organization: British Columbia

   Address of chief executive office: 101 International Drive, Missoula, Montana, USA, 59808

   Address of registered office: Suite 2600, Three Bentall Centre, 595 Burrard Street, P.O. Box 49314, Vancouver, BC, V7X 1L3, Canada

   Provinces where business is carried on or tangible Personal Property is kept: British Columbia

   Addresses of all owned real property: Nil.

   Addresses of all leased real property: Nil.

   Subsidiaries of the Debtor: See attached Schedule A-1B.

   Instruments, Documents of Title and Chattel Paper of the Debtor: Nil.

   Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Corporation	81,913,959 Common Shares	100% of Common Shares	DDC 00422	Vancouver

   Pledged Securities Accounts: Nil.

   Pledged Uncertificated Securities: Nil.

   Pledged Futures Accounts: Nil.

Registered trade-marks and applications for trademark registrations: Nil.

Patents and patent applications: Nil.

Copyright registrations and applications for copyright registrations: Nil.

Industrial designs/registered designs and applications for registered designs: Nil.

---

2. **Full legal name:** Dominion Diamond Corporation

Prior names: See attached Schedule A-1A.

Predecessor companies: See attached Schedule A-1A.

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: 1090 Don Mills Road, Suite 506, Toronto, Ontario, M3C 3R6

Provinces where business is carried on or tangible Personal Property is kept: Northwest Territories, Ontario, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Holdings Ltd.	46,004,716 Class A shares 142,002 Class A	100% of Class A shares	16, 17	Vancouver

	shares			
Dominion Diamond Holdings Ltd.	1,000 Special Voting shares	100% of Special Voting shares	SV4	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: See Schedule C

Patents and patent applications: See Schedule C

Copyright registrations and applications for copyright registrations: See Schedule C

Industrial designs/registered designs and applications for registered designs: See Schedule C

---

3. **Full legal name:** Dominion Diamond Holdings Ltd.

Prior names: Aber Diamond Mines Ltd., Harry Winston Diamond Mines Ltd.

Predecessor companies: None

Jurisdiction of incorporation or organization: Northwest Territories

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife, NT, X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property: 3502 McDonald Drive, Unit 3, Yellowknife, Northwest Territories, Canada, X1A 2H1

3502 McDonald Drive, Unit 7, Yellowknife, Northwest Territories, Canada, X1A 2H1

Addresses of all leased real property: None

Subsidiaries of the Debtor: See attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
6355137 Canada Inc.	289,294 Common shares 10,000 Common shares	100% of Common shares	C-7, C-8	Vancouver
Dominion Diamond Diavik Limited Partnership	255,485,148.387 Partnership Units	~ 99% of Partnership Units	N/A	Vancouver
Dominion Diamond Diavik Limited Partnership	1 General Partner Interest	100% of General Partner Interest	N/A	Vancouver
Dominion Diamond NY Corporation	1,007,682 Common shares	100% of Common shares	C-14	Vancouver
Dominion Diamond Ekati Corporation	261,974 Class B Preferred shares	100% of Class B Preferred shares	BP-1	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond NY Corporation

Prior names: Aber Fifth Avenue Corporation, Harry Winston Fifth Avenue Corporation

Predecessor companies: None

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: 1090 Don Mills Road, Suite 506, Toronto, Ontario, M3C 3R6

Provinces where business is carried on or tangible Personal Property is kept: Ontario, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: Dominion Diamond Delaware Company LLC; see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Delaware Company LLC	All Class A and Class B Membership Interest	100% of Class A and Class B Membership Interest	3 (Class A) 3 (Class B)	New York

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond Delaware Company LLC

Prior names: HWH Acquisition Company LLC

Predecessor companies: None

Jurisdiction of incorporation or organization: Delaware

Address of chief executive office: 4th Floor, St Paul's Gate, 22-24 New Street St Helier, Jersey, JE1 4TR

Provinces where business is carried on or tangible Personal Property is kept:

Bailiwick of Jersey, New York

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location

Dominion Diamond Ekati Corporation	912,222,492 Common shares	100% of Common shares	C-1	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: 6355137 Canada Inc.

Prior names: None

Predecessor companies: None

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife NT X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: None.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Diavik Limited Partnership	2,580,658.065 Partnership Units	~ 1% of Partnership Units	N/A	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond Diavik Limited Partnership

Prior names: Aber Diamond Limited Partnership, Harry Winston Diamond Limited Partnership

Predecessor companies: None

Jurisdiction of incorporation or organization: Northwest Territories

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife NT X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: None.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities: Nil

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond Ekati Corporation

Prior names: See attached Schedule A-1C.

Predecessor companies: See attached Schedule A-1C.

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife, NT X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property:

1701 Northern Height, Yellowknife, Northwest Territories, Canada, X1A 3T1

9 Denison Court, Yellowknife, Northwest Territories, Canada, X1A 3L3

113 Rivet Crescent, Yellowknife, Northwest Territories, Canada, X1A 3S6

121 Rivet Crescent, Yellowknife,
Northwest Territories, Canada, X1A 3S6

157 Rivet Crescent, Yellowknife,
Northwest Territories, Canada, X1A 3T8

129 Kasteel Drive, Yellowknife, Northwest
Territories, Canada, X1A 3W1

Addresses of all leased real property: 112 Archibald Street, Yellowknife
Northwest Territories, Canada X1A 3T1 (the building located on the real property is owned by Dominion Diamond Ekati Corporation)
#1102-4920 52nd Street, Yellowknife
Northwest Territories, Canada X1A 3T1

Subsidiaries of the Debtor: None.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities: Nil

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Northwest Acquisitions Pledge B.V.

Prior names: Nil

Predecessor companies: Nil

Jurisdiction of incorporation or organization: Netherlands

Address of chief executive office: 101 International Drive, Missoula, Montana, USA, 59808

Address of registered office:

Provinces where business is carried on or tangible Personal Property is kept:

Netherlands

Addresses of all owned real property: Nil.

Addresses of all leased real property: Nil.

Subsidiaries of the Debtor: see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil.

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Northwest Acquisitions ULC	5,025,001	100%	C-5	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

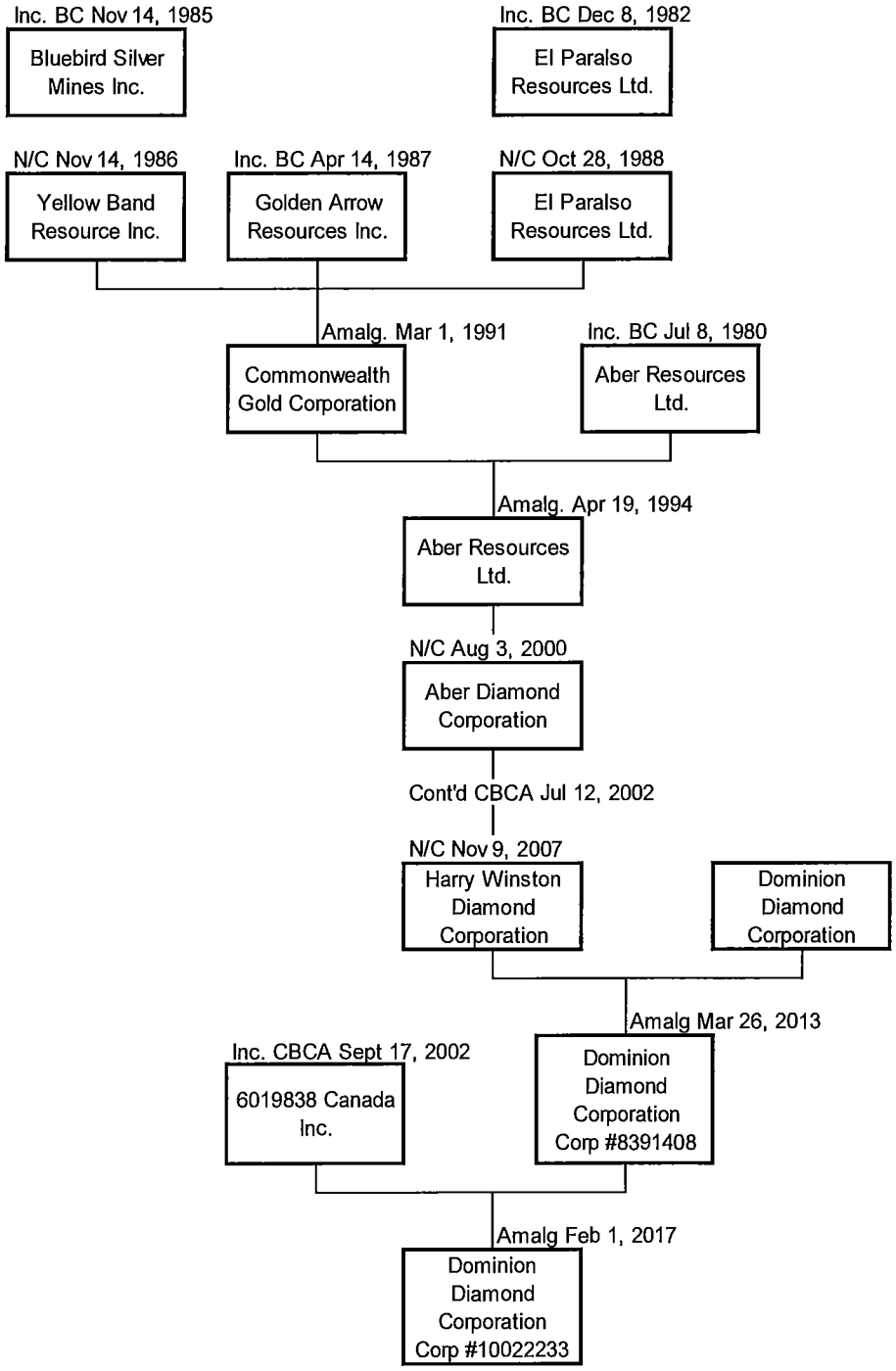
Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

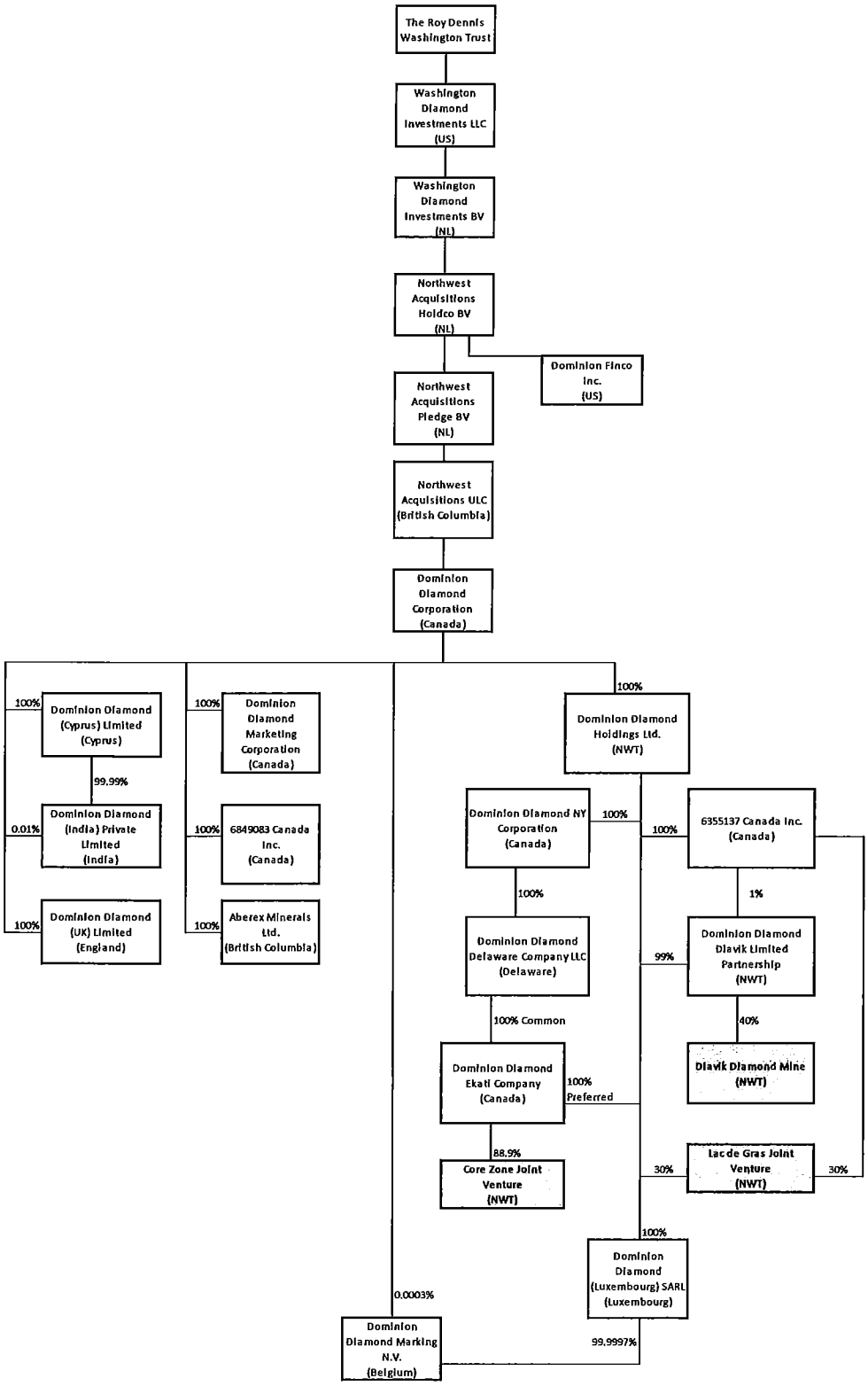
Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

SCHEDULE A-1A
DOMINION DIAMOND CORPORATION CORPORATE HISTORY

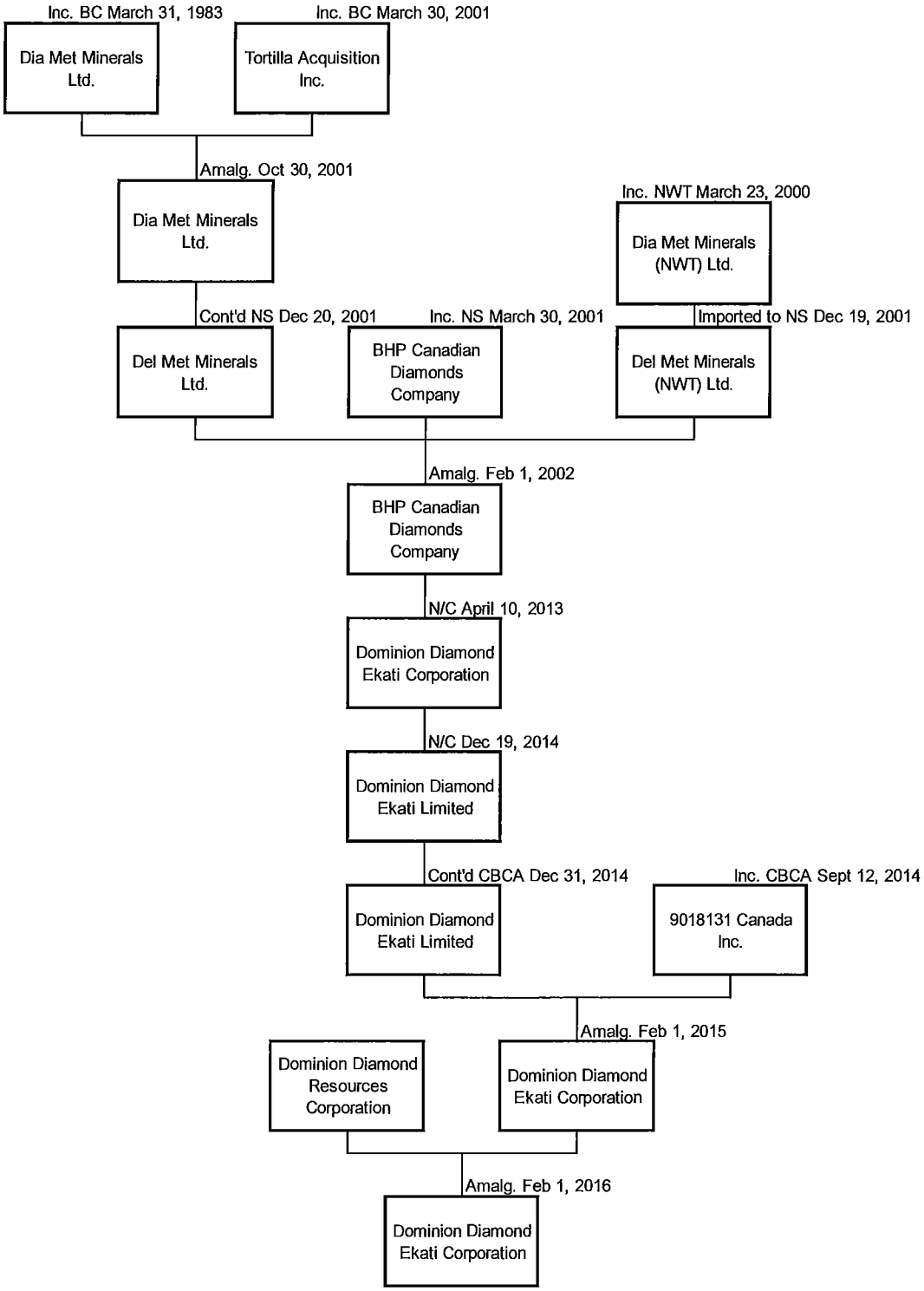


SCHEDULE A-1B



SCHEDULE A-1C

DOMINION DIAMOND EKATI CORPORATION CORPORATE HISTORY



SCHEDULE B-1

MATERIAL LEASES, CLAIMS OR MINING REGISTER ENTRIES

DIAVIK DIAMOND MINE

Lease Number	Owner Name	Percentage	NTS Map Sheet(s)	Issued Date	Expires Date	Acres	Hectares	District
3539	Diavik Diamond Mines (2012) Inc.	100	076D 08, 09	July 16, 1996	July 16, 2017	2,697	1,091	NT
3540 - 3541	Diavik Diamond Mines (2012) Inc.	100	076D 08, 09	February 24, 1997	February 24, 2018	5,319	2,153	NT
3710 - 3711	Diavik Diamond Mines (2012) Inc.	100	076D 08	November 19, 1997	November 19, 2018	4,605	1,864	NT
3712			076D 08, 09			2,671	1,081	
3713 - 3716			076D 09			10,392	4,205	
3719			076D 08			2,572	1,041	
3760 - 3766			076D 08			2,348	950	
3767			076D 08, 09			2,559	1,036	
3768 - 3773			076D 08			15,458	6,256	
3931	Diavik Diamond Mines (2012) Inc.	100	076D 09	April 17, 2001	April 17, 2022	2,434	985	NT
4093 - 4095	Diavik Diamond Mines (2012) Inc.	100	076C 11	January 16, 2002	January 16, 2023	7,764	3,142	NT
4097 - 4101	Diavik Diamond Mines (2012) Inc.	100	076C 05	March 5, 2002	March 5, 2023	12,788	5,175	NT
4102			076C 05, 06			2,526	1,022	
4103			076C 06			2,677	1,083	
4104 - 4108			076C 12			12,946	5,239	
4109			076C 11, 12			2,388	966	
4110			076C 11			2,674	1,082	
4111 - 4119			076D 08			23,718	9,598	
4120			076C 05, 076D 08			2,608	1,055	
4121 - 4128			076C 05			20,780	8,409	
4129			076C 05, 06			2,609	1,056	
4130			076C 06			2,531	1,024	
4134 - 4135	Diavik Diamond Mines (2012) Inc.	100	076C 05	January 16, 2002	January 16, 2023	4,671	1,890	NT
4136			076C 05, 076D 08			1,298	525	
4137			076C 05			2,168	877	
4138	Diavik Diamond Mines (2012) Inc.	100	076D 08	March 5, 2002	March 5, 2023	2,596	1,051	NT
4139			076C 05, 076D 08			2,687	1,087	
4140 - 4143			076C 05			10,575	4,280	
4144 - 4145			076D 08			1,744	706	
4146 - 4147			076D 16			4,838	1,958	
4148	Diavik Diamond Mines (2012) Inc.	100	076C 12	January 16, 2002	January 16, 2023	1,093	442	NT
4152			076C 12, 076D 09			1,227	497	
4153 - 4157			076C 12			457	185	
4164 - 4168			076C 12			12,149	4,917	
4174 - 4178	Diavik Diamond Mines (2012) Inc.	100	076C 06	March 5, 2002	March 5, 2023	13,013	5,266	NT
4179 - 4180	Diavik Diamond Mines (2012) Inc.	100	076C 05, 12	January 16, 2002	January 16, 2023	4,551	1,842	NT
4181 - 4185	Diavik Diamond Mines (2012) Inc.	100	076C 05, 12	March 5, 2002	March 5, 2023	12,956	5,243	NT
4186			076C 05, 06, 11, 12			2,390	967	
4187			076C 06, 11			2,677	1,083	
4192 - 4193	Diavik Diamond Mines (2012) Inc.	100	076C 12	January 16, 2002	January 16, 2023	490	198	NT
4197 - 4198			076C 12			4,906	1,985	
4202 - 4204			076C 12			611	247	
4208 - 4211			076C 12			8,698	3,520	
4212			076C 05, 12			2,266	917	
4213			076C 05			2,381	964	
4214 - 4216			076C 12			944	382	
4217			076C 05, 12			244	99	
4218 - 4219			076C 12			4,693	1,899	
4228 - 4229			076C 10			5,304	2,146	

Lease Number	Owner Name	Percentage	NTS Map Sheet(s)	Issued Date	Expires Date	Acres	Hectares	District
4234 - 4235	Diavik Diamond Mines (2012) Inc.	100	076C 12	March 5, 2002	March 5, 2023	1,525	617	NT
4266 - 4268			076C 06			7,670	3,104	
4269 - 4272			076C 06, 11			10,321	4,177	
4325 - 4328			076C 06			10,256	4,150	
4400	Diavik Diamond Mines (2012) Inc.	100	076C 11	January 16, 2002	January 16, 2023	2,622	1,061	NT
4432 - 4436	Diavik Diamond Mines (2012) Inc.	100	076C 11	March 5, 2002	March 5, 2023	13,082	5,294	NT
4437 - 4440			076C 06			10,391	4,205	
4441 - 4442			076C 06, 11			5,146	2,083	
5194 - 5196	Diavik Diamond Mines (2012) Inc.	100	076C 11	December 8, 2010	December 8, 2031	7,852	3,178	NT
5360	Diavik Diamond Mines (2012) Inc.	100	076C 11	December 8, 2010	December 8, 2031	2,774	1,123	NT

SCHEDULE B-2

MATERIAL LEASES, CLAIMS OR MINING REGISTER ENTRIES

EKATI BUFFER ZONE

ENTITY	LEASE	STATUS	TAG_NO	FID	ISSUE DATE	EXPIRY_DATE	NTS MAPSHEETS	HECTARES	ACRES	AREA (m²)	PERIMETER	EKLEASE4_	EKLEASE4_I	CLAIM	ACRES	HECTARES
DDEC	3485	BUFFER ZONE CLAIM	F19564	274	1996-Apr-10	2018-Apr-10	076/D09	1005	2483	10058510.36	13731.44095	365	1422	ED 52	2485.51	1005.851036
DDEC	3486	BUFFER ZONE CLAIM	F19566	275	1996-Apr-10	2018-Apr-10	076/D09	1022	2525	10216430.81	13337.74298	366	1424	ED 53	2524.54	1021.643081
DDEC	3487	BUFFER ZONE CLAIM	F19568	276	1996-Apr-10	2018-Apr-10	076/D09	580	1434	5906079.994	11402.31734	367	1426	ED 54	1459.42	590.6079994
DDEC	3503	BUFFER ZONE CLAIM	F18266	207	1996-Apr-10	2018-Apr-10	076/D09	423	1044	4229847.449	9483.47524	273	1452	ED 69	1045.22	422.9847449
DDEC	3504	BUFFER ZONE CLAIM	F18267	213	1996-Apr-10	2018-Apr-10	076/D09	678	1676	6789757.89	10566.34918	279	1454	ED 70	1677.79	678.975789
DDEC	3505	BUFFER ZONE CLAIM	F19569	269	1996-Apr-10	2018-Apr-10	076/D09	1016	2510	10106037.6	13648.4881	360	1420	ED 26	2487.26	1010.60376
DDEC	3506	BUFFER ZONE CLAIM	F18263	229	1996-Apr-10	2018-Apr-10	076/D09	520	1284	5110662.916	9302.23296	306	1450	ED 66	1262.87	511.0662916
DDEC	3510	BUFFER ZONE CLAIM	F19613	231	1996-Apr-10	2018-Apr-10	076/D09	1069	2641	10736721.22	14067.77758	308	1398	ED 20	2653.1	1073.672122
DDEC	3511	BUFFER ZONE CLAIM	F19615	232	1996-Apr-10	2018-Apr-10	076/D09	970	2396	9722905.323	14048.36878	309	1400	ED 21	2402.58	972.2905323
DDEC	3512	BUFFER ZONE CLAIM	F19617	237	1996-Apr-10	2018-Apr-10	076/D09	1092	2699	10921103.43	13796.46082	314	1402	ED 22	2698.66	1092.110343
DDEC	3515	BUFFER ZONE CLAIM	F19563	258	1996-Apr-10	2018-Apr-10	076/D09	632	1562	6313789.119	10251.50394	349	1414	ED 23	1560.17	631.3789119
DDEC	3516	BUFFER ZONE CLAIM	F19565	259	1996-Apr-10	2018-Apr-10	076/D09	666	1646	6337647.105	12992.16639	350	1416	ED 24	1566.07	633.7647105
DDEC	3517	BUFFER ZONE CLAIM	F19567	260	1996-Apr-10	2018-Apr-10	076/D09	445	1100	4452937.685	8824.63561	351	1418	ED 25	1100.34	445.2937685
	3941	BUFFER ZONE CLAIM	F18265	228	2001-Jul-27	2022 Jul 27		789	1950	7880994.031	11458.36984	305	1454	ED68	1947.44	788.0994031
	3942	BUFFER ZONE CLAIM	F18269	208	2001-Jul-27	2022 Jul 27		399	986	3972106.844	9168.36806	274	1468	ED72	981.53	397.2106844
	3943	BUFFER ZONE CLAIM	F19582	246	2001-Jul-27	2022 Jul 27		664	1639	6634225.546	10842.75388	335	1460	ED64	1639.35	663.4225546
	3975	BUFFER ZONE CLAIM	F18264	227	2001-Jul-27	2022 Jul 27		883	2181	8906276.977	11788.17145	304	1452	ED67	2200.79	890.6276977
	3976	BUFFER ZONE CLAIM	F18268	209	2001-Jul-27	2022 Jul 27		908	2243	9059394.765	12205.84121	275	1466	ED71	2238.53	905.9394765
	3977	BUFFER ZONE CLAIM	F19571	271	2001-Nov-01	2022 Nov 01		1028	2540	10352618.05	12993.40758	362	1438	ED27	2558.19	1035.261805
	3978	BUFFER ZONE CLAIM	F19575	273	2001-Nov-01	2022 Nov 01		709	1752	7081668.212	10831.65291	364	1442	ED29	1749.92	708.1668212
	3979	BUFFER ZONE CLAIM	F19573	272	2001-Jul-27	2022 Jul 27		970	2396	9770448.572	13561.90375	363	1440	ED28	2414.33	977.0448572
	3980	BUFFER ZONE CLAIM	F18270	199	2001 Nov 01	2022 Nov 01		988	2441	9883690.051	13634.25055	262	1470	ED73	2442.31	988.3690051
	3981	BUFFER ZONE CLAIM	F19632	192	2001 Jul 27	2022 Jul 27		1072	2649	10707895	14052.65843	255	1472	ED74	2645.98	1070.7895
	3982	BUFFER ZONE CLAIM	F19633	191	2001 Jul 27	2022 Jul 27		959	2370	9601925.202	13645.90778	254	1474	ED75	2372.69	960.1925202
	3983	BUFFER ZONE CLAIM	F19652	57	2001 Jul 27	2022 Jul 27		1056	2609	10540177.18	13956.38596	105	1182	GO4	2604.53	1054.017718
	3984	BUFFER ZONE CLAIM	F19653	58	2001 Jul 27	2022 Jul 27		1009	2493	10121337.29	13889.6976	106	1184	GO5	2501.04	1012.133729
	3985	BUFFER ZONE CLAIM	F17671	59	2001 Nov 01	2022 Nov 01		1042	2576	10418217.52	13787.07803	107	1186	GO6	2574.4	1041.821752
	3986	BUFFER ZONE CLAIM	F19638	176	2001 Jul 27	2022 Jul 27		808	1997	8077195.133	12007.47662	238	1476	ED76	1995.92	807.7195133
	3987	BUFFER ZONE CLAIM	F19639	178	2001 Jul 27	2022 Jul 27		823	2033	8221815.2	12003.65616	240	1478	ED77	2031.65	822.18152
	3988	BUFFER ZONE CLAIM	F19640	177	2001 Jul 27	2022 Jul 27		830	2050	8276763.901	11783.12834	239	1480	ED78	2045.23	827.6763901
	3989	BUFFER ZONE CLAIM	F19580	247	2001 Jul 27	2022 Jul 27		609	1504	6059121.264	10834.87951	336	1458	ED62	1497.24	605.9121264
	3990	BUFFER ZONE CLAIM	F19581	245	2001 Jul 27	2022 Jul 27		647	1600	6505489.98	10675.91528	334	1456	ED63	1607.54	650.548998
	3991	BUFFER ZONE CLAIM	F19656	120	2001 Nov 01	2022 Nov 01		1022	2526	10219398.04	13885.49698	174	1170	GO10	2525.27	1021.939804
	3992	BUFFER ZONE CLAIM	F19657	121	2001 Nov 01	2022 Nov 01		1039	2567	10360179.57	13757.60285	175	1172	GO11	2560.06	1036.017957
	3993	BUFFER ZONE CLAIM	F17673	122	2001 Nov 01	2022 Nov 01		1044	2579	10407874.34	13845.31721	176	1174	GO12	2571.84	1040.787434
	4003	BUFFER ZONE CLAIM	F19770	7	2001 Nov 01	2022 Nov 01		1021	2523	10205037.73	13841.08402	17	1266	AM59	2521.72	1020.503773
	4010	BUFFER ZONE CLAIM	F19783	0	2001 Nov 01	2022 Nov 01		494	1221	4931974.75	8763.13556	3	1278	AM72	1218.72	493.197475
	4011	BUFFER ZONE CLAIM	F19771	8	2001 Nov 01	2022 Nov 01		1059	2617	10593555.79	13769.78437	19	1268	AM60	2617.72	1059.355579
	4012	BUFFER ZONE CLAIM	F19773	11	2001 Nov 01	2022 Nov 01		1000	2471	10017443.08	13501.87369	26	1270	AM61	2475.36	1001.744308
	4013	BUFFER ZONE CLAIM	F19774	12	2001 Nov 01	2022 Nov 01		1009	2492	10076015.87	13587.34997	27	1272	AM62	2489.84	1007.601587
	4014	BUFFER ZONE CLAIM	F19775	10	2001 Nov 01	2022 Nov 01		1030	2545	10279110.65	13599.13273	23	1274	AM63	2540.02	1027.911065
	4015	BUFFER ZONE CLAIM	F19776	9	2001 Nov 01	2022 Nov 01		726	1794	7238695.357	12205.18264	22	1212	AM64	1788.23	723.6695357
	4016	BUFFER ZONE CLAIM	F19784	1	2001 Nov 01	2022 Nov 01		544	1345	5399105.429	9393.99946	4	1280	AM73	1334.15	539.9105429
	4017	BUFFER ZONE CLAIM	F19785	5	2001 Nov 01	2022 Nov 01		511	1262	5099941.918	8953.67789	13	1282	AM74	1260.22	509.9941918
	4018	BUFFER ZONE CLAIM	F19786	6	2001 Nov 01	2022 Nov 01		494	1221	4947478.352	9220.66489	14	1284	AM75	1222.55	494.7478352
	4019	BUFFER ZONE CLAIM	F19787	4	2001 Nov 01	2022 Nov 01		539	1332	5389740.35	9408.47769	10	1286	AM76	1331.83	538.974035
	4020	BUFFER ZONE CLAIM	F19788	3	2001 Nov 01	2022 Nov 01		367	907	3662873.602	7786.34118	8	1208	AM77	905.12	366.2873602
	4021	BUFFER ZONE CLAIM	F19713	2	2001 Nov 01	2022 Nov 01		1036	2560	10367206.35	13813.42938	5	1210	AM65	2561.79	1036.720635
	4022	BUFFER ZONE CLAIM	F17682	17	2001 Nov 01	2022 Nov 01		667	1647	6652544.205	10442.02475	44	1218	GO27	1643.88	665.2544205
	4023	BUFFER ZONE CLAIM	F17683	20	2001 Nov 01	2022 Nov 01		633	1564	6297189.519	10185.67195	47	1216	GO28	1556.07	629.7189519
	4024	BUFFER ZONE CLAIM	F17684	19	2001 Nov 01	2022 Nov 01		641	1585	6432520.741	10476.05916	46	1214	GO29	1589.51	643.2520741
	4025	BUFFER ZONE CLAIM	F19658	151	2001 Nov 01	2022 Nov 01		952	2353	9509904.54	13266.5863	208	1482	GO13	2349.95	950.990454
	4026	BUFFER ZONE CLAIM	F19659	149	2001 Nov 01	2022 Nov 01		1056	2609	10569964.11	13788.91826	206	1484	GO14	2611.9	1056.996411
	4027	BUFFER ZONE CLAIM	F17674	150	2001 Nov 01	2022 Nov 01		1054	2605	10566991.85	13923.29121	207	1486	GO15	2611.16	1056.699185
	4028	BUFFER ZONE CLAIM	F19576	277	2001 Jul 27	2022 Jul 27		834	2061	8356079.975	12125.5758	368	1434	ED58	2064.83	835.6079975
	4029	BUFFER ZONE CLAIM	F19572	278	2001 Jul 27	2022 Jul 27		962	2377	9571612.92	11994.76699	369	1430	ED56	2365.2	957.161292
	4030	BUFFER ZONE CLAIM	F19574	279	2001 Jul 27	2022 Jul 27		1060	2620	10590467.03	13023.43604	370	1432	ED57	2616.96	1059.046703
	4031	BUFFER ZONE CLAIM	F17678	38	2001 Jul 27	2022 Jul 27		998	2465	9972335.289	13690.90504	80	1192	GO23	2464.22	997.2335289

	4032	BUFFER ZONE CLAIM	F17677	34	2001 Nov 01	2022 Nov 01		1011	2499	10117214.88	14083.25019	76	1194	GO22	2500.02	1011.721488
	4033	BUFFER ZONE CLAIM	F17679	37	2001 Nov 01	2022 Nov 01		954	2357	9547688.128	13430.22532	79	1190	GO24	2359.29	954.7688128
	4034	BUFFER ZONE CLAIM	F17685	23	2001 Nov 01	2022 Nov 01		980	2421	9785429.073	13230.89885	65	1188	GO30	2418.03	978.5429073
	4035	BUFFER ZONE CLAIM	F17686	22	2001 Nov 01	2022 Nov 01		986	2435	9873121.276	13765.16694	64	1276	GO31	2439.7	987.3121276
	4036	BUFFER ZONE CLAIM	F19570	280	2001 Jul 27	2022 Jul 27		709	1751	7007119.888	10361.48165	371	1428	ED55	1731.5	700.7119888
	4037	BUFFER ZONE CLAIM	F19577	281	2001 Jul 27	2022 Jul 27		1044	2580	10513018.79	16671.96374	372	1436	ED59	2597.82	1051.301879
	4038	BUFFER ZONE CLAIM	F19578	255	2001 Jul 27	2022 Jul 27		1162	2872	11497738.38	13601.68944	344	1444	ED60	2841.15	1149.773838
	4039	BUFFER ZONE CLAIM	F19579	252	2001 Jul 27	2022 Jul 27		1068	2638	10659527	13717.05187	341	1446	ED61	2634.03	1065.9527
	4040	BUFFER ZONE CLAIM	F18262	253	2001 Nov 01	2022 Nov 01		186	460	1822471.728	7208.13022	342	1448	ED65	450.34	182.2471728
	4041	BUFFER ZONE CLAIM	F19554	87	2001 Nov 01	2022 Nov 01		1021	2523	10193496.31	13291.61808	138	1176	GO7	2518.87	1019.349631
	4042	BUFFER ZONE CLAIM	F19555	85	2001 Nov 01	2022 Nov 01		1006	2485	10052442.72	13554.41543	136	1178	GO8	2484.01	1005.244272
	4043	BUFFER ZONE CLAIM	F17672	86	2001 Nov 01	2022 Nov 01		1078	2665	10763623.03	13856.5803	137	1180	GO9	2659.75	1076.362303
	4273	BUFFER ZONE CLAIM	F19597	262	2001 Nov 16	2022 Nov 16		672	1661	6706269.724	10639.26629	353	746	ED42	1657.16	670.6269724
	4274	BUFFER ZONE CLAIM	F19601	264	2001 Nov 16	2022 Nov 16		735	1816	7321822.506	10668.62864	355	1324	ED43	1809.26	732.1822506
	4275	BUFFER ZONE CLAIM	F19599	265	2001 Nov 16	2022 Nov 16		609	1504	6120459.481	10542.18728	356	1326	ED44	1512.4	612.0459481
	4276	BUFFER ZONE CLAIM	F19606	266	2001 Nov 16	2022 Nov 16		674	1666	6668260.032	10476.83631	357	1328	ED45	1647.76	666.8260032
	4277	BUFFER ZONE CLAIM	F19608	268	2001 Nov 16	2022 Nov 16		589	1456	5898890.077	9798.80538	359	1330	ED46	1457.65	589.8890077
	4281	BUFFER ZONE CLAIM	F19605	225	2001 Nov 16	2022 Nov 16		1069	2642	10660206.75	13974.54922	302	728	ED11	2634.19	1066.020675
	4282	BUFFER ZONE CLAIM	F19607	226	2001 Nov 16	2022 Nov 16		1012	2500	10094085.58	13680.92792	303	730	ED12	2494.3	1009.408559
	4287	BUFFER ZONE CLAIM	F18295	222	2001 Nov 16	2022 Nov 16		1038	2564	10366166	13893.08238	288	724	ED9	2561.54	1036.6166
	4288	BUFFER ZONE CLAIM	F18298	220	2001 Nov 16	2022 Nov 16		1026	2535	10248464.76	13738.26077	286	726	ED10	2532.45	1024.846476
	4289	BUFFER ZONE CLAIM	F18301	250	2001 Nov 16	2022 Nov 16		642	1586	6442004.007	10579.39248	339	742	ED40	1591.85	644.2004007
	4290	BUFFER ZONE CLAIM	F19595	251	2001 Nov 16	2022 Nov 16		682	1686	6807042.753	10527.56108	340	744	ED41	1682.06	680.7042753
	4351	BUFFER ZONE CLAIM	F19647	16	2001 Nov 16	2022 Nov 16		674	1665	6729009.466	10794.0256	43	1224	GO16	1662.77	672.9009466
	4352	BUFFER ZONE CLAIM	F19648	15	2001 Nov 16	2022 Nov 16		698	1725	6927852.739	10397.99162	42	1226	GO17	1711.91	692.7852739
	4353	BUFFER ZONE CLAIM	F19649	13	2001 Nov 16	2022 Nov 16		652	1611	6480587.357	10067.07443	36	1228	GO18	1601.39	648.0587357
	4354	BUFFER ZONE CLAIM	F17680	14	2001 Nov 16	2022 Nov 16		661	1633	6599965.025	10406.9841	41	1222	GO25	1630.89	659.9965025
	4355	BUFFER ZONE CLAIM	F17681	18	2001 Nov 16	2022 Nov 16		671	1659	6706325.643	10260.40774	45	1220	GO26	1657.17	670.6325643
	4356	BUFFER ZONE CLAIM	F19646	30	2001 Nov 16	2022 Nov 16		1074	2654	10764180.06	13884.29815	72	1202	GO1	2659.89	1076.418006
	4357	BUFFER ZONE CLAIM	F19651	31	2001 Nov 16	2022 Nov 16		1013	2503	10127457.57	13542.50262	73	1204	GO2	2502.55	1012.745757
	4358	BUFFER ZONE CLAIM	F19650	36	2001 Nov 16	2022 Nov 16		966	2387	9634440.686	13491.18441	78	1200	GO19	2380.72	963.4440686
	4359	BUFFER ZONE CLAIM	F17675	35	2001 Nov 16	2022 Nov 16		1006	2486	10055633.12	13571.76525	77	1198	GO20	2484.8	1005.563312
	4360	BUFFER ZONE CLAIM	F17676	33	2001 Nov 16	2022 Nov 16		1048	2589	10465095.37	13661.28186	75	1196	GO21	2585.98	1046.509537
	4361	BUFFER ZONE CLAIM	F19610	267	2001 Nov 16	2022 Nov 16		785	1939	7847982.613	11049.34991	358	1404	ED47	1939.28	784.7982613
	4362	BUFFER ZONE CLAIM	F19612	256	2001 Nov 16	2022 Nov 16		589	1456	5869896.86	9837.33559	347	1406	ED48	1450.48	586.989686
	4363	BUFFER ZONE CLAIM	F19614	257	2001 Nov 16	2022 Nov 16		668	1650	6648005.129	10653.40318	348	1408	ED49	1642.76	664.8005129
	4364	BUFFER ZONE CLAIM	F19616	263	2001 Nov 16	2022 Nov 16		626	1546	6246701.825	10399.80302	354	1410	ED50	1543.59	624.6701825
	4365	BUFFER ZONE CLAIM	F19618	261	2001 Nov 16	2022 Nov 16		630	1557	6288988.883	10327.84979	352	1412	ED51	1554.04	628.8988883
	4366	BUFFER ZONE CLAIM	F19596	235	2001 Nov 16	2022 Nov 16		1016	2511	10160683.89	13746.79521	312	748	ED13	2510.76	1016.068389
	4367	BUFFER ZONE CLAIM	F19598	240	2001 Nov 16	2022 Nov 16		964	2381	9626932.674	13461.70989	319	1316	ED14	2378.87	962.6932674
	4368	BUFFER ZONE CLAIM	F19600	241	2001 Nov 16	2022 Nov 16		1061	2623	10559588.69	13901.23326	320	1318	ED15	2609.33	1055.958869
	4369	BUFFER ZONE CLAIM	F19603	242	2001 Nov 16	2022 Nov 16		935	2310	9348018.087	13695.0032	321	1320	ED16	2309.95	934.8018087
	4370	BUFFER ZONE CLAIM	F19604	238	2001 Nov 16	2022 Nov 16		1124	2779	11224569.32	14154.20043	315	1322	ED17	2773.65	1122.456932
	4371	BUFFER ZONE CLAIM	F19609	239	2001 Nov 16	2022 Nov 16		1129	2791	11273888.09	14368.93141	316	1394	ED18	2785.84	1127.388809
	4372	BUFFER ZONE CLAIM	F19611	243	2001 Nov 16	2022 Nov 16		947	2341	9430404.536	12968.96366	322	1396	ED19	2330.3	943.0404536
	4380	BUFFER ZONE CLAIM	F19660	32	2001 Nov 16	2022 Nov 16		999	2468	9973766.239	13706.97893	74	1206	GO3	2464.57	997.3766239
	4532	BUFFER ZONE CLAIM	F18297	244	2001 Nov 16	2022 Nov 16		654	1616	6525417.977	10265.98764	330	1535	ED38	1612.47	652.5417977
	4533	BUFFER ZONE CLAIM	F18299	234	2001 Nov 16	2022 Nov 16		616	1523	6146857.619	10706.84718	311	738	ED39	1518.92	614.6857619

SCHEDULE C

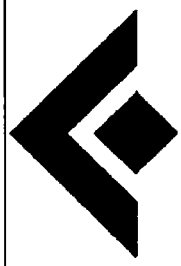
INTELLECTUAL PROPERTY

Canadian Intellectual Property

Trade-Marks

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
CA-1	POWERED BY DOMINION POWERED BY DOMINION & DESIGN	Formalized (Pending) **App** 1858961 **App** 22-SEP-2017		DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-2	ARCTIC LIGHT ARCTIC LIGHT & DESIGN	Formalized (Pending) **App** 1858960 **App** 22-SEP-2017		DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-3	DDC	**App** 20-OCT-2015 **App** 1751229 **Reg** 17-MAY-2017 **Reg** TMA971149 Registered	(1) Operation of a company dealing in mining services for diamonds and precious stones, sourcing of diamonds; processing of diamonds, namely, diamond mining, cutting of diamonds, polishing of diamonds, grading of diamonds; retail and wholesale sale of diamonds, jewellery and precious stones.	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-4	INTÉGRITÉ ET HÉRITAGE ASSURÉS	**App** 22-DEC-2014 **App** 1708485 Allowed (Pending)	(1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds.	DOMINION DIAMOND CORPORATION a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-5	CANADAMARK	**App** 29-MAY-2014 **App** 1679010 **Reg** 25-SEP-2015 **Reg** TMA915208 Registered	(1) Operation of a programme to verify the integrity of a diamond and to assure supply chain integrity for the diamond to be of Canadian origin; providing information via a website in the field of diamond mining; verifying	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
			and certifying the origin, character and quality of diamonds, gems and gemstones. (2) Providing information via a website in the field of gemological services.	Calgary ALBERTA T2P 1T1	
CA-6	INTEGRITY AND HERITAGE ASSURED	**App** 06-MAR-2014 **App** 1666641 **Reg** 01-DEC-2015 **Reg** TMA964056 Registered	(1) mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-7	THE ORIGINAL DIAMOND HALLMARK	**App** 06-MAR-2014 **App** 1666637 Allowed (Pending)	(1) mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-8	THE ORIGINAL DIAMOND HALLMARK. INTEGRITY AND HERITAGE ASSURED	**Aban** 15-MAR-2017 **App** 25-FEB-2014 **App** 1665350 Abandoned - section 40(3) (Abandoned)	(1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds,	DOMINION DIAMOND CORPORATION, a legal entity 250 University Avenue Toronto ONTARIO M5H 3E5	
CA-9	JAY PIPE LOGO 	**App** 25-JUN-2013 **App** 1632642 **Reg** 19-JUL-2017 **Reg** TMA976191 Registered	(1) diamonds, jewellery, precious stones; drinking mugs, drinking glasses, coffee cups, t-shirts, hats, caps, sweatshirts (1) mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	DOMINION DIAMOND CORPORATION, a legal entity, 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS/See evidence on File No. 1619023
CA-10	DOMINION DIAMOND LOGO	**App** 20-MAR-2013 **App** 1619023 **Reg** 01-APR-2016 **Reg** TMA933199 Registered	(1) diamonds, jewellery, precious stones (1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds,	DOMINION DIAMOND CORPORATION 606 4th Street SW Suite 900	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS/ See evidence on File No. 1619023

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
			namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	Calgary ALBERTA T2P 1T1	
CA-11	DOC	**App** 14-FEB-2013 **App** 1614278 **Reg** 20-JAN-2016 **Reg** TMA926525 Registered	(1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	DOMINION DIAMOND CORPORATION 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS/See evidence on File No. 1619023
CA-12	DOMINION DIAMOND	**App** 12-FEB-2013 **App** 1613885 **Reg** 10-MAR-2015 **Reg** TMA898371 Registered	(1) Diamonds, jewellery, precious stones. (1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	DOMINION DIAMOND CORPORATION 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 sept/Sep 2017 COMMENTS/ See evidence on File No. 1619023
CA-13	Stylized C & Diamond Design 	**App** 27-AUG-2003 **App** 1188975 **Reg** 02-AUG-2007 **Reg** TMA693308 Registered	(1) Diamonds. (2) Precious and semi-precious gems and gemstones. (1) Verifying and certifying the origin, character, and quality of diamonds, gems, and gemstones. (2) Operation of a business selling and distributing diamonds, precious and semi-precious gems and gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: POINT LAKE MARKETING INC. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 sept/Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-14	CANADAMARK CERTIFICATE OF ORIGIN	**App** 23-JUL-2003 **App** 1185786 **Reg** 28-AUG-2008 **Reg** TMA722713 Registered	(1) Diamonds. (2) Precious and semi-precious gems and gemstones. (3) Pearls. (4) Precious metals, namely, gold, silver, and platinum. (5) Jewellery, namely, bracelets, rings, necklaces, pendants, chains, anklets, earrings, brooches, tie pins, tie clips, cufflinks, pendants, barrettes, hair clips, and rings. (6) Timepieces, namely, watches, stop watches, chronometers, and clocks.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-15	LOOK FOR THE MARK	**App** 27-JUN-2003 **App** 1183289 **Reg** 27-JUN-2007 **Reg** TMA690926 Registered	(1) Precious and semi-precious gems and gemstones. (1) Identifying and appraising the origin, value, and quality of precious and semi-precious gemstones, and providing certification, guarantees, and warranties to that effect to third parties. (2) Electronic laser-inscription of precious and semi-precious gemstones. (3) Retail and wholesale distribution of precious and semi-precious gems and gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: POINT LAKE MARKETING INC. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-16	CANADA MARK & Design CANADAMARK	**App** 26-MAY-2003 **App** 1179322 **Reg** 12-JUN-2007 **Reg** TMA689626 Registered	(1) Precious metals and their alloys, and goods in precious metals; precious stones; and jewellery.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: Point Lake Marketing Inc. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED/DATE: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-17	THE DEFINING SYMBOL OF CANADIAN DIAMONDS	**App** 26-MAY-2003 **App** 1179486 **Reg** 12-JUN-2007 **Reg** TMA689625 Registered	(1) Precious and semi-precious gems and gemstones. (1) Operation of a wholesale business selling gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLEE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 juin/Jun 2007 COMMENTS: FROM: POINT LAKE MARKETING INC. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-18	CANADAMARK	**App** 12-NOV-2002 **App** 1159101	(1) Precious stones; jewellery. (1) Providing business and statistical	Dominion Diamond Corporation	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
		Reg 07-DEC-2005 **Reg** TMA654545 Registered	information about the origin, character, and quality of diamonds; compilation and systemization of information into computer databases; operation of a retail and wholesale business selling and distributing diamonds, gems, jewellery, and watches; laser scribing.	606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: Point Lake Marketing Inc. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-19	EKATI DIAMONDS & DESIGN  	**App** 09-MAY-2001 **App** 1102515 **Reg** 18-DEC-2003 **Reg** TMA598004 Registered	(1) Precious and semi-precious gems and gemstones. (2) Pearls. (3) Precious metals, namely, gold, silver, and platinum. (4) Jewellery, namely, bracelets, rings, necklaces, pendants, chains, anklets, earrings, brooches, tie pins, tie clips, cufflinks, pendants, barrettes, hair clips, and rings. (5) Money clips. (6) Timepieces, namely, watches, stop watches, chronometers, and clocks. (1) Operation of a retail business selling jewellery, precious metals, gemstones, money clips, and	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
			timepieces. (2) Operation of a wholesale business selling jewellery, precious metals, gemstones, money clips, and timespieces. (3) Operation of a electronic commerce business selling jewellery, precious metals, gemstones, money clips, and timespieces to others, through a global computer network. (4) Operation of a website providing information on the subjects of jewellery, precious metals, gemstones, money clips, and timepieces.		**CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 jJul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-20	EKATI	**App** 04-MAY-2001 **App** 1101835 **Reg** 13-JUN-2003 **Reg** TMA583710 Registered	(1) Precious and semi-precious gems and gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2010 COMMENTS:

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. Voir Preuve au dossier/See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-21	AURIAS	**App** 02-FEB-2001 **App** 1091174 **Reg** 27-JAN-2004 **Reg** TMA600675 Registered	(1) Precious metals and their alloys; precious stones; jewellery made from precious metals and precious stones. (1) Marketing services namely advertising services for third parties relating to the sale of precious stones and jewellery; retailing and wholesaling services relating to the sale of precious stones, and retail sale services of custom jewellery of others.	Dominion Diamond Corporation PO Box 4569, Station A Toronto ONTARIO M5W 4T9	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 14 Mar 2013 COMMENTS: See evidence on File No. 1091174 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS:

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					FROM: BHP Billiton Innovation Pty. Ltd. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1091174 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1091174
CA-22	EKATI DIAMONDS & Maple Leaf Design 	**App** 16-JUL-1999 **App** 1022653 **Reg** 20-FEB-2001 **Reg** TMA541389 Registered	(1) Jewels, gems, and precious stones, namely, diamonds. (1) Mining and processing diamonds. (2) Sale of diamonds to others on a wholesale basis.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name and Address DATE REGISTERED: 07 Feb 2002 DATE OF CHANGE: 25 Oct 2001 COMMENTS: FROM: BHP DIAMONDS INC., TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENT: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					CHANGE IN TITLE: TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS:

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					See evidence on File No. 1619023
CA-23	EKATI DIAMOND MINE & DESIGN 	**App** 30-MAR-1999 **App** 1010291 **Reg** 04-JAN-2001 **Reg** TMA539131 Registered	(1) Jewels, gems, and precious stones, namely, diamonds.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name and Address DATE REGISTERED: 07 Feb 2002 DATE OF CHANGE: 25 Oct 2001 COMMENTS: FROM: BHP DIAMONDS INC., TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED : 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					DATE OF CHANGE: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE/: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-24	EKATI	**App** 13-NOV-1998 **App** 896464 **Reg** 13-JAN-2000 **Reg** TMA521456 Registered	(1) Jewels, gems, and precious stones, namely, diamonds. (1) Mining and processing diamonds. (2) Sale of diamonds to others on a wholesale basis.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name and Address DATE REGISTERED: 07 Feb 2002 DATE OF CHANGE: 25 Oct 2001 COMMENTS: FROM: BHP DIAMONDS INC. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					OWNER ADDRESS CHANGE: DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE/: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					CHANGE IN TITLE: TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023

Copyrights

Title	Reg. No.	Reg. Date	Author(s)	Registered Owner
JAY PIPE LOGO	1106059	2013-07-05	CARISA LAW SCOTT MCFARLAND	DOMINION DIAMOND CORPORATION
DOMINION DIAMOND LOGOS	1104372	2013-05-08	PETER NG	DOMINION DIAMOND CORPORATION

U.S. Intellectual Property

Trademarks

Ref. No.	Trademark	Status	Goods and Services	Owner	Assignment Information
US-1	CANADAMARK **Cross References:** CANADA MARK CANADAMARK	**App** 13-JUN-2014 **App** 86309170 **Reg** 25-AUG-2015 **Reg** 4797939 Registered Section 44(D)	**INT. CL. 37** PROVIDING INFORMATION VIA A WEBSITE IN THE FIELD OF DIAMOND MINING **INT. CL. 42** GEMOLOGICAL SERVICES, NAMELY, VERIFYING THE INTEGRITY OF A DIAMOND TO ASSURE THE DIAMOND TO BE OF CANADIAN ORIGIN, AND VERIFYING AND CERTIFYING THE ORIGIN, CHARACTER AND QUALITY OF DIAMONDS, GEMS AND GEMSTONES; PROVIDING INFORMATION VIA A WEBSITE IN THE FIELD OF GEMOLOGICAL SERVICES	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-2	THE ORIGINAL DIAMOND HALLMARK THE ORIGINAL DIAMOND HALLMARK	**App** 14-MAR-2014 **App** 86221684 Pending Section 44(D)	**INT. CL. 35** RETAIL STORE AND WHOLESALE STORE SERVICES FEATURING DIAMONDS **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-3	INTEGRITY AND HERITAGE ASSURED INTEGRITY AND HERITAGE ASSURED	**App** 14-MAR-2014 **App** 86221696 **Reg** 03-MAY-2016 **Reg** 4953221 Registered Supplemental Register Section 44(D)	**INT. CL. 35** RETAIL STORE AND WHOLESALE STORE SERVICES FEATURING DIAMONDS **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-4	JAY PIPE 	**App** 08-JUL-2013 **App** 86004485 Pending Section 44(D) Intent to Use	**INT. CL. 14** DIAMONDS, JEWELLERY, PRECIOUS STONES **INT. CL. 21** DRINKING MUGS, DRINKING GLASSES, COFFEE CUPS **INT. CL. 25** CLOTHING, NAMELY, T-SHIRTS, HATS AND CAPS **INT. CL. 37** MINING EXTRACTION SERVICES **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-5	D 	**App** 23-APR-2013 **App** 85912253 **Reg** 11-OCT-2016 **Reg** 5057005 Registered Section 44(D)	**INT. CL. 14** DIAMONDS, JEWELLERY, PRECIOUS STONES **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS **INT. CL. 45** SECURITY CONSULTANCY IN THE NATURE OF ARRANGING FOR SECURITY FOR DIAMOND RELATED	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	

			BUSINESSES; PROVIDING SECURITY FOR DIAMOND RELATED BUSINESSES, NAMELY, SECURITY GUARD SERVICES FOR DIAMOND RELATED BUSINESSES, MONITORING OF SECURITY SYSTEMS FOR DIAMOND RELATED BUSINESSES, AND SECURITY THREAT ANALYSIS FOR PERSONAL PROTECTION PURPOSES FOR DIAMOND RELATED BUSINESSES		
US-6	DDC DDC	**App** 01-MAR-2013 **App** 85864763 Published (Pending) Section 44(D)	**INT. CL. 14** DIAMONDS **INT. CL. 35** RETAIL STORE AND WHOLESALE STORE SERVICES FEATURING DIAMONDS **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, NAMELY, CUTTING SERVICES, POLISHING SERVICES, AND CHEMICAL CLEANING SERVICES; SORTING OF DIAMONDS **INT. CL. 45** SECURITY CONSULTANCY IN THE NATURE OF ARRANGING FOR SECURITY FOR DIAMOND RELATED BUSINESSES; PROVIDING SECURITY FOR DIAMOND RELATED BUSINESSES, NAMELY, SECURITY GUARD SERVICES FOR DIAMOND RELATED BUSINESSES, MONITORING OF SECURITY SYSTEMS FOR DIAMOND RELATED BUSINESSES, AND SECURITY THREAT ANALYSIS FOR PERSONAL PROTECTION PURPOSES FOR DIAMOND RELATED BUSINESSES	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	**Assignor:** DOMINION DIAMOND CORPORATION CANADA CORPORATION **Assignor:** HARRY WINSTON DIAMOND CORPORATION CANADA CORPORATION **Signed:** 26-MAR-2013 **Brief:** CERTIFICATE OF AMALGAMATION **Recorded:** 18-APR-2013 **Reel/Frame:** 5009/0970 **Correspondent:** FRANCIS J. DUFFIN, WIGGIN AND DANA LLP ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832 **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION PO BOX 4569, STATION A TORONTO, ONTARIO, M5W 4T9 CA (CANADA)
US-7	DOMINION DIAMOND DOMINION DIAMOND	**App** 19-FEB-2013 **App** 85853915 **Reg** 21-JUL-2015 **Reg** 4774976 Registered Section 44(D)	**INT. CL. 37** MINING EXTRACTION OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	**Assignor:** DOMINION DIAMOND CORPORATION CANADA CORPORATION **Assignor:** HARRY WINSTON DIAMOND CORPORATION CANADA CORPORATION **Signed:** 26-MAR-2013 **Brief:** CERTIFICATE OF AMALGAMATION **Recorded:** 18-APR-2013 **Reel/Frame:** 5009/0970 **Correspondent:**

					FRANCIS J. DUFFIN, WIGGIN AND DANA LLP ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832 **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION PO BOX 4569, STATION A TORONTO, ONTARIO, M5W 4T9 CA (CANADA)
US-8	CANADAMARK **Cross References:** CANADA MARK CANADAMARK	**App** 22-JUN-2007 **App** 77213664 **Reg** 05-AUG-2008 **Reg** 3479107 Registered CANCELLED SECTION 8 IN INT. CL. 40. ONLY O.G. 6-17-2014	**INT. CL. 14** PRECIOUS GEMS AND GEMSTONES; JEWELRY **INT. CL. 35** WHOLESALE AND RETAIL DISTRIBUTORSHIPS FEATURING DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES AND JEWELRY; PROVIDING CONSUMER INFORMATION VIA A WEBSITE IN THE FIELD OF DIAMONDS, JEWELRY, DIAMOND MINING AND DIAMOND PROCESSING **INT. CL. 40** [LASER SCRIBING SERVICES OF PRECIOUS GEMSTONES AND DIAMONDS] **INT. CL. 42** PROVIDING INFORMATION VIA A WEBSITE IN THE FIELDS OF DIAMOND MINING AND GEMOLOGICAL SERVICES, NAMELY, GRADING PRECIOUS STONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V."

					PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION

					Signed: 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-9	THE DEFINING SYMBOL OF CANADIAN DIAMONDS THE DEFINING SYMBOL OF CANADIAN DIAMONDS	**App** 21-NOV-2003 **App** 78331599 **Reg** 20-NOV-2007 **Reg** 3339229 Cancelled **Cancellation Section:** 8 Section 44(D)	**INT. CL.** 14 PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES **INT. CL. 35** WHOLESALE DISTRIBUTORSHIPS FEATURING DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY

					NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V." PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)

					Assignor: BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION **Signed:** 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-10	*Design Only* 	**App** 21-NOV-2003 **App** 78331632 **Reg** 26-AUG-2008 **Reg** 3492580 Registered Section 44(D)	**INT. CL. 14** DIAMONDS; PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES **INT. CL. 35** WHOLESALE AND RETAIL DISTRIBUTORSHIPS FEATURING DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES; PROVIDING WEBSITE FEATURING CONSUMER INFORMATION ON DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION

					Signed: 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V." PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION

					P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION **Signed:** 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-11	CANADAMARK **Cross References:** CANADA MARK	**App** 29-OCT-2002 **App** 76464985 **Reg** 06-NOV-2007 **Reg** 3328185 Registered	**INT. CL.** 14 PRECIOUS GEMSTONES; JEWELRY **INT. CL. 38** PROVIDING MULTIPLE-USER ACCESS TO A GLOBAL COMPUTER INFORMATION NETWORK FOR THE TRANSFER AND DISSEMINATION OF A WIDE-RANGE OF INFORMATION **INT. CL. 40** LASER SCRIBING OF PRECIOUS GEMSTONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** BHP BILLITON INNOVATION PTY LTD. AUSTRALIA CORPORATION **Signed:** 31-MAY-2003 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 14-DEC-2004 **Reel/Frame:** 2992/0668 **Correspondent:** ROTHWELL, FIGG, ERNST & MANBECK ROBERT B. MURRAY 1425 K ST., N.W. SUITE 800 WASHINGTON, D.C. 20005 **Assignee:** POINT LAKE MARKETING INC. BRITISH COLUMBIA CORPORATION SUITE 2300 1111 WEST GEORGIA STREET

					VANCOUVER, BRITISH COLUMBIA, V6E 4M3 CA (CANADA) **Assignor:** BHP BILLITON INNOVATION PTY LTD AUSTRALIA COMPANY **Signed:** 31-MAY-2003 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 17-DEC-2004 **Reel/Frame:** 2994/0839 **Correspondent:** STITES & HARBISON, PLLC BREWSTER TAYLOR 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314 **Assignee:** POINT LAKE MARKETING INC. CANADA CORPORATION 2300 1111 WEST GEORGIA STREET VANCOUVER, V6E 4M3 CA (CANADA) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268

					ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V." PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800

					TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION **Signed:** 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-12	EKATI	**App** 05-FEB-1999 **App** 75635156 **Reg** 11-DEC-2001 **Reg** 2517996 Renewed (Registered)	**INT. CL.** 14 PRECIOUS GEMSTONES AND JEWELRY	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, ONATRIO, M5W 4T9 CA (CANADA)	**Assignor:** BHP DIAMONDS, INC. CANADA CORPORATION **Signed:** 10-OCT-2011 **Brief:** CHANGE OF NAME **Recorded:** 06-MAR-2013 **Reel/Frame:** 4976/0093 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON DIAMONDS INC. CANADA CORPORATION 925 WEST GEORGIA STREET

					2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS INC CANADA CORPORATION **Signed:** 01-JUL-2007 **Brief:** AMALGAMATION OF BHP BILLITON DIAMONDS INC. WITH POINT LAKE MARKETING INC AND BHP PETROLEUM (TOLO) INC. TO FORM BHP BILLITON DIAMONDS INC. **Recorded:** 13-MAR-2013 **Reel/Frame:** 4981/0204 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON DIAMONDS INC CANADA CORPORATION 2000 CATHEDRAL PLACE, 925 WEST GEORGIA STREET VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS INC CANADA CORPORATION **Signed:** 01-JUL-2008 **Brief:** AMALGAMATION OF BHP BILLITON DIAMONDS INC. WITH BHP BILLITON (TRINIDAD-EAST COAST) LTD TO FORM BHP BILLITON DIAMONDS INC **Recorded:** 14-MAR-2013 **Reel/Frame:** 4982/0275 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614

					Assignee: BHP BILLITON DIAMONDS INC CANADA CORPORATION 925 WEST GEORGIA STREET 2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS INC CANADA CORPORATION **Signed:** 01-JAN-2010 **Brief:** CHANGE OF NAME **Recorded:** 18-MAR-2013 **Reel/Frame:** 4984/0541 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON CANADA INC CANADA CORPORATION 925 WEST GEORGIA STREET 2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON CANADA INC CANADA CORPORATION **Signed:** 01-JUL-2010 **Brief:** AMALGAMATION OF BHP BILLITON CANADA INC WITH ATHABASCA POTASH INC TO FORM BHP BILLITON CANADA INC **Recorded:** 19-MAR-2013 **Reel/Frame:** 4985/0076 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:**

					BHP BILLITON CANADA INC CANADA CORPORATION 925 WEST GEORGIA STREET 2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON CANADA INC CANADA CORPORATION **Signed:** 01-JUL-2012 **Brief:** AMALGAMATION OF BHP BILLITON CANADA INC WITH BHP BILLITON (TRINIDAD 3B) INC TO FORM BHP BILLITON CANADA INC **Recorded:** 20-MAR-2013 **Reel/Frame:** 4985/0927 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON CANADA INC CANADA CORPORATION 2900 - 550 BURRARD STREET VANCOUVER, BC V6C 0A3 CA (CANADA) **Assignor:** BHP BILLITON CANADA INC CANADA CORPORATION **Signed:** 10-APR-2013 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 08-NOV-2013 **Reel/Frame:** 5159/0041 **Correspondent:** PAUL HERBERT C/O RICHES, MCKENZIE & HERBERT LLP SUITE 1800 2 BLOOR STREET EAST TORONTO, ONTARIO M4W 3J5 **Assignee:** DOMINION DIAMOND EKATI

					CORPORATION CANADA CORPORATION 1102 4920 52 STREET YELLOWKNIFE, NT, X1A 3T1 CA (CANADA) **Assignor:** DOMINION DIAMOND EKATI CORPORATION CANADA CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 08-NOV-2013 **Reel/Frame:** 5159/0047 **Correspondent:** PAUL HERBERT C/O RICHES, MCKENZIE & HERBERT LLP SUITE 1800 2 BLOOR STREET EAST TORONTO, ONTARTIO M4W 3J5 **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, ONATRIO, M5W 4T9 CA (CANADA)

EXHIBIT A

FORM OF SUPPLEMENT
TO
CANADIAN PLEDGE AND SECURITY AGREEMENT

TO: Name: Credit Suisse AG, Cayman Islands Branch, as administrative agent (the "**Agent**")
Address: Eleven Madison Avenue, 6th Floor
New York, New York 10010
Attention: Agency Manager
Email: agency.loanops@credit-suisse.com
Fax: (212) 322-2291

RECITALS:

A. Reference is made to the Canadian Pledge and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") dated as of November 1, 2017 entered into by Northwest Acquisitions ULC and certain of its affiliates (including those which thereafter sign a Supplement), in favour of the Agent (for its own benefit and for the benefit of the other Secured Parties).

B. Capitalized terms used but not otherwise defined in this Supplement have the respective meanings given to such terms in the Security Agreement, including the definitions of terms incorporated in the Security Agreement by reference to other agreements.

C. Section 40 of the Security Agreement provides that additional Persons may from time to time after the date of the Security Agreement become Debtors under the Security Agreement by executing and delivering to the Agent a supplemental agreement to the Security Agreement in the form of this Supplement.

D. The undersigned (the "**New Debtor**") has agreed to become a Debtor under the Security Agreement by executing and delivering this Supplement to the Agent.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the New Debtor, the New Debtor agrees with and in favour of the Agent (for its own benefit and for the benefit of the Secured Parties) as follows:

1. The New Debtor has received a copy of, and has reviewed, the Security Agreement and is executing and delivering this Supplement to the Agent pursuant to Section 40 of the Security Agreement.

2. Effective from and after the date this Supplement is executed and delivered to the Agent by the New Debtor:

(a) the New Debtor shall be, and shall be deemed for all purposes to be, a Debtor under the Security Agreement with the same force and effect, and subject to the same agreements, representations, indemnities, liabilities, obligations and Security Interests, as if the New Debtor had been, as of the date of this Supplement, an original signatory to the Security Agreement as a Debtor; and

(b) all Collateral of the New Debtor shall be subject to the Security Interests granted by the New Debtor as security for the due payment and performance of the Secured Liabilities of the New Debtor in accordance with the provisions of the Security Agreement.

In furtherance of the foregoing, the New Debtor, as general and continuing collateral security for the due payment and performance of its Secured Liabilities, pledges, mortgages, charges and assigns (by way of security) to the Agent (for its own benefit and for the benefit of the other Secured Parties), and grants to the Agent (for its own benefit and for the benefit of the other Secured Parties) a security interest in, all right, title and interest in and to the Collateral of the New Debtor. The terms and provisions of the Security Agreement are incorporated by reference in this Supplement.

3. The New Debtor represents and warrants to the Agent (for its own benefit and for the benefit of the other Secured Parties) that each of the representations and warranties made or deemed to have been made by it under the Security Agreement as a Debtor are true and correct on the date of this Supplement.

4. All of the information set out in Schedule A to this Supplement with respect to the New Debtor is accurate and complete as of the date of this Supplement.

5. Upon this Supplement bearing the signature of any Person claiming to have authority to bind the New Debtor coming into the possession of the Agent, this Supplement and the Security Agreement shall be deemed to be finally and irrevocably executed and delivered by, and be effective and binding on, and enforceable against, the New Debtor free from any promise or condition affecting or limiting the liabilities of the New Debtor. No statement, representation, agreement or promise by any officer, employee or agent of the Agent or any Secured Party, unless expressly set forth in this Supplement, forms any part of this Supplement or has induced the New Debtor to enter into this Supplement and the Security Agreement or in any way affects any of the agreements, obligations or liabilities of the New Debtor under this Supplement and the Security Agreement.

6. Delivery of an executed signature page to this Supplement by the New Debtor by facsimile or other electronic transmission shall be as effective as delivery by the New Debtor of a manually executed copy of this Supplement by the New Debtor.

7. The New Debtor hereby agrees to file, from time to time, in any relevant jurisdiction any financing statements (including fixture filings), and financing change statements that contain the information required by the PPSA or the UCC of each applicable jurisdiction for the filing of any financing statement or financing change statement relating to the Collateral, including the filing

of a financing statement describing the Collateral as "all assets now owned or hereafter acquired by the Debtor or in which Debtor otherwise has rights" or using words of similar meaning.

8. This Supplement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein.

9. This Supplement and the Security Agreement shall be binding upon the New Debtor and its successors. The New Debtor shall not assign its rights and obligations under this Supplement or the Security Agreement, or any of its rights or obligations in this Supplement or the Security Agreement.

Dated: **[MONTH] [DAY], [YEAR]**

[NEW DEBTOR], as a Debtor

By: _____
Name:
Title:

SCHEDULE A

DEBTOR INFORMATION

Full legal name:

Prior names:

Predecessor companies:

Jurisdiction of incorporation or organization:

Address of chief executive office:

Provinces where business is carried on or tangible Personal Property is kept:

Addresses of all owned real property:

Addresses of all leased real property:

Subsidiaries of the New Debtor:

Instruments, Documents of Title and Chattel Paper of the New Debtor:

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
[SUBCO]	[100 common shares]	[100%]	[C-1]	[Toronto]

Pledged Securities Accounts:

Pledged Securities Intermediary	Securities Account Number	Pledged Securities Intermediary's Jurisdiction	Pledged Security Entitlements
[BROKERAGE HOUSE]	[NUMBER]	[Ontario]	[100 common shares of [COMPANY]]

Pledged Uncertificated Securities:

Pledged Issuer	Pledged Issuer's Jurisdiction	Securities Owned	% of issued and outstanding Securities of Pledged Issuer
[LIMITED PARTNERSHIP]	[Ontario]	[100 limited partnership units]	[50% of all limited partnership interests]

Pledged Futures Accounts:

Pledged Futures Intermediary	Futures Account Number	Pledged Futures Intermediary's Jurisdiction	Pledged Futures Contracts
[BROKERAGE HOUSE]	[NUMBER]	[Ontario]	[*Brief description of Contract*]

Registered trade-marks and applications for trademark registrations:

Country	*Trade-mark*	*Application No.*	*Application Date*	*Registration No.*	*Registration Date*	*Licensed to or by Debtor*[1]
						[Y/N]

Patents and patent applications:

Country	*Title*	*Patent No.*	*Application Date*	*Date of Grant*	*Licensed to or by Debtor*
					[Y/N]

Copyright registrations and applications for copyright registrations:

Country	*Work*	*Application No.*	*Application Date*	*Registration No.*	*Licensed to or by Debtor*
					[Y/N]

Industrial designs/registered designs and applications for registered designs:

Country	*Design*	*Application No.*	*Application Date*	*Registration No.*	*Issue Date*	*Licensed to or by Debtor*
						[Y/N]

[1] If the answer to this or any corresponding column is "yes", describe the particulars of each such licence.

This is Exhibit "B" referred to in the Affidavit of

Thomas Croese

sworn before me this 7th day of ~~April~~ May, 2020.

A Commissioner for Oaths in and for the Northwest Territories

SHEILA M. MacPHERSON
Notary Public in and for the
Northwest Territories. My commission
does not expire being a solicitor

SUBORDINATION AGREEMENT/
ACKNOWLEDGMENT OF LIEN

This Agreement made the 1st day of November, 2017.

BETWEEN:

DIAVIK DIAMOND MINES (2012) INC., in its capacity as Participant

(hereinafter called "**DDMI (2012)**")

OF THE FIRST PART;

- and -

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as notes collateral agent

(hereinafter referred to as the "**Agent**")

OF THE SECOND PART;

- and -

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP,

(hereinafter called the "**DDDLP**")

OF THE THIRD PART;

- and -

NORTHWEST ACQUISITIONS ULC

(hereinafter called the "**Escrow Issuer**")

OF THE FOURTH PART

WHEREAS Kennecott Canada Inc. ("**Kennecott**") and Aber Resources Limited ("**ARL**") entered into the Diavik Joint Venture Agreement dated March 23, 1995, as amended by an Amending Agreement dated December 1, 1995 (the "**Original JVA**");

AND WHEREAS Kennecott assigned all of its rights under the Original JVA to Diavik Diamond Mines Inc. ("**DDMI**") and ARL assigned all of its rights under the Original JVA to Aber Diamond Mines Ltd. ("**ADM**") (a predecessor of the Dominion Diamond Corporation);

AND WHEREAS DDMI and ADM entered into the Diavik Joint Venture Amending Agreement (No. 2) dated as of the 17th day of January, 2002 (the "**JVA Amending Agreement No. 2**");

AND WHEREAS DDMI and ADM entered into the agreement to establish a protocol for diamond splitting dated as of January 7, 2003 (the "**Original Protocol Agreement**"), further amending the Original JVA as amended by the JVA Amending Agreement No. 2;

AND WHEREAS DDMI and ADM entered into the Diavik Joint Venture Amending Agreement (No. 3) dated as of March 3, 2004 (the "**JVA Amending Agreement No. 3**") to further amend the Original JVA by deleting certain of the provisions of the JVA Amending Agreement No. 2;

AND WHEREAS ADM assigned all of its rights under the Original JVA, as amended, to Aber Diamond Limited Partnership (a predecessor of Harry Winston Diamond Limited Partnership "**HWDLP**", which is in turn a predecessor of DDDLP) effective as of March 11, 2005;

AND WHEREAS DDMI assigned all of its rights under the Original JVA, as amended and supplemented by the JVA Amending Agreement No. 2 and the JVA Amending Agreement No. 3, to DDMI (2012), effective as of January 7, 2014;

AND WHEREAS DDMI and HWDLP entered into an amendment to the Protocol Agreement dated as of November 4, 2011, and a further amendment dated as of February 14, 2014 (together the "**Protocol Agreement Amendments**", and together with the Original Protocol Agreement, the "**Protocol Agreement**");

AND WHEREAS DDMI and DDDLP entered into an Environmental Security Agreement dated August 25, 2015, amended on November 5, 2015 and June 30, 2017 (the "**ESA**");

AND WHEREAS the Original JVA, as amended and supplemented by the JVA Amending Agreement No. 2, the JVA Amending Agreement No. 3, the Protocol Agreement and the ESA, in each case as in effect on the date hereof, are hereinafter referred to as the "**JVA**";

AND WHEREAS the Escrow Issuer and the Agent, *inter alios*, are parties to an indenture dated as of October 23, 2017 (the "**Indenture**");

AND WHEREAS, pursuant to a purchase agreement dated October 6, 2017 among the Escrow Issuer, Dominion Finco Inc. (the "**Co-Issuer**", and collectively with the Escrow Issuer, the "**Issuers**") and Credit Suisse Securities (USA) LLC and the Indenture, the Issuers issued and sold US$550,000,000 aggregate principal amount of 7.125% Senior Secured Second Lien Notes due 2022 (the "**Notes**");

AND WHEREAS, DDDLP has agreed to guarantee to each holder of Notes, to the Agent and to Wilmington Trust, National Association, in its capacity as trustee (Wilmington Trust, National Association, in such capacity, in its capacity as Agent and the holders of Notes are referred to herein as the "**Secured Parties**") under the Indenture and its successors and assignees on behalf of each holder of Notes the full payment of principal of, premium, if any, interest, if any, and certain other additional amounts, if any, on and all other monetary obligations of the Issuers under the Indenture and the Notes (collectively, the "**Obligations**"), and as security for the obligations of DDDLP pursuant to such guarantee, DDDLP has agreed to grant to the Agent for the benefit of the Secured Parties by way of a general security agreement substantially in the form attached hereto as Schedule "A" a mortgage, charge, assignment and security interest over, *inter alia*, DDDLP's Participating Interest, any Net Profit Royalty to which DDDLP may become entitled pursuant to Article 10 of the JVA and all of DDDLP's right, title and interest to the Assets (as defined under the JVA) (collectively and including as same may be amended, restated, revised, supplemented or replaced from time to time, the "**Secured Parties' Security**");

AND WHEREAS, for the purpose of delineating their respective rights and obligations in relation to one another, the parties hereto have agreed to enter into this Agreement;

NOW THEREFORE, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto) the parties hereto hereby covenant and agree with each other as follows:

1. **Subordination**

The Agent, for itself and on behalf of the Secured Parties, hereby agrees that the mortgages, charges, assignments and security interests in DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA created by the Secured Parties' Security (the "**Secured Parties' Charge**") are fully subordinate to the terms of the JVA (and the respective rights of the parties thereunder) and the Secured Parties' Charge shall be fully subordinate in priority to any mortgage, security interest or other security now or hereafter held by DDMI (2012) in DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA (as in effect on the date hereof, or as amended from time to time with the consent of the Agent) (the "**DDMI (2012) Charge**"). The foregoing acknowledgement and grant of priority shall be effective notwithstanding the respective dates of execution of, advance of monies under, registration or perfection of, notice or demand under, enforcement of the Secured Parties' Charge and the DDMI (2012) Charge. The parties hereto agree that the Secured Parties' security interest in any other assets or property (other than DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA) is not subordinated, affected, diminished or otherwise compromised hereby.

2. **Notice and Acknowledgement of Security**

(a) The Agent hereby gives written notice of the Secured Parties' Security.

(b) DDMI (2012) hereby acknowledges that the Agent and DDDLP have delivered to DDMI (2012) written notice of the Secured Parties' Security and DDMI (2012) acknowledges that the granting of the Secured Parties' Security is a permitted transfer under Section 15.2(d) of the JVA.

3. **Confirmation**

Pursuant to Section 2.4 of the JVA, DDMI (2012) and DDDLP hereby acknowledge and confirm that, as of the date hereof:

(a) DDDLP's Participating Interest is 40%; and

(b) DDMI (2012)'s Participating Interest is 60%.

4. **Joint Venture Agreement**

Notwithstanding anything to the contrary contained in the Secured Parties' Security, the Agent agrees for itself and on behalf of the Secured Parties that the enforcement rights of the Agent and the Secured Parties with respect to the Secured Parties' Charge must be exercised in accordance and in compliance with the applicable terms of the JVA including without limitation paragraph 15.2(d) thereof. Without limiting the generality of the foregoing, to the extent the Agent becomes entitled to a share of diamond production from the Diavik project, the Agent will be bound by, and entitled to the benefit of, the Protocol Agreement.

5. **Notices**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by telecopier, electronic mail or other electronic communication addressed:

(a) in the case of DDMI (2012) to:

Diavik Diamond Mines (2012) Inc.
P.O. Box 2498
5201 – 50th Avenue, Suite 300
Yellowknife, NT X1A 2P8
Attention: Vice President, Finance
Telecopier: (867) 336-9058
Email: jon.brennan@riotinto.com

(b) in the case of the Agent to:

Wilmington Trust, National Association, as Agent
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Dominion Diamond Administrator
Fax: (612) 217-5651

(c) in the case of DDDLP to:

c/o Dominion Diamond Holdings Ltd.
900 – 6064 Street SW
Calgary, Alberta T2P 1T1
Attention: Ron Cameron
Telecopier: (416) 362-2230
Email: ron.cameron@ekati.ddcorp.ca

with a copy to:

Dominion Diamond Corporation
900-6064 Street SW
Calgary, Alberta T2P 1T1
Attention: Ron Cameron
Telecopier: (416) 362-2230
Email: ron.cameron@ekati.ddcorp.ca

(d) in the case of the Escrow Issuer to:

Northwest Acquisitions ULC
900 - 606 4 Street SW
Calgary, AB T2P 1T1
Canada
Attn: Finance
Tel: (403) 910-1933

or to such other address as any party hereto may, from time to time designate in writing to the other parties hereto. Any communication shall be considered to have been received on the date of delivery if delivered during business hours by courier or electronic mail, or on the first business day following delivery if delivered after business hours or by telecopier.

6. **Defined Terms**

Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the JVA.

7. **Further Assurances**

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

8. **Successors and Assigns**

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

9. **Governing Law**

This Agreement shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

10. **Counterparts**

This Agreement may be executed by facsimile or electronic signature and in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

11. **Concerning the Agent**

Wilmington Trust, National Association is entering this Agreement in its capacity as notes collateral agent under the Indenture and not in its individual capacity. In acting hereunder, the Agent shall be entitled to all of the rights, privileges and immunities of the notes collateral agent set forth in the Indenture, including without limitation, those set forth in Section 11.8 thereof, as if such rights, privileges and immunities were set forth herein.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first noted above.

DIAVIK DIAMOND MINES (2012) INC., as Participant

louis.beland

Digitally signed by louis.beland
DN: dc=org, dc=riotinto, dc=corp, ou=PROD, ou=AMER, ou=CA-Montreal_Maison, ou=People, cn=louis.beland, email=Louis.Beland@riotinto.com
Date: 2017.10.27 09:48:13 -04'00'

By: Thenua, Sandeep (DDMI) Digitally signed by Thenua, Sandeep (DDMI) DN: dc=org, dc=riotinto, dc=corp, ou=PROD, ou=AMER, ou=CA-Yellowknife_HQ, ou=People, cn=Thenua, Sandeep (DDMI), email=Sandeep.Thenua@riotinto.com Date: 2017.10.26 17:14:43 -06'00'

Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Notes Collateral Agent

By: _____

Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first noted above.

DIAVIK DIAMOND MINES (2012) INC., as Participant

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Notes Collateral Agent

By: _____
Name: Hallie E. Field
Title: Assistant Vice President

S - 2

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner, DOMINION DIAMOND HOLDINGS LTD.

By: _____
Name: Matt Quinlan
Title: Chief Financial Officer

NORTHWEST ACQUISITIONS ULC

By: _____
Name:
Title:

S - 2

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner, DOMINION DIAMOND HOLDINGS LTD.

By: _____
Name:
Title:

NORTHWEST ACQUISITIONS ULC

By: _____
Name: JOSEPH M. RACICOT
Title: SECRETARY

SCHEDULE "A"
GENERAL SECURITY AGREEMENT

See attached.

SECOND LIEN CANADIAN PLEDGE AND SECURITY AGREEMENT

This Second Lien Canadian Pledge and Security Agreement is made as of November 1, 2017 by and among the Debtors (as hereinafter defined) and Wilmington Trust, National Association, as Notes Collateral Agent (under and as defined in the Indenture referred to below) (in such capacity and together with any successor in such capacity, the "**Agent**").

RECITALS:

A. Northwest Acquisitions ULC (the "**Escrow Issuer**"), Dominion Finco Inc. (the "**Co-Issuer**" and, together with the Escrow Issuer, the "**Notes Issuers**") and Wilmington Trust, National Association, as Trustee, Agent, Paying Agent, Transfer Agent and Registrar are parties to that certain indenture dated as of October 23, 2017 (as amended, supplemented, restated, amended and restated, replaced or modified from time to time, the "**Indenture**").

B. Each Guarantor has executed and delivered to the Agent (for its own benefit and for the benefit of the other Secured Parties) a supplemental indenture, dated as of the date hereof, pursuant to which it has guaranteed the Notes Obligations of the Notes Issuers under the Indenture and the Notes.

C. To secure the payment and performance of its Secured Liabilities, each Debtor has agreed to grant to the Agent (for its own benefit and for the benefit of the other Secured Parties) the Security Interests with respect to its Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by each Debtor, each Debtor severally (and not jointly or jointly and severally) agrees with and in favour of the Agent (for its own benefit and for the benefit of the other Secured Parties) as follows:

1. **Definitions**. In this Agreement capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Indenture, and the following terms have the following meanings:

"**Accessions**", "**Account**", "**Certificated Security**", "**Chattel Paper**", "**Consumer Goods**", "**Document of Title**", "**Equipment**", "**Financial Asset**", "**Futures Account**", "**Futures Contract**", "**Futures Intermediary**", "**Goods**", "**Instrument**", "**Intangible**", "**Inventory**", "**Investment Property**", "**Money**", "**Proceeds**", "**Securities Account**", "**Securities Intermediary**", "**Security**", "**Security Certificate**", "**Security Entitlement**" and "**Uncertificated Security**" have the meanings given to them in the PPSA.

"**Agent**" shall have the meaning given to that term in the preamble hereto.

"**Agreement**" means this second lien Canadian pledge and security agreement, including the exhibits and recitals to this agreement, the Supplements and the Schedules, as it or they may be amended, supplemented, restated, amended and restated, replaced or modified from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.

"**Applicable Authorized Representative**" has the meaning assigned to such term in Section 14.

"**Books and Records**" means, with respect to any Debtor, all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Personal Property of such Debtor which are at any time owned by such Debtor or to which such Debtor (or any Person on such Debtor's behalf) has access.

"**Business**" means the exploration, development and operation of diamond deposits and diamond mines and the polishing, sorting, marketing and wholesale sale of diamonds.

"**Capital Stock**" means:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or, membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"**Collateral**" means, with respect to any Debtor, any and all and any part of each Debtor's present and after acquired personal property, including all of the present and future:

(a) undertaking;

(b) Personal Property (including any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that such Debtor may from time to time provide to the Agent in connection with this Agreement);

(c) real property (including any real property that may be described in any Schedule to this Agreement or any schedules, documents or listings that such Debtor may from time to time provide to the Agent in connection with this Agreement and including all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property); and

(d) without limiting the generality of the foregoing, all right, title and interest in and to any and all mineral claims, mining rights, mining claims (whether patented or unpatented), mining leases (including the leasehold or other interest created pursuant to any such mining lease and all rights or options of the lessee under each such mining lease to purchase or acquire the leasehold estate of the landlord or any right or option of termination, renewal, extension or first offer or first

refusal for the same), including, without limitation, those described in Schedule B to this Agreement,

of such Debtor, including Books and Records, Contracts, Intellectual Property Rights and Permits, and including all such property in which such Debtor now or in the future has any right, title or interest whatsoever, whether owned, leased, licensed, possessed or otherwise held by such Debtor, and all Proceeds of any of the foregoing, wherever located; provided, however, that the term "Collateral"* shall not include any Excluded Assets.

"**Contracts**" means, with respect to any Debtor, all contracts and agreements to which such Debtor is at any time a party or pursuant to which such Debtor has at any time acquired rights, and includes (i) all rights of such Debtor to receive money due and to become due to it in connection with a contract or agreement, (ii) all rights of such Debtor to damages arising out of, or for breach or default with respect to, a contract or agreement, and (iii) all rights of such Debtor to perform and exercise all remedies in connection with a contract or agreement.

"**Debtors**" means the Persons executing a signature page to this Agreement as a "Debtor" and any other Person which hereafter delivers a Supplement in the capacity of a "Debtor", and "**Debtor**" means any one of them.

"**Environmental Laws**" means all laws, rules, regulations, codes and ordinances and binding orders, decrees, judgments, injunctions, permits, authorizations, approvals, licenses, notices or agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to pollution, the environment, preservation or reclamation of natural resources, the protection of plants or animals, Hazardous Materials or to human health and safety matters with respect to exposure to any Hazardous Materials.

"**Equivalent Amount**" in one currency on any day means the amount of such currency that would result from the Agent converting into such currency another currency at approximately 12:00 noon (Toronto time) on such day in accordance with Agent's customary practice.

"**Event of Default**" has the meaning given to that term in the Indenture or in any Pari Secured Indebtedness Agreement, as applicable.

"**Exhibits**" means the exhibits to this Agreement.

"**Flood Hazard Property**" means any Material Real Estate Asset subject to a Mortgage if any building included in such Material Real Estate Asset is located in an area designated by the Federal Emergency Management Agency as having special flood hazards.

"**Governmental Authority**" means the government of the United States of America, Canada, any other nation or any political subdivision thereof, whether state, provincial, territorial, or local, and any agency, authority, ministry, board, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, and any private body exercising any supervisory or oversight role established pursuant to an agreement with government.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including wastes from mining operations, petroleum or petroleum distillates, asbestos or asbestos containing materials, metals, tailings, waste rock, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes in each case above as regulated pursuant to any Environmental Law.

"**Insurance**" means any and all insurance policies covering any or all of any other Collateral (regardless of whether the Agent is the loss payee or an additional insured or named insured thereof).

"**Intellectual Property Rights**" means, with respect to any Debtor, all industrial and intellectual property rights of such Debtor or in which such Debtor has any right, title or interest, including copyrights, patents, inventions (whether or not patented or patentable), trade-marks, tradenames, get-up trade dress and other business indicia, industrial designs, integrated circuit topographies, know how, processes, business methods, methods of production, scientific and technical information and data and trade secrets, registrations and applications for registration for any such industrial and intellectual property rights, and all Contracts related to any such industrial and intellectual property rights.

"**Intervening Creditor**" has the meaning assigned to such term in Section 48.

"**Issuer**" has the meaning given to that term in the STA.

"**Material Adverse Effect**" means (a) a material adverse effect on the business, financial condition or results of operations of the Notes Issuers and their Restricted Subsidiaries, taken as a whole or (b) a material and adverse effect on the material rights and remedies (taken as a whole) of the Notes Collateral Agent, the Trustee or any Pari Secured Indebtedness Agent under any Notes Documents or Pari Secured Indebtedness Documents.

"**Material Real Estate Asset**" means any "fee-owned" Real Estate Asset having a fair market value (as determined by the Escrow Issuer in good faith after taking into account any liabilities with respect thereto that impact such fair market value) in excess of USD$10,000,000.

"**Mortgages**" means any mortgage, deed of trust, deed to secure debt, hypothec or other agreement that conveys or evidences a Lien in favor of the Agent, for the benefit of the Agent and the relevant Secured Parties, on any Material Real Estate Asset constituting Collateral.

"**Notes Issuers**" shall have the meaning given to that term in the recitals hereto, and their respective successors and assigns.

"**Notes Secured Liabilities**" means, with respect to any Debtor, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of such Debtor to the Notes Secured Parties (or any of them) under, in connection with or with respect to the Notes Documents, and any unpaid balance thereof, including all of the Notes Obligations.

"**Notes Secured Parties**" has the meaning assigned to the term "Secured Parties" in the Indenture.

"**Organizational Documents**" means, (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws (or equivalent), (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating or limited liability company agreement, and (e) with respect to any other form of entity, such other organizational documents required by local law or customary under the jurisdiction in which such entity is organized to document the formation and governance principles of such type of entity.

"**Pari Secured Indebtedness**" means "Pari Secured Indebtedness" as defined in the Indenture, but only to the extent such Pari Secured Indebtedness is secured by a Security Interest in favor of the Agent under this Agreement.

"**Pari Secured Indebtedness Agent**" shall mean the Person appointed to act as trustee, agent or representative for the holders of Pari Secured Indebtedness pursuant to any Pari Secured Indebtedness Agreement, together with any permitted successors or assigns of such Person.

"**Pari Secured Indebtedness Agreement**" means any credit agreement, indenture (other than the Indenture) or other agreement, document or instrument pursuant to which any Debtor has or will incur Pari Secured Indebtedness; provided that, in each case, the Indebtedness thereunder has been designated as Pari Secured Indebtedness Secured Liabilities pursuant to and in accordance with Section 46.

"**Pari Secured Indebtedness Document**s" means, with respect to any series of Pari Secured Indebtedness, the Pari Secured Indebtedness Agreement and the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Pari Secured Indebtedness and each other agreement entered into for the purpose of securing such Pari Secured Indebtedness.

"**Pari Secured Indebtedness Secured Liabilities**" means, with respect to any Debtor, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of such Debtor to the Pari Secured Indebtedness Secured Parties (or any of them) under, in connection with or with respect to the Pari Secured Indebtedness, and any unpaid balance thereof, including all of the Pari Secured Indebtedness.

"**Pari Secured Indebtedness Secured Party Consent**" means a consent substantially in the form of Exhibit B to this Agreement executed by the Pari Secured Indebtedness Agent as representative of any holders of Pari Secured Indebtedness Secured Liabilities pursuant to Section 46.

"**Permits**" means, with respect to any Debtor, all permits, licences, waivers, exemptions, consents, certificates, authorizations, approvals, franchises, rights-of-way, easements and entitlements that such Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business.

"**Personal Property**" means personal property and includes Accounts, Chattel Paper, Documents of Title, Financial Assets, Equipment, Goods, Instruments, Insurance, Intangibles, Inventory, Investment Property, Money and Pledged Indebtedness.

"**Pledged Certificated Securities**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Certificated Security.

"**Pledged Futures Accounts**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Futures Account.

"**Pledged Futures Contracts**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Futures Contract.

"**Pledged Futures Intermediary**" means, at any time, any Person which is at such time is a Futures Intermediary at which a Pledged Futures Account is maintained.

"**Pledged Futures Intermediary's Jurisdiction**" means, with respect to any Pledged Futures Intermediary, its jurisdiction as determined under section 7.1(4) of the PPSA.

"**Pledged Indebtedness**" means any and all and any part of present and future Indebtedness owed to any Debtor by any Person.

"**Pledged Issuer**" means, with respect to any Debtor at any time, any Person which is an Issuer of, or with respect to, any Pledged Shares of such Debtor at such time.

"**Pledged Issuer's Jurisdiction**" means, with respect to any Pledged Issuer, its jurisdiction as determined under section 44 of the STA.

"**Pledged Securities**" means, with respect to any Debtor, any and all issued and outstanding Capital Stock held by such Debtor on the date hereof (including of each issuer set forth on the Schedules hereto) or hereafter acquired, together with all rights, privileges, authority and powers of such Debtor relating to such Capital Stock in each issuer of such Capital Stock or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such Capital Stock and any and all interest of such Debtor in the entries on the books of any financial intermediary pertaining to such Capital Stock, and including all Capital Stock issued in respect of any of the foregoing upon any consolidation, amalgamation or merger.

"**Pledged Securities Accounts**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Securities Account.

"**Pledged Securities Intermediary**" means, at any time, any Person which is at such time a Securities Intermediary at which a Pledged Securities Account is maintained.

"**Pledged Securities Intermediary's Jurisdiction**" means, with respect to any Pledged Securities Intermediary, its jurisdiction as determined under section 45(2) of the STA.

"**Pledged Security Certificates**" means, with respect to any Debtor, any and all certificates representing the Pledged Securities of such Debtor.

"**Pledged Security Entitlements**" means, with respect to any Debtor, any and all Collateral of such Debtor that is a Security Entitlement.

"**Pledged Shares**" means, with respect to any Debtor, all Pledged Securities and Pledged Security Entitlements of such Debtor.

"**Pledged Uncertificated Securities**" means, with respect to any Debtor, any and all Collateral of such Debtor that is an Uncertificated Security.

"**Real Estate Asset**" means collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Receiver**" means a receiver, a manager, a receiver and manager, interim receiver or similar official for any Debtor.

"**Release Date**" means the date on which all the Secured Liabilities of each Debtor have been paid and discharged in full in accordance with Section 11.2 of the Indenture and analogous sections of each Pari Secured Indebtedness Document.

"**Schedules**" means the schedules to this Agreement.

"**Secured Documents**" means the Notes Documents and the Pari Secured Indebtedness Documents.

"**Secured Liabilities**" means the Notes Secured Liabilities and the Pari Secured Indebtedness Secured Liabilities.

"**Secured Parties**" means the Notes Secured Parties and the Pari Secured Indebtedness Secured Parties.

"**Security Interests**" means, with respect to any Debtor, the Liens created or granted by such Debtor in favour of the Agent (for its own benefit and for the benefit of the other Secured Parties) under this Agreement.

"**STA**" means the *Securities Transfer Act* (Ontario), including the regulations thereto and related Minister's Orders; provided that, if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Secured Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect

to personal property security in effect in a jurisdiction in Canada other than the Province of Ontario, "STA" means the Securities Transfer Act or such other applicable legislation in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Supplement**" has the meaning given to that term in Section 40.

"**U.S. Security Agreement**" means that certain Second Lien Pledge and Security Agreement, dated as of the date hereof, by and among Dominion Finco Inc., Dominion Diamond Delaware Company LLC, certain affiliates party thereto from time to time as Debtors (as defined therein) and the Agent, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**ULC**" means an Issuer that is an unlimited company, unlimited liability corporation or unlimited liability company or any similar body corporate or other business entity formed under the laws of any jurisdiction whose members, shareholders or other equity holders are, or may at any time become, responsible for any of the obligations of that entity whether such responsibility is to the entity or any creditor of the entity or any other person.

"**ULC Laws**" means the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future laws governing ULCs.

"**ULC Shares**" means shares or other equity interests in the capital stock of a ULC.

2. **Entire Agreement.** This Agreement and the other Secured Documents constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the other Secured Documents.

3. **Currency Matters**. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Canadian Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts denominated in other currencies shall be converted into the Equivalent Amount of Canadian Dollars on the date of calculation, comparison, measurement or determination.

4. **Grant of Security Interests**. As general and continuing collateral security for the due payment and performance of its Secured Liabilities, each Debtor pledges, mortgages, charges and grants to the Agent for its own benefit and for the benefit of the other Secured Parties a continuing, specific and fixed security interest in all of such Debtor's right, title and interest in and to its Collateral.

5. **Fixed Nature of Security Interest**. The Security Interests are intended to operate as a fixed and specific charge of all of the Collateral presently existing, and with respect to all future Collateral, to operate as a fixed and specific charge of such future Collateral.

6. **Limitations on Grant of Security Interests**. The Security Interests do not attach to Consumer Goods or extend to the last day of the term of any lease or agreement for lease of real property. Such last day shall be held by the applicable Debtor in trust for the Agent (for its own benefit and for the benefit of the other Secured Parties) and, on the exercise by the Agent of any of its rights or remedies under this Agreement following an Event of Default which is continuing, shall be assigned by such Debtor as directed by the Agent.

7. **Attachment; No Obligation to Advance**. Each Debtor confirms that value has been given by the Secured Parties to such Debtor, that such Debtor has rights in its Collateral existing at the date of this Agreement or the date of any Supplement, as applicable, and that such Debtor and the Agent have not agreed to postpone the time for attachment of the Security Interests to any of the Collateral of such Debtor. The Security Interests with respect to the Collateral of each Debtor created by this Agreement shall have effect and be deemed to be effective whether or not the Secured Liabilities of such Debtor or any part thereof are owing or in existence before or after or upon the date of this Agreement or the date of any Supplement, as applicable. Neither the execution and delivery of this Agreement or any Supplement nor the provision of any financial accommodation by any Secured Party shall oblige any Secured Party to make any financial accommodation or further financial accommodation available to any Debtor or any other Person.

8. **Representations and Warranties**. Each Debtor represents and warrants to the Agent (for its own benefit and for the benefit of the other Secured Parties) that, as of the date of this Agreement:

(a) Debtor Information. All of the information set out in the Schedules and Supplements, as applicable, with respect to such Debtor is accurate and complete.

(b) Authority. Such Debtor has full power and authority to grant to the Agent (for its own benefit and for the benefit of the other Secured Parties) the Security Interests granted by such Debtor and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of such Debtor's Organizational Documents or any agreement, instrument or restriction to which such Debtor is a party or by which such Debtor or any of its Collateral is bound.

(c) Security Interest. Each Debtor's Security Interest constitutes a legal, valid and perfected security interest in all of such Debtor's Collateral securing the payment and performance of its Secured Liabilities.

(d) Necessary Filings/PPSA Matters. All filings, recordings and registrations which are necessary or desirable to preserve, perfect or protect the Security Interests have been made. No further or subsequent filing, refiling, recording, rerecording,

registration or reregistration is necessary in any jurisdiction, except as provided under applicable law with respect to the filing of continuation statements.

(e) Consents. Except for any consent that has been obtained and is in full force and effect, no material consent of any Person (including any counterparty with respect to any Contract, any account debtor with respect to any Account, or any Governmental Authority with respect to any Permit) is required, or is purported to be required, for the execution, delivery, performance and enforcement of this Agreement (this representation being given with reference to the exclusions contained in Section 6). For the purposes of complying with any transfer restrictions contained in the Organizational Documents of any Pledged Issuer, such Debtor hereby irrevocably consents to any transfer of such Debtor's Pledged Securities of such Pledged Issuer.

(f) Execution and Delivery. This Agreement has been duly authorized, executed and delivered by such Debtor and is a valid and binding obligation of such Debtor enforceable against such Debtor in accordance with its terms, subject only to bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws generally affecting the enforcement of creditors' rights, and to the fact that equitable remedies (such as specific performance and injunction) are discretionary remedies.

(g) No Consumer Goods. Such Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of such Debtor.

(h) Intellectual Property Rights. The Schedules and Supplements set forth a complete list and a description at the date hereof of all registrations and applications for Intellectual Property Rights owned by each Debtor. Each Debtor owns such Intellectual Property Rights free and clear of any Liens (other than Permitted Liens). Each Debtor owns or licenses all Intellectual Property Rights required to be able to carry on its Business and all material licenses included in such Intellectual Property Rights are in full force and effect.

(i) Pledged Certificated Securities. Each Debtor has delivered to the Agent, or prior to the Discharge of Senior Credit Facility Obligations (as defined in the Intercreditor Agreement), the Revolving Credit Facility Collateral Agent, as bailee for the Agent, all Pledged Security Certificates evidencing Pledged Securities held by such Debtor as at the date of this Agreement, together with duly executed instruments of transfer or assignment in blank and all other necessary documents and effective endorsements to enable Agent or its agent or nominee, as the Agent may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Securities upon any enforcement of the Agent's rights and remedies.

(j) Pledged Indebtedness. Each Debtor has delivered to the Agent, or prior to the Discharge of Senior Credit Facility Obligations (as defined in the Intercreditor

Agreement), the Revolving Credit Facility Collateral Agent, as bailee for the Agent, all Instruments evidencing Pledged Indebtedness held by such Debtor as at the date of this Agreement, together with duly executed instruments of transfer or assignment in blank and all other necessary documents and effective endorsements to enable Agent or its agent or nominee, as the Agent may direct, to be registered as the owner of and to transfer or sell or cause to be transferred or sold such Pledged Indebtedness upon any enforcement of the Agent's rights and remedies.

(k) Partnerships, Limited Liability Companies. The terms of any interest in a partnership or limited liability company that is Collateral of such Debtor expressly provide that such interest is a "security" for the purposes of the STA or the UCC, as applicable.

(l) Due Authorization. The Pledged Securities of such Debtor have been, where applicable, duly authorized and validly issued and are fully paid and non-assessable.

(m) Warrants, Options, etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Shares of such Debtor.

(n) No Required Disposition. There is no existing agreement, option, right or privilege capable of becoming an agreement or option pursuant to which such Debtor would be required to sell, redeem or otherwise dispose of any Pledged Shares of such Debtor or under which any Pledged Issuer has any obligation to issue any Securities of such Pledged Issuer to any Person.

(o) No Restrictions. Except for restrictions and limitations imposed by the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement, the Secured Documents, the Senior Documents or securities laws generally, or customary restrictions on transfer contained in its Organizational Documents, all of the Pledged Securities are and will continue to be freely transferable and assignable, and none of the Pledged Securities are or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit the Secured Parties the pledge of such Pledged Securities hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Agent of its rights and remedies hereunder.

9. **Survival of Representations and Warranties**. All representations and warranties made by each Debtor in this Agreement (a) are material, (b) shall be considered to have been relied on by the Secured Parties, and (c) shall survive the execution and delivery of this Agreement and any Supplement or any investigation made at any time by or on behalf of any Secured Party and any disposition or payment of the Secured Liabilities.

10. **Covenants.** Each Debtor covenants and agrees with the Agent (for its own benefit and for the benefit of the other Secured Parties) that:

(a) Further Documentation. Such Debtor shall from time to time, at the expense of such Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as necessary or as the Agent may reasonably request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests, which shall be prepared and filed by the applicable Debtor, and the applicable Debtor shall deliver copies to the Agent promptly thereafter). Such Debtor acknowledges that this Agreement has been prepared based on the existing laws in the Province referred to in the "Governing Law" section of this Agreement and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, such Debtor agrees that the Agent shall have the right (but not the duty) to require that this Agreement be amended, supplemented, restated or replaced, and that such Debtor shall immediately on request by the Agent authorize, execute and deliver any such amendment, supplement, restatement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if such Debtor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Agent Liens similar to, and having the same effect as, the Security Interests. Each Debtor hereby irrevocably authorizes the Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by the UCC or the PPSA of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including the filing of a financing statement describing the Collateral as "all assets now owned or hereafter acquired by the Debtor or in which Debtor otherwise has rights" or using words of similar meaning. Notwithstanding the foregoing authorizations, each Debtor agrees to prepare, record and file, at its own expense, financing statements (and amendments or financing change statements when applicable) with respect to the Collateral now existing or hereafter created meeting the requirements of applicable law in such manner and in such jurisdictions in Canada and the U.S. as are necessary to perfect and maintain perfected the Collateral, and to deliver a verification statement for each such financing statement or other evidence of filing to the Agent.

(b) Maintenance of Records. Such Debtor shall keep and maintain accurate and complete records of the Collateral of such Debtor, including a record of all payments received and all credits granted with respect to the Accounts and Contracts of such Debtor. At the written request of the Agent, acting reasonably,

such Debtor shall mark any Collateral of such Debtor specified by the Agent to evidence the existence of the Security Interests.

(c) Right of Inspection. Such Debtor shall permit the Agent and its representatives and consultants to visit and inspect any of its Collateral at such reasonable times as the Agent may reasonably request upon reasonable prior notice to such Debtor by the Agent, provided that prior to the occurrence of an Event of Default which is continuing, no more than one such visit and inspection shall be permitted in any calendar year and all such visits, inspections, examinations and discussions shall be at the sole cost and expense of the Agent. Such inspections shall not interfere with the operations of such Debtor and the persons performing such inspections shall at all times comply with the applicable safety and security rules of such Debtor.

(d) Limitations on Other Liens. Such Debtor shall not create, incur or permit to exist, and shall use commercially reasonable efforts to defend the Collateral of such Debtor against, and shall take such other action as is reasonably necessary to remove, any and all Liens in and other claims affecting the Collateral of such Debtor, other than the Permitted Liens, and such Debtor shall use commercially reasonable efforts to defend the right, title and interest of the Secured Parties in and to the Collateral of such Debtor against the claims and demands of all Persons.

(e) Limitations on Dispositions of Collateral. Such Debtor shall not sell, lease or otherwise dispose of any of its Collateral, except in compliance with the Indenture and analogous sections of each Pari Secured Indebtedness Document. Following an Event of Default that is continuing, all Proceeds of the Collateral of such Debtor (including all amounts received with respect to Accounts) received by or on behalf of such Debtor, whether or not arising in the ordinary course of such Debtor's business, shall be received by such Debtor as trustee for the Agent and shall be immediately paid to the Agent.

(f) Maintenance of Collateral. Such Debtor shall maintain and preserve all of its Collateral in all material respects in good repair, working order and condition, as applicable (other than ordinary wear and tear and in the case of casualty or condemnation), maintain, renew and keep in effect all Intellectual Property Rights in all material respects, and in material compliance with all applicable laws (except where failure to so comply would not reasonably be expected to have a Material Adverse Effect) and, from time to time, make all needful and proper repairs, renewals, replacements, additions and improvements thereto, so that the Business may be properly and advantageously conducted at all times in accordance with prudent business management, provided that this Section shall not prevent any Debtor from discontinuing, in whole or in part, the operation or the maintenance of any of its properties if such discontinuance is desirable in the conduct of the Business and the Escrow Issuer has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(g) Insurance. Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Escrow Issuer will maintain or cause to be maintained, in each case, as determined by the Notes Issuers in good faith, with financially sound and reputable insurers (determined at the time such insurance is obtained), such insurance coverage with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Parent and the Restricted Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons, including, but only if required by applicable law or regulation, flood insurance with respect to each Flood Hazard Property, in each case in compliance with (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 and (v) the Biggert–Waters Flood Insurance Reform Act of 2012, as now or hereafter in effect or any successor statute thereto, in each case, together with all statutory and regulatory provisions consolidating, amending, replacing, supplementing, implementing or interpreting any of the foregoing, as amended or modified from time to time. Each such policy of insurance maintained by a Debtor shall (i) name the Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable/mortgagee clause or endorsement that names Agent, on behalf of the Secured Parties, as the loss payee/mortgagee thereunder; provided, however, that the Escrow Issuer shall have 90 days after the date of this Agreement (or, prior to the Discharge of Senior Credit Facility Obligations (as defined in the Intercreditor Agreement), such later date as the Revolving Credit Facility Collateral Agent may agree pursuant to the comparable provision of the Revolving Credit Agreement Security Agreements) to comply with the requirements to the foregoing clauses (i) and (ii) with respect to policies in effect on the date of this Agreement.

(h) Further Identification of Collateral. Such Debtor shall promptly furnish to the Agent such statements and schedules further identifying and describing the Collateral of such Debtor, and such other reports in connection with the Collateral of such Debtor, as the Agent may (but shall have no duty to) from time to time reasonably request.

(i) Amalgamation, Merger or Consolidation. Except as permitted by the Indenture and analogous sections of each Pari Secured Indebtedness Document, such Debtor shall not permit any Pledged Issuer of such Debtor to amalgamate, merge or consolidate unless all of the outstanding capital stock held by such Debtor of the surviving or resulting corporation is, upon such amalgamation, merger or consolidation, pledged under this Agreement, and no cash, securities or other

property is distributed with respect to the outstanding shares of any other constituent corporation.

(j) Agreements re Intellectual Property Rights. Debtor shall promptly (and in any event within 30 days) authorize, execute, file and deliver any and all agreements, instruments, documents and papers as necessary or that the Agent may reasonably request to evidence, perfect and record the Security Interests in any such Intellectual Property Rights of such Debtor notified to the Agent in accordance with Section 10(p), including, filings with the Canadian Intellectual Property Office or any successor office or any similar office in any other country, as applicable, and, where applicable, the goodwill of the business of such Debtor connected with the use of, and symbolized by, any such Intellectual Property Rights.

(k) Instruments; Documents of Title; Chattel Paper. Promptly (and in any event within 30 days) upon receipt thereof, the applicable Debtor shall deliver to the Agent, endorsed and/or accompanied by such instruments of assignment and transfer, any and all Instruments, Documents of Title and Chattel Paper of such Debtor included in or relating to the Collateral of such Debtor.

(l) Pledged Certificated Securities. Such Debtor shall promptly (and in any event within 30 days) upon receipt thereof, deliver to the Agent any and all Pledged Security Certificates of such Debtor and other materials as may be required from time to time to provide the Agent with control over all Pledged Certificated Securities of such Debtor in the manner provided under section 23 of the STA. Upon the occurrence of an Event of Default that is continuing, such Debtor shall cause all Pledged Security Certificates (subject, in the case of ULC Shares, to Section 19) of such Debtor to be registered in the name of the Agent or its nominee. If the Pledged Certificated Securities of such Debtor are issued in the predecessor name of such Debtor or the applicable issuer, such Debtor shall, within 30 days after the date hereof, (i) cause the applicable issuer of such Pledged Certificated Securities to issue the Pledged Certificated Securities in the current name of itself and such Debtor (the "**Replacement Certificates**"); and (ii) deliver the Replacement Certificates of such Debtor to the Agent.

(m) Partnerships, Limited Liability Companies. Such Debtor shall ensure that the terms of any interest in a partnership or limited liability company that is Collateral of such Debtor shall expressly provide that such interest is a "security" for the purposes of the STA or the UCC, as applicable.

(n) Transfer Restrictions. If the Organizational Documents of any Pledged Issuer (other than a ULC) restrict the transfer of the Securities of such Pledged Issuer, then such Debtor shall (or, in the case of a Pledged Issuer that is not wholly owned by the Debtor, make commercially reasonable efforts to) deliver to the Agent a certified copy of a resolution of the directors, shareholders, unitholders or partners of such Pledged Issuer, as applicable, consenting to the transfer(s) contemplated by this Agreement, including any prospective transfer of the

Collateral of such Debtor by the Agent upon a realization on the Security Interests.

(o) Mineral Interests. Such Debtor shall ensure that this Agreement, and the Security Interest granted to the Agent (for its own benefit and for the benefit of the other Secured Parties) pursuant to this Agreement, are promptly registered against any material lease, claim or mining register entry relating to the mineral interests of such Debtor. As of the date of this Agreement, a list of all material leases, claims or mining register entries in respect of the Diavik Diamond Mine and the Ekati Buffer Zone is attached as Schedule B.

(p) Notices. Each Debtor shall advise the Agent promptly (and in any event within 30 days), in reasonable detail, of any:

(i) change to a Pledged Securities Intermediary's Jurisdiction, Pledged Issuer's Jurisdiction or Pledged Future Intermediary's Jurisdiction;

(ii) merger, consolidation or amalgamation of such Debtor with any other Person;

(iii) acquisition of any right, title or interest in a Material Real Estate Asset by such Debtor;

(iv) acquisition of any Intellectual Property Rights which are the subject of a registration or application with any governmental intellectual property or other governing body or registry, and which are material to such Debtor's business;

(v) acquisition of any Instrument, Document of Title or Chattel Paper;

(vi) Lien (other than Permitted Liens) on, or claim asserted against, any of the Collateral which is material to such Debtor's business; or

(vii) occurrence of any event, claim or occurrence that could reasonably be expected to have a Material Adverse Effect on the value of the Collateral of such Debtor or on the Security Interests.

Such Debtor shall not effect or permit any of the changes referred to in clauses (ii) through (iv) above unless all filings are made and all other actions taken that are required within the time period required under applicable laws in order for the Agent to continue at all times following such change to have a valid and perfected Security Interest with respect to all of the Collateral of such Debtor, subject to Permitted Liens.

(q) Changes and Other Names. It shall not, without giving 30 days prior written notice to the Agent, (i) change its name nor add a French form of name as it appears in official filings in the jurisdiction of its organization; (ii) change its registered office, head office, chief executive office, places of business, domicile,

corporate offices or warehouses or locations at which any Collateral is held or stored, or the physical location of its books and records; (iii) change the type of entity that it is; or (iv) change its jurisdiction of incorporation or organization. It shall, at its own expense, promptly upon any change described in this Section 10(q) taking effect provide such further documents or instruments as may be necessary or desirable to confirm or perfect the Security Interest and the priority accorded to the Agent by law or under this Agreement.

(r) Additional Material Real Estate Assets. Within 90 days (or prior to the Discharge of Senior Credit Facility Obligations (as defined in the Intercreditor Agreement) such later period as the Revolving Credit Facility Collateral Agent may agree pursuant to the comparable provision of the Revolving Credit Agreement Documents) after the acquisition by any Debtor of any Material Real Estate Asset other than any Excluded Asset, the Agent shall have received with, respect to any Material Real Estate Asset (other than an Excluded Asset) acquired after the Issue Date, a Mortgage and any necessary UCC or PPSA fixture filing or equivalent fixture filing in respect thereof, in each case together with, to the extent customary and appropriate:

(i) evidence that (A) counterparts of such Mortgage have been duly executed, acknowledged and delivered and such Mortgage and any corresponding UCC, PPSA or equivalent fixture filing are filed or recorded in all filing or recording offices that are reasonably necessary in order to create a valid and subsisting Lien on such Material Real Estate Asset in favor of the Agent for the benefit of the Secured Parties, (B) such Mortgage and any corresponding UCC, PPSA or equivalent fixture filings have been duly recorded or filed, as applicable, and (C) all filing and recording taxes and fees have been paid or otherwise provided for;

(ii) a fully paid policy of lender's title insurance (a "Mortgage Policy") (to the extent customarily available on commercially reasonable terms in such jurisdiction) in an amount not to exceed the fair market value of such Material Real Estate Asset (as determined by the Escrow Issuer in good faith)) issued by a nationally recognized title insurance company in the applicable jurisdiction, insuring the relevant Mortgage as having created a valid subsisting Lien on the real property described therein with the ranking or the priority which it is expressed to have in such Mortgage, subject only to Permitted Liens, together with such endorsements to the extent the same are available on commercially reasonable terms in the applicable jurisdiction;

(iii) a customary legal opinion, substantially in the form delivered to the Revolving Credit Facility Collateral Agent, of local counsel for the relevant Debtor in the jurisdiction in which such Material Real Estate Asset is located and, if applicable, in the jurisdiction of formation of the relevant Debtor; and

(iv) (A) surveys and appraisals (including if required under the Financial Institutions Reform Recovery and Enforcement Act of 1989, as amended) and (B) with respect to Material Real Estate Assets located in the U.S., a "Life-of-Loan" flood certifications under Regulation H (together with evidence of federal flood insurance for any such Flood Hazard Property), to the extent required under applicable law; provided that the Agent may (but shall not be required to) accept (A) any existing appraisal so long as such existing appraisal satisfies any applicable local law requirements and (B) any new survey or any existing survey, together with a no change affidavit, in either case sufficient for the relevant title insurance company to remove the standard survey exception and issue the survey-related endorsements.

Notwithstanding any provision of any Security Document to the contrary, if any mortgage tax or similar tax or charge is owed on the entire amount of the Secured Liabilities evidenced hereby in connection with the delivery of a Mortgage or PPSA, UCC or equivalent fixture filing, then, to the extent permitted by, and in accordance with, applicable Requirements of Law, the amount of such mortgage tax or similar tax or charge shall be calculated based on the lesser of (x) the amount of the Secured Liabilities allocated to the applicable Material Real Estate Asset and (y) the fair market value of the applicable Material Real Estate Asset at the time the Mortgage is entered into and determined in a manner reasonably acceptable to Agent and the Escrow Issuer.

11. **Rights before Default.** Until the occurrence of an Event of Default and subject to the terms of this Agreement, each Debtor shall be entitled to deal with the Collateral in accordance with the Indenture and the other Secured Documents, provided that no such action shall be taken which would impair the effectiveness of the Security Interests or materially impair the value of the Collateral or which would be inconsistent with or violate the provisions of this Agreement, any other Secured Document, any other written agreement between the Agent and any Debtor. Upon the occurrence of an Event of Default, each Debtor shall and shall be deemed to hold all Proceeds in trust, separate and apart from other property, for the benefit of the Agent, until all amounts owing by Debtors to the Secured Parties have been paid in full.

12. **Pledged Shares.**

(a) Voting Rights. Unless an Event of Default has occurred and is continuing, each Debtor shall be entitled to exercise all voting power from time to time exercisable with respect to the Pledged Shares of such Debtor and give consents, waivers and ratifications with respect thereto; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would be, or would have a reasonable likelihood of being, materially prejudicial to the interests of the Secured Parties or which would have the effect of imposing any restriction on the transferability of any of the Collateral of such Debtor. Unless an Event of Default has occurred and is continuing, the Agent shall, from time to time at the request and expense of the applicable Debtor, execute or cause to be executed, with respect to all Pledged Securities of such Debtor that are registered in the name of

the Agent or its nominee, valid proxies appointing such Debtor as its (or its nominee's) proxy to attend, vote and act for and on behalf of the Agent or such nominee, as the case may be, at any and all meetings of the applicable Pledged Issuer's shareholders or debt holders, all Pledged Securities that are registered in the name of the Agent or such nominee, as the case may be, and to execute and deliver, consent to or approve or disapprove of or withhold consent to any resolutions in writing of shareholders or debt holders of the applicable Pledged Issuer for and on behalf of the Agent or such nominee, as the case may be. Immediately upon the occurrence and during the continuance of any Event of Default all such rights of the applicable Debtor to vote and give consents, waivers and ratifications shall cease and the Agent or its nominee shall be entitled to exercise all such voting rights and to give all such consents, waivers and ratifications.

(b) Dividends; Interest. Unless an Event of Default has occurred and is continuing, each Debtor shall be entitled to receive any and all cash dividends, interest, principal payments and other forms of cash distribution on the Pledged Shares of such Debtor which it is otherwise entitled to receive, but any and all stock and/or liquidating dividends, distributions of property, returns of capital or other distributions made on or with respect to the Pledged Shares of such Debtor, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of any Pledged Issuer of such Debtor or received in exchange for such Pledged Shares or any part thereof or as a result of any amalgamation, merger, consolidation, acquisition or other exchange of property to which any Pledged Issuer of such Debtor may be a party or otherwise, and any and all cash and other property received in exchange for any Pledged Shares of such Debtor shall be and become part of the Collateral of such Debtor subject to the Security Interests and, if received by such Debtor, shall forthwith be delivered to the Agent or its nominee (accompanied, if appropriate, by proper instruments of assignment and/or stock powers of attorney executed by such Debtor) to be held subject to the terms of this Agreement; and if any of the Pledged Security Certificates have been registered in the name of the Agent or its nominee, the Agent shall execute and deliver (or cause to be executed and delivered) to such Debtor all such dividend orders and other instruments as such Debtor may request for the purpose of enabling such Debtor to receive the dividends, distributions or other payments which such Debtor is authorized to receive and retain pursuant to this Section. If an Event of Default has occurred and is continuing, all rights of such Debtor pursuant to this Section shall cease and the Agent shall have the sole and exclusive right and authority to receive and retain the cash dividends, interest, principal payments and other forms of cash distribution which such Debtor would otherwise be authorized to retain pursuant to this Section. Any money and other property paid over to or received by the Agent pursuant to the provisions of this Section shall be retained by the Agent as additional Collateral hereunder and be applied in accordance with the provisions of this Agreement.

(c) Agent's Rights. Upon the occurrence of an Event of Default that is continuing, all of the Debtors' rights pursuant to Sections 12(a) and 12(b) shall cease and the Agent may, but shall not be obligated to, enforce any Debtor's rights with respect to the Pledged Shares held by such Debtor. Upon an Event of Default that is continuing, such Debtor shall and shall be deemed to hold all Pledged Shares not under the control of the Agent in trust, separate and apart from other property and assets of such Debtor, for the benefit of the Agent until the termination of the commitments, if any, in respect of all Secured Liabilities and the payment in full of all Secured Liabilities, and shall forthwith transfer control of such Pledged Shares to the Agent, or its nominee or agent, as the Agent may direct. The Agent and its nominee shall not have any duty of care with respect to the Pledged Shares other than to use the same care in the custody and preservation of the Pledged Shares as it would with its own property. The Agent or its nominee may take no steps to defend or preserve any Debtor's rights against the claims or demands of others. The Agent or its nominee, however, shall use reasonable efforts to give the applicable Debtor notice of any claim or demand of which it becomes aware to permit such Debtor to have a reasonable opportunity to defend or contest the claim or demand.

13. **Rights on Event of Default**. If an Event of Default has occurred that is continuing, then and in every such case all of the Secured Liabilities shall, at the Agent's option (in accordance with the Secured Documents) and without notice to any Debtor, become immediately due and payable and the Security Interests of each Debtor shall become enforceable and the Agent, in addition to any rights now or hereafter existing under applicable law may, personally or by agent, at such time or times as the Agent may determine and in accordance with the Secured Documents, do any one or more of the following:

(a) Rights under PPSA, etc. Exercise against any or all Debtors all of the rights and remedies granted to secured parties under the PPSA and any other applicable law, or otherwise available to the Agent by contract, at law or in equity.

(b) Demand Possession. Demand possession of any or all of the Collateral of any or all Debtors, in which event each such Debtor shall, at the expense of such Debtor, immediately cause the Collateral of such Debtor designated by the Agent to be assembled and made available or delivered to the Agent at any place designated by the Agent.

(c) Take Possession. Enter on any premises where any Collateral of any or all Debtors is located and take possession of, disable or remove such Collateral by any method permitted by law.

(d) Deal with Collateral. Hold, store and keep idle, or operate, lease or otherwise use or permit the use of, any or all of the Collateral of any or all Debtors for such time and on such terms as the Agent may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person with respect to any of the Collateral of any or all Debtors.

(e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of any or all Debtors and enter on, occupy and use (without charge by such Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, any or all Debtors.

(f) Enforce Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral of any or all Debtors in such manner, on such terms and conditions and at such times as the Agent deems advisable.

(g) Dispose of Collateral. Realize on any or all of the Collateral of any or all Debtors and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral of any or all Debtors (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Agent or elsewhere, with or without advertising or other formality, except as required by applicable law, on such terms and conditions as the Agent may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.

(h) Court-Approved Disposition of Collateral. Obtain from any court of competent jurisdiction an order for the sale or foreclosure of any or all of the Collateral of any or all Debtors.

(i) Purchase by Agent. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral of any or all Debtors offered for sale and, upon compliance with the terms of such sale, hold, retain, sell or otherwise dispose of such Collateral without any further accountability to any Debtor or any other Person with respect to such holding, retention, sale or other disposition, except as required by law. In any such sale to the Agent, the Agent may, for the purpose of making payment for all or any part of the Collateral of any Debtor so purchased, use any claim for any or all of the Secured Liabilities of such Debtor then due and payable to it as a credit against the purchase price.

(j) Collect Accounts. Notify (whether in its own name or in the name of any Debtor) the account debtors under any Accounts of any or all Debtors of the assignment of such Accounts to the Agent and direct such account debtors to make payment of all amounts due or to become due to any or all Debtors with respect to such Accounts directly to the Agent and, upon such notification and at the expense of any such Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Agent deems appropriate in the circumstances.

(k) Transfer of Collateral. Transfer any Collateral of any or all Debtors that is Pledged Shares into the name of the Agent or its nominee.

(l) Voting. Vote with respect to any or all of the Pledged Shares of any or all Debtors (whether or not transferred to the Agent or its nominee) and give or

withhold all consents, waivers and ratifications with respect thereto and otherwise act with respect thereto as though it were the outright owner thereof.

(m) Exercise Other Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Collateral of any or all Debtors that is Pledged Shares as if the Agent were the absolute owner of such Pledged Shares.

(n) Dealing with Contracts and Permits. Deal with any and all Contracts and Permits of any or all Debtors to the same extent as any such Debtor might (including the enforcement, realization, sale, assignment, transfer, and requirement for continued performance), all on such terms and conditions and at such time or times as may seem advisable to the Agent.

(o) Payment of Liabilities. Pay any liability secured by any Lien against any Collateral of any or all Debtors. Each such Debtor shall immediately on demand reimburse the Agent for all such payments and, until paid, any such reimbursement obligation shall form part of the Secured Liabilities of such Debtor and shall be secured by the Security Interests of such Debtor.

(p) Borrow and Grant Liens. Borrow money for the maintenance, preservation or protection of any Collateral of any or all Debtors or for carrying on any of the business or undertaking of any or all Debtors and grant Liens on any Collateral of any or all Debtors (in priority to the Security Interests of any or all Debtors or otherwise) as security for the money so borrowed. Each such Debtor shall immediately on demand reimburse the Agent for all such borrowings and, until paid, any such reimbursement obligations shall form part of the Secured Liabilities of such Debtor and shall be secured by the Security Interests of such Debtor.

(q) Appoint Receiver. Appoint by instrument in writing one or more Receivers of any or all Debtors or any or all of the Collateral of any or all Debtors with such rights, powers and authority (including any or all of the rights, powers and authority of the Agent under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Agent shall (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of any such Debtor and not of the Agent or any of the other Secured Parties.

(r) Court-Appointed Receiver. Obtain from any court of competent jurisdiction an order for the appointment of a Receiver of any or all Debtors or of any or all of the Collateral of any or all Debtors.

(s) Consultants. Require any or all Debtors to engage a consultant of the Agent's choice, or engage a consultant on its own behalf, such consultant to receive the full cooperation and support of each such Debtor and its agents and employees, including unrestricted access to the premises of each such Debtor and the Books

and Records of each such Debtor; all reasonable fees and expenses of such consultant shall be for the account of each such Debtor and each such Debtor hereby authorizes any such consultant to report directly to the Agent and to disclose to the Agent any and all information obtained in the course of such consultant's employment.

The Agent may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on any Debtor or any other Person, and each Debtor hereby waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies shall be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Each Debtor acknowledges and agrees that any action taken by the Agent hereunder following the occurrence and during the continuance of an Event of Default shall not be rendered invalid or ineffective as a result of the curing of the Event of Default on which such action was based.

14. **Waivers and Extensions by the Agent.** The Agent may waive default or any breach by any Debtor of any of the provisions contained in this Agreement pursuant to and subject to the terms of the Indenture and each Secured Document. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived and no act or omission of any Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of any Debtor or the rights of any Secured Party resulting therefrom. Any such waiver must be in writing and signed by the Agent and other Secured Parties as required pursuant to the terms of the Indenture and each Secured Document to be effective. Subject to the terms of the Indenture and each Secured Document, the Agent may (but shall not be obligated to) also grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Collateral to third parties and otherwise deal with any Debtor's guarantors or sureties and others and with the Collateral and other securities as the Agent may see fit without prejudice to the liability of such Debtor to the Secured Parties, or the Agent's rights, remedies and powers under this Agreement. Prior to the Discharge of Senior Credit Facility Obligations (as defined in the Intercreditor Agreement), any extension of time granted by the Revolving Credit Facility Collateral Agent shall be deemed to automatically apply to the comparable provision of this Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Agent to any Debtor shall operate as a waiver, alteration or amendment of the rights of the Agent or otherwise preclude the Agent from enforcing such rights. The holders of the Notes and holders of any Pari Secured Indebtedness will vote together as a single class for all purposes hereunder and under the Security Documents. The Applicable Authorized Representative will have the right to direct the Agent upon the occurrence of an Event of Default to foreclose on, or exercise its other rights with respect to, the Collateral (or exercise other remedies with respect to the Collateral); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to the Secured Documents or applicable laws. Any action taken or not taken by the Agent without the vote of any Secured Party will nevertheless be binding. The "**Applicable Authorized Representative**" shall mean (i) the Trustee so long as the Notes Secured Liabilities

are outstanding and secured by Liens on the Collateral, and (ii) thereafter, the Pari Secured Indebtedness Agent representing the series of Pari Secured Indebtedness secured by Liens on the Collateral pursuant to the Security Documents with the greatest outstanding aggregate principal amount. If the Agent has asked the Secured Parties for instruction and the applicable Secured Parties have not yet responded to such request, the Agent will be authorized to take, but will not be required to take, and will in no event have any liability for taking, any delay in taking or the failure to take, such actions with regard to a default or event of default which the Agent, in good faith, believes to be reasonably required to promote and protect the interests of the Secured Parties; provided that once instructions from the applicable Secured Parties have been received by the Agent, the actions of the Agent will be governed thereby and the Agent will not take any further action which would be contrary thereto.

15. **Realization Standards**. Each Debtor acknowledges and agrees that, to the extent notice of sale or other disposition of the Collateral or any part thereof shall be required by law, fifteen (15) days' prior notice to such Debtor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Debtor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition. To the extent that applicable law imposes duties on the Agent to exercise remedies in a commercially reasonable manner and without prejudice to the ability of the Agent to dispose of the Collateral in any such manner, each Debtor acknowledges and agrees that it is not commercially unreasonable for the Agent to (or not to) (a) incur expenses reasonably necessary to prepare the Collateral of such Debtor for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) fail to obtain third party consents for access to the Collateral of such Debtor to be disposed of, (c) fail to exercise collection remedies against account debtors or other Persons obligated on the Collateral of such Debtor or to remove Liens against the Collateral of such Debtor, (d) exercise collection remedies against account debtors and other Persons obligated on the Collateral of such Debtor directly or through the use of collection agencies and other collection specialists, (e) dispose of Collateral of such Debtor by way of public auction, public tender or private contract, with or without advertising and without any other formality, (f) contact other Persons, whether or not in the same business of such Debtor, for expressions of interest in acquiring all or any portion of the Collateral of such Debtor, (g) hire one or more professional auctioneers to assist in the disposition of the Collateral of such Debtor, whether or not such Collateral is of a specialized nature or an upset or reserve bid or price is established, (h) dispose of the Collateral of such Debtor by utilizing internet sites that provide for the auction of assets of the types included in such Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) dispose of assets in wholesale rather than retail markets, (j) disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) purchase insurance or credit enhancements to insure the Agent against risks of loss, collection or disposition of the Collateral of such Debtor or to provide to the Agent a guaranteed return from the collection or disposition of such Collateral, (l) obtain the services of other brokers, investment bankers, consultants and other professionals, as is reasonably necessary, to assist the Agent in the collection or disposition of any of the Collateral of such Debtor, (m) dispose of Collateral of such Debtor in whole or in part, (n) dispose of Collateral of

such Debtor to a customer of the Agent, (o) establish an upset or reserve bid price with respect to Collateral of such Debtor and (p) accept an assignment of any Collateral in lieu of foreclosure.

16. **Grant of Licence**. For the purpose of enabling the Agent to exercise its rights and remedies under this Agreement when the Agent is entitled to exercise such rights and remedies upon the occurrence and during the continuance of an Event of Default, and for no other purpose, each Debtor grants to the Agent an irrevocable (during the term of this Agreement), non-exclusive licence (exercisable without payment of royalty or other compensation to such Debtor) to use or sublicense any or all of the Intellectual Property Rights of such Debtor, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same. For any trade-marks, tradenames, get up and trade dress and other business indicia, such licence includes an obligation on the part of the Agent to maintain the standards of quality with respect to products and/or services maintained by such Debtor or, in the case of trade-marks, tradenames, get-up and trade dress or other business indicia licensed to such Debtor, the standards of quality with respect to products and/or services imposed upon such Debtor by the relevant licence, and such Debtor shall have a right to inspect any such services and/or products to monitor compliance with such standards. For copyright works, such licence shall include the benefit of any waivers of moral rights and similar rights.

17. **Sale of Pledged Investment Property.** Without limiting the generality of Section 13(g), each Debtor acknowledges that when disposing of any Investment Property, the Agent may be unable to effect a public sale of any or all of the Investment Property, or to sell any or all of the securities as a control block sale at more than a stated premium to the "market price" of any shares, stock, instruments, warrants, bonds, debenture stock and other securities forming part of the Investment Property, by reason of certain prohibitions contained in the *Securities Act* (Ontario) and applicable laws of other jurisdictions, but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Investment Property as principal and to comply with other resale restrictions provided for in the *Securities Act* (Ontario) and other applicable laws. Each Debtor acknowledges and agrees that any such private sale may result in prices and other terms less favourable to the seller than if such sale were a public sale or a control block sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by reason of its being a private sale. The Agent shall be under no obligation to delay a sale of any of the Investment Property for the period of time necessary to permit the issuer of such securities to qualify such Investment Property for public sale under the *Securities Act* (Ontario) or under applicable securities laws of other jurisdictions, even if the issuer would agree to do so, or to permit a prospective purchaser to make a formal offer to all or substantially all holders of any class of securities forming any part of the Investment Property.

18. **Securities Laws**. The Agent is authorized, in connection with any offer or sale of any Pledged Shares of any Debtor, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and

purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. In addition to and without limiting Section 15, each Debtor further agrees that compliance with any such limitation or restriction shall not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Agent shall not be liable or accountable to such Debtor for any discount allowed by reason of the fact that such Pledged Shares are sold in compliance with any such limitation or restriction. If the Agent chooses to exercise its right to sell any or all Pledged Shares of any Debtor, upon written request, such Debtor shall cause each applicable Pledged Issuer to furnish to the Agent all such information as the Agent may request in order to determine the number of shares and other instruments included in the Collateral of such Debtor which may be sold by the Agent in exempt transactions under any laws governing securities, and the rules and regulations of any applicable securities regulatory body thereunder, as the same are from time to time in effect.

19. **ULC Shares**. Notwithstanding any other provision in this Agreement or any other document or agreement among all or some of the parties hereto, to the extent that any ULC Shares constitute Collateral, each Debtor thereof is the sole registered and beneficial holder of any such ULC Shares and will remain so until such time as such ULC Shares are effectively transferred into the name of the Agent, any other Secured Party or any other person on the books and records of the issuer of such pledged ULC Shares. Accordingly, each such Debtor shall be entitled to receive and retain for its own account any dividends, property or other distributions, if any, in respect of such ULC Shares (except insofar as the Debtor has granted a security interest in such dividends, property or other distributions, and any shares which are ULC Shares shall be delivered to the Agent to hold as Collateral hereunder) and shall have the right to vote such ULC Shares and to control the direction, management and policies of the issuer of such ULC Shares to the same extent as the Debtor would if such ULC Shares were not pledged to the Agent pursuant to this Agreement. Nothing in this Agreement, the Secured Documents or any other document or agreement among all or some of the parties hereto is intended to, and nothing in this Agreement, the Secured Documents or any other document or agreement among all or some of the parties hereto shall constitute the Agent nor any other Secured Party as a member, shareholder or other equity holder for the purposes of ULC Laws or provide to them the right to obtain any other indicia of ownership of any ULC until such time as notice is given to the Debtor and further steps are taken thereunder so as to register the Agent, or any other person as holder of Collateral which are ULC Shares. No provision in this Agreement (except this Section 19) or actions taken by the Agent pursuant to this Agreement which might provide or be deemed to provide otherwise, in whole or in part, shall, without the express written consent of the Agent, apply in respect of ULC Shares. To the extent any provision hereof or of any other document or agreement would have the effect of constituting the Agent, any other Secured Party, or any other person as a shareholder or member of an issuer of ULC Shares for the purposes of the ULC Laws prior to such time, such provision shall be severed herefrom or therefrom and ineffective with respect to the Collateral which are ULC Shares without otherwise invalidating or rendering unenforceable this Agreement or such other agreement or invalidating or rendering unenforceable such provision insofar as it relates to Collateral which is not ULC Shares. Notwithstanding anything contained herein, in the Indenture or any other Secured Document to the contrary (except to the extent, if any, that the Agent, the Secured Parties or any of their successors or assigns hereafter expressly becomes a registered member or shareholder of a

ULC), neither the Agent, the Secured Parties nor any of their respective successors or assigns shall be deemed to have assumed or otherwise become liable for any debts or obligations of any ULC. For the avoidance of doubt, and except as otherwise provided in the last sentence of this Section 19, no provision of this Agreement or actions taken by the Agent pursuant to this Agreement shall apply, or be deemed to apply, so as to cause the Agent or any other Secured Party to be, and the Agent and each other Secured Party shall not be or be deemed to be or entitled to, and no Debtor shall cause or permit the Agent or any other Secured Party to:

(a) be registered as a shareholder, member or other equity holder, or apply to be registered as a shareholder, member or other equity holder, of any ULC;

(b) have a notation, or request or assent to a notation, being entered in its favour in the share or equity register in respect of ULC Shares;

(c) be held out, or hold itself out, as a shareholder, member or other equity holder of any ULC;

(d) receive, directly or indirectly, any dividends, property or other distributions from such ULC by reason of the Agent or any other Secured Party holding a security interest in such ULC; or

(e) act or purport to act as a shareholder, member or other equity holder of any ULC, or obtain, exercise or attempt to exercise any rights of a shareholder, member or other equity holder, including the right to attend a meeting of, or to vote any ULC Shares or to be entitled to receive or receive any dividend, property or other distribution in respect of ULC Shares.

The foregoing limitation shall not restrict the Agent from exercising the rights which it is entitled to exercise hereunder in respect of any ULC Shares constituting Collateral at any time that the Agent shall be entitled to realize on all or any portion of the Collateral and upon notice being given of the intention to realize upon such Collateral and in the course of exercising upon such Collateral on the occurrence of an Event of Default that is continuing.

20. **Application of Proceeds**. Upon the occurrence and during the continuance of an Event of Default, the Agent shall promptly apply the proceeds, moneys or balances of any collection or sale of Collateral or Material Real Estate Asset realized through the exercise by the Agent of its remedies hereunder, as well as any Collateral consisting of cash at any time when remedies are being exercised hereunder, as follows:

FIRST, to the payment of all out-of-pocket costs and expenses incurred by the Agent (and Trustee, as applicable) in connection with such collection or sale or otherwise in connection with any Secured Document or any of the Secured Liabilities secured by such Collateral, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Agent under any Secured Document on behalf of any Debtor, any other costs or expenses incurred in connection with the exercise of any right or remedy

hereunder or under any other Secured Document, and all other fees, expenses, indemnities and other amounts owing or reimbursable to the Agent (and the Trustee, as applicable) under any Secured Document in its capacity as such;

SECOND, pro rata (based on the respective amounts of Secured Liabilities described in subclauses (x) and (y) below and as certified by the Escrow Issuer to the Agent) to (x) the Trustee, based on the amount of Notes Secured Liabilities then outstanding under the Indenture, in accordance with and to the extent required by the Indenture and (y) each Pari Secured Indebtedness Agent, based on the amount of Pari Secured Indebtedness Secured Liabilities then outstanding under the Pari Secured Indebtedness Agreement pursuant to which it is acting as such, in accordance with the provisions of the applicable Pari Secured Indebtedness Agreement; and

THIRD, to the extent proceeds remain after application pursuant to the clauses above, to the Debtors, their successors or assigns, or as a court of competent jurisdiction may otherwise direct. If, despite the provisions of this Agreement, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Liabilities to which it is then entitled in accordance with this Agreement, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties hereunder for distribution in accordance with this Section 20.

This Section 20 and the rights set forth herein shall be subject to, and shall not be deemed to alter, the rights and obligations of the Collateral Agent, the Trustee and each Pari Secured Indebtedness Agent set forth in the Additional Intercreditor Agreement (if any).

21. **Continuing Liability of Debtor**. Subject to applicable law, each Debtor shall remain liable for any Secured Liabilities of such Debtor that are outstanding following realization of all or any part of the Collateral of such Debtor and the application of the Proceeds thereof.

22. **Agent's Appointment as Attorney-in-Fact**. Each Debtor constitutes and appoints the Agent and any officer or agent of the Agent, with full power of substitution, as such Debtor's true and lawful attorney-in-fact with full power and authority in the place of such Debtor and in the name of such Debtor or in its own name, from time to time in the Agent's discretion, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney, may be necessary or desirable to accomplish the purposes of this Agreement, or to exercise its rights and remedies, provided that such power of attorney shall not be exercised until an Event of Default has occurred. Without limiting the effect of this Section, each Debtor grants the Agent an irrevocable proxy to vote the Pledged Shares of such Debtor and to exercise all other rights, powers, privileges and remedies to which a holder thereof would be entitled (including giving or withholding written consents of shareholders, calling special meetings of shareholders and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Shares of such Debtor on the books and records of a Pledged Issuer or Pledged Securities Intermediary, as applicable), upon the occurrence and during the continuance of an Event of Default. These powers are coupled with an interest and shall not be revoked or terminated until the Release Date. Nothing in this Section affects the right of the Agent as secured party or any

other Person on the Agent's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as the Agent or such other Person considers appropriate provided that, the Debtors shall have the sole responsibility to file such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral necessary to ensure that the Agent shall have a perfected Security Interest over such Collateral. Each Debtor hereby ratifies and confirms, and agrees to ratify and confirm, whatever lawful acts the Agent or any of the Agent's sub-agents, nominees or attorneys do or purport to do in exercise of the power of attorney granted to the Agent pursuant to this Section.

23. **Performance by Agent of Debtor's Obligations**. Upon the occurrence and during the continuance of an Event of Default, if any Debtor fails to perform or comply with any of the obligations of such Debtor under this Agreement, the Agent may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance shall not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Agent incurred in connection with any such performance or compliance shall be payable by such Debtor to the Agent immediately on demand, and until paid, any such expenses shall form part of the Secured Liabilities of such Debtor and shall be secured by the Security Interests of such Debtor.

24. **[Reserved.]**

25. **Severability**. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

26. **Rights of Agent; Limitations on Agent's Obligations**.

(a) Limitations on Liability of Secured Parties. Neither the Agent nor any other Secured Party shall be liable to any Debtor or any other Person for any failure or delay in exercising any of the rights of such Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral of such Debtor, or to preserve rights against prior parties). Neither the Agent, any other Secured Party, a Receiver, nor any agent thereof (including, in Alberta or British Columbia, any sheriff) is required to take, or shall have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral of any Debtor in its possession. Neither the Agent, any other Secured Party, any Receiver, nor any agent thereof shall be liable for any, and each Debtor shall bear the full risk of all, loss or damage to any and all of the Collateral of such Debtor (including any Collateral of such Debtor in the possession of the Agent, any other Secured Party, any Receiver, or any agent thereof) caused for any reason other than the gross negligence or wilful misconduct of the Agent,

such other Secured Party, such Receiver or such agent thereof as determined by a final non-appealable order of a court of competent jurisdiction.

(b) Debtors Remain Liable under Accounts and Contracts. Notwithstanding any provision of this Agreement, each Debtor shall remain liable under each of the documents giving rise to the Accounts of such Debtor and under each of the Contracts of such Debtor to observe and perform all the conditions and obligations to be observed and performed by such Debtor thereunder, all in accordance with the terms of each such document and Contract. Neither the Agent nor any other Secured Party shall have any obligation or liability under any Account of any Debtor (or any document giving rise thereto) or Contract of any Debtor by reason of or arising out of this Agreement or the receipt by the Agent of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), neither the Agent nor any other Secured Party shall be obligated in any manner to perform any of the obligations of any Debtor under or pursuant to any Account of such Debtor (or any document giving rise thereto) or under or pursuant to any Contract of such Debtor, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account of such Debtor (or any document giving rise thereto) or under any Contract of such Debtor, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

(c) Collections on Accounts and Contracts. Each Debtor shall be authorized to, at any time that an Event of Default is not continuing, collect the Accounts of such Debtor and payments under the Contracts of such Debtor in the normal course of the business of such Debtor and for the purpose of carrying on the same. If required by the Agent at any time following the occurrence of an Event of Default that is continuing, any payments of Accounts of such Debtor or under Contracts of such Debtor, when collected by such Debtor, shall be forthwith (and, in any event, within two Business Days) deposited by such Debtor in the exact form received, duly endorsed by such Debtor to the Agent if required, in a special collateral account maintained by the Agent, and until so deposited, will be held by such Debtor in trust for the Agent, segregated from the other funds of such Debtor. All such amounts while held by the Agent (or by such Debtor in trust for the Agent) and all income with respect thereto shall continue to be collateral security for the Secured Liabilities and shall not constitute payment thereof until applied as hereinafter provided. If an Event of Default has occurred and is continuing, the Agent may (but shall not be required to) apply all or any part of the amounts on deposit with respect to such Debtor in said special collateral account on account of the Secured Liabilities of such Debtor in accordance with Section 20. At the Agent's request, such Debtor shall deliver to the Agent any documents evidencing and relating to the agreements and transactions which gave rise to the Accounts and the Contracts of such Debtor, including all original orders, invoices and shipping receipts.

(d) Use of Agents. The Agent may perform any of its rights or duties under this Agreement by or through agents and is entitled to retain counsel and to act in reliance on the advice of such counsel concerning all matters pertaining to its rights and duties under this Agreement

The Agent shall be deemed to have exercised reasonable care in the custody and preservation of pledged Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Agent or any other Secured Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any person with respect to any Collateral.

27. **Dealings by Agent**. The Agent shall not be obliged to exhaust its recourse against any Debtor or any other Person or against any other security it may hold with respect to the Secured Liabilities of such Debtor or any part thereof before realizing upon or otherwise dealing with the Collateral of such Debtor in such manner as the Agent may consider desirable. The Agent and the other Secured Parties may (but shall not be obligated to) grant extensions of time and other indulgences (subject to the terms of this Agreement), take and give up security, accept compositions, grant releases and discharges and otherwise deal with any Debtor and any other Person, and with any or all of the Collateral of any Debtor, and with other security and sureties, as they may see fit, all without prejudice to the Secured Liabilities of any Debtor or to the rights and remedies of the Agent under this Agreement. The powers conferred on the Agent under this Agreement are solely to protect the interests of the Agent in the Collateral of each Debtor and shall not impose any duty upon the Agent to exercise any such powers.

28. **Communication**. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be effectively given if made in accordance with Section 12.1 of the Indenture. All communications to any Secured Party other than the Notes Secured Parties shall be addressed to the applicable Pari Secured Indebtedness Agent at its address set forth in the applicable Pari Secured Indebtedness Secured Party Consent, as such address may be changed by written notice to the Agent and the Debtors.

29. **Release of Information**. Each Debtor authorizes the Agent to provide a copy of this Agreement and such other information as may be requested of the Agent (i) to the extent necessary to enforce the Agent's rights, remedies and entitlements under this Agreement, (ii) to any potential successor Agent, and (iii) as required by applicable law.

30. **Expenses; Indemnity; Waiver**.

(a) Each Debtor hereby agrees that the Agent and its officers, directors, employees and agents shall be entitled to reimbursement of its expenses incurred hereunder as provided in Sections 7.6 and 11.8(c) of the Indenture as if such section were set out in full herein and references to "the Issuers" therein were references to the

Debtors and references to the Trustee and the Notes Collateral Agent therein were references to the Agent.

(b) Each Debtor shall indemnify the Secured Parties in accordance with Sections 7.6 and 11.8(c) of the Indenture as if such section were set out in full herein and references to "the Issuers" therein were references to the Debtors and references to the Trustee and the Notes Collateral Agent therein were references to the Secured Parties.

(c) All amounts due under this Section shall be payable to the Agent for the benefit of the applicable Secured Parties promptly after demand therefor with documented particulars thereof.

(d) The indemnifications set out in this Section shall survive the Release Date and the release or extinguishment of the Security Interests or the earlier resignation or removal of the Agent or any Secured Party.

31. **Release of Debtor**. The Security Interests securing the Notes Secured Liabilities will be released, in whole or in part, without recourse or warranty, as provided in Section 11.2 of the Indenture. The Security Interests securing Pari Secured Indebtedness Secured Liabilities of any series will be released, in whole or in part, without recourse or warranty, as provided in the Pari Secured Indebtedness Agreement governing such obligations. Notwithstanding the foregoing, the Agent shall not be required to execute and deliver any such releases or discharges unless, in each case, a responsible officer of the Escrow Issuer has certified in writing that such documents are required in order to evidence or effect such release in accordance with Section 11.2 of the Indenture and/or in accordance with any applicable provisions of any Pari Secured Indebtedness Agreement

32. **Additional Security**. This Agreement is in addition to, and not in substitution of, any and all other security previously or concurrently delivered by any Debtor or any other Person to any Secured Party, all of which other security shall remain in full force and effect.

33. **Alteration or Waiver**. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Agent and the Debtors in accordance with the terms of the Indenture and each Pari Secured Indebtedness Agreement. The Secured Parties shall not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Agent would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale shall extinguish the liability of any Debtor to pay the Secured Liabilities of such Debtor, nor shall the same operate as a merger of any covenant contained in this Agreement

or of any other liability, nor shall the acceptance of any payment or other security constitute or create any novation.

34. **Environmental Licence and Indemnity**. Each Debtor hereby grants to the Agent and its employees and agents, upon the occurrence and during the continuation of an Event of Default, an irrevocable and non-exclusive licence, subject to the rights of tenants, to enter any of the premises of such Debtor, upon advance written notice to such Debtor and during regular business hours, to conduct audits, investigations, assessments, sampling, testing and monitoring with respect to hazardous substances or contaminants and to collect, remove and analyze any Hazardous Materials at the cost and expense of such Debtor (which cost and expense shall form part of the Secured Liabilities of such Debtor and shall be payable immediately on demand and secured by the Security Interests created by this Agreement). Other than due to the gross negligence, wilful misconduct or bad faith of, in the case of indemnification of the Agent, the Agent or, in the case of indemnification of a Secured Party, such Secured Party or its agent, each Debtor shall indemnify the Secured Parties and hold the Secured Parties harmless against and from all losses, costs, damages, penalties, fines and expenses which any Secured Party may sustain, incur or be or become liable at any time whatsoever for by reason of or arising from the past, present or future existence, migration, spill, seepage, escape, leak, emission, clean-up, removal or disposal of any Hazardous Materials on or about any property owned by any Debtor or compliance with Environmental Laws or environmental orders relating thereto, including any investigation, assessment, delineation, monitoring, clean-up, decommissioning, reclamation, closure, restoration or remediation of any premises owned by such Debtor or other affected lands or property. This indemnification shall survive the Release Date or the earlier resignation or removal of the Agent.

35. **Amalgamation**. If any Debtor is a corporation, such Debtor acknowledges that if it amalgamates or merges with any other corporation or corporations, then (i) the Collateral and the Security Interests of such Debtor shall extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired in each case that constitutes Collateral, (ii) the term "Debtor", where used in this Agreement, shall extend to and include the amalgamated corporation, and (iii) the term "Secured Liabilities", where used in this Agreement, shall extend to and include the Secured Liabilities of the amalgamated corporation.

36. **Governing Law; Attornment**. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province. Without prejudice to the ability of the Agent to enforce this Agreement in any other proper jurisdiction, each Debtor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable law, each Debtor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.

37. **Interpretation**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "or" is

disjunctive; the word "and" is conjunctive. The word "shall" is mandatory; the word "may" is permissive. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set out herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (e) all references herein to Sections and Schedules shall be construed to refer to Sections and Schedules to, this Agreement, Section headings are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. Any reference in this Agreement to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Security Interest to any Permitted Lien. In accordance with the *Property Law Act* (British Columbia), the doctrine of consolidation applies to this Agreement.

38. **Paramountcy.** In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Indenture then, notwithstanding anything contained in this Agreement, the provisions contained in the Indenture shall prevail to the extent of such conflict or inconsistency and the provisions of this Agreement shall be deemed to be amended to the extent necessary to eliminate such conflict or inconsistency, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to the Agent (for its own benefit and for the benefit of the other Secured Parties) under the Indenture. If any act or omission of any or all Debtors is expressly permitted under the Indenture but is expressly prohibited under this Agreement, such act or omission shall be permitted. If any act or omission is expressly prohibited under this Agreement, but the Indenture does not expressly permit such act or omission, or if any act is expressly required to be performed under this Agreement but the Indenture does not expressly relieve any or all Debtors from such performance, such circumstance shall not constitute a conflict or inconsistency between the applicable provisions of this Agreement and the provisions of the Indenture.

39. **Successors and Assigns**. This Agreement shall enure to the benefit of, and be binding on, each Debtor and its successors and permitted assigns, and shall enure to the benefit of, and be binding on, the Agent and its successors and assigns. No Debtor may assign this Agreement, or any of its rights or obligations under this Agreement. The Agent may assign this Agreement and any of its rights and obligations hereunder to any Person that replaces it in its capacity as such in accordance with the Indenture.

40. **Additional Debtors**. Additional Persons may from time to time after the date of this Agreement become Debtors under this Agreement by executing and delivering to the Agent a supplemental agreement (together with all schedules thereto, a "**Supplement**") to this

Agreement, in substantially the form attached hereto as Exhibit A. Effective from and after the date of the execution and delivery by any Person to the Agent of a Supplement:

(a) such Person shall be, and shall be deemed for all purposes to be, a Debtor under this Agreement with the same force and effect, and subject to the same agreements, representations, indemnities, liabilities, obligations and Security Interests, as if such Person had been an original signatory to this Agreement as a Debtor; and

(b) all Collateral of such Person shall be subject to the Security Interest from such Person as security for the due payment and performance of the "Secured Liabilities" of such Person in accordance with the provisions of this Agreement.

The execution and delivery of a Supplement by any additional Person shall not require the consent of any Debtor and all of the Secured Liabilities of each Debtor and the Security Interests granted thereby shall remain in full force and effect, notwithstanding the addition of any new Debtor to this Agreement.

41. **Acknowledgment of Receipt/Waiver**. Each Debtor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement or financing change statement registered in connection with this Agreement or any verification statement issued with respect to any such financing statement or financing change statement.

42. **Enforcement by Agent**. This Agreement and the Security Interests may be enforced only by the action of the Agent acting on behalf of the Secured Parties at the direction of the Applicable Authorized Representative and no other Secured Party shall have any rights individually to enforce or seek to enforce this Agreement or any of the Security Interests, it being understood and agreed that such rights and remedies may be exercised by the Agent for the benefit of the Secured Parties upon the terms of this Agreement.

43. **Electronic Signature and Counterparts**. Delivery of an executed signature page to this Agreement by any Debtor by facsimile or other electronic form of transmission shall be as effective as delivery by such Debtor of a manually executed copy of this Agreement by such Debtor. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

44. **Intercreditor Agreement Governs.** Notwithstanding anything herein to the contrary, (i) the Security Interest granted to the Agent, for the benefit of the Secured Parties, pursuant to this Agreement is expressly subject and subordinate to the liens and security interests granted in favor of the Senior Secured Parties (as defined in the Intercreditor Agreement referred to below), including liens and security interests granted to Credit Suisse AG, Cayman Islands Branch, as administrative agent, pursuant to or in connection with the Revolving Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time), among Northwest Acquisitions ULC, an unlimited liability company formed under the laws of British Columbia, Washington Diamond Investments B.V., with corporate seat in Amsterdam,

the Netherlands, the lenders party thereto, the other parties thereto, and Credit Suisse AG, Cayman Islands Branch, as administrative agent and (ii) the exercise of any right or remedy by the Agent hereunder is subject to the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement with respect to the priority of any liens and security interests and the exercise of rights and remedies, the terms of the Intercreditor Agreement shall govern. Notwithstanding anything in this Agreement to the contrary, prior to the Discharge of Senior Credit Facility Obligations (as defined in the Intercreditor Agreement), the requirements of this Agreement to deliver Collateral and any certificates, instruments or documents evidencing such Collateral to the Agent shall be deemed satisfied by delivery of such Collateral and such certificates, instruments or documents evidencing such Collateral to the Revolving Credit Facility Collateral Agent (as bailee for the Agent pursuant to the terms of the Intercreditor Agreement).

45. **Other**. Each Debtor agrees that, in the event any Debtor takes any action to grant or perfect a Lien in favor of any Senior Representative (as defined in the Intercreditor Agreement) or any Senior Secured Party (as defined in the Intercreditor Agreement) in any assets, such Debtor shall also take such action to grant or perfect a Lien (subject to the Intercreditor Agreement) in favor of the Agent to secure the Secured Liabilities, whether or not such action was requested by the Agent.

46. **Pari Secured Indebtedness**. On or after the Issue Date and so long as not prohibited by the Indenture or any Pari Secured Indebtedness Document then in effect, the Notes Issuers may from time to time designate obligations in respect of Indebtedness to be secured on a pari passu basis with the then-outstanding Secured Liabilities as Pari Secured Indebtedness Secured Liabilities hereunder by delivering to the Agent, the Trustee and each Pari Secured Indebtedness Agent (a) an Officer's Certificate of the Notes Issuers (i) identifying the obligations so designated and the initial aggregate principal amount or face amount thereof, (ii) stating that such obligations are designated as Pari Secured Indebtedness Secured Liabilities for purposes hereof and as "Pari Secured Indebtedness" for purposes of the Indenture, (iii) representing that such designation of such obligations as Pari Secured Indebtedness Secured Liabilities and Pari Secured Indebtedness is not prohibited by the Indenture or any Pari Secured Indebtedness Agreement then in effect, and (iv) specifying the name and address of the Pari Secured Indebtedness Agent for such obligations, and (b) except in the case of Additional Notes, a Pari Secured Indebtedness Secured Party Consent executed by the Pari Secured Indebtedness Agent for such obligations and the Notes Issuers and a Pari Secured Indebtedness Secured Party Consent as defined in and pursuant to the terms of the U.S. Security Agreement. Upon the satisfaction of all conditions set forth in the preceding sentence, (x) the Agent shall act as collateral agent under and subject to the terms of the Notes Documents for the benefit of all Secured Parties, including without limitation, any Secured Parties that hold any such Pari Secured Indebtedness Secured Liabilities, and shall execute and deliver the acknowledgement at the end of the Pari Secured Indebtedness Secured Party Consent, (y) each Pari Secured Indebtedness Agent agrees to the appointment, and acceptance of the appointment, of the Agent, as collateral agent for the holders of such Pari Secured Indebtedness Secured Liabilities as set forth in each Pari Secured Indebtedness Secured Party Consent and agrees, on behalf of itself and each Secured Party it represents, to be bound by this Agreement, the Intercreditor Agreement and any other the applicable intercreditor agreements and (z) such Pari Secured Indebtedness Secured

Liabilities shall automatically be deemed to be "Junior Debt Obligations" in the Intercreditor Agreement. The rights and obligations of each party to this Agreement shall remain in full force and effect notwithstanding the addition of any new Secured Liabilities to this Agreement.

47. **Concerning the Collateral Agent**. Wilmington Trust, National Association is entering this Agreement in its capacity as Notes Collateral Agent under the Indenture and not in its individual capacity. In acting hereunder, the Agent shall be entitled to all of the rights, privileges and immunities of the Notes Collateral Agent set forth in the Indenture, including without limitation, those set forth in Section 11.8 thereof, as if such rights, privileges and immunities were set forth herein. The powers conferred on the Agent hereunder are solely to protect the Secured Parties' interest in the Collateral and shall not impose any duty upon the Agent to exercise any such powers. Notwithstanding anything herein or in any Secured Document to the contrary, in exercising the rights and powers of the Agent hereunder, the Collateral Agent shall be entitled to written direction of the Applicable Authorized Representative, accompanied by indemnity satisfactory to the Agent for any losses, liabilities or expenses that may be **incurred** by it, and the Agent shall be entitled to refrain from acting (and shall have no liability for refraining from acting) until it has received such direction and indemnity. Notwithstanding anything herein or in any other Secured Document, the Agent shall have no duty or obligation to file or recording any financing statement, continuation statement, document or agreement to perfect or maintain the perfection of the Agent's security interest in the Collateral.

48. **Impairment and Intervening Creditors**. Notwithstanding the pari passu nature of all the Notes Secured Liabilities, on the one hand, and any Pari Secured Indebtedness Secured Liabilities, on the other hand, in the event of any determination by a court of competent jurisdiction with respect to any series of Pari Secured Indebtedness Secured Liabilities that (i) such series of Pari Secured Indebtedness Secured Liabilities is unenforceable under applicable law or is subordinated to any other Secured Liabilities (other than another series of Pari Secured Indebtedness Secured Liabilities), (ii) such series of Pari Secured Indebtedness Secured Liabilities does not have an enforceable security interest in any of the Collateral and/or (iii) any intervening security interest exists securing any other Secured Liabilities (other than Notes Secured Liabilities or another series of Pari Secured Indebtedness Secured Liabilities) on a basis ranking prior to the security interest of such series of Pari Secured Indebtedness Secured Liabilities but junior to the security interest of the Notes Secured Liabilities (any such condition referred to in the foregoing clause (i), (ii) or (iii) with respect to any series of Pari Secured Indebtedness Secured Liabilities, an "Impairment" of such series of Pari Secured Indebtedness Secured Liabilities), the results of such Impairment shall be borne solely by the holders of such series of Pari Secured Indebtedness Secured Liabilities, and the rights of the holders of such series of Pari Secured Indebtedness Secured Liabilities (including, without limitation, the right to receive distributions in respect of such series of Pari Secured Indebtedness Secured Liabilities) set forth in the Security Documents shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of such series of Pari Secured Indebtedness subject to such Impairment. Notwithstanding the foregoing, with respect to any Collateral for which a third party (other than a holder of another series of Pari Secured Indebtedness Secured Liabilities) has a Lien or security interest that is junior in priority to the security interest of the

Notes Secured Parties (as determined by appropriate legal proceedings in the case of any dispute) to the security interest of the holder of any other series of Pari Secured Indebtedness Secured Liabilities (such third party, an "Intervening Creditor"), the value of any Collateral or proceeds which are allocated to such Intervening Creditor shall be deducted on a ratable basis solely from the Collateral or proceeds to be distributed in respect of the series of Pari Secured Indebtedness Secured Liabilities with respect to which such Impairment exists.

[signatures on the next following pages]

IN WITNESS WHEREOF each of the undersigned have caused this Agreement to be duly executed as of the date first written above.

NORTHWEST ACQUISITIONS ULC, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND CORPORATION,
as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND HOLDINGS LTD.,
as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND NY CORPORATION, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND EKATI CORPORATION, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

6355137 CANADA INC., as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND DIAVIK LIMITED PARTNERSHIP, by its general partner DOMINION DIAMOND HOLDINGS LTD., as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

DOMINION DIAMOND DELAWARE COMPANY LLC, as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

NORTHWEST ACQUISITIONS PLEDGE B.V., as a Debtor

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above.

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Agent

By: _____
Name:
Title:

SCHEDULE A-1

DEBTOR INFORMATION

1. **Full legal name:** Northwest Acquisitions ULC

   Prior names: Nil.

   Predecessor companies: Nil

   Jurisdiction of incorporation or organization: British Columbia

   Address of chief executive office: 101 International Drive, Missoula, Montana, USA, 59808

   Address of registered office: Suite 2600, Three Bentall Centre, 595 Burrard Street, P.O. Box 49314, Vancouver, BC, V7X 1L3, Canada

   Provinces where business is carried on or tangible Personal Property is kept: British Columbia

   Addresses of all owned real property: Nil.

   Addresses of all leased real property: Nil.

   Subsidiaries of the Debtor: See attached Schedule A-1B.

   Instruments, Documents of Title and Chattel Paper of the Debtor: Nil.

   Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Corporation	81,913,959 Common Shares	100% of Common Shares	DDC 00422	Vancouver

   Pledged Securities Accounts: Nil.

   Pledged Uncertificated Securities: Nil.

   Pledged Futures Accounts: Nil.

Registered trade-marks and applications for trademark registrations: Nil.

Patents and patent applications: Nil.

Copyright registrations and applications for copyright registrations: Nil.

Industrial designs/registered designs and applications for registered designs: Nil.

---

2. **Full legal name:** Dominion Diamond Corporation

Prior names: See attached Schedule A-1A.

Predecessor companies: See attached Schedule A-1A.

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: 1090 Don Mills Road, Suite 506, Toronto, Ontario, M3C 3R6

Provinces where business is carried on or tangible Personal Property is kept: Northwest Territories, Ontario, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Holdings Ltd.	46,004,716 Class A shares 142,002 Class A	100% of Class A shares	16, 17	Vancouver

	shares			
Dominion Diamond Holdings Ltd.	1,000 Special Voting shares	100% of Special Voting shares	SV4	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: See Schedule C

Patents and patent applications: See Schedule C

Copyright registrations and applications for copyright registrations: See Schedule C

Industrial designs/registered designs and applications for registered designs: See Schedule C

---

3. **Full legal name:** Dominion Diamond Holdings Ltd.

Prior names: Aber Diamond Mines Ltd., Harry Winston Diamond Mines Ltd.

Predecessor companies: None

Jurisdiction of incorporation or organization: Northwest Territories

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife, NT, X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property: 3502 McDonald Drive, Unit 3, Yellowknife, Northwest Territories, Canada, X1A 2H1

3502 McDonald Drive, Unit 7, Yellowknife, Northwest Territories, Canada, X1A 2H1

Addresses of all leased real property: None

Subsidiaries of the Debtor: See attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
6355137 Canada Inc.	289,294 Common shares 10,000 Common shares	100% of Common shares	C-7, C-8	Vancouver
Dominion Diamond Diavik Limited Partnership	255,485,148.387 Partnership Units	~ 99% of Partnership Units	N/A	Vancouver
Dominion Diamond Diavik Limited Partnership	1 General Partner Interest	100% of General Partner Interest	N/A	Vancouver
Dominion Diamond NY Corporation	1,007,682 Common shares	100% of Common shares	C-14	Vancouver
Dominion Diamond Ekati Corporation	261,974 Class B Preferred shares	100% of Class B Preferred shares	BP-1	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond NY Corporation

Prior names: Aber Fifth Avenue Corporation, Harry Winston Fifth Avenue Corporation

Predecessor companies: None

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: 1090 Don Mills Road, Suite 506, Toronto, Ontario, M3C 3R6

Provinces where business is carried on or tangible Personal Property is kept: Ontario, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: Dominion Diamond Delaware Company LLC; see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Delaware Company LLC	All Class A and Class B Membership Interest	100% of Class A and Class B Membership Interest	3 (Class A) 3 (Class B)	New York

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond Delaware Company LLC

Prior names: HWH Acquisition Company LLC

Predecessor companies: None

Jurisdiction of incorporation or organization: Delaware

Address of chief executive office: 4th Floor, St Paul's Gate, 22-24 New Street St Helier, Jersey, JE1 4TR

Provinces where business is carried on or tangible Personal Property is kept:

Bailiwick of Jersey, New York

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location

Dominion Diamond Ekati Corporation	912,222,492 Common shares	100% of Common shares	C-1	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: 6355137 Canada Inc.

Prior names: None

Predecessor companies: None

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife NT X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: None.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Dominion Diamond Diavik Limited Partnership	2,580,658.065 Partnership Units	~ 1% of Partnership Units	N/A	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond Diavik Limited Partnership

Prior names: Aber Diamond Limited Partnership, Harry Winston Diamond Limited Partnership

Predecessor companies: None

Jurisdiction of incorporation or organization: Northwest Territories

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife NT X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property: None

Addresses of all leased real property: None

Subsidiaries of the Debtor: None.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities: Nil

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Dominion Diamond Ekati Corporation

Prior names: See attached Schedule A-1C.

Predecessor companies: See attached Schedule A-1C.

Jurisdiction of incorporation or organization: Canada

Address of chief executive office: 900 – 606 4 Street SW Calgary, Alberta, Canada T2P 1T1

Address of registered office: Suite 802, 5201 – 50th Avenue, Yellowknife, NT X1A 3S9, Canada

Provinces where business is carried on or tangible Personal Property is kept:

Northwest Territories, Alberta

Addresses of all owned real property:

1701 Northern Height, Yellowknife, Northwest Territories, Canada, X1A 3T1

9 Denison Court, Yellowknife, Northwest Territories, Canada, X1A 3L3

113 Rivet Crescent, Yellowknife, Northwest Territories, Canada, X1A 3S6

121 Rivet Crescent, Yellowknife,
Northwest Territories, Canada, X1A 3S6

157 Rivet Crescent, Yellowknife,
Northwest Territories, Canada, X1A 3T8

129 Kasteel Drive, Yellowknife, Northwest Territories, Canada, X1A 3W1

Addresses of all leased real property: 112 Archibald Street, Yellowknife Northwest Territories, Canada X1A 3T1 (the building located on the real property is owned by Dominion Diamond Ekati Corporation)
#1102-4920 52nd Street, Yellowknife
Northwest Territories, Canada X1A 3T1

Subsidiaries of the Debtor: None.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil

Pledged Certificated Securities: Nil

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

---

Full legal name: Northwest Acquisitions Pledge B.V.

Prior names: Nil

Predecessor companies: Nil

Jurisdiction of incorporation or organization: Netherlands

Address of chief executive office: 101 International Drive, Missoula, Montana, USA, 59808

Address of registered office:

Provinces where business is carried on or tangible Personal Property is kept:

Netherlands

Addresses of all owned real property: Nil.

Addresses of all leased real property: Nil.

Subsidiaries of the Debtor: see attached Schedule A-1B.

Instruments, Documents of Title and Chattel Paper of the Debtor: Nil.

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
Northwest Acquisitions ULC	5,025,001	100%	C-5	Vancouver

Pledged Securities Accounts: Nil

Pledged Uncertificated Securities: Nil

Pledged Futures Accounts: Nil

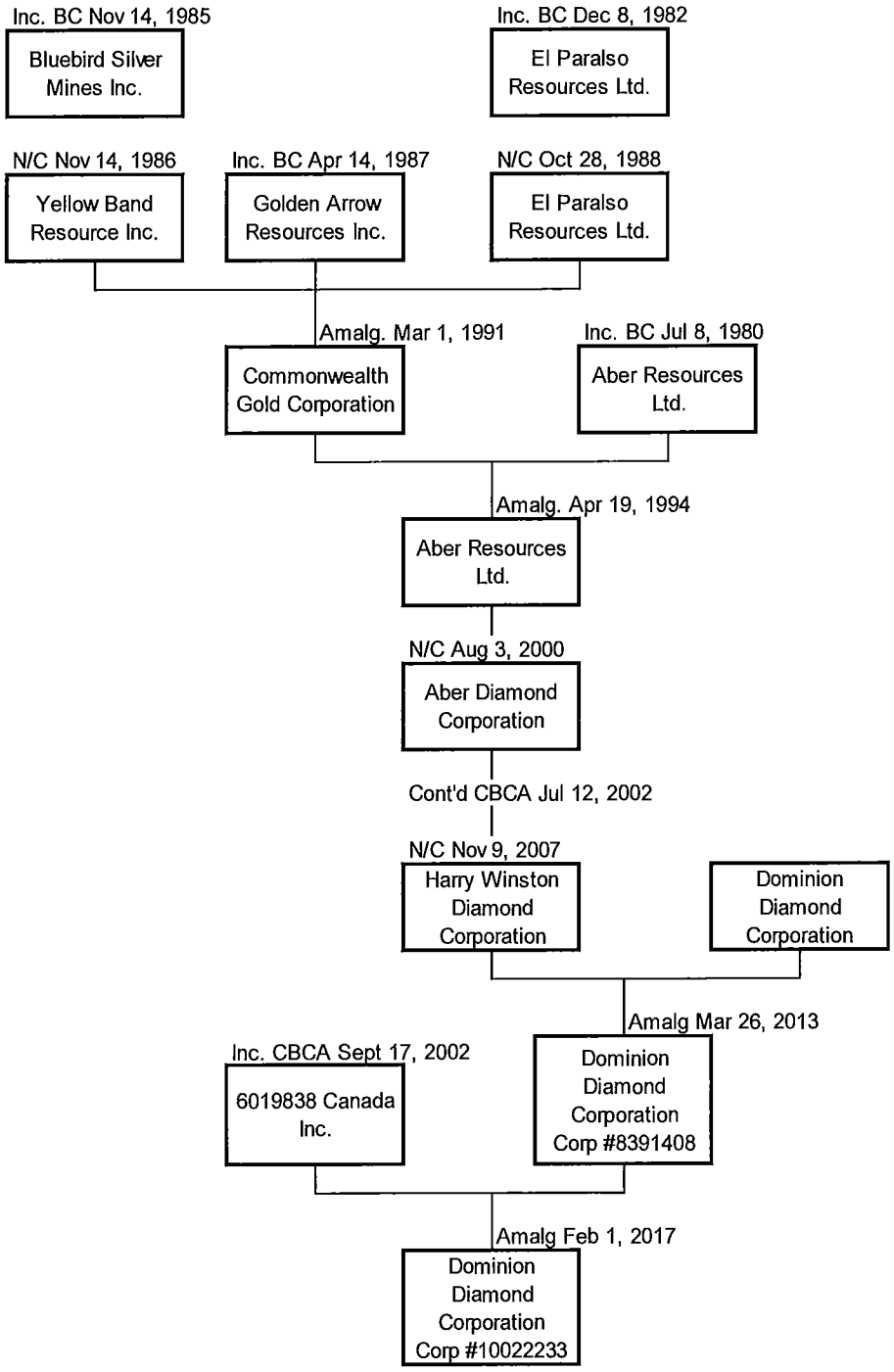
Registered trade-marks and applications for trademark registrations: Nil

Patents and patent applications: Nil

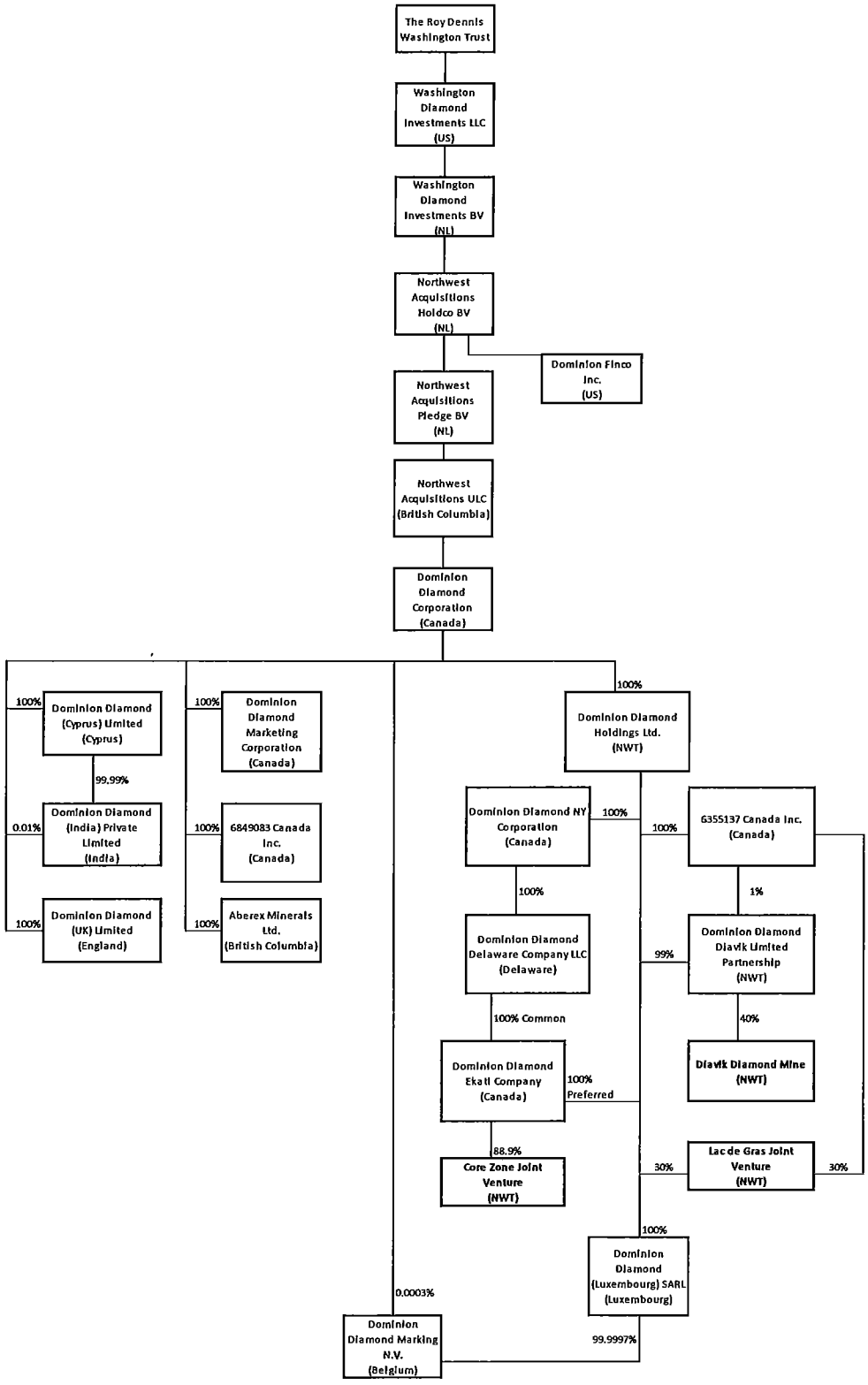
Copyright registrations and applications for copyright registrations: Nil

Industrial designs/registered designs and applications for registered designs: Nil

SCHEDULE A-1A
DOMINION DIAMOND CORPORATION CORPORATE HISTORY

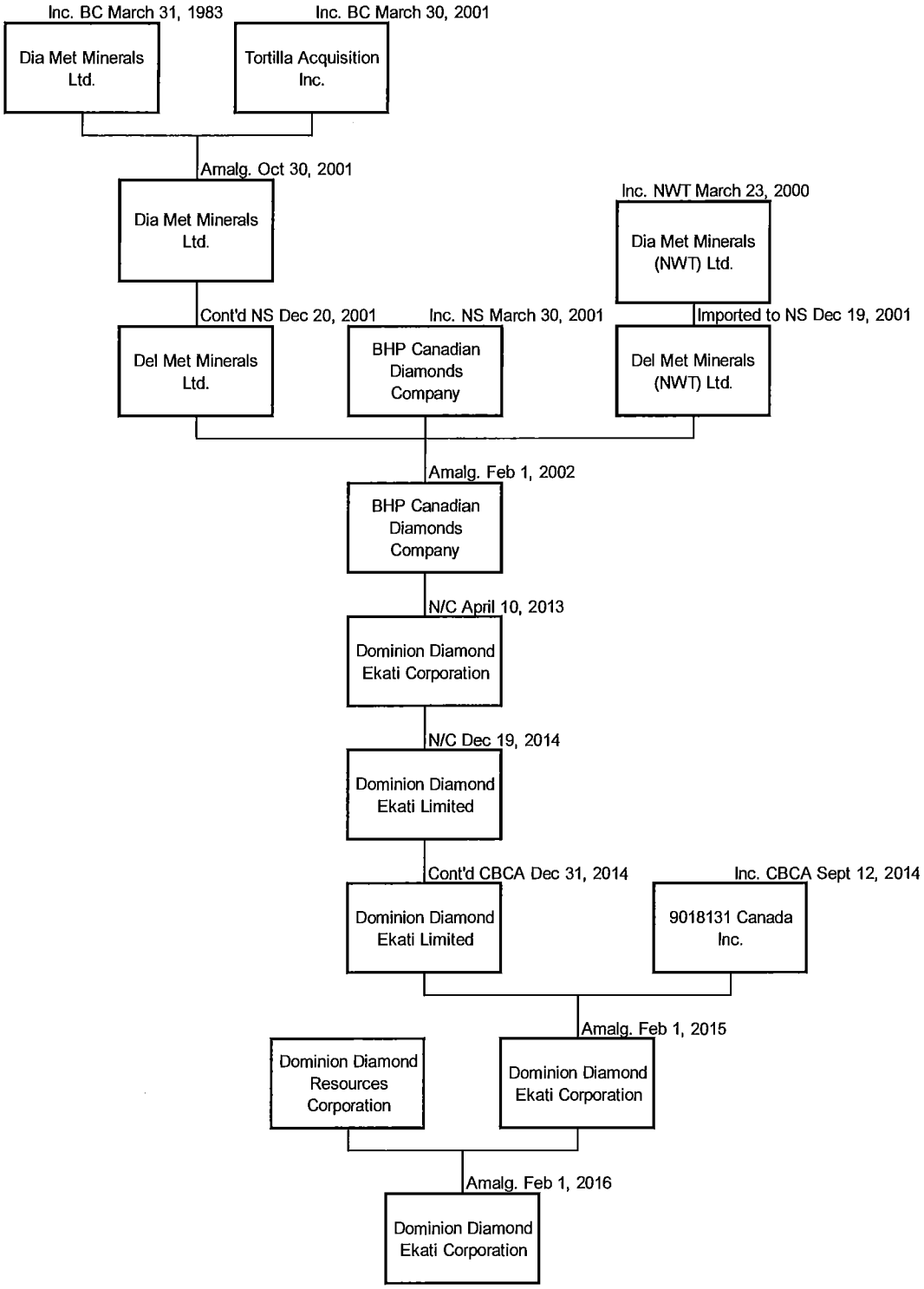


SCHEDULE A-1B



SCHEDULE A-1C

DOMINION DIAMOND EKATI CORPORATION CORPORATE HISTORY



SCHEDULE B-1

MATERIAL LEASES, CLAIMS OR MINING REGISTER ENTRIES

DIAVIK DIAMOND MINE

Lease Number	Owner Name	Percentage	NTS Map Sheet(s)	Issued Date	Expires Date	Acres	Hectares	District
3539	Diavik Diamond Mines (2012) Inc.	100	076D 08, 09	July 16, 1996	July 16, 2017	2,697	1,091	NT
3540 - 3541	Diavik Diamond Mines (2012) Inc.	100	076D 08, 09	February 24, 1997	February 24, 2018	5,319	2,153	NT
3710 - 3711	Diavik Diamond Mines (2012) Inc.	100	076D 08	November 19, 1997	November 19, 2018	4,605	1,864	NT
3712			076D 08, 09			2,671	1,081	
3713 - 3716			076D 09			10,392	4,205	
3719			076D 08			2,572	1,041	
3760 - 3766			076D 08			2,348	950	
3767			076D 08, 09			2,559	1,036	
3768 - 3773			076D 08			15,458	6,256	
3931	Diavik Diamond Mines (2012) Inc.	100	076D 09	April 17, 2001	April 17, 2022	2,434	985	NT
4093 - 4095	Diavik Diamond Mines (2012) Inc.	100	076C 11	January 16, 2002	January 16, 2023	7,764	3,142	NT
4097 - 4101	Diavik Diamond Mines (2012) Inc.	100	076C 05	March 5, 2002	March 5, 2023	12,788	5,175	NT
4102			076C 05, 06			2,526	1,022	
4103			076C 06			2,677	1,083	
4104 - 4108			076C 12			12,946	5,239	
4109			076C 11, 12			2,388	966	
4110			076C 11			2,674	1,082	
4111 - 4119			076D 08			23,718	9,598	
4120			076C 05, 076D 08			2,608	1,055	
4121 - 4128			076C 05			20,780	8,409	
4129			076C 05, 06			2,609	1,056	
4130			076C 06			2,531	1,024	
4134 - 4135	Diavik Diamond Mines (2012) Inc.	100	076C 05	January 16, 2002	January 16, 2023	4,571	1,850	NT
4136			076C 05, 076D 08			1,298	525	
4137			076C 05			2,168	877	
4138	Diavik Diamond Mines (2012) Inc.	100	076D 08	March 5, 2002	March 5, 2023	2,596	1,051	NT
4139			076C 05, 076D 08			2,687	1,087	
4140 - 4143			076C 05			10,575	4,280	
4144 - 4145			076D 08			1,744	706	
4146 - 4147			076D 16			4,838	1,958	
4148	Diavik Diamond Mines (2012) Inc.	100	076C 12	January 16, 2002	January 16, 2023	1,093	442	NT
4152			076C 12, 076D 09			1,227	497	
4153 - 4157			076C 12			457	185	
4164 - 4168			076C 12			12,149	4,917	
4174 - 4178	Diavik Diamond Mines (2012) Inc.	100	076C 06	March 5, 2002	March 5, 2023	13,013	5,266	NT
4179 - 4180	Diavik Diamond Mines (2012) Inc.	100	076C 05, 12	January 16, 2002	January 16, 2023	4,551	1,842	NT
4181 - 4185	Diavik Diamond Mines (2012) Inc.	100	076C 05, 12	March 5, 2002	March 5, 2023	12,956	5,243	NT
4186			076C 05, 06, 11, 12			2,390	967	
4187			076C 06, 11			2,677	1,083	
4192 - 4193	Diavik Diamond Mines (2012) Inc.	100	076C 12	January 16, 2002	January 16, 2023	490	198	NT
4197 - 4198			076C 12			4,906	1,985	
4202 - 4204			076C 12			611	247	
4208 - 4211			076C 12			8,698	3,520	
4212			076C 05, 12			2,266	917	
4213			076C 05			2,381	964	
4214 - 4216			076C 12			944	382	
4217			076C 05, 12			244	99	
4218 - 4219			076C 12			4,693	1,899	
4228 - 4229			076C 10			5,304	2,146	

Lease Number	Owner Name	Percentage	NTS Map Sheet(s)	Issued Date	Expires Date	Acres	Hectares	District
4234 - 4235	Diavik Diamond Mines (2012) Inc.	100	076C 12	March 5, 2002	March 5, 2023	1,525	617	NT
4266 - 4268			076C 06			7,670	3,104	
4269 - 4272			076C 06, 11			10,321	4,177	
4325 - 4328			076C 06			10,256	4,150	
4400	Diavik Diamond Mines (2012) Inc.	100	076C 11	January 16, 2002	January 16, 2023	2,622	1,061	NT
4432 - 4436	Diavik Diamond Mines (2012) Inc.	100	076C 11	March 5, 2002	March 5, 2023	13,082	5,294	NT
4437 - 4440			076C 06			10,391	4,205	
4441 - 4442			076C 06, 11			5,146	2,083	
5194 - 5196	Diavik Diamond Mines (2012) Inc.	100	076C 11	December 8, 2010	December 8, 2031	7,852	3,178	NT
5380	Diavik Diamond Mines (2012) Inc.	100	076C 11	December 8, 2010	December 8, 2031	2,774	1,123	NT

SCHEDULE B-2

MATERIAL LEASES, CLAIMS OR MINING REGISTER ENTRIES

EKATI BUFFER ZONE

ENTITY	LEASE	STATUS	TAG_NO	FID	ISSUE DATE	EXPIRY_DATE	NTS MAPSHEETS	HECTARES	ACRES	AREA (m²)	PERIMETER	EKLEASE4_	EKLEASE4_I	CLAIM	ACRES	HECTARES
DDEC	3485	BUFFER ZONE CLAIM	F19564	274	1996-Apr-10	2018-Apr-10	076/D09	1005	2483	10058510.36	13731.44095	365	1422	ED 52	2485.51	1005.851036
DDEC	3486	BUFFER ZONE CLAIM	F19566	275	1996-Apr-10	2018-Apr-10	076/D09	1022	2525	10216430.81	13337.74298	366	1424	ED 53	2524.54	1021.643081
DDEC	3487	BUFFER ZONE CLAIM	F19568	276	1996-Apr-10	2018-Apr-10	076/D09	580	1434	5906079.994	11402.31734	367	1426	ED 54	1459.42	590.6079994
DDEC	3503	BUFFER ZONE CLAIM	F18266	207	1996-Apr-10	2018-Apr-10	076/D09	423	1044	4229847.449	9483.47524	273	1462	ED 69	1045.22	422.9847449
DDEC	3504	BUFFER ZONE CLAIM	F18267	213	1996-Apr-10	2018-Apr-10	076/D09	678	1676	6789757.89	10566.34918	279	1464	ED 70	1677.79	678.975789
DDEC	3505	BUFFER ZONE CLAIM	F19569	269	1996-Apr-10	2018-Apr-10	076/D09	1016	2510	10106037.6	13648.4881	360	1420	ED 26	2497.26	1010.60376
DDEC	3506	BUFFER ZONE CLAIM	F18263	229	1996-Apr-10	2018-Apr-10	076/D09	520	1284	5110662.916	9302.23296	306	1450	ED 66	1262.87	511.0662916
DDEC	3510	BUFFER ZONE CLAIM	F19613	231	1996-Apr-10	2018-Apr-10	076/D09	1069	2641	10736721.22	14067.77758	308	1398	ED 20	2653.1	1073.672122
DDEC	3511	BUFFER ZONE CLAIM	F19615	232	1996-Apr-10	2018-Apr-10	076/D09	970	2396	9722905.323	14048.36878	309	1400	ED 21	2402.58	972.2905323
DDEC	3512	BUFFER ZONE CLAIM	F19617	237	1996-Apr-10	2018-Apr-10	076/D09	1092	2699	10921103.43	13796.46082	314	1402	ED 22	2698.66	1092.110343
DDEC	3515	BUFFER ZONE CLAIM	F19563	258	1996-Apr-10	2018-Apr-10	076/D09	632	1562	6313789.119	10251.50394	349	1414	ED 23	1560.17	631.3789119
DDEC	3516	BUFFER ZONE CLAIM	F19565	259	1996-Apr-10	2018-Apr-10	076/D09	666	1646	6337647.105	12992.16639	350	1416	ED 24	1586.07	633.7647105
DDEC	3517	BUFFER ZONE CLAIM	F19567	260	1996-Apr-10	2018-Apr-10	076/D09	445	1100	4452937.685	8824.63561	351	1418	ED 25	1100.34	445.2937685
	3941	BUFFER ZONE CLAIM	F18265	228	2001-Jul-27	2022 Jul 27		789	1950	7880994.031	11458.36984	305	1454	ED68	1947.44	788.0994031
	3942	BUFFER ZONE CLAIM	F18269	208	2001-Jul-27	2022 Jul 27		399	986	3972106.844	9168.36806	274	1468	ED72	981.53	397.2106844
	3943	BUFFER ZONE CLAIM	F19582	246	2001-Jul-27	2022 Jul 27		664	1639	6634225.546	10842.75388	335	1460	ED64	1639.35	663.4225546
	3975	BUFFER ZONE CLAIM	F18264	227	2001-Jul-27	2022 Jul 27		883	2181	8906276.977	11788.17145	304	1452	ED67	2200.79	890.6276977
	3976	BUFFER ZONE CLAIM	F18268	209	2001-Jul-27	2022 Jul 27		908	2243	9059394.765	12205.84121	275	1466	ED71	2238.63	905.9394765
	3977	BUFFER ZONE CLAIM	F19571	271	2001-Nov-01	2022 Nov 01		1028	2540	10352618.05	12993.40758	362	1438	ED27	2558.19	1035.261805
	3978	BUFFER ZONE CLAIM	F19575	273	2001-Nov-01	2022 Nov 01		709	1752	7081668.212	10831.65291	364	1442	ED29	1749.92	708.1668212
	3979	BUFFER ZONE CLAIM	F19573	272	2001-Jul-27	2022 Jul 27		970	2396	9770446.572	13581.90375	363	1440	ED28	2414.33	977.0446572
	3980	BUFFER ZONE CLAIM	F18270	199	2001 Nov 01	2022 Nov 01		988	2441	9883690.051	13634.25055	262	1470	ED73	2442.31	988.3690051
	3981	BUFFER ZONE CLAIM	F19632	192	2001 Jul 27	2022 Jul 27		1072	2649	10707895	14052.65843	255	1472	ED74	2645.98	1070.7895
	3982	BUFFER ZONE CLAIM	F19633	191	2001 Jul 27	2022 Jul 27		959	2370	9601925.202	13645.90778	254	1474	ED75	2372.69	960.1925202
	3983	BUFFER ZONE CLAIM	F19652	57	2001 Jul 27	2022 Jul 27		1056	2609	10540177.18	13856.38596	105	1182	GO4	2604.53	1054.017718
	3984	BUFFER ZONE CLAIM	F19653	58	2001 Jul 27	2022 Jul 27		1009	2493	10121337.29	13889.6976	106	1184	GO5	2501.04	1012.133729
	3985	BUFFER ZONE CLAIM	F17671	59	2001 Nov 01	2022 Nov 01		1042	2576	10418217.52	13787.07803	107	1186	GO6	2574.4	1041.821752
	3986	BUFFER ZONE CLAIM	F19638	176	2001 Jul 27	2022 Jul 27		808	1997	8077195.133	12007.47662	238	1476	ED76	1995.92	807.7195133
	3987	BUFFER ZONE CLAIM	F19639	178	2001 Jul 27	2022 Jul 27		823	2033	8221815.2	12003.65616	240	1478	ED77	2031.65	822.18152
	3988	BUFFER ZONE CLAIM	F19640	177	2001 Jul 27	2022 Jul 27		830	2050	8276763.901	11783.12834	239	1480	ED78	2045.23	827.6763901
	3989	BUFFER ZONE CLAIM	F19580	247	2001 Jul 27	2022 Jul 27		609	1504	6059121.264	10834.87951	336	1458	ED62	1497.24	605.9121264
	3990	BUFFER ZONE CLAIM	F19581	245	2001 Jul 27	2022 Jul 27		647	1600	6505489.98	10575.91528	334	1456	ED63	1607.54	650.548998
	3991	BUFFER ZONE CLAIM	F19656	120	2001 Nov 01	2022 Nov 01		1022	2526	10219398.04	13885.49698	174	1170	GO10	2525.27	1021.939804
	3992	BUFFER ZONE CLAIM	F19657	121	2001 Nov 01	2022 Nov 01		1039	2567	10360179.57	13757.60285	175	1172	GO11	2560.06	1036.017957
	3993	BUFFER ZONE CLAIM	F17673	122	2001 Nov 01	2022 Nov 01		1044	2579	10407874.34	13645.31721	176	1174	GO12	2571.84	1040.787434
	4003	BUFFER ZONE CLAIM	F19770	7	2001 Nov 01	2022 Nov 01		1021	2523	10205037.73	13841.08402	17	1266	AM59	2521.72	1020.503773
	4010	BUFFER ZONE CLAIM	F19783	0	2001 Nov 01	2022 Nov 01		494	1221	4931974.75	8763.13556	3	1278	AM72	1218.72	493.197475
	4011	BUFFER ZONE CLAIM	F19771	8	2001 Nov 01	2022 Nov 01		1059	2617	10593555.79	13769.78437	19	1268	AM60	2617.72	1059.355579
	4012	BUFFER ZONE CLAIM	F19773	11	2001 Nov 01	2022 Nov 01		1000	2471	10017443.08	13501.87369	26	1270	AM61	2475.36	1001.744308
	4013	BUFFER ZONE CLAIM	F19774	12	2001 Nov 01	2022 Nov 01		1009	2492	10076015.87	13587.34997	27	1272	AM62	2489.84	1007.601587
	4014	BUFFER ZONE CLAIM	F19775	10	2001 Nov 01	2022 Nov 01		1030	2545	10279110.65	13599.13273	23	1274	AM63	2540.02	1027.911065
	4015	BUFFER ZONE CLAIM	F19776	9	2001 Nov 01	2022 Nov 01		726	1794	7236695.357	12205.18264	22	1212	AM64	1788.23	723.6695357
	4016	BUFFER ZONE CLAIM	F19784	1	2001 Nov 01	2022 Nov 01		544	1345	5399105.429	9393.99946	4	1280	AM73	1334.15	539.9105429
	4017	BUFFER ZONE CLAIM	F19785	5	2001 Nov 01	2022 Nov 01		511	1262	5099841.918	8953.67789	13	1282	AM74	1260.22	509.9841918
	4018	BUFFER ZONE CLAIM	F19786	6	2001 Nov 01	2022 Nov 01		494	1221	4947478.352	9220.66489	14	1284	AM75	1222.55	494.7478352
	4019	BUFFER ZONE CLAIM	F19787	4	2001 Nov 01	2022 Nov 01		539	1332	5389740.35	9408.47769	10	1286	AM76	1331.83	538.974035
	4020	BUFFER ZONE CLAIM	F19788	3	2001 Nov 01	2022 Nov 01		367	907	3662873.602	7786.34118	8	1208	AM77	905.12	366.2873602
	4021	BUFFER ZONE CLAIM	F19713	2	2001 Nov 01	2022 Nov 01		1036	2560	10367206.35	13813.42938	5	1210	AM65	2561.79	1036.720635
	4022	BUFFER ZONE CLAIM	F17682	17	2001 Nov 01	2022 Nov 01		667	1647	6652544.205	10442.02475	44	1218	GO27	1643.88	665.2544205
	4023	BUFFER ZONE CLAIM	F17683	20	2001 Nov 01	2022 Nov 01		633	1564	6297189.519	10185.67195	47	1216	GO28	1556.07	629.7189519
	4024	BUFFER ZONE CLAIM	F17684	19	2001 Nov 01	2022 Nov 01		641	1585	6432520.741	10476.05916	46	1214	GO29	1588.51	643.2520741
	4025	BUFFER ZONE CLAIM	F19658	151	2001 Nov 01	2022 Nov 01		952	2353	9509904.54	13266.5863	208	1482	GO13	2349.95	950.990454
	4026	BUFFER ZONE CLAIM	F19659	149	2001 Nov 01	2022 Nov 01		1056	2609	10569964.11	13788.91826	206	1484	GO14	2611.9	1056.996411
	4027	BUFFER ZONE CLAIM	F17674	150	2001 Nov 01	2022 Nov 01		1054	2605	10566991.85	13923.29121	207	1486	GO15	2611.16	1056.699185
	4028	BUFFER ZONE CLAIM	F19576	277	2001 Jul 27	2022 Jul 27		834	2061	8356079.975	12125.5758	368	1434	ED58	2064.83	835.6079975
	4029	BUFFER ZONE CLAIM	F19572	278	2001 Jul 27	2022 Jul 27		962	2377	9571612.92	11994.76699	369	1430	ED56	2365.2	957.161292
	4030	BUFFER ZONE CLAIM	F19574	279	2001 Jul 27	2022 Jul 27		1060	2620	10590467.03	13023.43604	370	1432	ED57	2616.96	1059.046703
	4031	BUFFER ZONE CLAIM	F17678	38	2001 Jul 27	2022 Jul 27		998	2465	9972335.289	13690.90504	80	1192	GO23	2464.22	997.2335289

	4032	BUFFER ZONE CLAIM	F17677	34	2001 Nov 01	2022 Nov 01		1011	2499	10117214.88	14083.25019	76	1194	GO22	2500.02	1011.721488
	4033	BUFFER ZONE CLAIM	F17679	37	2001 Nov 01	2022 Nov 01		954	2357	9547688.128	13430.22532	79	1190	GO24	2359.29	954.7688128
	4034	BUFFER ZONE CLAIM	F17685	23	2001 Nov 01	2022 Nov 01		960	2421	9785429.073	13230.89885	65	1188	GO30	2418.03	978.5429073
	4035	BUFFER ZONE CLAIM	F17686	22	2001 Nov 01	2022 Nov 01		986	2435	9873121.276	13765.16694	64	1276	GO31	2439.7	987.3121276
	4036	BUFFER ZONE CLAIM	F19570	280	2001 Jul 27	2022 Jul 27		709	1751	7007119.888	10361.48165	371	1428	ED55	1731.5	700.7119888
	4037	BUFFER ZONE CLAIM	F19577	281	2001 Jul 27	2022 Jul 27		1044	2580	10513018.79	16671.96374	372	1436	ED59	2597.82	1051.301879
	4038	BUFFER ZONE CLAIM	F19578	255	2001 Jul 27	2022 Jul 27		1162	2872	11497738.38	13601.68944	344	1444	ED60	2841.15	1149.773838
	4039	BUFFER ZONE CLAIM	F19579	252	2001 Jul 27	2022 Jul 27		1068	2638	10659527	13717.05187	341	1446	ED61	2634.03	1065.9527
	4040	BUFFER ZONE CLAIM	F18262	253	2001 Nov 01	2022 Nov 01		186	460	1822471.728	7208.13022	342	1448	ED65	450.34	182.2471728
	4041	BUFFER ZONE CLAIM	F19654	87	2001 Nov 01	2022 Nov 01		1021	2523	10193496.31	13291.61808	138	1176	GO7	2518.87	1019.349631
	4042	BUFFER ZONE CLAIM	F19655	85	2001 Nov 01	2022 Nov 01		1006	2485	10052442.72	13554.41543	136	1178	GO8	2484.01	1005.244272
	4043	BUFFER ZONE CLAIM	F17672	86	2001 Nov 01	2022 Nov 01		1078	2665	10763623.03	13856.5803	137	1180	GO9	2659.75	1076.362303
	4273	BUFFER ZONE CLAIM	F19597	262	2001 Nov 16	2022 Nov 16		672	1661	6706269.724	10639.26629	353	746	ED42	1657.16	670.6269724
	4274	BUFFER ZONE CLAIM	F19601	264	2001 Nov 16	2022 Nov 16		735	1816	7321822.506	10668.62864	355	1324	ED43	1809.26	732.1822506
	4275	BUFFER ZONE CLAIM	F19599	265	2001 Nov 16	2022 Nov 16		609	1504	6120459.481	10542.18728	356	1326	ED44	1512.4	612.0459481
	4276	BUFFER ZONE CLAIM	F19606	266	2001 Nov 16	2022 Nov 16		674	1666	6668260.032	10476.83631	357	1328	ED45	1647.76	666.8260032
	4277	BUFFER ZONE CLAIM	F19608	268	2001 Nov 16	2022 Nov 16		589	1456	5898890.077	9798.80538	359	1330	ED46	1457.65	589.8890077
	4281	BUFFER ZONE CLAIM	F19605	225	2001 Nov 16	2022 Nov 16		1069	2642	10660206.75	13974.54922	302	728	ED11	2634.19	1066.020675
	4282	BUFFER ZONE CLAIM	F19607	226	2001 Nov 16	2022 Nov 16		1012	2500	10094085.58	13680.92792	303	730	ED12	2494.3	1009.408559
	4287	BUFFER ZONE CLAIM	F18296	222	2001 Nov 16	2022 Nov 16		1038	2564	10366166	13893.08238	288	724	ED9	2561.54	1036.6166
	4288	BUFFER ZONE CLAIM	F18298	220	2001 Nov 16	2022 Nov 16		1026	2535	10248464.76	13738.26077	286	726	ED10	2532.45	1024.846476
	4289	BUFFER ZONE CLAIM	F18301	250	2001 Nov 16	2022 Nov 16		642	1586	6442004.007	10579.39248	339	742	ED40	1591.85	644.2004007
	4290	BUFFER ZONE CLAIM	F19595	251	2001 Nov 16	2022 Nov 16		682	1686	6807042.753	10527.56108	340	744	ED41	1682.06	680.7042753
	4351	BUFFER ZONE CLAIM	F19647	16	2001 Nov 16	2022 Nov 16		674	1665	6729009.466	10794.0256	43	1224	GO16	1662.77	672.9009466
	4352	BUFFER ZONE CLAIM	F19648	15	2001 Nov 16	2022 Nov 16		698	1725	6927852.739	10397.99162	42	1226	GO17	1711.91	692.7852739
	4353	BUFFER ZONE CLAIM	F19649	13	2001 Nov 16	2022 Nov 16		652	1611	6480587.357	10067.07443	36	1228	GO18	1601.39	648.0587357
	4354	BUFFER ZONE CLAIM	F17680	14	2001 Nov 16	2022 Nov 16		661	1633	6599965.025	10406.9841	41	1222	GO25	1630.89	659.9965025
	4355	BUFFER ZONE CLAIM	F17681	18	2001 Nov 16	2022 Nov 16		671	1659	6706325.643	10260.40774	45	1220	GO26	1657.17	670.6325643
	4356	BUFFER ZONE CLAIM	F19646	30	2001 Nov 16	2022 Nov 16		1074	2654	10764180.06	13884.29815	72	1202	GO1	2659.89	1076.418006
	4357	BUFFER ZONE CLAIM	F19651	31	2001 Nov 16	2022 Nov 16		1013	2503	10127457.57	13542.50262	73	1204	GO2	2502.55	1012.745757
	4358	BUFFER ZONE CLAIM	F19650	36	2001 Nov 16	2022 Nov 16		966	2387	9634440.686	13491.18441	78	1200	GO19	2380.72	963.4440686
	4359	BUFFER ZONE CLAIM	F17675	35	2001 Nov 16	2022 Nov 16		1006	2486	10055633.12	13571.76525	77	1198	GO20	2484.8	1005.563312
	4360	BUFFER ZONE CLAIM	F17676	33	2001 Nov 16	2022 Nov 16		1048	2589	10465095.37	13661.28186	75	1196	GO21	2585.98	1046.509537
	4361	BUFFER ZONE CLAIM	F19610	267	2001 Nov 16	2022 Nov 16		785	1939	7847982.613	11049.34991	358	1404	ED47	1939.28	784.7982613
	4362	BUFFER ZONE CLAIM	F19612	256	2001 Nov 16	2022 Nov 16		589	1456	5869896.86	9837.33559	347	1406	ED48	1450.48	586.989686
	4363	BUFFER ZONE CLAIM	F19614	257	2001 Nov 16	2022 Nov 16		668	1650	6648005.129	10653.40318	348	1408	ED49	1642.76	664.8005129
	4364	BUFFER ZONE CLAIM	F19616	263	2001 Nov 16	2022 Nov 16		626	1546	6246701.825	10399.80302	354	1410	ED50	1543.59	624.6701825
	4365	BUFFER ZONE CLAIM	F19618	261	2001 Nov 16	2022 Nov 16		630	1557	6286988.883	10327.84979	352	1412	ED51	1554.04	628.8988883
	4366	BUFFER ZONE CLAIM	F19596	235	2001 Nov 16	2022 Nov 16		1016	2511	10160683.89	13746.79521	312	748	ED13	2510.76	1016.068389
	4367	BUFFER ZONE CLAIM	F19598	240	2001 Nov 16	2022 Nov 16		964	2381	9626932.674	13461.70989	319	1316	ED14	2378.87	962.6932674
	4368	BUFFER ZONE CLAIM	F19600	241	2001 Nov 16	2022 Nov 16		1061	2623	10559588.69	13901.23326	320	1318	ED15	2609.33	1055.958869
	4369	BUFFER ZONE CLAIM	F19603	242	2001 Nov 16	2022 Nov 16		935	2310	9348018.087	13695.0032	321	1320	ED16	2309.95	934.8018087
	4370	BUFFER ZONE CLAIM	F19604	238	2001 Nov 16	2022 Nov 16		1124	2779	11224569.32	14154.20043	315	1322	ED17	2773.65	1122.456932
	4371	BUFFER ZONE CLAIM	F19609	239	2001 Nov 16	2022 Nov 16		1129	2791	11273888.09	14368.93141	316	1394	ED18	2785.84	1127.388809
	4372	BUFFER ZONE CLAIM	F19611	243	2001 Nov 16	2022 Nov 16		947	2341	9430404.536	12968.96366	322	1396	ED19	2330.3	943.0404536
	4380	BUFFER ZONE CLAIM	F19660	32	2001 Nov 16	2022 Nov 16		999	2468	9973766.239	13706.97893	74	1206	GO3	2464.57	997.3766239
	4532	BUFFER ZONE CLAIM	F18297	244	2001 Nov 16	2022 Nov 16		654	1616	6525417.977	10265.98764	330	1535	ED38	1612.47	652.5417977
	4533	BUFFER ZONE CLAIM	F18299	234	2001 Nov 16	2022 Nov 16		616	1523	6146857.619	10706.84718	311	738	ED39	1518.92	614.6857619

SCHEDULE C

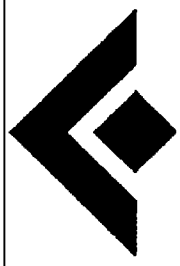
INTELLECTUAL PROPERTY

Canadian Intellectual Property

Trade-Marks

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
CA-1	POWERED BY DOMINION POWERED BY DOMINION & DESIGN	Formalized (Pending) **App** 1858961 **App** 22-SEP-2017		DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-2	ARCTIC LIGHT ARCTIC LIGHT & DESIGN	Formalized (Pending) **App** 1858960 **App** 22-SEP-2017		DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-3	DDC	**App** 20-OCT-2015 **App** 1751229 **Reg** 17-MAY-2017 **Reg** TMA971149 Registered	(1) Operation of a company dealing in mining services for diamonds and precious stones, sourcing of diamonds; processing of diamonds, namely, diamond mining, cutting of diamonds, polishing of diamonds, grading of diamonds; retail and wholesale sale of diamonds, jewellery and precious stones.	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-4	INTÉGRITÉ ET HÉRITAGE ASSURÉS	**App** 22-DEC-2014 **App** 1708485 Allowed (Pending)	(1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds.	DOMINION DIAMOND CORPORATION a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-5	CANADAMARK	**App** 29-MAY-2014 **App** 1679010 **Reg** 25-SEP-2015 **Reg** TMA915208 Registered	(1) Operation of a programme to verify the integrity of a diamond and to assure supply chain integrity for the diamond to be of Canadian origin; providing information via a website in the field of diamond mining; verifying	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
			and certifying the origin, character and quality of diamonds, gems and gemstones. (2) Providing information via a website in the field of gemological services.	Calgary ALBERTA T2P 1T1	
CA-6	INTEGRITY AND HERITAGE ASSURED	**App** 06-MAR-2014 **App** 1666641 **Reg** 01-DEC-2015 **Reg** TMA964056 Registered	(1) mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-7	THE ORIGINAL DIAMOND HALLMARK	**App** 06-MAR-2014 **App** 1666637 Allowed (Pending)	(1) mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds	DOMINION DIAMOND CORPORATION, a legal entity 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	
CA-8	THE ORIGINAL DIAMOND HALLMARK. INTEGRITY AND HERITAGE ASSURED	**Aban** 15-MAR-2017 **App** 25-FEB-2014 **App** 1665350 Abandoned - section 40(3) (Abandoned)	(1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds,	DOMINION DIAMOND CORPORATION, a legal entity 250 University Avenue Toronto ONTARIO M5H 3E5	
CA-9	JAY PIPE LOGO 	**App** 25-JUN-2013 **App** 1632642 **Reg** 19-JUL-2017 **Reg** TMA976191 Registered	(1) diamonds, jewellery, precious stones; drinking mugs, drinking glasses, coffee cups, t-shirts, hats, caps, sweatshirts (1) mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	DOMINION DIAMOND CORPORATION, a legal entity, 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS/See evidence on File No. 1619023
CA-10	DOMINION DIAMOND LOGO	**App** 20-MAR-2013 **App** 1619023 **Reg** 01-APR-2016 **Reg** TMA933199 Registered	(1) diamonds, jewellery, precious stones (1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds,	DOMINION DIAMOND CORPORATION 606 4th Street SW Suite 900	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS/ See evidence on File No. 1619023

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
			namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	Calgary ALBERTA T2P 1T1	
CA-11	DOC	**App** 14-FEB-2013 **App** 1614278 **Reg** 20-JAN-2016 **Reg** TMA926525 Registered	(1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	DOMINION DIAMOND CORPORATION 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS/See evidence on File No. 1619023
CA-12	DOMINION DIAMOND	**App** 12-FEB-2013 **App** 1613885 **Reg** 10-MAR-2015 **Reg** TMA898371 Registered	(1) Diamonds, jewellery, precious stones. (1) Mining services, retail and wholesale sale of diamonds, sourcing of diamonds, processing of diamonds, namely, cutting services, polishing services and chemical cleaning services, sorting of diamonds, arranging for and providing security for diamond related businesses.	DOMINION DIAMOND CORPORATION 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 sept/Sep 2017 COMMENTS/ See evidence on File No. 1619023
CA-13	Stylized C & Diamond Design 	**App** 27-AUG-2003 **App** 1188975 **Reg** 02-AUG-2007 **Reg** TMA693308 Registered	(1) Diamonds. (2) Precious and semi-precious gems and gemstones. (1) Verifying and certifying the origin, character, and quality of diamonds, gems, and gemstones. (2) Operation of a business selling and distributing diamonds, precious and semi-precious gems and gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: POINT LAKE MARKETING INC. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 sept/Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-14	CANADAMARK CERTIFICATE OF ORIGIN	**App** 23-JUL-2003 **App** 1185786 **Reg** 28-AUG-2008 **Reg** TMA722713 Registered	(1) Diamonds. (2) Precious and semi-precious gems and gemstones. (3) Pearls. (4) Precious metals, namely, gold, silver, and platinum. (5) Jewellery, namely, bracelets, rings, necklaces, pendants, chains, anklets, earrings, brooches, tie pins, tie clips, cufflinks, pendants, barrettes, hair clips, and rings. (6) Timepieces, namely, watches, stop watches, chronometers, and clocks.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-15	LOOK FOR THE MARK	**App** 27-JUN-2003 **App** 1183289 **Reg** 27-JUN-2007 **Reg** TMA690926 Registered	(1) Precious and semi-precious gems and gemstones. (1) Identifying and appraising the origin, value, and quality of precious and semi-precious gemstones, and providing certification, guarantees, and warranties to that effect to third parties. (2) Electronic laser-inscription of precious and semi-precious gemstones. (3) Retail and wholesale distribution of precious and semi-precious gems and gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: POINT LAKE MARKETING INC. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-16	CANADA MARK & Design CANADAMARK	**App** 26-MAY-2003 **App** 1179322 **Reg** 12-JUN-2007 **Reg** TMA689626 Registered	(1) Precious metals and their alloys, and goods in precious metals; precious stones; and jewellery.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: Point Lake Marketing Inc. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED/DATE: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-17	THE DEFINING SYMBOL OF CANADIAN DIAMONDS	**App** 26-MAY-2003 **App** 1179486 **Reg** 12-JUN-2007 **Reg** TMA689625 Registered	(1) Precious and semi-precious gems and gemstones. (1) Operation of a wholesale business selling gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLEE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 juin/Jun 2007 COMMENTS: FROM: POINT LAKE MARKETING INC. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-18	CANADAMARK	**App** 12-NOV-2002 **App** 1159101	(1) Precious stones; jewellery. (1) Providing business and statistical	Dominion Diamond Corporation	**CHANGE IN TITLE:** TYPE OF CHANGE: Assignment

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
		Reg 07-DEC-2005 **Reg** TMA654545 Registered	information about the origin, character, and quality of diamonds; compilation and systemization of information into computer databases; operation of a retail and wholesale business selling and distributing diamonds, gems, jewellery, and watches; laser scribing.	606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	DATE REGISTERED: 09 Jun 2008 DATE OF CHANGE: 29 Jun 2007 COMMENTS: FROM: Point Lake Marketing Inc. TO: BHP Billiton Diamonds (Belgium) N.V. See evidence on File No. 1117820 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS FROM: BHP Billiton Diamonds (Belgium) N.V. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1179486 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 06 Dec 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1159101 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-19	EKATI DIAMONDS & DESIGN  	**App** 09-MAY-2001 **App** 1102515 **Reg** 18-DEC-2003 **Reg** TMA598004 Registered	(1) Precious and semi-precious gems and gemstones. (2) Pearls. (3) Precious metals, namely, gold, silver, and platinum. (4) Jewellery, namely, bracelets, rings, necklaces, pendants, chains, anklets, earrings, brooches, tie pins, tie clips, cufflinks, pendants, barrettes, hair clips, and rings. (5) Money clips. (6) Timepieces, namely, watches, stop watches, chronometers, and clocks. (1) Operation of a retail business selling jewellery, precious metals, gemstones, money clips, and	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
			timepieces. (2) Operation of a wholesale business selling jewellery, precious metals, gemstones, money clips, and timespieces. (3) Operation of a electronic commerce business selling jewellery, precious metals, gemstones, money clips, and timespieces to others, through a global computer network. (4) Operation of a website providing information on the subjects of jewellery, precious metals, gemstones, money clips, and timepieces.		**CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 jJul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-20	EKATI	**App** 04-MAY-2001 **App** 1101835 **Reg** 13-JUN-2003 **Reg** TMA583710 Registered	(1) Precious and semi-precious gems and gemstones.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2010 COMMENTS:

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. Voir Preuve au dossier/See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-21	AURIAS	**App** 02-FEB-2001 **App** 1091174 **Reg** 27-JAN-2004 **Reg** TMA600675 Registered	(1) Precious metals and their alloys; precious stones; jewellery made from precious metals and precious stones. (1) Marketing services namely advertising services for third parties relating to the sale of precious stones and jewellery; retailing and wholesaling services relating to the sale of precious stones, and retail sale services of custom jewellery of others.	Dominion Diamond Corporation PO Box 4569, Station A Toronto ONTARIO M5W 4T9	**OWNER ADDRESS CHANGE:** DATE REGISTERED: 14 Mar 2013 COMMENTS: See evidence on File No. 1091174 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS:

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					FROM: BHP Billiton Innovation Pty. Ltd. TO: Dominion Diamond Marketing N.V. See evidence on File No. 1091174 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Marketing N.V. TO: Dominion Diamond Corporation See evidence on File No. 1091174
CA-22	EKATI DIAMONDS & Maple Leaf Design EKATI DIAMONDS	**App** 16-JUL-1999 **App** 1022653 **Reg** 20-FEB-2001 **Reg** TMA541389 Registered	(1) Jewels, gems, and precious stones, namely, diamonds. (1) Mining and processing diamonds. (2) Sale of diamonds to others on a wholesale basis.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name and Address DATE REGISTERED: 07 Feb 2002 DATE OF CHANGE: 25 Oct 2001 COMMENTS: FROM: BHP DIAMONDS INC., TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENT: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					CHANGE IN TITLE: TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS:

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					See evidence on File No. 1619023
CA-23	EKATI DIAMOND MINE & DESIGN 	**App** 30-MAR-1999 **App** 1010291 **Reg** 04-JAN-2001 **Reg** TMA539131 Registered	(1) Jewels, gems, and precious stones, namely, diamonds.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name and Address DATE REGISTERED: 07 Feb 2002 DATE OF CHANGE: 25 Oct 2001 COMMENTS: FROM: BHP DIAMONDS INC., TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED : 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					DATE OF CHANGE: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE/: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023
CA-24	EKATI	**App** 13-NOV-1998 **App** 896464 **Reg** 13-JAN-2000 **Reg** TMA521456 Registered	(1) Jewels, gems, and precious stones, namely, diamonds. (1) Mining and processing diamonds. (2) Sale of diamonds to others on a wholesale basis.	Dominion Diamond Corporation 606 4th Street SW Suite 900 Calgary ALBERTA T2P 1T1	**CHANGE IN TITLE:** TYPE OF CHANGE: Name and Address DATE REGISTERED: 07 Feb 2002 DATE OF CHANGE: 25 Oct 2001 COMMENTS: FROM: BHP DIAMONDS INC. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					OWNER ADDRESS CHANGE: DATE REGISTERED: 06 Oct 2005 COMMENTS: See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2007 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2008 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Diamonds Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Name DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jan 2010 COMMENTS: FROM: BHP Billiton Diamonds Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Amalgamation DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE/: 01 Jul 2010 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464 Amalgamation and address DATE REGISTERED: 11 Apr 2013 DATE OF CHANGE: 01 Jul 2012 COMMENTS: FROM: BHP Billiton Canada Inc. TO: BHP Billiton Canada Inc. See evidence on File No. 896464

Ref. No.	Trade-mark	Status	Goods and Services	Owner	Footnotes (CA)
					CHANGE IN TITLE: TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 10 Apr 2013 COMMENTS: FROM: BHP Billiton Canada Inc. TO: Dominion Diamond Ekati Corporation See evidence on File No. 896464 **CHANGE IN TITLE:** TYPE OF CHANGE: Assignment DATE REGISTERED: 21 Aug 2013 DATE OF CHANGE: 15 Jul 2013 COMMENTS: FROM: Dominion Diamond Ekati Corporation TO: Dominion Diamond Corporation See evidence on File No. 896464 **OWNER ADDRESS CHANGE:** DATE REGISTERED: 08 Sep 2017 COMMENTS: See evidence on File No. 1619023

Copyrights

Title	Reg. No.	Reg. Date	Author(s)	Registered Owner
JAY PIPE LOGO	1106059	2013-07-05	CARISA LAW SCOTT MCFARLAND	DOMINION DIAMOND CORPORATION
DOMINION DIAMOND LOGOS	1104372	2013-05-08	PETER NG	DOMINION DIAMOND CORPORATION

U.S. Intellectual Property

Trademarks

Ref. No.	Trademark	Status	Goods and Services	Owner	Assignment Information
US-1	CANADAMARK **Cross References:** CANADA MARK CANADAMARK	**App** 13-JUN-2014 **App** 86309170 **Reg** 25-AUG-2015 **Reg** 4797939 Registered Section 44(D)	**INT. CL. 37** PROVIDING INFORMATION VIA A WEBSITE IN THE FIELD OF DIAMOND MINING **INT. CL. 42** GEMOLOGICAL SERVICES, NAMELY, VERIFYING THE INTEGRITY OF A DIAMOND TO ASSURE THE DIAMOND TO BE OF CANADIAN ORIGIN, AND VERIFYING AND CERTIFYING THE ORIGIN, CHARACTER AND QUALITY OF DIAMONDS, GEMS AND GEMSTONES; PROVIDING INFORMATION VIA A WEBSITE IN THE FIELD OF GEMOLOGICAL SERVICES	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-2	THE ORIGINAL DIAMOND HALLMARK THE ORIGINAL DIAMOND HALLMARK	**App** 14-MAR-2014 **App** 86221684 Pending Section 44(D)	**INT. CL. 35** RETAIL STORE AND WHOLESALE STORE SERVICES FEATURING DIAMONDS **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-3	INTEGRITY AND HERITAGE ASSURED INTEGRITY AND HERITAGE ASSURED	**App** 14-MAR-2014 **App** 86221696 **Reg** 03-MAY-2016 **Reg** 4953221 Registered Supplemental Register Section 44(D)	**INT. CL. 35** RETAIL STORE AND WHOLESALE STORE SERVICES FEATURING DIAMONDS **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-4	JAY PIPE 	**App** 08-JUL-2013 **App** 86004485 Pending Section 44(D) Intent to Use	**INT. CL. 14** DIAMONDS, JEWELLERY, PRECIOUS STONES **INT. CL. 21** DRINKING MUGS, DRINKING GLASSES, COFFEE CUPS **INT. CL. 25** CLOTHING, NAMELY, T-SHIRTS, HATS AND CAPS **INT. CL. 37** MINING EXTRACTION SERVICES **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	
US-5	D 	**App** 23-APR-2013 **App** 85912253 **Reg** 11-OCT-2016 **Reg** 5057005 Registered Section 44(D)	**INT. CL. 14** DIAMONDS, JEWELLERY, PRECIOUS STONES **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, SORTING OF DIAMONDS **INT. CL. 45** SECURITY CONSULTANCY IN THE NATURE OF ARRANGING FOR SECURITY FOR DIAMOND RELATED	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	

			BUSINESSES; PROVIDING SECURITY FOR DIAMOND RELATED BUSINESSES, NAMELY, SECURITY GUARD SERVICES FOR DIAMOND RELATED BUSINESSES, MONITORING OF SECURITY SYSTEMS FOR DIAMOND RELATED BUSINESSES, AND SECURITY THREAT ANALYSIS FOR PERSONAL PROTECTION PURPOSES FOR DIAMOND RELATED BUSINESSES		
US-6	DDC DDC	**App** 01-MAR-2013 **App** 85864763 Published (Pending) Section 44(D)	**INT. CL. 14** DIAMONDS **INT. CL. 35** RETAIL STORE AND WHOLESALE STORE SERVICES FEATURING DIAMONDS **INT. CL. 37** MINING EXTRACTION OF DIAMONDS **INT. CL. 40** PROCESSING OF DIAMONDS, NAMELY, CUTTING SERVICES, POLISHING SERVICES, AND CHEMICAL CLEANING SERVICES; SORTING OF DIAMONDS **INT. CL. 45** SECURITY CONSULTANCY IN THE NATURE OF ARRANGING FOR SECURITY FOR DIAMOND RELATED BUSINESSES; PROVIDING SECURITY FOR DIAMOND RELATED BUSINESSES, NAMELY, SECURITY GUARD SERVICES FOR DIAMOND RELATED BUSINESSES, MONITORING OF SECURITY SYSTEMS FOR DIAMOND RELATED BUSINESSES, AND SECURITY THREAT ANALYSIS FOR PERSONAL PROTECTION PURPOSES FOR DIAMOND RELATED BUSINESSES	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	**Assignor:** DOMINION DIAMOND CORPORATION CANADA CORPORATION **Assignor:** HARRY WINSTON DIAMOND CORPORATION CANADA CORPORATION **Signed:** 26-MAR-2013 **Brief:** CERTIFICATE OF AMALGAMATION **Recorded:** 18-APR-2013 **Reel/Frame:** 5009/0970 **Correspondent:** FRANCIS J. DUFFIN, WIGGIN AND DANA LLP ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832 **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION PO BOX 4569, STATION A TORONTO, ONTARIO, M5W 4T9 CA (CANADA)
US-7	DOMINION DIAMOND DOMINION DIAMOND	**App** 19-FEB-2013 **App** 85853915 **Reg** 21-JUL-2015 **Reg** 4774976 Registered Section 44(D)	**INT. CL. 37** MINING EXTRACTION OF DIAMONDS	DOMINION DIAMOND CORPORATION CANADA CORPORATION 606 4TH STREET SW, SUITE 900 CALGARY, ALBERTA, T2P1T1 CA (CANADA)	**Assignor:** DOMINION DIAMOND CORPORATION CANADA CORPORATION **Assignor:** HARRY WINSTON DIAMOND CORPORATION CANADA CORPORATION **Signed:** 26-MAR-2013 **Brief:** CERTIFICATE OF AMALGAMATION **Recorded:** 18-APR-2013 **Reel/Frame:** 5009/0970 **Correspondent:**

					FRANCIS J. DUFFIN, WIGGIN AND DANA LLP ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832 **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION PO BOX 4569, STATION A TORONTO, ONTARIO, M5W 4T9 CA (CANADA)
US-8	CANADAMARK **Cross References:** CANADA MARK CANADAMARK	**App** 22-JUN-2007 **App** 77213664 **Reg** 05-AUG-2008 **Reg** 3479107 Registered CANCELLED SECTION 8 IN INT. CL. 40. ONLY O.G. 6-17-2014	**INT. CL. 14** PRECIOUS GEMS AND GEMSTONES; JEWELRY **INT. CL. 35** WHOLESALE AND RETAIL DISTRIBUTORSHIPS FEATURING DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES AND JEWELRY; PROVIDING CONSUMER INFORMATION VIA A WEBSITE IN THE FIELD OF DIAMONDS, JEWELRY, DIAMOND MINING AND DIAMOND PROCESSING **INT. CL. 40** [LASER SCRIBING SERVICES OF PRECIOUS GEMSTONES AND DIAMONDS] **INT. CL. 42** PROVIDING INFORMATION VIA A WEBSITE IN THE FIELDS OF DIAMOND MINING AND GEMOLOGICAL SERVICES, NAMELY, GRADING PRECIOUS STONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V."

					PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION

					Signed: 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-9	THE DEFINING SYMBOL OF CANADIAN DIAMONDS THE DEFINING SYMBOL OF CANADIAN DIAMONDS	**App** 21-NOV-2003 **App** 78331599 **Reg** 20-NOV-2007 **Reg** 3339229 Cancelled **Cancellation Section:** 8 Section 44(D)	**INT. CL. 14** PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES **INT. CL. 35** WHOLESALE DISTRIBUTORSHIPS FEATURING DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY

					NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V." PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)

					Assignor: BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION **Signed:** 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-10	*Design Only* 	**App** 21-NOV-2003 **App** 78331632 **Reg** 26-AUG-2008 **Reg** 3492580 Registered Section 44(D)	**INT. CL. 14** DIAMONDS; PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES **INT. CL. 35** WHOLESALE AND RETAIL DISTRIBUTORSHIPS FEATURING DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES; PROVIDING WEBSITE FEATURING CONSUMER INFORMATION ON DIAMONDS, PRECIOUS AND SEMI-PRECIOUS GEMS AND GEMSTONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION

					Signed: 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V." PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION

					P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION **Signed:** 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-11	CANADAMARK **Cross References:** CANADA MARK	**App** 29-OCT-2002 **App** 76464985 **Reg** 06-NOV-2007 **Reg** 3328185 Registered	**INT. CL. 14** PRECIOUS GEMSTONES; JEWELRY **INT. CL. 38** PROVIDING MULTIPLE-USER ACCESS TO A GLOBAL COMPUTER INFORMATION NETWORK FOR THE TRANSFER AND DISSEMINATION OF A WIDE-RANGE OF INFORMATION **INT. CL. 40** LASER SCRIBING OF PRECIOUS GEMSTONES	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA)	**Assignor:** BHP BILLITON INNOVATION PTY LTD. AUSTRALIA CORPORATION **Signed:** 31-MAY-2003 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 14-DEC-2004 **Reel/Frame:** 2992/0668 **Correspondent:** ROTHWELL, FIGG, ERNST & MANBECK ROBERT B. MURRAY 1425 K ST., N.W. SUITE 800 WASHINGTON, D.C. 20005 **Assignee:** POINT LAKE MARKETING INC. BRITISH COLUMBIA CORPORATION SUITE 2300 1111 WEST GEORGIA STREET

					VANCOUVER, BRITISH COLUMBIA, V6E 4M3 CA (CANADA) **Assignor:** BHP BILLITON INNOVATION PTY LTD AUSTRALIA COMPANY **Signed:** 31-MAY-2003 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 17-DEC-2004 **Reel/Frame:** 2994/0839 **Correspondent:** STITES & HARBISON, PLLC BREWSTER TAYLOR 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314 **Assignee:** POINT LAKE MARKETING INC. CANADA CORPORATION 2300 1111 WEST GEORGIA STREET VANCOUVER, V6E 4M3 CA (CANADA) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 01-DEC-2008 **Reel/Frame:** 3896/0068 **Correspondent:** EUGENE M. PAK, ESQ. C/O DLA PIPER LLP 153 TOWNSEND STREET, SUITE 800 SAN FRANCISCO, CA 94107 **Assignee:** BHP BILLITON DIAMONDS N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268

					ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** POINT LAKE MARKETING, INC. CANADA CORPORATION **Signed:** 25-JUN-2007 **Brief:** CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY NAME FROM "BHP BILLITON DIAMONDS N.V." TO "BHP BILLITON DIAMONDS (BELGIUM) N.V." PREVIOUSLY RECORDED ON REEL 003896 FRAME 0068. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT OF ENTIRE INTEREST AND **Recorded:** 21-FEB-2013 **Reel/Frame:** 4968/0282 **Correspondent:** DLA PIPER LLP (US) C/O HEATHER DUNN 555 MISSION STREET SUITE 2400 SAN FRANCISCO, CA 94105 **Assignee:** BHP BILLITON DIAMONDS (BELGIUM) N.V. BELGIUM N.V. HOVENIERSSTRAAT 30, BUS 263-268 ANTWERPEN, 2018 BE (BELGIUM) **Assignor:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0681 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800

					TORONTO, M4W 3J5 CANADA **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, M5W 4T9 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS N.V. BELGIUM CORPORATION **Signed:** 10-APR-2013 **Brief:** CHANGE OF NAME **Recorded:** 07-MAR-2014 **Reel/Frame:** 5232/0687 **Correspondent:** PAUL HERBERT 2 BLOOR STREET EAST SUITE 1800 TORONTO, ONC M4W 3J5 **Assignee:** DOMINION DIAMOND MARKETING N.V. BELGIUM CORPORATION HOVENIERSSTRAAT 30, BOX 263-268 ANTWERP, 2018 BE (BELGIUM)
US-12	EKATI	**App** 05-FEB-1999 **App** 75635156 **Reg** 11-DEC-2001 **Reg** 2517996 Renewed (Registered)	**INT. CL. 14** PRECIOUS GEMSTONES AND JEWELRY	DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, ONATRIO, M5W 4T9 CA (CANADA)	**Assignor:** BHP DIAMONDS, INC. CANADA CORPORATION **Signed:** 10-OCT-2011 **Brief:** CHANGE OF NAME **Recorded:** 06-MAR-2013 **Reel/Frame:** 4976/0093 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON DIAMONDS INC. CANADA CORPORATION 925 WEST GEORGIA STREET

					2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS INC CANADA CORPORATION **Signed:** 01-JUL-2007 **Brief:** AMALGAMATION OF BHP BILLITON DIAMONDS INC. WITH POINT LAKE MARKETING INC AND BHP PETROLEUM (TOLO) INC. TO FORM BHP BILLITON DIAMONDS INC. **Recorded:** 13-MAR-2013 **Reel/Frame:** 4981/0204 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON DIAMONDS INC CANADA CORPORATION 2000 CATHEDRAL PLACE, 925 WEST GEORGIA STREET VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS INC CANADA CORPORATION **Signed:** 01-JUL-2008 **Brief:** AMALGAMATION OF BHP BILLITON DIAMONDS INC. WITH BHP BILLITON (TRINIDAD-EAST COAST) LTD TO FORM BHP BILLITON DIAMONDS INC **Recorded:** 14-MAR-2013 **Reel/Frame:** 4982/0275 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614

					Assignee: BHP BILLITON DIAMONDS INC CANADA CORPORATION 925 WEST GEORGIA STREET 2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON DIAMONDS INC CANADA CORPORATION **Signed:** 01-JAN-2010 **Brief:** CHANGE OF NAME **Recorded:** 18-MAR-2013 **Reel/Frame:** 4984/0541 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON CANADA INC CANADA CORPORATION 925 WEST GEORGIA STREET 2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON CANADA INC CANADA CORPORATION **Signed:** 01-JUL-2010 **Brief:** AMALGAMATION OF BHP BILLITON CANADA INC WITH ATHABASCA POTASH INC TO FORM BHP BILLITON CANADA INC **Recorded:** 19-MAR-2013 **Reel/Frame:** 4985/0076 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:**

					BHP BILLITON CANADA INC CANADA CORPORATION 925 WEST GEORGIA STREET 2000 CATHEDRAL PLACE VANCOUVER, BRITISH COLUMBIA V6C 3L2 CA (CANADA) **Assignor:** BHP BILLITON CANADA INC CANADA CORPORATION **Signed:** 01-JUL-2012 **Brief:** AMALGAMATION OF BHP BILLITON CANADA INC WITH BHP BILLITON (TRINIDAD 3B) INC TO FORM BHP BILLITON CANADA INC **Recorded:** 20-MAR-2013 **Reel/Frame:** 4985/0927 **Correspondent:** STACEY R. HALPERN 2040 MAIN STREET, FOURTEENTH FLOOR IRVINE, CA 92614 **Assignee:** BHP BILLITON CANADA INC CANADA CORPORATION 2900 - 550 BURRARD STREET VANCOUVER, BC V6C 0A3 CA (CANADA) **Assignor:** BHP BILLITON CANADA INC CANADA CORPORATION **Signed:** 10-APR-2013 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 08-NOV-2013 **Reel/Frame:** 5159/0041 **Correspondent:** PAUL HERBERT C/O RICHES, MCKENZIE & HERBERT LLP SUITE 1800 2 BLOOR STREET EAST TORONTO, ONTARIO M4W 3J5 **Assignee:** DOMINION DIAMOND EKATI

					CORPORATION CANADA CORPORATION 1102 4920 52 STREET YELLOWKNIFE, NT, X1A 3T1 CA (CANADA) **Assignor:** DOMINION DIAMOND EKATI CORPORATION CANADA CORPORATION **Signed:** 15-JUL-2013 **Brief:** ASSIGNS THE ENTIRE INTEREST **Recorded:** 08-NOV-2013 **Reel/Frame:** 5159/0047 **Correspondent:** PAUL HERBERT C/O RICHES, MCKENZIE & HERBERT LLP SUITE 1800 2 BLOOR STREET EAST TORONTO, ONTARTIO M4W 3J5 **Assignee:** DOMINION DIAMOND CORPORATION CANADA CORPORATION P.O. BOX 4569, STATION A TORONTO, ONATRIO, M5W 4T9 CA (CANADA)

EXHIBIT A

FORM OF SUPPLEMENT
TO
SECOND LIEN CANADIAN PLEDGE AND SECURITY AGREEMENT

TO: Name: Wilmington Trust, National Association, as notes collateral agent (in such capacity and together with any successor in such capacity, the "**Agent**")
Address: 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402

Attention: Dominion Diamond Administrator
Fax: (612) 217-5651

RECITALS:

A. Reference is made to the Second Lien Canadian Pledge and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time the "**Security Agreement**") dated as of November 1, 2017 entered into by Northwest Acquisitions ULC and certain of its affiliates (including those which thereafter sign a Supplement), in favour of the Agent (for its own benefit and for the benefit of the other Secured Parties).

B. Capitalized terms used but not otherwise defined in this Supplement have the respective meanings given to such terms in the Security Agreement, including the definitions of terms incorporated in the Security Agreement by reference to other agreements.

C. Section 40 of the Security Agreement provides that additional Persons may from time to time after the date of the Security Agreement become Debtors under the Security Agreement by executing and delivering to the Agent a supplemental agreement to the Security Agreement in the form of this Supplement.

D. The undersigned (the "**New Debtor**") has agreed to become a Debtor under the Security Agreement by executing and delivering this Supplement to the Agent.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the New Debtor, the New Debtor agrees with and in favour of the Agent (for its own benefit and for the benefit of the Secured Parties) as follows:

1. The New Debtor has received a copy of, and has reviewed, the Security Agreement and is executing and delivering this Supplement to the Agent pursuant to Section 40 of the Security Agreement.

2. Effective from and after the date this Supplement is executed and delivered to the Agent by the New Debtor:

(a) the New Debtor shall be, and shall be deemed for all purposes to be, a Debtor under the Security Agreement with the same force and effect, and subject to the same agreements, representations, indemnities, liabilities, obligations and

Security Interests, as if the New Debtor had been, as of the date of this Supplement, an original signatory to the Security Agreement as a Debtor; and

(b) all Collateral of the New Debtor shall be subject to the Security Interests granted by the New Debtor as security for the due payment and performance of the Secured Liabilities of the New Debtor in accordance with the provisions of the Security Agreement.

In furtherance of the foregoing, the New Debtor, as general and continuing collateral security for the due payment and performance of its Secured Liabilities, pledges, mortgages, charges and assigns (by way of security) to the Agent (for its own benefit and for the benefit of the other Secured Parties), and grants to the Agent (for its own benefit and for the benefit of the other Secured Parties) a security interest in, all right, title and interest in and to the Collateral of the New Debtor. The terms and provisions of the Security Agreement are incorporated by reference in this Supplement.

3. The New Debtor represents and warrants to the Agent (for its own benefit and for the benefit of the other Secured Parties) that each of the representations and warranties made or deemed to have been made by it under the Security Agreement as a Debtor are true and correct on the date of this Supplement.

4. All of the information set out in Schedule A to this Supplement with respect to the New Debtor is accurate and complete as of the date of this Supplement.

5. Upon this Supplement bearing the signature of any Person claiming to have authority to bind the New Debtor coming into the possession of the Agent, this Supplement and the Security Agreement shall be deemed to be finally and irrevocably executed and delivered by, and be effective and binding on, and enforceable against, the New Debtor free from any promise or condition affecting or limiting the liabilities of the New Debtor. No statement, representation, agreement or promise by any officer, employee or agent of the Agent or any Secured Party, unless expressly set forth in this Supplement, forms any part of this Supplement or has induced the New Debtor to enter into this Supplement and the Security Agreement or in any way affects any of the agreements, obligations or liabilities of the New Debtor under this Supplement and the Security Agreement.

6. The New Debtor hereby agrees to file, from time to time, in any relevant jurisdiction any financing statements (including fixture filings), and financing change statements that contain the information required by the PPSA or the UCC of each applicable jurisdiction for the filing of any financing statement or financing change statement relating to the Collateral, including the filing of a financing statement describing the Collateral as "all assets now owned or hereafter acquired by the Debtor or in which Debtor otherwise has rights" or using words of similar meaning.

7. Delivery of an executed signature page to this Supplement by the New Debtor by facsimile or other electronic transmission shall be as effective as delivery by the New Debtor of a manually executed copy of this Supplement by the New Debtor.

8. This Supplement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein.

9. This Supplement and the Security Agreement shall be binding upon the New Debtor and its successors. The New Debtor shall not assign its rights and obligations under this Supplement or the Security Agreement, or any of its rights or obligations in this Supplement or the Security Agreement.

Dated: **[MONTH] [DAY], [YEAR]**

[NEW DEBTOR], as a Debtor

By: _____
Name:
Title:

SCHEDULE A

DEBTOR INFORMATION

Full legal name:

Prior names:

Predecessor companies:

Jurisdiction of incorporation or organization:

Address of chief executive office:

Provinces where business is carried on or tangible Personal Property is kept:

Addresses of all owned real property:

Addresses of all leased real property:

Subsidiaries of the New Debtor:

Instruments, Documents of Title and Chattel Paper of the New Debtor:

Pledged Certificated Securities:

Pledged Issuer	Securities Owned	% of issued and outstanding Securities of Pledged Issuer	Security Certificate Numbers	Security Certificate Location
[SUBCO]	[100 common shares]	[100%]	[C-1]	[Toronto]

Pledged Securities Accounts:

Pledged Securities Intermediary	Securities Account Number	Pledged Securities Intermediary's Jurisdiction	Pledged Security Entitlements
[BROKERAGE HOUSE]	[NUMBER]	[Ontario]	[100 common shares of [COMPANY]]

Pledged Uncertificated Securities:

Pledged Issuer	Pledged Issuer's Jurisdiction	Securities Owned	% of issued and outstanding Securities of Pledged Issuer
[LIMITED PARTNERSHIP]	[Ontario]	[100 limited partnership units]	[50% of all limited partnership interests]

Pledged Futures Accounts:

Pledged Futures Intermediary	Futures Account Number	Pledged Futures Intermediary's Jurisdiction	Pledged Futures Contracts
[BROKERAGE HOUSE]	[NUMBER]	[Ontario]	[*Brief description of Contract*]

Registered trade-marks and applications for trademark registrations:

Country	*Trade-mark*	*Application No.*	*Application Date*	*Registration No.*	*Registration Date*	*Licensed to or by Debtor*[1]
						[Y/N]

Patents and patent applications:

Country	*Title*	*Patent No.*	*Application Date*	*Date of Grant*	*Licensed to or by Debtor*
					[Y/N]

Copyright registrations and applications for copyright registrations:

Country	*Work*	*Application No.*	*Application Date*	*Registration No.*	*Licensed to or by Debtor*
					[Y/N]

Industrial designs/registered designs and applications for registered designs:

Country	*Design*	*Application No.*	*Application Date*	*Registration No.*	*Issue Date*	*Licensed to or by Debtor*
						[Y/N]

[1] If the answer to this or any corresponding column is "yes", describe the particulars of each such licence.

EXHIBIT B

[Form of] Pari Secured Indebtedness **Secured Party Consent**

[Name of Representative]
[Address of Representative]

[Date]

Wilmington Trust, National Association, solely in its capacity as Notes Collateral Agent, as Agent
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: Dominion Diamond Administrator

The undersigned is the representative for persons wishing to become Secured Parties (the "New Secured Parties") under the Second Lien Canadian Pledge and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), among Northwest Acquisitions ULC (the "Escrow Issuer") and the other Debtors from to time to time party thereto in favor of Wilmington Trust, National Association, as notes collateral agent (together with its successors and assigns in such capacity, the "Agent") for the Secured Parties (as defined therein). Capitalized terms used but not otherwise defined in this Pari Secured Indebtedness Secured Party Consent have the meanings set forth in the Security Agreement (or, if not set forth therein, as set forth in the Indenture referred to therein).

In consideration of the foregoing, the undersigned hereby:

(i) represents that it has been duly authorized by the New Secured Parties to become a party to the Security Agreement [and the Intercreditor Agreement] on behalf of the New Secured Parties under that certain [DESCRIBE OPERATIVE AGREEMENT] (the "New Agreement" and the obligations under the New Agreement, the "New Secured Obligations") and to act as the representative for the New Secured Parties;

(ii) acknowledges that it has received a copy of the Security Agreement, the U.S. Security Agreement, the Intercreditor Agreement and each Additional Intercreditor Agreement;

(iii) appoints and authorizes the Agent to take such action as agent on its behalf and on behalf of all other Secured Parties and to exercise such powers under the Security Agreement, each other Security Document applicable to such New Secured Parties, the Intercreditor Agreement and each Additional Intercreditor Agreement as are delegated to the Agent by the terms thereof, together with all such powers as are reasonably incidental thereto; and

(iv) accepts and acknowledges the terms of the Security Agreement, each other Security Document applicable to such New Secured Parties and each intercreditor agreement applicable to it and the New Secured Parties and agrees to serve as representative for the New Secured Parties with respect to the New Secured Obligations and agrees on its own behalf and on behalf of the

New Secured Parties to be bound by the terms thereof applicable to holders of Pari Secured Indebtedness Secured Liabilities, with all the rights and obligations of a Secured Party thereunder and bound by all the provisions thereof as fully as if it had been a Secured Party on the date of the Security Agreement and each of the applicable intercreditor agreements and agrees that its address for receiving notices pursuant to the Security Documents shall be as follows:

[Address].

The Agent, by acknowledging and agreeing to this Pari Secured Indebtedness Secured Party Consent, accepts the appointment in clause (iii) above.

THIS PARI SECURED INDEBTEDNESS SECURED PARTY CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE IN THAT PROVINCE.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned has caused this Pari Secured Indebtedness Secured Party Consent to be duly executed by its authorized officer as of the date first set forth above.

[NAME OF REPRESENTATIVE]

By:_____
Name:
Title:

Acknowledged and Agreed:

WILMINGTON TRUST, NATIONAL ASSOCIATION, solely in its capacity as Notes Collateral Agent, as Agent

By:_____
Name:
Title:

Acknowledged and Agreed:

[ESCROW ISSUER],
for itself and on behalf of the other Debtors

By:_____
Name:
Title:

This is Confidential Exhibit "1" referred to in the Supplemental Affidavit of

Thomas Croese

sworn before me this 7th day of May, 2020.

A Commissioner for Oaths in and for the Northwest Territories

SHEILA M. MacPHERSON
Notary Public in and for the
Northwest Territories. My commission
does not expire being a solicitor

THIS DOCUMENT IS CONFIDENTIAL PURSUANT TO AN ORDER (SEALING), GRANTED BY THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK ON MAY 29, 2020

This is Exhibit "M" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

Karen Anderson

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT #4 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

Clerk's Stamp

AFFIDAVIT #4 OF THOMAS CROESE
Sworn on October 19, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

3. A copy of the JVA is attached as Confidential Exhibit 1 to my affidavit sworn on April 30, 2020 ("**April 30 Affidavit**). Terms capitalized in my Affidavit that I have not defined have the same meaning as in the JVA or the Second Amended and Restated Initial Order granted in the within proceedings on June 19, 2020 (the "**SARIO**").

Summary of Relief Sought

4. This affidavit is sworn in support of an application by DDMI to:

   (a) implement the realization process in respect of Dominion's share of production from the Diavik Mine (the "**DDMI Collateral**"), substantially as summarized below (the "**Realization Process**"); and

   (b) amend paragraph 16 of the SARIO so as to delete the provisions that limit the amount of DDMI Collateral that DDMI is permitted to hold based on Diamonds International Canada Limited ("**DICAN**") valuations. Instead DDMI, for the reasons that follow, including the uncertainty that attends with valuing the DDMI Collateral, proposes it be authorized to realize upon the DDMI Collateral.

5. DDMI has been funding Dominion's share of Diavik JV obligations by way of Cover Payments under the Diavik JV since the commencement of these proceedings in April 2020. As of today, the Cover Payment indebtedness owed by Dominion to DDMI totals $119.52 million CAD, plus interest (presently estimated to be in the amount of $2.37 million CAD) and legal fees, costs and expenses.

6. The Applicants have not been able to close a transaction under the SISP Procedures and it is clear that this CCAA case has now undergone a fundamental and material change. Dominion's participating interest in the Diavik Mine failed to attract any bids. There is no realistic prospect of Dominion paying Diavik JV Cash Calls. Significant expenditures are required for the acquisition of critical materials and supplies to be transported to site on the winter road and will have to be incurred very shortly. DDMI does not have sufficient capital to fund Dominion's Diavik JV obligations without receiving advances from its parent, Rio Tinto plc. Rio Tinto plc will not provide funding without assurances that DDMI will be able to recover the Cover Payment indebtedness. The Diavik Mine's continued operation is at risk in the present circumstances.

TRL

The Realization Process

7. Diamonds are a unique product type with a limited market that is currently subject to a number of external pressures. The COVID-19 pandemic does not show any signs of abating in the near-term and is worsening in many areas. Despite these challenges, DDMI has continued to utilize its existing market capability, strong supply chain and deep customer relationships to sell its share of Diavik Mine production and is therefore well placed to be the entity which implements the realization on the DDMI Collateral.

8. It is imperative that the DDMI Collateral be realized upon pursuant to a considered and controlled approach so-as to enhance the potential for value maximization. DDMI has designed the Realization Process, taking current market conditions into account, including its experience in selling DDMI's share of Diavik Mine production, to optimize recovery on the DDMI Collateral in a fair and transparent manner for the benefit of Dominion and its stakeholders, including Diavik Mine employees, contractors, vendors and the Government of the Northwest Territories (the "**GNWT**"). The key principles of the Realization Process are:

   (a) product must be fully cleaned and sorted in a wide variety of diamond categories (sizes, colours, clarities, shapes) to be able to offer the right products to the right customers. This sorting process needs to be executed in a safe and secure operation;

   (b) timing of sales must as much as possible be aligned to market cycles placing the right volume of product aligned with market demand;

   (c) optionality of sales channels (contracts, auctions, tenders, negotiated spot sales) provides flexibility, market/price/customer insights and fast product placement and monetization pathways;

   (d) a professional, experienced, equipped and well-capitalized organisation is required to execute the sales process and collect payment in the fastest and most cost-efficient manner possible;

   (e) fair and transparent realization of collateral will be achieved by treating all Diavik Mine production the same, without discrimination or preference between the DDMI Collateral and DDMI's own products.

TMR

9. The Realization Process will follow standard processes and procedures for diamond sales, including accessing and utilizing international marketing networks. The basic operation of the Realization Process is as follows:

(a) DDMI Collateral will be transported from the PSF to Antwerp, Belgium for cleaning, sorting, marketing and sale;

(b) DDMI Collateral will be insured, imported, cleaned, sorted, valued and sold using existing secure and well-established infrastructure. Full utilization will be made of existing experience, security systems, diamond stock tracking software, sorting technology and experts, pricing methods, contracts, auction platform, and industry networks;

(c) DDMI Collateral will be sorted and valued on the same sorting product line as DDMI product and phased into the market over time to avoid a high volume of product being offered at once. The exact time at which this occurs will be dependent on prevailing market conditions, with focus on optimizing sale proceeds by avoiding a circumstance where a market that is already experiencing deflated pricing is flooded with built-up inventory. The Realization Process involves several steps before transactions are completed such that the current expectation is that this will be a multi-month process;

(d) DDMI Collateral will be treated the same as DDMI product (including using the same pricebooks) and handled in the same way DDMI handles its own 60% share. The DDMI Collateral will benefit from existing sales channels, know-how, technology and customer notebooks. It is envisaged that new supply agreements (term contracts) and spot auctions will be implemented to optimise value;

(e) DDMI Collateral will be subject to all existing processes, audits, analysis and checks & balances that are applied to the DDMI product;

(f) Net sales proceeds will be applied to Dominion's outstanding Cover Payment indebtedness owing to DDMI, after deduction of a 2.5% handling, sorting, sales and cash collection fee, as well as the deduction of any required taxes or royalties. The handling, sorting, sales and cash collection fee is consistent with fees charged

by affiliates of DDMI's parent company, Rio Tinto plc, to arm's-length third parties for similar services;

(g) DDMI will report to Dominion and the Monitor on the Realization Process on a monthly basis and when otherwise reasonably requested by Dominion or the Monitor. DDMI's proposed monthly reporting form, which will track sales data and outstanding Cover Payment indebtedness, is attached and marked as **Exhibit "A"**.

10. Rio Tinto plc is a significant producer of rough diamonds and has been active in the diamond market for over 35 years and its operational expertise will be utilized to implement the Realization Process. Although diamonds are a highly specialized class of asset, the Realization Process is designed to operate in a simple fashion and account for the fact that DDMI and Dominion are joint venturers with respect to the Diavik Mine. DDMI's diamond team will handle 100% of the Diavik Mine volume in the same way it handles its own 60% share. In that circumstance, the interests of DDMI, Dominion and its other stakeholders are fully aligned in maximizing value of the DDMI Collateral.

Current Security Position

11. As I explained in paragraph 20 of my evidence in my third affidavit, DICAN is a joint venture between the Aboriginal Diamonds Group Ltd. and WWW Internal Diamond Consultants Limited (**"WWW International"**) which provides independent resource evaluation and diamond valuation services to both the government of Ontario and the GNWT. WWW International is the technical partner in the DICAN joint venture.

12. The Cover Payment indebtedness owed by Dominion to DDMI exceeds the gross value of DDMI Collateral (as determined by DICAN) currently held by DDMI at the PSF pursuant to paragraph 16 of the SARIO. In my third affidavit, at paragraph 22, I attached a Confidential Exhibit that set out the gross value of Dominion's share of the DDMI Collateral at the PSF, the estimated gross valuation ascribed to that DDMI Collateral using the DICAN valuation, and the security position of DDMI. Since my third Affidavit, there have been additional shipments of Products to the PSF, and the most-recent monthly DICAN valuation was received on October 14, 2020. I have updated the Confidential Exhibit and the same is attached as **Confidential Exhibit "1"** to this Affidavit.

13. The SARIO currently limits the amount of Dominion's share of Diavik Mine production that DDMI can hold at the PSF based on monthly gross DICAN valuations. DDMI has always had concern that the gross DICAN valuation was not an accurate proxy for the true realizable value of the DDMI Collateral. This concern has been materially amplified due to the significant market disruption, depressed sale activity and ongoing uncertainty caused by the COVID-19 pandemic. In each of 2017, 2018 and 2019, DICAN's average valuation of DDMI's share of Diavik diamonds was higher than the actual realized value in sales to third parties. The average overvaluation exceeded 10% in the second half of 2019 and grew further still in the first half of 2020. The difficulty in estimating the gross value of diamonds in such volatile markets is further demonstrated by sales of DDMI's share of Diavik production to third parties in September and early October being in excess of the DICAN gross valuation. DDMI has not needed to address these market discrepancies because, as explained below, GNWT royalty payments are not based on DICAN's monthly valuations.

14. Holding a share of diamonds equal to an appraisal of their value (whether it be based on DICAN or alternative metrics) places DDMI at risk of loss. DDMI should never be in such a position because, subject to the CCAA priority charges, it has the senior security position on the DDMI Collateral. It is highly prejudicial to DDMI if it is required to deliver a portion of the DDMI Collateral to Dominion based on any form of valuation (including a valuation that DDMI was comfortable or otherwise agreed with) when Cover Payment obligations remain owing to DDMI. The inequitableness is exacerbated by the fact that Dominion has no intention of resuming payment of Cash Calls and there is no purchaser for the Diavik Mine. DDMI's risk of loss has increased significantly due to recent developments and can be addressed in a manner that is fair to all interested parties through DDMI's proposed amendments to the SARIO.

DICAN Valuation

15. The DICAN valuation is undertaken to comply with the provisions of the Northwest Territories Mining Regulations, including provisions that mandate that diamonds must not be removed from the jurisdiction until they are valued in accordance with the regulations. Diamonds are a specialized product and unlike commodities, such as oil and gas, pricing of each stone will vary widely based on specific individual characteristics. This is evidenced by the focus on the four "C's" (carat, cut, clarity, and color) in the retail industry,

each of which will impact price. It is important to understand that the gross DICAN valuation does not equate to the realizable value of the DDMI Collateral from the Diavik Mine, which is only known after cleaning, sorting, marketing and sale and which will occur well after the DICAN valuation is performed. DICAN assesses the gross value of production from the Diavik Mine on a monthly basis and establishes a provisional holding value for the diamond production. DICAN is not used to calculate final royalty payment amounts, which are based on actual sale prices to third parties.

16. DDMI is particularly concerned that the use of DICAN as a proxy as is currently contemplated by the SARIO will result in material negative deviations from actual realizable values for the following reasons:

(a) DICAN provides a gross value of the product that does not account for sale, marketing, royalty and other fees and expenses that will be incurred as part of realization on the DDMI Collateral. These additional expenditures can materially impact the net payment received by diamond producers. By way of example the Sixth Report of the Monitor shows that Dominion sold one tranche of diamonds for gross proceeds of $61 million. However, the net revenue generated after settling these fees and expenses was $53.0 million. As such, these fees and expenses were $8 million or 13% of the gross value of the diamonds. Further to this point, Exhibit "B" to the Affidavit of Frederick Vescio, sworn October 7, 2020 and filed in these proceedings, indicates that going forward, an estimate of 20% for these fees and expenses would not be unreasonable;

(b) the liquidity in the diamond market has been negatively impacted due to the COVID-19 pandemic. In particular, there has been a tremendous decrease in both the number of diamond sales and the volume of diamonds being sold and a significant and unprecedented build up of diamond inventory due to the very limited sale of diamonds during the period of May through August 2020. The DICAN valuation generally occurs months before final sale of the subject product. The result is that any recent valuation of product (whether it be performed by DICAN or otherwise) has been based on a very limited number of market transactions (as compared to previous valuations), without knowledge of how the decrease in demand or the significant increase in diamond inventory will impact pricing and with heightened uncertainty that was not previously present.

WWW Forecast – September 2020

17. WWW Diamond Forecasts Ltd. ("**WWW Forecasts**") is an affiliate of WWW International and provides a quarterly subscription-based service whose market analyses and projections are based upon "a database [that] is designed to be a central depository for all information relating to the diamond industry. The database contains history and forecasts for all stages of the diamond pipeline, as well as history and forecasts for the macro-economic factors that have a bearing upon the diamond industry."[1]

18. Attached to this Affidavit and marked as **Confidential Exhibit "2"** is a copy of WWW Forecast's Diamond Market Review (the "**September 2020 WWW Confidential Review**"), dated September 1, 2020. This document is not publicly available and has been attached to this Affidavit with the express consent of WWW Forecasts on the condition that it not be publicly disclosed due to the sensitive commercial and proprietary information contained in it. On page 9, the September 2020 WWW Confidential Review summarizes the current market conditions as follows:

> The diamond market is under extreme stresses across the entire pipeline as it adjusts to weak demand and changing circumstances in the wake of the coronavirus pandemic. Economic uncertainty is unlikely to dissipate in the near-term which will continue to be a drag on any recovery in diamond jewellery sales. The length and size of the market contraction will be highly correlated with the timing of the recoveries in the USA and China respectively. Producers will need to adapt to a sustained period of lower prices and should consider further curtailing supply in an effort to provide price support. Across the mid-stream, financial pressures and bloated inventories could be the catalyst for change and a period of industry consolidation.

19. The September 2020 WWW Confidential Review, at page 20, notes that polished and rough diamond prices could suffer declines of between 20% and 30% over 2020 and that recovery will likely take several years to play out. On this note, for the calendar year 2020, WWW forecasts a 22.6% decline in nominal rough prices from projected 2019 prices. Furthermore, prices are expected to continue to decline further in 2021, with a further decrease of 6.1% anticipated (this information is found on page 43).

20. Several important observations flow from the recent September 2020 WWW Confidential Review. First, the discussion illustrates that using a valuation of rough diamonds – such

[1] See http://www.diamondwww.com/associates/?page=www-diamond-forecasts.

TMC

as is performed at the PSF – as proxy for realizable value is a highly uncertain and inexact exercise even in circumstances where the market is stable. Second, current market pressures, in part attributable to the COVID-19 pandemic and a substantial fall-off in transactions to serve as benchmarks, have exacerbated such uncertainty. Third, and most important, WWW Forecasts anticipates that diamond prices will not recover for several years, as a result of which diamonds valued in 2020 (as much of the DDMI Collateral has been), are at significant risk of being sold for an amount that is less than the value previously ascribed to them. For these reasons, DDMI is concerned that the uncertainty surrounding any valuation of the Diavik diamonds will not equate to actual realizable value of the product.

WWW Forecast – June 2020

21. The ongoing challenges that are expected to impact the market, as outlined in the September 2020 WWW Confidential Review, are also outlined in previous confidential reviews performed by WWW Forecasts. Attached to this Affidavit and marked as **Confidential Exhibit "3"** is a copy of WWW Forecast's Diamond Market Review (the "**June 2020 WWW Confidential Review**"), dated June 1, 2020. Once again, this document is not publicly available and has been attached to this Affidavit with the express consent of WWW Forecasts on the same condition as the September 2020 WWW Confidential Review. Much like the September 2020 WWW Confidential Review, the June 2020 WWW Confidential Review highlights market uncertainty in the diamond industry.

22. On page 11 of the WWW Confidential Review, with respect to rough diamond prices, WWW International concedes that "[g]auging actual current prices is difficult as so little trading has taken place but in our view an overall decline of around 20% is not an unreasonable guess." With respect to the forecast of market demand for polished diamonds, the June 2020 Confidential Review notes at page 17 that:

> There are so many variables in play that forecasting what might happen in the retail markets this year ***is akin to reading the tea leaves at the bottom of a tea cup.*** That said, the diamond jewellery market is in stasis and the key global driver for demand, the USA, remains in partial lockdown as the half year approaches.(***emphasis added)***

TMC

Additional Market Data

23. ALROSA and De Beers are the world's two largest diamond producers and, on a combined basis, account for approximately seventy percent of global rough diamond sales by sale value. Both of these companies have seen unprecedented declines in diamond sales in 2020, as evidenced by recent public documents from each (attached hereto and marked as **Exhibits "B"**, **"C"** and **"D"** respectively). Page 3 of ALROSA's public disclosure (**Exhibit "B"**) indicates that its diamond sales in the second quarter of 2020 were 92% lower than first quarter sales and 91% lower than 2019 second quarter sales. De Beers experienced similar 2020 second quarter decreases of 94% (as compared to 2020 first quarter sales) and 96% (as compared to 2019 second quarter sales), as shown on page 2 of **Exhibit "C"**. These companies, who sold approximately $2.1 billion USD of diamonds in April to June of 2019, sold $130 million USD of diamonds in the same period in 2020.

24. While both ALROSA and De Beers have recommenced diamond sales late in the third quarter of 2020, the COVID-19 pandemic has brought unprecedented disruption to the diamond markets and makes it extremely difficult to accurately determine the market price of diamonds at this point in time. In an October 16, 2020 press release, attached as **Exhibit "E"** hereto, ALROSA is cautious on the recent re-opening of markets, as evidenced by its statement on page 2:

> The diamond industry began to show signs of improvement. It is, however, too early to talk about a full recovery before we see the year's key figures – the USA holiday season sales.

25. De Beers is similarly muted about the recent uptick in sales activity. Its Chief Executive Officer, Mr. Bruce Cleaver, commented as follows in an October 14, 2020 press release which is attached as **Exhibit "F"** hereto:

> We continue to see a steady improvement in demand for rough diamonds in the eighth sales cycle of the year, with cutters and polishers increasing their purchases as retail orders come through ahead of the key holiday season. It's encouraging to see these demand trends, but these are still early days and there is a long way to go before we can be sure of a sustained recovery in trading conditions.

26. The build-up of inventory within the system, in conjunction with unclear demand profile, is also concerning. Page 17 of the October 16, 2020 press release from ALROSA, previously attached as **Exhibit "E"**, shows ALROSA alone having diamond inventory of

30.6 million carats as of September 30, 2020. This represents a 45% increase since March 31, 2020 and a 97% increase since September 2018. All of these diamonds will have to be sold into the market at some time in the future and will put downward pressure on prices

27. The uncertainty surrounding the recent and current valuation of rough diamond prices is further underlined by such industry websites as RoughPrices.com which offers both limited open-source pricing information as well as subscription-based services. In March, at the outset of the pandemic, the publication of the RoughPrices.com Overall Index was suspended. Publication of the polished diamond prices Overall Index on PolishedPrices.com, which is affiliated with RoughPrices.com, was similarly suspended. At that time, an explanation for the suspension was published on the PolishedPrices.com website:

> Given the impact of the Corona virus on business activity we have decided to stop updating the index and publishing the weekly index report until there is significant increase in trading activity.

28. It is worth noting that whilst the publication of the PolishedPrices.com Overall Index resumed publication in May 2020, the RoughPrices.com Overall Index has yet to resume publication. Attached hereto and marked collectively as **Exhibit "G"** to this Affidavit is:

(a) a screen capture taken on October 18, 2020, of the RoughPrices.com Overall Index which shows that the rough price index has not been updated since March 13, 2020;

(b) a screen capture taken on October 18, 2020, of the PolishedPrices.com Overall Index which shows that the polished price index is being currently updated;

(c) a screen capture from of the PolishedPrices.com showing the quote from Mr. Platt regarding the suspension of the publication of the index.

29. In summary, and while market conditions and demand have improved somewhat in recent weeks, the outlook remains highly unsure and volatile and many material risks still present to pricing forecasts. Retail demand for diamond jewellery in the United States continues to be fragile, COVID-19 is still growing at an alarming rate in India with potential impacts on future factory capacity and overall liquidity and logistics are expected to remain affected in the period ahead. In addition, the excess inventory at rough producers is at very high

levels which increases risks on future volatility and prices. In this context it remains extremely difficult to forecast prices with any degree of confidence.

DDMI Sealing Order

30. DDMI is applying to seal Confidential Exhibits "1" through "3". Confidential Exhibit "1" is an update on a confidential exhibit that has been previously sealed by this Honourable Court. Confidential Exhibit "2" and "3" contain various information on the current diamond market that is generally not in the public domain. WWW Forecasts has provided same on the condition and with the expectation that the same are confidential. Disclosure of the information in the Confidential Exhibits would cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Disclosure would also create risk of reducing the recovery on the DDMI Collateral in the open market.

Process for Commissioning of this Affidavit

31. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

(a) I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on my ID;

(b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

(c) the Commissioner and I have a paper copy of this Affidavit before us;

(d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

(e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

TM

(f) I will send this signed Affidavit electronically to the Commissioner

SWORN BEFORE ME by two-way video conference on October 19, 2020)

A COMMISSIONER FOR OATHS in and for the Province of Alberta)

THOMAS CROESE

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS*
	)	*ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED*
PROVINCE OF	)	*AND IN THE MATTER OF A PLAN OF COMPROMISE OR*
	)	*ARRANGEMENT OF DOMINION DIAMOND MINES ULC,*
ALBERTA	)	*DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION*
	)	*DIAMOND CANADA ULC, WASHINGTON DIAMOND*
	)	*INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND*
	)	*DOMINION FINCO INC.*

I, Carley Frazer, of the City of Calgary, in the Province of Alberta, Student-At-Law, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated October, 19 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 19th day of October, 2020.

Carley Frazer

A Commissioner for Oaths in
and for the Province of Alberta

154213/516250
MT DOCS 20856310v1

TMC

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT #4 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

Clerk's Stamp

AFFIDAVIT #4 OF THOMAS CROESE
Sworn on October 19, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

3. A copy of the JVA is attached as Confidential Exhibit 1 to my affidavit sworn on April 30, 2020 ("**April 30 Affidavit**). Terms capitalized in my Affidavit that I have not defined have the same meaning as in the JVA or the Second Amended and Restated Initial Order granted in the within proceedings on June 19, 2020 (the "**SARIO**").

Summary of Relief Sought

4. This affidavit is sworn in support of an application by DDMI to:

   (a) implement the realization process in respect of Dominion's share of production from the Diavik Mine (the "**DDMI Collateral**"), substantially as summarized below (the "**Realization Process**"); and

   (b) amend paragraph 16 of the SARIO so as to delete the provisions that limit the amount of DDMI Collateral that DDMI is permitted to hold based on Diamonds International Canada Limited ("**DICAN**") valuations. Instead DDMI, for the reasons that follow, including the uncertainty that attends with valuing the DDMI Collateral, proposes it be authorized to realize upon the DDMI Collateral.

5. DDMI has been funding Dominion's share of Diavik JV obligations by way of Cover Payments under the Diavik JV since the commencement of these proceedings in April 2020. As of today, the Cover Payment indebtedness owed by Dominion to DDMI totals $119.52 million CAD, plus interest (presently estimated to be in the amount of $2.37 million CAD) and legal fees, costs and expenses.

6. The Applicants have not been able to close a transaction under the SISP Procedures and it is clear that this CCAA case has now undergone a fundamental and material change. Dominion's participating interest in the Diavik Mine failed to attract any bids. There is no realistic prospect of Dominion paying Diavik JV Cash Calls. Significant expenditures are required for the acquisition of critical materials and supplies to be transported to site on the winter road and will have to be incurred very shortly. DDMI does not have sufficient capital to fund Dominion's Diavik JV obligations without receiving advances from its parent, Rio Tinto plc. Rio Tinto plc will not provide funding without assurances that DDMI will be able to recover the Cover Payment indebtedness. The Diavik Mine's continued operation is at risk in the present circumstances.

The Realization Process

7. Diamonds are a unique product type with a limited market that is currently subject to a number of external pressures. The COVID-19 pandemic does not show any signs of abating in the near-term and is worsening in many areas. Despite these challenges, DDMI has continued to utilize its existing market capability, strong supply chain and deep customer relationships to sell its share of Diavik Mine production and is therefore well placed to be the entity which implements the realization on the DDMI Collateral.

8. It is imperative that the DDMI Collateral be realized upon pursuant to a considered and controlled approach so-as to enhance the potential for value maximization. DDMI has designed the Realization Process, taking current market conditions into account, including its experience in selling DDMI's share of Diavik Mine production, to optimize recovery on the DDMI Collateral in a fair and transparent manner for the benefit of Dominion and its stakeholders, including Diavik Mine employees, contractors, vendors and the Government of the Northwest Territories (the "**GNWT**"). The key principles of the Realization Process are:

(a) product must be fully cleaned and sorted in a wide variety of diamond categories (sizes, colours, clarities, shapes) to be able to offer the right products to the right customers. This sorting process needs to be executed in a safe and secure operation;

(b) timing of sales must as much as possible be aligned to market cycles placing the right volume of product aligned with market demand;

(c) optionality of sales channels (contracts, auctions, tenders, negotiated spot sales) provides flexibility, market/price/customer insights and fast product placement and monetization pathways;

(d) a professional, experienced, equipped and well-capitalized organisation is required to execute the sales process and collect payment in the fastest and most cost-efficient manner possible;

(e) fair and transparent realization of collateral will be achieved by treating all Diavik Mine production the same, without discrimination or preference between the DDMI Collateral and DDMI's own products.

9. The Realization Process will follow standard processes and procedures for diamond sales, including accessing and utilizing international marketing networks. The basic operation of the Realization Process is as follows:

(a) DDMI Collateral will be transported from the PSF to Antwerp, Belgium for cleaning, sorting, marketing and sale;

(b) DDMI Collateral will be insured, imported, cleaned, sorted, valued and sold using existing secure and well-established infrastructure. Full utilization will be made of existing experience, security systems, diamond stock tracking software, sorting technology and experts, pricing methods, contracts, auction platform, and industry networks;

(c) DDMI Collateral will be sorted and valued on the same sorting product line as DDMI product and phased into the market over time to avoid a high volume of product being offered at once. The exact time at which this occurs will be dependent on prevailing market conditions, with focus on optimizing sale proceeds by avoiding a circumstance where a market that is already experiencing deflated pricing is flooded with built-up inventory. The Realization Process involves several steps before transactions are completed such that the current expectation is that this will be a multi-month process;

(d) DDMI Collateral will be treated the same as DDMI product (including using the same pricebooks) and handled in the same way DDMI handles its own 60% share. The DDMI Collateral will benefit from existing sales channels, know-how, technology and customer notebooks. It is envisaged that new supply agreements (term contracts) and spot auctions will be implemented to optimise value;

(e) DDMI Collateral will be subject to all existing processes, audits, analysis and checks & balances that are applied to the DDMI product;

(f) Net sales proceeds will be applied to Dominion's outstanding Cover Payment indebtedness owing to DDMI, after deduction of a 2.5% handling, sorting, sales and cash collection fee, as well as the deduction of any required taxes or royalties. The handling, sorting, sales and cash collection fee is consistent with fees charged

by affiliates of DDMI's parent company, Rio Tinto plc, to arm's-length third parties for similar services;

(g) DDMI will report to Dominion and the Monitor on the Realization Process on a monthly basis and when otherwise reasonably requested by Dominion or the Monitor. DDMI's proposed monthly reporting form, which will track sales data and outstanding Cover Payment indebtedness, is attached and marked as **Exhibit "A"**.

10. Rio Tinto plc is a significant producer of rough diamonds and has been active in the diamond market for over 35 years and its operational expertise will be utilized to implement the Realization Process. Although diamonds are a highly specialized class of asset, the Realization Process is designed to operate in a simple fashion and account for the fact that DDMI and Dominion are joint venturers with respect to the Diavik Mine. DDMI's diamond team will handle 100% of the Diavik Mine volume in the same way it handles its own 60% share. In that circumstance, the interests of DDMI, Dominion and its other stakeholders are fully aligned in maximizing value of the DDMI Collateral.

Current Security Position

11. As I explained in paragraph 20 of my evidence in my third affidavit, DICAN is a joint venture between the Aboriginal Diamonds Group Ltd. and WWW Internal Diamond Consultants Limited ("**WWW International**") which provides independent resource evaluation and diamond valuation services to both the government of Ontario and the GNWT. WWW International is the technical partner in the DICAN joint venture.

12. The Cover Payment indebtedness owed by Dominion to DDMI exceeds the gross value of DDMI Collateral (as determined by DICAN) currently held by DDMI at the PSF pursuant to paragraph 16 of the SARIO. In my third affidavit, at paragraph 22, I attached a Confidential Exhibit that set out the gross value of Dominion's share of the DDMI Collateral at the PSF, the estimated gross valuation ascribed to that DDMI Collateral using the DICAN valuation, and the security position of DDMI. Since my third Affidavit, there have been additional shipments of Products to the PSF, and the most-recent monthly DICAN valuation was received on October 14, 2020. I have updated the Confidential Exhibit and the same is attached as **Confidential Exhibit "1"** to this Affidavit.

13. The SARIO currently limits the amount of Dominion's share of Diavik Mine production that DDMI can hold at the PSF based on monthly gross DICAN valuations. DDMI has always had concern that the gross DICAN valuation was not an accurate proxy for the true realizable value of the DDMI Collateral. This concern has been materially amplified due to the significant market disruption, depressed sale activity and ongoing uncertainty caused by the COVID-19 pandemic. In each of 2017, 2018 and 2019, DICAN's average valuation of DDMI's share of Diavik diamonds was higher than the actual realized value in sales to third parties. The average overvaluation exceeded 10% in the second half of 2019 and grew further still in the first half of 2020. The difficulty in estimating the gross value of diamonds in such volatile markets is further demonstrated by sales of DDMI's share of Diavik production to third parties in September and early October being in excess of the DICAN gross valuation. DDMI has not needed to address these market discrepancies because, as explained below, GNWT royalty payments are not based on DICAN's monthly valuations.

14. Holding a share of diamonds equal to an appraisal of their value (whether it be based on DICAN or alternative metrics) places DDMI at risk of loss. DDMI should never be in such a position because, subject to the CCAA priority charges, it has the senior security position on the DDMI Collateral. It is highly prejudicial to DDMI if it is required to deliver a portion of the DDMI Collateral to Dominion based on any form of valuation (including a valuation that DDMI was comfortable or otherwise agreed with) when Cover Payment obligations remain owing to DDMI. The inequitableness is exacerbated by the fact that Dominion has no intention of resuming payment of Cash Calls and there is no purchaser for the Diavik Mine. DDMI's risk of loss has increased significantly due to recent developments and can be addressed in a manner that is fair to all interested parties through DDMI's proposed amendments to the SARIO.

DICAN Valuation

15. The DICAN valuation is undertaken to comply with the provisions of the Northwest Territories Mining Regulations, including provisions that mandate that diamonds must not be removed from the jurisdiction until they are valued in accordance with the regulations. Diamonds are a specialized product and unlike commodities, such as oil and gas, pricing of each stone will vary widely based on specific individual characteristics. This is evidenced by the focus on the four "C's" (carat, cut, clarity, and color) in the retail industry,

each of which will impact price. It is important to understand that the gross DICAN valuation does not equate to the realizable value of the DDMI Collateral from the Diavik Mine, which is only known after cleaning, sorting, marketing and sale and which will occur well after the DICAN valuation is performed. DICAN assesses the gross value of production from the Diavik Mine on a monthly basis and establishes a provisional holding value for the diamond production. DICAN is not used to calculate final royalty payment amounts, which are based on actual sale prices to third parties.

16. DDMI is particularly concerned that the use of DICAN as a proxy as is currently contemplated by the SARIO will result in material negative deviations from actual realizable values for the following reasons:

(a) DICAN provides a gross value of the product that does not account for sale, marketing, royalty and other fees and expenses that will be incurred as part of realization on the DDMI Collateral. These additional expenditures can materially impact the net payment received by diamond producers. By way of example the Sixth Report of the Monitor shows that Dominion sold one tranche of diamonds for gross proceeds of $61 million. However, the net revenue generated after settling these fees and expenses was $53.0 million. As such, these fees and expenses were $8 million or 13% of the gross value of the diamonds. Further to this point, Exhibit "B" to the Affidavit of Frederick Vescio, sworn October 7, 2020 and filed in these proceedings, indicates that going forward, an estimate of 20% for these fees and expenses would not be unreasonable;

(b) the liquidity in the diamond market has been negatively impacted due to the COVID-19 pandemic. In particular, there has been a tremendous decrease in both the number of diamond sales and the volume of diamonds being sold and a significant and unprecedented build up of diamond inventory due to the very limited sale of diamonds during the period of May through August 2020. The DICAN valuation generally occurs months before final sale of the subject product. The result is that any recent valuation of product (whether it be performed by DICAN or otherwise) has been based on a very limited number of market transactions (as compared to previous valuations), without knowledge of how the decrease in demand or the significant increase in diamond inventory will impact pricing and with heightened uncertainty that was not previously present.

WWW Forecast – September 2020

17. WWW Diamond Forecasts Ltd. ("**WWW Forecasts**") is an affiliate of WWW International and provides a quarterly subscription-based service whose market analyses and projections are based upon "a database [that] is designed to be a central depository for all information relating to the diamond industry. The database contains history and forecasts for all stages of the diamond pipeline, as well as history and forecasts for the macro-economic factors that have a bearing upon the diamond industry."[1]

18. Attached to this Affidavit and marked as **Confidential Exhibit "2"** is a copy of WWW Forecast's Diamond Market Review (the "**September 2020 WWW Confidential Review**"), dated September 1, 2020. This document is not publicly available and has been attached to this Affidavit with the express consent of WWW Forecasts on the condition that it not be publicly disclosed due to the sensitive commercial and proprietary information contained in it. On page 9, the September 2020 WWW Confidential Review summarizes the current market conditions as follows:

> The diamond market is under extreme stresses across the entire pipeline as it adjusts to weak demand and changing circumstances in the wake of the coronavirus pandemic. Economic uncertainty is unlikely to dissipate in the near-term which will continue to be a drag on any recovery in diamond jewellery sales. The length and size of the market contraction will be highly correlated with the timing of the recoveries in the USA and China respectively. Producers will need to adapt to a sustained period of lower prices and should consider further curtailing supply in an effort to provide price support. Across the mid-stream, financial pressures and bloated inventories could be the catalyst for change and a period of industry consolidation.

19. The September 2020 WWW Confidential Review, at page 20, notes that polished and rough diamond prices could suffer declines of between 20% and 30% over 2020 and that recovery will likely take several years to play out. On this note, for the calendar year 2020, WWW forecasts a 22.6% decline in nominal rough prices from projected 2019 prices. Furthermore, prices are expected to continue to decline further in 2021, with a further decrease of 6.1% anticipated (this information is found on page 43).

20. Several important observations flow from the recent September 2020 WWW Confidential Review. First, the discussion illustrates that using a valuation of rough diamonds – such

---

[1] See http://www.diamondwww.com/associates/?page=www-diamond-forecasts.

as is performed at the PSF – as proxy for realizable value is a highly uncertain and inexact exercise even in circumstances where the market is stable. Second, current market pressures, in part attributable to the COVID-19 pandemic and a substantial fall-off in transactions to serve as benchmarks, have exacerbated such uncertainty. Third, and most important, WWW Forecasts anticipates that diamond prices will not recover for several years, as a result of which diamonds valued in 2020 (as much of the DDMI Collateral has been), are at significant risk of being sold for an amount that is less than the value previously ascribed to them. For these reasons, DDMI is concerned that the uncertainty surrounding any valuation of the Diavik diamonds will not equate to actual realizable value of the product.

WWW Forecast – June 2020

21. The ongoing challenges that are expected to impact the market, as outlined in the September 2020 WWW Confidential Review, are also outlined in previous confidential reviews performed by WWW Forecasts. Attached to this Affidavit and marked as **Confidential Exhibit "3"** is a copy of WWW Forecast's Diamond Market Review (the "**June 2020 WWW Confidential Review**"), dated June 1, 2020. Once again, this document is not publicly available and has been attached to this Affidavit with the express consent of WWW Forecasts on the same condition as the September 2020 WWW Confidential Review. Much like the September 2020 WWW Confidential Review, the June 2020 WWW Confidential Review highlights market uncertainty in the diamond industry.

22. On page 11 of the WWW Confidential Review, with respect to rough diamond prices, WWW International concedes that "[g]auging actual current prices is difficult as so little trading has taken place but in our view an overall decline of around 20% is not an unreasonable guess." With respect to the forecast of market demand for polished diamonds, the June 2020 Confidential Review notes at page 17 that:

> There are so many variables in play that forecasting what might happen in the retail markets this year ***is akin to reading the tea leaves at the bottom of a tea cup.*** That said, the diamond jewellery market is in stasis and the key global driver for demand, the USA, remains in partial lockdown as the half year approaches.(***emphasis added)***

Additional Market Data

23. ALROSA and De Beers are the world's two largest diamond producers and, on a combined basis, account for approximately seventy percent of global rough diamond sales by sale value. Both of these companies have seen unprecedented declines in diamond sales in 2020, as evidenced by recent public documents from each (attached hereto and marked as **Exhibits "B"**, **"C"** and "**D**" respectively). Page 3 of ALROSA's public disclosure (**Exhibit "B"**) indicates that its diamond sales in the second quarter of 2020 were 92% lower than first quarter sales and 91% lower than 2019 second quarter sales. De Beers experienced similar 2020 second quarter decreases of 94% (as compared to 2020 first quarter sales) and 96% (as compared to 2019 second quarter sales), as shown on page 2 of **Exhibit "C"**. These companies, who sold approximately $2.1 billion USD of diamonds in April to June of 2019, sold $130 million USD of diamonds in the same period in 2020.

24. While both ALROSA and De Beers have recommenced diamond sales late in the third quarter of 2020, the COVID-19 pandemic has brought unprecedented disruption to the diamond markets and makes it extremely difficult to accurately determine the market price of diamonds at this point in time. In an October 16, 2020 press release, attached as **Exhibit "E"** hereto, ALROSA is cautious on the recent re-opening of markets, as evidenced by its statement on page 2:

> The diamond industry began to show signs of improvement. It is, however, too early to talk about a full recovery before we see the year's key figures – the USA holiday season sales.

25. De Beers is similarly muted about the recent uptick in sales activity. Its Chief Executive Officer, Mr. Bruce Cleaver, commented as follows in an October 14, 2020 press release which is attached as **Exhibit "F"** hereto:

> We continue to see a steady improvement in demand for rough diamonds in the eighth sales cycle of the year, with cutters and polishers increasing their purchases as retail orders come through ahead of the key holiday season. It's encouraging to see these demand trends, but these are still early days and there is a long way to go before we can be sure of a sustained recovery in trading conditions.

26. The build-up of inventory within the system, in conjunction with unclear demand profile, is also concerning. Page 17 of the October 16, 2020 press release from ALROSA, previously attached as **Exhibit "E"**, shows ALROSA alone having diamond inventory of

30.6 million carats as of September 30, 2020. This represents a 45% increase since March 31, 2020 and a 97% increase since September 2018. All of these diamonds will have to be sold into the market at some time in the future and will put downward pressure on prices

27. The uncertainty surrounding the recent and current valuation of rough diamond prices is further underlined by such industry websites as RoughPrices.com which offers both limited open-source pricing information as well as subscription-based services. In March, at the outset of the pandemic, the publication of the RoughPrices.com Overall Index was suspended. Publication of the polished diamond prices Overall Index on PolishedPrices.com, which is affiliated with RoughPrices.com, was similarly suspended. At that time, an explanation for the suspension was published on the PolishedPrices.com website:

> Given the impact of the Corona virus on business activity we have decided to stop updating the index and publishing the weekly index report until there is significant increase in trading activity.

28. It is worth noting that whilst the publication of the PolishedPrices.com Overall Index resumed publication in May 2020, the RoughPrices.com Overall Index has yet to resume publication. Attached hereto and marked collectively as **Exhibit "G"** to this Affidavit is:

(a) a screen capture taken on October 18, 2020, of the RoughPrices.com Overall Index which shows that the rough price index has not been updated since March 13, 2020;

(b) a screen capture taken on October 18, 2020, of the PolishedPrices.com Overall Index which shows that the polished price index is being currently updated;

(c) a screen capture from of the PolishedPrices.com showing the quote from Mr. Platt regarding the suspension of the publication of the index.

29. In summary, and while market conditions and demand have improved somewhat in recent weeks, the outlook remains highly unsure and volatile and many material risks still present to pricing forecasts. Retail demand for diamond jewellery in the United States continues to be fragile, COVID-19 is still growing at an alarming rate in India with potential impacts on future factory capacity and overall liquidity and logistics are expected to remain affected in the period ahead. In addition, the excess inventory at rough producers is at very high

levels which increases risks on future volatility and prices. In this context it remains extremely difficult to forecast prices with any degree of confidence.

DDMI Sealing Order

30. DDMI is applying to seal Confidential Exhibits "1" through "3". Confidential Exhibit "1" is an update on a confidential exhibit that has been previously sealed by this Honourable Court. Confidential Exhibit "2" and "3" contain various information on the current diamond market that is generally not in the public domain. WWW Forecasts has provided same on the condition and with the expectation that the same are confidential. Disclosure of the information in the Confidential Exhibits would cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Disclosure would also create risk of reducing the recovery on the DDMI Collateral in the open market.

Process for Commissioning of this Affidavit

31. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

(a) I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on my ID;

(b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

(c) the Commissioner and I have a paper copy of this Affidavit before us;

(d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

(e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner

SWORN BEFORE ME by two-way video conference on October 19, 2020)

A COMMISSIONER FOR OATHS in and for the Province of Alberta)

THOMAS CROESE

Carley R. Frazer
Student-at-Law

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS*
	)	*ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED*
PROVINCE OF	)	*AND IN THE MATTER OF A PLAN OF COMPROMISE OR*
	)	*ARRANGEMENT OF DOMINION DIAMOND MINES ULC,*
ALBERTA	)	*DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION*
	)	*DIAMOND CANADA ULC, WASHINGTON DIAMOND*
	)	*INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND*
	)	*DOMINION FINCO INC.*

I, Carley Frazer, of the City of Calgary, in the Province of Alberta, Student-At-Law, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated October, 19 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 19th day of October, 2020.

Carley Frazer

A Commissioner for Oaths in and for the Province of Alberta

Carley R. Frazer
Student-at-Law

154213/516250
MT DOCS 20856310v1

This is Exhibit "N" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

ENTERED

COM
Oct 30 2020
J. Eidvsik
110181

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT #5 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

AFFIDAVIT #5 OF THOMAS CROESE
Sworn on October 29, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. This affidavit is sworn by DDMI in response to the Affidavit of Kristal Kaye, sworn on October 28, 2020 (the "**Kaye Affidavit**"). Terms capitalized in my Affidavit and not otherwise defined have the same meaning as in the Kaye Affidavit or the Fourth Affidavit I swore in the within proceedings on October 19, 2020. All monetary figures used in this Affidavit are in Canadian currency unless otherwise noted.

The JVA Budget

3. At paragraph 10 of the Kaye Affidavit, Ms. Kaye provides a summary of Cash Calls made in the most recent six month period relating to the Diavik Mine. Ms. Kaye goes onto state at paragraph 12 of her affidavit that payments are over the Approved JV Budget by 18.9%.

4. Ms. Kaye's evidence does not provide information on the Approved JV Budget on an annualized basis. The total cash call amount within the Approved JV Budget for fiscal 2020 is $576.5 million, when adjusted for closure securitisation cash calls, which were initially included and then subsequently removed. The total estimated cash calls for this annual fiscal period are $579.8 million. On an annualized basis, the Joint Venture is projected to be over budget by approximately 0.6% and Dominion's 40% share of the deficit is approximately $1.3 million. The chart below shows Dominion's current 40% share of the Approved JV Budget[1] (including November and December projections) and corresponding Cash Calls:

Month	2020 Approved JV Budget	Cash Call	Variance
Jan	15.1	22.1	(7.0)
Feb	20.5	18.6	1.9
Mar	36.5	28.8	7.7
Apr	35.5	33.2	2.3
May	24.8	29.6	(4.8)
Jun	19.3	15.6	3.7
Jul	16.2	18.4	(2.2)
Aug	13.7	14.4	(0.7)
Sep	11.0	16.1	(5.1)
Oct	15.0	14.3	0.7
Nov	13.0	10.4	2.6
Dec	10.4	10.4	-
Total	**230.6**	**231.9**	**(1.3)**

5. Ms. Kaye's evidence on the Approved JV Budget is also based on inaccurate records. In February, 2020, Dominion prepared its own Cash Call schedule, to adjust for the cancellation of closure securitisation cash calls that understated Dominion's total Cash Call obligations by approximately $14.9 million. I advised Ms. Kaye of the error in her

[1] The charts in this affidavit are in millions (000's) and are rounded.

TMC

Cash Call schedule in April, 2020 and Ms. Kaye's evidence is based on Dominion's own (incorrect) model. Further, Ms. Kaye's tabulated schedule in Paragraph 10 of her affidavit arbitrarily apportions the monthly cash call amounts to two equal billings each month. This also is incorrect, as the payment cycles necessitate that the two billings within a given month are different from one another. The chart below identifies the amount of the correct Approved JV Budget and corresponding error in Ms. Kaye's calculations:

Month	Approved Program and Budget	Kaye Testimony Amount	Kaye Error Amount
April	35.5	34.6	0.9
May	24.8	22.6	2.2
June	19.3	17.0	2.3
July	16.2	13.8	2.4
August	13.7	11.8	1.9
September	11.0	8.6	2.4
October	15.0	12.2	2.8
Total	**135.3**	**120.6**	**14.7**

6. The Diavik Mine experienced some increased cost over the second and third quarters of 2020, primarily due to the following:

   (a) $11.0 million in increased operating costs directly attributable to COVID-19, relating to overtime from changing shift patterns, external services and temporary labour to off-set the impacts of personnel who are unable to work as a result of various health and community safety precautions;

   (b) $4.4 million in severance costs associated with restructuring to sustainably reduce the operating costs of the asset for the long term; and

   (c) $2.0 million in annual leave payout as a result of needing to cancel annual leave for certain shift workers to sustain stable operations.

7. These unanticipated expenditures have been offset by reduced capital expenditures and exploration costs. DDMI has taken reasonable and necessary precautions to stabilize the operations due to the COVID-19 pandemic and does not project material variation from the Approved JV Budget.

BC Litigation

8. At paragraph 13 of the Kaye Affidavit, Ms. Kaye testifies that Dominion has commenced civil proceedings against DDMI in British Columbia relating to the JVA. The proceedings were commenced in June, 2020. DDMI has responded by defending the action and bringing a security for costs application. Dominion requested and was granted an adjournment of the security for costs application on terms that stayed the litigation. Other than responding to the security for costs application, Dominion has taken no steps to advance the aforementioned civil proceedings.

Month End Balances

9. At paragraph 15(a) of the Kaye Affidavit, Ms. Kaye states that she has concerns with the month-end cash balances in the JV Cash Account.

10. The increased month end balances in the JV Cash Account have been largely caused by Dominion's request (made shortly prior to the CCAA filing in April 2020) to change the twice-monthly payment date for Cash Calls from the first / fifteenth of each month to the eighth / twenty-second of each month. The result is that amounts are required to be on deposit at month-end to satisfy payables coming due in the first week of the following month. Absent Dominion's earlier request and DDMI's accommodation, month-end balances would be lower.

11. The $17.0 million balance in the account as at September 30, 2020 is the result of a timing variance. There was a $9.7 million insurance payment forecasted to be paid in September, 2020 but such payment did not clear the JV Cash Account in time to be accounted for in September. The payment was paid and recorded on October 9, 2020. The closing balance of the JV bank accounts on November 6 (shortly before the next scheduled cash call payment) is forecast to be approximately $5.0 million, which is reasonable and normal course.

CEWS

12. At paragraph 15(b) of the Kaye Affidavit, Ms. Kaye testifies that, to the best of her knowledge, DDMI has not applied for the CEWS.

TMC

13. DDMI has not applied for the CEWS and is currently reviewing both its eligibility for and the benefits associated with the program. The decision to make an application, and the quantum of such an application, is impacted by a number of factors including the basis for calculating the subsidy, which benefits from a holistic view over the duration of the scheme. This includes consideration of the operating status of the Joint Venture, particularly if it becomes unviable in the absence of a viable partner or repayment of the Cover Payment obligations. Ms. Kaye testifies that DDMI could be entitled to tens of millions of dollars, based on the assumption that DDMI's sales operations have been impacted similarly to Dominion's. I do not believe that this assumption to be accurate, and note the fact that DDMI's sales operations have continued throughout the pandemic. This adds complexity to the calculation of an appropriate CEWS claim and the decision to apply. Further analysis is ongoing and the deadline for making an application is in February 2021.

Fees and Expenses

14. At paragraph 27 of the Kaye Affidavit, Ms. Kaye testifies that sale, marketing, royalty and other fees for Dominion's share of production from the Diavik Mine is 11%.

15. In my Fourth Affidavit, I testified that DICAN provides a gross valuation and expenditures of the type testified to by Ms. Kaye can materially impact the net payment received by diamond producers. I also noted that, based on the information provided in the Sixth Report of the Monitor, such fees and expenses in Dominion's recent sales had equated to 13% and that an estimate of 20% (based on Exhibit "B" to the Affidavit of Mr. Frederick Vescio, sworn October 7, 2020) for future sales would not be unreasonable.

16. I never "indicated that an amount of 13-20% must be deducted from the gross value of the Additional Diamond Collateral". I was simply making the point that the DICAN value is a gross valuation and does not reflect the net revenues generated. Ms. Kaye's testimony does indicate that the sale, marketing, royalty and other fees for Dominion's share of production from the Diavik Mine (in the amount of 11%) reduces the net payments received by Dominion. This is a further reason why the DICAN value cannot be relied upon for determining the collateralisation position as it does not reflect the proceeds received by diamond producers after these sale, marketing, royalty and other fees are deducted.

Carat Discrepancy

17. At paragraph 29 of the Kaye Affidavit, Ms. Kaye testifies as to a carat discrepancy in my evidence and the DICAN report. DDMI has re-confirmed that its balance is correct with the staff at the PSF and that it was provided to the GNWT. DDMI is engaging with the GNWT to understand the origin of their carat number.

May 8 Order

18. At paragraph 38 of the Kaye Affidavit, Ms. Kaye testifies that DDMI has not delivered certain diamonds that it was ordered to deliver to Dominion pursuant to an order issued on May 8, 2020. This is incorrect. DDMI made the diamonds referenced in Confidential Exhibit #5 to Ms. Kaye's affidavit of May 6, 2020 available for pick-up immediately following the issuance of the May 8 Order and Dominion collected these diamonds on the afternoon of May 8, 2020.

19. Subsequent to pick-up of the diamonds, Dominion alleged that DDMI was in breach of the May 8 Order and DDMI advised Dominion that it disagreed with Dominion's position. I am advised by my counsel that, on May 29, 2020, Dominion's counsel sent an email to DDMI's counsel advising that the dispute would have to be determined by way of an application and with motion materials. Dominion has not brought an application in respect of the dispute.

DDMI Realization Proposal

20. At paragraph 39 of the Kaye Affidavit, Ms. Kaye testifies that the DDMI realization proposal is "...markedly different from previous proposals circulated by DDMI prior to the delivery of their court materials."

21. DDMI circulated an outline of a realization process to Dominion, the First Lien Lenders and the Monitor on September 25, 2020. The outline circulated by DDMI set certain key principles relating to the proposed security enforcement. These key principles were, by and large, repeated at paragraph 8 and 9 of my Fourth Affidavit sworn on October 19, 2020. Neither Dominion nor the First Lien Lenders responded to the DDMI outline before DDMI served its court materials on October 19, 2020.

TMC

22. The DDMI outline of key principles circulated to Dominion, the First Lien Lenders and the Monitor on September 25, 2020 was never intended nor capable of being a final realization process. Rather, it was intended to facilitate further engagement and discussion with Dominion and the First Lien Lenders on security realization. Issues such as transportation, vesting and distribution of proceeds were not specifically addressed in the outline and would always have to be established in a formal written document. As there was no response from either Dominion or the First Lien Lenders to the September 25, 2020 outline, DDMI delivered its actual form of realization process to each of Dominion, the First Lien Lenders and the Monitor on October 23, 2020. The First Lien Lenders subsequently provided comments on the September 25, 2020 draft outline on October 24, 2020. Dominion then provided comments on October 27, 2020. DDMI and its counsel immediately convened lengthy conference calls over the course of the night and early morning (Calgary time) to provide a revised realization process early in the day on October 28, 2020. DDMI was prepared to continue consultation with Dominion and the First Lien Lenders but it was ultimately required to make considerable effort in responding to the Kaye Affidavit and the additional materials served by Dominion and the First Lien Lenders yesterday.

23. While DDMI is disappointed in the lack of engagement with Dominion and the First Lien Lenders in the period following September 25, 2020, DDMI has accepted many of the comments made by Dominion and the First Lien Lenders in the revised form of realization process that it seeks on the within application. I have also reviewed certain of the concerns expressed by Ms. Kaye in the Kaye Affidavit and believe that many of them are, in fact, expressly accounted for in the revised form of realization process:

(a) at paragraph 39(e) of the Kaye Affidavit, Ms. Kaye testifies that the realization process purports to "...distribute proceeds to Dominion's creditors without a proper adjudication of priorities." This is not correct. DDMI's proposed realization process expressly provides for distribution to creditors in accordance with priority entitlements;

(b) at paragraph 49 of the Kaye Affidavit, Ms. Kaye testifies to the reporting provisions proposed in the realization process. DDMI has reviewed the alternative reporting proposed by Dominion and is prepared to work with Dominion to refine reporting processes, but to the extent that requested additions are not reasonably

TM-L

achievable within existing DDMI processes DDMI may be unable to report on the exact form sought by Dominion. DDMI's realization proposal includes a right for Dominion to audit all material records and information relating to the realization, including diamond sorting results, actual sales invoices, auction logs and receipt and distribution of proceeds, subject only to commercially reasonable confidentiality arrangements being made with the selected accounting firm. In addition, Dominion has the express right to access the DDMI Collateral for the purpose of verifying and assessing the value of the DDMI Collateral;

(c) at paragraph 54 of the Kaye Affidavit, Ms. Kaye testifies that Dominion is concerned that DDMI "...will continue to use its existing long-term contracts (or similar long-term supply contracts) in its sale of the Additional Diamond Collateral" and suggests that this will result in lower pricing. DDMI currently anticipates that substantially all of the DDMI Collateral will be sold pursuant to an auction process but committing to one type of transaction will potentially limit recoveries and is inconsistent with the flexible approach that is a critical component of the realization (including preserving optionality of sales channels and aligning volume of product to market demand). Ms. Kaye's concern on the use of long-term sales contracts is ultimately misplaced: the realization process expressly provides that the "...DDMI Collateral will not be sold under long term supply contracts that provide pricing at a discount to the prevailing market";

(d) at paragraph 62 of the Kaye Affidavit, Ms. Kaye testifies that Dominion is concerned about chain of title and associated taxation issues. Ms. Kaye's apprehension on this matter is again specifically addressed within the document: the realization process expressly provides that "...Dominion shall have and shall continue to have all right, title and interest in the DDMI Collateral throughout the sales process" and that DDMI shall "...take good faith and commercially reasonable steps in order to effectuate the Sales in a tax efficient manner."

Process for Commissioning of this Affidavit

24. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

TMC

(a) I have shown the Commissioner the front and back of my current government-issued photo identification ("**ID**") and the Commissioner has compared my video image to the information on my ID;

(b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

(c) the Commissioner and I have a paper copy of this Affidavit before us;

(d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

(e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video conference on October 29, 2020)

_____)
A COMMISSIONER FOR OATHS)
in and for the Province of Alberta)

_____
THOMAS CROESE

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.*
PROVINCE OF	)	
ALBERTA	)	

I, Colleen Bonnyman, of the City of Calgary, in the Province of Alberta, Student-At-Law, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated October 29, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 29th day of October, 2020.

Colleen Bonnyman

A Commissioner for Oaths in
and for the Province of Alberta

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT #5 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

Clerk's Stamp

AFFIDAVIT #5 OF THOMAS CROESE
Sworn on October 29, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. This affidavit is sworn by DDMI in response to the Affidavit of Kristal Kaye, sworn on October 28, 2020 (the "**Kaye Affidavit**"). Terms capitalized in my Affidavit and not otherwise defined have the same meaning as in the Kaye Affidavit or the Fourth Affidavit I swore in the within proceedings on October 19, 2020. All monetary figures used in this Affidavit are in Canadian currency unless otherwise noted.

CB

The JVA Budget

3. At paragraph 10 of the Kaye Affidavit, Ms. Kaye provides a summary of Cash Calls made in the most recent six month period relating to the Diavik Mine. Ms. Kaye goes onto state at paragraph 12 of her affidavit that payments are over the Approved JV Budget by 18.9%.

4. Ms. Kaye's evidence does not provide information on the Approved JV Budget on an annualized basis. The total cash call amount within the Approved JV Budget for fiscal 2020 is $576.5 million, when adjusted for closure securitisation cash calls, which were initially included and then subsequently removed. The total estimated cash calls for this annual fiscal period are $579.8 million. On an annualized basis, the Joint Venture is projected to be over budget by approximately 0.6% and Dominion's 40% share of the deficit is approximately $1.3 million. The chart below shows Dominion's current 40% share of the Approved JV Budget[1] (including November and December projections) and corresponding Cash Calls:

Month	2020 Approved JV Budget	Cash Call	Variance
Jan	15.1	22.1	(7.0)
Feb	20.5	18.6	1.9
Mar	36.5	28.8	7.7
Apr	35.5	33.2	2.3
May	24.8	29.6	(4.8)
Jun	19.3	15.6	3.7
Jul	16.2	18.4	(2.2)
Aug	13.7	14.4	(0.7)
Sep	11.0	16.1	(5.1)
Oct	15.0	14.3	0.7
Nov	13.0	10.4	2.6
Dec	10.4	10.4	-
Total	**230.6**	**231.9**	**(1.3)**

5. Ms. Kaye's evidence on the Approved JV Budget is also based on inaccurate records. In February, 2020, Dominion prepared its own Cash Call schedule, to adjust for the cancellation of closure securitisation cash calls that understated Dominion's total Cash Call obligations by approximately $14.9 million. I advised Ms. Kaye of the error in her

[1] The charts in this affidavit are in millions (000's) and are rounded.

Cash Call schedule in April, 2020 and Ms. Kaye's evidence is based on Dominion's own (incorrect) model. Further, Ms. Kaye's tabulated schedule in Paragraph 10 of her affidavit arbitrarily apportions the monthly cash call amounts to two equal billings each month. This also is incorrect, as the payment cycles necessitate that the two billings within a given month are different from one another. The chart below identifies the amount of the correct Approved JV Budget and corresponding error in Ms. Kaye's calculations:

Month	Approved Program and Budget	Kaye Testimony Amount	Kaye Error Amount
April	35.5	34.6	0.9
May	24.8	22.6	2.2
June	19.3	17.0	2.3
July	16.2	13.8	2.4
August	13.7	11.8	1.9
September	11.0	8.6	2.4
October	15.0	12.2	2.8
Total	**135.3**	**120.6**	**14.7**

6. The Diavik Mine experienced some increased cost over the second and third quarters of 2020, primarily due to the following:

   (a) $11.0 million in increased operating costs directly attributable to COVID-19, relating to overtime from changing shift patterns, external services and temporary labour to off-set the impacts of personnel who are unable to work as a result of various health and community safety precautions;

   (b) $4.4 million in severance costs associated with restructuring to sustainably reduce the operating costs of the asset for the long term; and

   (c) $2.0 million in annual leave payout as a result of needing to cancel annual leave for certain shift workers to sustain stable operations.

7. These unanticipated expenditures have been offset by reduced capital expenditures and exploration costs. DDMI has taken reasonable and necessary precautions to stabilize the operations due to the COVID-19 pandemic and does not project material variation from the Approved JV Budget.

CB

BC Litigation

8. At paragraph 13 of the Kaye Affidavit, Ms. Kaye testifies that Dominion has commenced civil proceedings against DDMI in British Columbia relating to the JVA. The proceedings were commenced in June, 2020. DDMI has responded by defending the action and bringing a security for costs application. Dominion requested and was granted an adjournment of the security for costs application on terms that stayed the litigation. Other than responding to the security for costs application, Dominion has taken no steps to advance the aforementioned civil proceedings.

Month End Balances

9. At paragraph 15(a) of the Kaye Affidavit, Ms. Kaye states that she has concerns with the month-end cash balances in the JV Cash Account.

10. The increased month end balances in the JV Cash Account have been largely caused by Dominion's request (made shortly prior to the CCAA filing in April 2020) to change the twice-monthly payment date for Cash Calls from the first / fifteenth of each month to the eighth / twenty-second of each month. The result is that amounts are required to be on deposit at month-end to satisfy payables coming due in the first week of the following month. Absent Dominion's earlier request and DDMI's accommodation, month-end balances would be lower.

11. The $17.0 million balance in the account as at September 30, 2020 is the result of a timing variance. There was a $9.7 million insurance payment forecasted to be paid in September, 2020 but such payment did not clear the JV Cash Account in time to be accounted for in September. The payment was paid and recorded on October 9, 2020. The closing balance of the JV bank accounts on November 6 (shortly before the next scheduled cash call payment) is forecast to be approximately $5.0 million, which is reasonable and normal course.

CEWS

12. At paragraph 15(b) of the Kaye Affidavit, Ms. Kaye testifies that, to the best of her knowledge, DDMI has not applied for the CEWS.

13. DDMI has not applied for the CEWS and is currently reviewing both its eligibility for and the benefits associated with the program. The decision to make an application, and the quantum of such an application, is impacted by a number of factors including the basis for calculating the subsidy, which benefits from a holistic view over the duration of the scheme. This includes consideration of the operating status of the Joint Venture, particularly if it becomes unviable in the absence of a viable partner or repayment of the Cover Payment obligations. Ms. Kaye testifies that DDMI could be entitled to tens of millions of dollars, based on the assumption that DDMI's sales operations have been impacted similarly to Dominion's. I do not believe that this assumption to be accurate, and note the fact that DDMI's sales operations have continued throughout the pandemic. This adds complexity to the calculation of an appropriate CEWS claim and the decision to apply. Further analysis is ongoing and the deadline for making an application is in February 2021.

Fees and Expenses

14. At paragraph 27 of the Kaye Affidavit, Ms. Kaye testifies that sale, marketing, royalty and other fees for Dominion's share of production from the Diavik Mine is 11%.

15. In my Fourth Affidavit, I testified that DICAN provides a gross valuation and expenditures of the type testified to by Ms. Kaye can materially impact the net payment received by diamond producers. I also noted that, based on the information provided in the Sixth Report of the Monitor, such fees and expenses in Dominion's recent sales had equated to 13% and that an estimate of 20% (based on Exhibit "B" to the Affidavit of Mr. Frederick Vescio, sworn October 7, 2020) for future sales would not be unreasonable.

16. I never "indicated that an amount of 13-20% must be deducted from the gross value of the Additional Diamond Collateral". I was simply making the point that the DICAN value is a gross valuation and does not reflect the net revenues generated. Ms. Kaye's testimony does indicate that the sale, marketing, royalty and other fees for Dominion's share of production from the Diavik Mine (in the amount of 11%) reduces the net payments received by Dominion. This is a further reason why the DICAN value cannot be relied upon for determining the collateralisation position as it does not reflect the proceeds received by diamond producers after these sale, marketing, royalty and other fees are deducted.

Carat Discrepancy

17. At paragraph 29 of the Kaye Affidavit, Ms. Kaye testifies as to a carat discrepancy in my evidence and the DICAN report. DDMI has re-confirmed that its balance is correct with the staff at the PSF and that it was provided to the GNWT. DDMI is engaging with the GNWT to understand the origin of their carat number.

May 8 Order

18. At paragraph 38 of the Kaye Affidavit, Ms. Kaye testifies that DDMI has not delivered certain diamonds that it was ordered to deliver to Dominion pursuant to an order issued on May 8, 2020. This is incorrect. DDMI made the diamonds referenced in Confidential Exhibit #5 to Ms. Kaye's affidavit of May 6, 2020 available for pick-up immediately following the issuance of the May 8 Order and Dominion collected these diamonds on the afternoon of May 8, 2020.

19. Subsequent to pick-up of the diamonds, Dominion alleged that DDMI was in breach of the May 8 Order and DDMI advised Dominion that it disagreed with Dominion's position. I am advised by my counsel that, on May 29, 2020, Dominion's counsel sent an email to DDMI's counsel advising that the dispute would have to be determined by way of an application and with motion materials. Dominion has not brought an application in respect of the dispute.

DDMI Realization Proposal

20. At paragraph 39 of the Kaye Affidavit, Ms. Kaye testifies that the DDMI realization proposal is "...markedly different from previous proposals circulated by DDMI prior to the delivery of their court materials."

21. DDMI circulated an outline of a realization process to Dominion, the First Lien Lenders and the Monitor on September 25, 2020. The outline circulated by DDMI set certain key principles relating to the proposed security enforcement. These key principles were, by and large, repeated at paragraph 8 and 9 of my Fourth Affidavit sworn on October 19, 2020. Neither Dominion nor the First Lien Lenders responded to the DDMI outline before DDMI served its court materials on October 19, 2020.

22. The DDMI outline of key principles circulated to Dominion, the First Lien Lenders and the Monitor on September 25, 2020 was never intended nor capable of being a final realization process. Rather, it was intended to facilitate further engagement and discussion with Dominion and the First Lien Lenders on security realization. Issues such as transportation, vesting and distribution of proceeds were not specifically addressed in the outline and would always have to be established in a formal written document. As there was no response from either Dominion or the First Lien Lenders to the September 25, 2020 outline, DDMI delivered its actual form of realization process to each of Dominion, the First Lien Lenders and the Monitor on October 23, 2020. The First Lien Lenders subsequently provided comments on the September 25, 2020 draft outline on October 24, 2020. Dominion then provided comments on October 27, 2020. DDMI and its counsel immediately convened lengthy conference calls over the course of the night and early morning (Calgary time) to provide a revised realization process early in the day on October 28, 2020. DDMI was prepared to continue consultation with Dominion and the First Lien Lenders but it was ultimately required to make considerable effort in responding to the Kaye Affidavit and the additional materials served by Dominion and the First Lien Lenders yesterday.

23. While DDMI is disappointed in the lack of engagement with Dominion and the First Lien Lenders in the period following September 25, 2020, DDMI has accepted many of the comments made by Dominion and the First Lien Lenders in the revised form of realization process that it seeks on the within application. I have also reviewed certain of the concerns expressed by Ms. Kaye in the Kaye Affidavit and believe that many of them are, in fact, expressly accounted for in the revised form of realization process:

(a) at paragraph 39(e) of the Kaye Affidavit, Ms. Kaye testifies that the realization process purports to "...distribute proceeds to Dominion's creditors without a proper adjudication of priorities." This is not correct. DDMI's proposed realization process expressly provides for distribution to creditors in accordance with priority entitlements;

(b) at paragraph 49 of the Kaye Affidavit, Ms. Kaye testifies to the reporting provisions proposed in the realization process. DDMI has reviewed the alternative reporting proposed by Dominion and is prepared to work with Dominion to refine reporting processes, but to the extent that requested additions are not reasonably

achievable within existing DDMI processes DDMI may be unable to report on the exact form sought by Dominion. DDMI's realization proposal includes a right for Dominion to audit all material records and information relating to the realization, including diamond sorting results, actual sales invoices, auction logs and receipt and distribution of proceeds, subject only to commercially reasonable confidentiality arrangements being made with the selected accounting firm. In addition, Dominion has the express right to access the DDMI Collateral for the purpose of verifying and assessing the value of the DDMI Collateral;

(c) at paragraph 54 of the Kaye Affidavit, Ms. Kaye testifies that Dominion is concerned that DDMI "...will continue to use its existing long-term contracts (or similar long-term supply contracts) in its sale of the Additional Diamond Collateral" and suggests that this will result in lower pricing. DDMI currently anticipates that substantially all of the DDMI Collateral will be sold pursuant to an auction process but committing to one type of transaction will potentially limit recoveries and is inconsistent with the flexible approach that is a critical component of the realization (including preserving optionality of sales channels and aligning volume of product to market demand). Ms. Kaye's concern on the use of long-term sales contracts is ultimately misplaced: the realization process expressly provides that the "...DDMI Collateral will not be sold under long term supply contracts that provide pricing at a discount to the prevailing market";

(d) at paragraph 62 of the Kaye Affidavit, Ms. Kaye testifies that Dominion is concerned about chain of title and associated taxation issues. Ms. Kaye's apprehension on this matter is again specifically addressed within the document: the realization process expressly provides that "...Dominion shall have and shall continue to have all right, title and interest in the DDMI Collateral throughout the sales process" and that DDMI shall "...take good faith and commercially reasonable steps in order to effectuate the Sales in a tax efficient manner."

Process for Commissioning of this Affidavit

24. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

CB

(a) I have shown the Commissioner the front and back of my current government-issued photo identification ("**ID**") and the Commissioner has compared my video image to the information on my ID;

(b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

(c) the Commissioner and I have a paper copy of this Affidavit before us;

(d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

(e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video conference on October 29, 2020)

A COMMISSIONER FOR OATHS in and for the Province of Alberta)

THOMAS CROESE

Colleen R. Bonnyman
Student-at-Law

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS*
	)	*ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED*
PROVINCE OF	)	*AND IN THE MATTER OF A PLAN OF COMPROMISE OR*
	)	*ARRANGEMENT OF DOMINION DIAMOND MINES ULC,*
ALBERTA	)	*DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION*
	)	*DIAMOND CANADA ULC, WASHINGTON DIAMOND*
	)	*INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND*
	)	*DOMINION FINCO INC.*

I, Colleen Bonnyman, of the City of Calgary, in the Province of Alberta, Student-At-Law, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated October 29, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 29th day of October, 2020.

Colleen Bonnyman

A Commissioner for Oaths in
and for the Province of Alberta

CB

This is Exhibit "O" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

Karen Cenc

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 29, 2023

CLERK'S STAMP

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 KRISTAL KAYE

Sworn on October 28, 2020

I, Kristal Kaye of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Canada ULC ("**Dominion Canada**"), and Dominion Diamond Delaware Company, LLC ("**Dominion Delaware**"), three of the applicants in these proceedings , a director of Dominion Canada and Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), and I also hold other director and officer positions with certain other non-CCAA applicant entities affiliated with Dominion Diamond. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. I make this affidavit in response to the affidavit of Thomas Croese sworn October 19, 2020 (the "**Croese Affidavit**") and in opposition to DDMI's application for:

(a) an amendment to the Second and Amended Restated Initial Order of this Court dated June 19, 2020 (the "**SARIO**") that would allow DDMI to retain all of Dominion's share of the Diavik Mine production (as opposed to only the Additional Diamond Collateral, as defined below); and

(b) an order permitting DDMI to implement its proposed realization process (the "**DDMI Sale Proposal**") for the sale of the diamonds currently held by DDMI (the "**Additional Diamond Collateral**") as further security for the "**Cover Payments**" made by DDMI pursuant to the SARIO.

3. For the reasons set out below, the Applicants reject DDMI's assertion that DDMI requires further collateral to secure the Cover Payments and oppose DDMI's application to vary the SARIO to allow DDMI to hold any more of Dominion's production from the Diavik Mine beyond the Additional Diamond Collateral.

4. With respect to the DDMI Sale Proposal, the Applicants submit that any process that is implemented to sell the Additional Diamond Collateral must be fair, transparent, and provide for the best realization value available in the circumstances.

5. The Applicants should be permitted to, and are able and prepared to, sell the Additional Diamond Collateral themselves, but if DDMI is to be responsible for the sale, modifications to the DDMI Sale Proposal are required.

(1) Background

6. I have previously sworn several affidavits in these CCAA proceedings, including my affidavit of April 21, 2020 (the "**April Affidavit**") and May 6, 2020 (the "**May Affidavit**"). Background facts relevant to DDMI's application are set out in my April and May Affidavits.

7. If not defined in this affidavit, capitalized terms have the meaning given to them in my April and May Affidavits.

(2) DDMI's Cash Calls

8. As is described in my April Affidavit, one of the significant financial burdens faced by Dominion prior to its filing for CCAA protection were the bi-monthly "**Cash Calls**" issued by DDMI with respect to Dominion's forty percent share of the operating expenses of the Diavik Mine, which DDMI has been running notwithstanding the disruptions to the diamond industry sales channels caused by the COVID-19 pandemic.

9. As is described in both the Affidavit of Mr. Croese sworn April 30, 2020 and my May Affidavit, pursuant to the Joint Venture Agreement that governs Dominion and DDMI's participation in the Diavik Mine joint venture, the operation of the Diavik Mine is conducted in accordance with an approved program and budget (the "**Approved JV Budget**").

10. In the period from April 22, 2020 when the Applicants filed for CCAA protection, until September 30, 2020, DDMI has made the following Cash Calls (which are compared in the table below to the amounts payable under the Approved JV Budget for Dominion's 40% share):

Cash Call Period	**$ CAD**			**$ USD**		
	Approved JV Budget	**Actual**	**Over/ (Under) Budget**	**Approved JV Budget**	**Actual**	**Over/ (Under) Budget**
2nd April Cash Call	17,283,400	16,000,000	(1,283,400)	13,294,923	12,093,726	(1,201,197)
1st May Cash Call	11,283,400	17,600,000	6,316,600	8,679,538	13,303,099	4,623,561
2nd May Cash Call	11,283,400	12,000,000	716,600	8,679,538	9,070,295	390,757
1st June Cash Call	8,483,400	5,600,000	(2,883,400)	6,525,692	4,232,804	(2,292,888)

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	Actual	Over/ (Under) Budget	Approved JV Budget	Actual	Over/ (Under) Budget
2nd June Cash Call	8,483,400	10,000,000	1,516,600	6,525,692	7,558,579	1,032,887
1st July Cash Call	6,883,400	8,400,000	1,516,600	5,294,923	6,349,206	1,054,283
2nd July Cash Call	6,883,400	8,000,000	1,116,600	5,294,923	6,046,863	751,940
Exploration	-	1,977,282	1,977,282	-	1,494,544	1,494,544
1st Aug Cash Call	5,883,400	8,000,000	2,116,600	4,525,692	6,046,863	1,521,171
2nd Aug Cash Call	5,883,400	6,400,000	516,600	4,525,692	4,837,491	311,799
1st Sept Cash Call	4,283,400	8,800,000	4,516,600	3,294,923	6,651,550	3,356,627
Exploration	-	80,293	80,293	-	60,690	60,690
2nd Sept Cash Call	4,283,400	7,200,000	2,916,600	3,294,923	5,442,177	2,147,254
TOTAL to September 30th	**90,917,400**	**110,057,575**	**19,140,175**	**69,936,462**	**83,187,887**	**13,251,425**

11. Further Cash Calls in the month of October are as follows:

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	Actual	Over/ (Under) Budget	Approved JV Budget	Actual	Over/ (Under) Budget
1st Oct Cash Call	6,083,400	8,800,000	2,716,600	4,679,538	6,651,550	1,972,012
Exploration	-	664,634	664,634	-	502,369	502,369
2nd Oct Cash Call	6,083,400	4,800,000	(1,283,400)	4,679,538	3,628,118	(1,051,420)
TOTAL	**103,084,200**	**124,322,209**	**21,238,009**	**79,295,538**	**93,969,924**	**14,674,386**

12. As is contemplated by the SARIO, while the exercise of Dominion's creditors' rights and remedies are stayed, DDMI has the ability to make Cover Payments with respect to Dominion's

Cash Call obligations to DDMI. The amount of the above listed Cash Calls is equivalent to the amount that DDMI has paid as Cover Payments as of September 30, 2020. That is to say, as of September 30, DDMI has made Cover Payments in the amount of approximately $83.2 USD million since the Applicants were granted CCAA protection. This amount is over the Approved JV Budget by approximately $13.3 million USD or 18.9%.

13. As I described in my May Affidavit, Dominion Diamond has had for some time, and continues to have, concerns with the way in which DDMI has operated and continues to operate the joint venture and the Diavik Mine. The concerns that Dominion has raised are described in paragraph 6 of my May Affidavit, which include concerns related to the operational and financial performance of the Diavik Mine generally and DDMI's repeated failure to meet cost budgets, including a significant failure to meet the Approved JV Budget (many of which failures preceded the COVID-19 pandemic). Dominion has commenced litigation against DDMI with respect to its operation of the Diavik Mine in the British Columbia Supreme Court.

14. In light of its concerns with respect to the operation of the Diavik Mine, as is also described in my May Affidavit, Dominion has repeatedly asked DDMI to pursue appropriate cost reductions, including months before the onset of the COVID-19 pandemic. Despite these requests, as is clear from the above, DDMI's Cash Calls have continued to be in an amount well in excess of the Approved JV Budget.

15. The Applicants' concerns with respect to DDMI's operation of the Diavik Mine have continued to manifest since filing for CCAA protection. Among others, the Applicants' concerns include the following two issues:

(a) **Cash Account**: DDMI maintains a cash account to fund the operations of the Diavik Mine (the "**JV Cash Account**"), 40% of which is funded by the Applicants in respect of their proportional share of the Diavik Mine obligations. Prior to the Applicants' filing for CCAA protection (with a starting point of January 2017), the average month-end balance in the JV Cash Account has been approximately $5 million CAD. Since the Applicants' filing for CCAA protection in April, the average month-end balance in the JV Cash Account has been approximately $15 million CAD. As of the last financial reporting at September 30, 2020 I understand that the cash balance in the JV Cash Account was approximately $17 million CAD. Yet, in October, DDMI has again made Cash Calls in excess of the Approved JV Budget by approximately $2 million CAD. I am not aware of any reason for DDMI

to maintain such an increased balance in the JV Cash Account, which in effect increases the amount of Dominion's Cash Calls (and therefore the DDMI Cover Payments and the associated interest payable on these Cover Payments).

(b) **CEWS Benefit**: To the best of my knowledge, DDMI has not applied for the Canadian Emergency Wage Subsidy ("**CEWS**") benefit that has been made available to Canadian employers who have seen a drop in revenue due to COVID-19 to cover part of employee wages. A general discussion on CEWS eligibility occurred between Dominion and DDMI at a meeting held on April 20, 2020. At a third-quarter joint venture meeting held on October 21, 2020, Dominion confirmed that DDMI had not applied for the CEWS benefit. Subsequent to that meeting Dominion requested further details from DDMI in order to calculate the potential benefit available to DDMI pursuant to the CEWS. This information has not been provided to Dominion as of the date of this affidavit. If DDMI's operations have been impacted in a similar way as Dominion's by the pandemic, particularly with respect to the ability to conduct significant sales, this could be a significant benefit to DDMI and provide them with additional funds in the tens of millions of dollars, which would again reduce the amount of the Dominion Cash Calls and corresponding Cover Payments. DDMI has advised that it may apply for this subsidy in the coming months but the Dominion Cash Calls should have already been reduced.

(3) DDMI is Over-Secured (not Under-Secured)

16. DDMI's claim that the Cover Payment indebtedness of the Applicants to DDMI exceeds the gross value of the Additional Diamond Collateral is incorrect. If anything, as is set out below, DDMI is over-secured with respect to the Cover Payments on the basis of the most recent pricing information available.

Valuation of the Additional Diamond Collateral

17. Mr. Croese is correct that historically the DICAN (as defined in the Croese Affidavit) valuations have been higher than the realized value of diamonds from the Diavik Mine. However, all of the diamonds that Dominion has sold in 2020 (beginning as early as January, prior to both the COVID-19 pandemic and the Applicants' CCAA filing) have sold at a higher realized value than the DICAN valuation.

18. As noted by Mr. Croese himself at paragraph 13 of his affidavit, DDMI has also sold diamonds in September and early October of this year in excess of the DICAN valuation.

19. Below is a table showing the average price per carat that Dominion has obtained in its sales in 2020 as compared to the DICAN valuation for those same diamonds (being the DICAN valuation conducted several months prior):

Production Date	DICAN value (USD$/carat)	Sales Month	Sale value (USD$/carat)	$/carat Variance	Percentage Difference
November 2019	$90.82	January 2020	$97.56	$6.74	7%
December 2019-January 2020	$80.41/$87.85	February 2020	$93.94	$9.65	11%
February 2020	$86.13	September 2020	$90.52	$4.39	5%

20. If the DICAN values applied at the time the valuation was performed are applied to the Dominion diamonds currently held by DDMI, the total value of these diamonds is approximately $92.1 million USD:

Production Dates	Carats	DICAN USD$/ct	Total DICAN Value (USD)
April 16-May 6	51,578.47	$102.63	$5,293,436.87
May 7 - May 27	242,242.17	$73.13	$17,716,298.61
May 28 - June 17	171,587.14	$71.61	$12,286,998.25
June 18 - July 22	251,599.75	$71.87	$18,081,391.17
July 23 - 26 August	262,052.28	$74.28	$19,465,839.98
27 August-30 September	230,251.02	$83.45	$19,213,928.58
Production up to September 30	**1,209,310.83**	**$76.12**	**$92,057,893.47**

21. As set out above, as of September 30, 2020, the Cover Payments made by DDMI are approximately $83.2 million USD. The value of the Dominion diamonds being held by DDMI for this same period of time using the DICAN pricing is approximately $92.1 million USD. In other words, DDMI is over-secured by approximately $8.9 million USD, based on the DICAN valuations.

22. However, these DICAN valuations for 2020 undervalue the diamonds because of the point in time at which the valuations were done (at the height of the pandemic). If all of the diamonds currently held by DDMI for the production dates up to September 30 are valued using the most recent DICAN valuation number, $83.45 per carat, the total value of the inventory held by DDMI to secure its Cover Payments (both current to September 30) is approximately $100.7 million USD. This results in DDMI being over-secured in an amount of approximately $17.5 million USD.

23. An even more accurate way to value the Additional Diamond Collateral is to use the actual pricing obtained by Dominion in its most recent diamond sales in September of this year. If the Additional Diamond Collateral is valued at the average sales price obtained by Dominion during its September sale, being $90.52 per carat, the total value of the Additional Diamond Collateral (to September 30) is approximately $109.2 million US. DDMI is therefore over-secured by $26.0 million US.

24. In my view, Dominion's recent sales data, or in the alternative the current DICAN valuation, is the best and most accurate way to value the Additional Diamond Collateral. For clarity, Dominion is not asking this Court to revise the terms of SARIO or change the method of valuation used – it is only providing this evidence to illustrate that the position taken by DDMI with respect to the valuation of the Additional Diamond Collateral is incorrect.

Further Inaccuracies in DDMI's valuation

25. In paragraph 16(a) of the Croese Affidavit, Mr. Croese claims that an amount of 13-20% must be deduced from the gross value of the Additional Diamond Collateral to account for sale, marketing, royalty and other fees and expenses associated with selling these diamonds. According to Mr. Croese, the basis of this information is data from a recent sale of diamonds by Dominion that is found in in the Monitor's Sixth Report.

26. Mr. Croese's claim that these expenses will amount to 13-20% of the gross value of the Additional Diamond Collateral is incorrect. An estimation of 20% is too conservative (given, among other things, the fixed cost of sales that does not fluctuate materially with increased volume, except for per-stone sorting costs).

27. The actual amount of these costs for Dominion's share of production from the Diavik Mine is 11%. This accounts for Belgian taxes, GNWT royalties, private royalties and sorting and shipping costs. The estimated 13% expense value derived from the information on diamond

sales from the Monitor's Sixth Report, dated September 22, 2020, was arrived at using diamond sale figures reported on a consolidated basis and included costs associated with both the Ekati and Diavik Mines. Dominion does not own 100% of the Ekati Mine and has to pay the proportionate share of Ekati's net revenues to its JV partner, Mr. Stu Blusson. There are no other deductions or expenses that I am aware of to justify an ask of 13-20%.

28. If DDMI truly estimates that it will have to deduct an amount of 13-20% from the gross value of the Additional Diamond Collateral to account for sale, marketing, royalty and other fees and expenses associated with selling these diamonds, whereas Dominion estimates these costs to be approximately 11%, that is only further evidence that Dominion should be the party responsible for selling the Additional Diamond Collateral.

29. For the sake of accuracy, I also note that in his affidavit Mr. Croese indicates that the diamonds owed to Dominion for May 20, 2020 are in an amount of 49,832.78 carats, but the DICAN report provided to Dominion by GNWT indicates that the correct weight is 50,316.99 carats.

Projections as to Future Diamond Sales

30. I do not disagree with Mr. Croese that there is uncertainty as to how diamond prices may fluctuate in the coming months and year. Even absent the COVID-19 pandemic, diamond pricing is dynamic. However, it is important to recognize that diamond experts hold differing views with respect to what the future holds for the diamond market. For example, Paul Zimnisky Diamond Analytics ("**Zimnisky Analytics**"), a monthly subscription service that is used by financial institutions, management consulting firms, private and public corporations, governments, intergovernmental organizations and universities, takes a more optimistic view in its monthly reports for September (the "**September Zimnisky Report**") and October (the "**October Zimnisky Report**", together the "**Zimnisky Reports**") than the views contained in the secondary market sources relied on in the Croese Affidavit.

31. In the September Zimnisky Report, Zimnisky Analytics stated that:

> "While the impact of the pandemic has led to a continuation of a multi-year down-trend in diamond prices, the situation has also acted as a catalyst to expediate pre-existing supply trends that should be fundamentally supportive of prices going forward."

32. Further, the Zimnisky October Report notes that "in the weeks spanning late-August through early-September, both De Beers and ALROSA held sales in which rough was sold at levels not seen since before the pandemic".

33. Similar to the WWW Forecasts relied on by Mr. Croese in his affidavit, the Zimnisky Reports are not publicly available and have been attached to this Affidavit with the express consent of Zimnisky Analytics on the basis that they will not be disclosed due to the commercially sensitive and proprietary information contained in them. The September Zimnisky Report is attached to this affidavit as "Confidential Exhibit 1" and the October Zimnisky Report is "Confidential Exhibit 2".

34. This more positive view of the future value of diamonds contained in the Zimnisky Reports, for example, aligns with Dominion's recent sales experience. Dominion sold 99.6% of the diamonds it put to market in September at a price per carat that is significantly higher than the DICAN valuation. As noted in the Croese Affidavit, DDMI's recent diamond sales have yielded a similar result.

35. There is no reasonable basis for DDMI to assert that applying the DICAN valuation to the Additional Diamond Collateral results in DDMI being under-secured for the amounts owing to it with respect to the Cover Payments. As is set out above, the evidence demonstrates the opposite - DDMI is over-secured.

(4) <u>DDMI Continues to Hold Diamonds Owing to Dominion</u>

36. As is stated in my May Affidavit, prior to filing for CCAA protection on April 22, Dominion paid DDMI's first Cash Call for the month of April (the "**First April Cash Call**"). The First April Cash Call was in amount of $17,200,000.

37. Following a dispute between DDMI and Dominion as to Dominion's entitlement to the diamonds owing to Dominion by virtue of its payment of the First April Cash Call, being the diamonds with a production start of April 1, 2020 and up to April 15, 2020, in an order of May 8, 2020, this Court required DDMI to provide those diamonds to Dominion. In that order the Court stated that DDMI "shall forthwith make available for delivery" to Dominion Diamond the diamonds referenced in a confidential exhibit to my May Affidavit "for the period with the Production Start of April 1, 2020 and the Cut-Off of April 15, 2020."

38. However, DDMI has only provided Dominion with the smaller stones from that April 1 – April 15 production cycle (8 gr and below). The larger stones (10 gr to +6), approximately 7,275 carats, have not been provided to Dominion. Dominion is entitled to receive all diamonds owing to it from the April 1 – April 15 production cycle, not only these smaller stones.

(5) DDMI's Proposed Process to Monetize the Additional Diamond Collateral

39. I have reviewed the draft DDMI Sale Proposal that was circulated by counsel to DDMI on Friday October 23. This proposal is markedly different from previous proposals circulated by DDMI prior to the delivery of their court materials. The DDMI Sale Proposal eliminates the parameters previously being negotiated between the parties to ensure Dominion and its stakeholders had some assurance that DDMI would maximize the Additional Diamond Collateral. Specifically, the DDMI Sale Proposal is deficient in that:

(a) it does not identify the scope of the Additional Diamond Collateral to be sold by DDMI;

(b) it does not speak to maximizing the value of the Additional Diamond Collateral or establish a procedure which would require it to do so;

(c) it purports to "empower and authorize" DDMI to sell the Additional Diamond Collateral on any terms and conditions as it may deem or consider appropriate;

(d) it does not properly establish the basis on which DDMI would act as Dominion's agent for the purpose of selling the Additional Diamond Collateral; and

(e) it purports to distribute proceeds to Dominion's creditors without a proper adjudication of priorities.

40. In addition, the DDMI Sale Proposal does not provide for sufficient reporting to Dominion to allow it and its stakeholders to review, consider and assess the results of any sales undertaken by DDMI of the Additional Diamond Collateral.

41. Dominion has been working with the First Lien Lenders to prepare an alternative process (the "**Revised Monetization Process**") to the DDMI Sale Proposal served Friday, October 23. The Revised Monetization Process will be a fair and transparent sales process designed to maximize the value received for the Additional Diamond Collateral and provide the appropriate and necessary information to Dominion, the First Lien Lenders and the Monitor, to allow for the

appropriate degree of insight into the monetization process and exchange of information. This Revised Monetization Process will include details as to the monthly reporting that should be provided to Dominion, the Monitor, and the First Lien Lenders.

42. Both Dominion and the First Lien Lenders have provided initial comments on revised sales proposals to DDMI. Dominion is continuing to work with the First Lien Lenders on the Revised Monetization Process.

43. Dominion is prepared to sell the Additional Diamond Collateral and will be prepared to do so on the terms of the Revised Monetization Process, including providing to DDMI the monthly reporting provided for in the Revised Monetization Process.

44. Dominion has all of the infrastructure required to effectively realize value for these assets, including an excellent, secure facility, sorting abilities, quick and secure collection of cash, and the ability for the Court-appointed Monitor to oversee and ensure priority distribution of the cash proceeds to DDMI to reimburse the Cover Payments and associated expenses.

45. However, should this Court conclude that DDMI ought to be permitted to sell the Additional Diamond Collateral, certain safeguards are required to ensure that the sales process is fair and transparent and that the interests of both the Applicants and their other stakeholders are protected.

More Transparency is Required

46. If DDMI is permitted to sell the Additional Diamond Collateral, the process must be transparent. DDMI must provide monthly reporting with sufficient information to allow Dominion and its stakeholders, including the First Lien Lenders, to evaluate the pricing, marketing, and results of the sale of the Additional Diamond Collateral by DDMI. The DDMI Sale Proposal provides none of this.

47. As is set out in my May Affidavit, DDMI's lack of consultation with Dominion and failure to properly take into consideration the interests and views of Dominion was a concern to Dominion prior to the commencement of these CCAA proceedings. As Dominion and other CCAA stakeholders' interests will be directly impacted by any sale of the Additional Diamond Collateral, any realization process approved by this Court must ensure that adequate consultation occurs, including by requiring that the process is structured to maximize value, transparent and designed to give Dominion the information it needs to participate effectively.

48. There is no valid reason for DDMI to resist providing the necessary information to the Applicants and their stakeholders, particularly if sufficient safeguards are put in place to ensure protection of any confidential or commercially sensitive details.

49. The information I reviewed with respect to DDMI's proposed realization process, including Exhibit "A" to the Croese Affidavit (DDMI's Proposed Monthly Reporting Form) indicates that more information must be made available to the Applicants and their stakeholders. A transparent process must, among other things:

(a) require a prescribed level of reporting from DDMI that meets a number of criteria with respect pricing and sorting of diamonds, beyond the level of detail provided for in Exhibit "A" to the Croese Affidavit, in conjunction with copies of all detailed DICAN valuation reports so that the Applicants have some evidence as to a third-party's valuation and can confirm carat recoveries;

(b) prior to each sales cycle, Dominion should receive a report showing each category of diamond parcels and each individual "special" stone, the most recent achieved price per carat in such category and the proposed average reserve price for such category;

(c) following each sales cycle, Dominion should receive a report showing the results of the sale for each category of diamond parcels and each individual special stones, the performance versus the reserve pricing and the amount of goods which remain unsold;

(d) a right to inspect and value the sorted diamond inventory (on notice to DDMI);

(e) a month-end snapshot of current inventory, carats and estimate value (by production cycle if possible); and

(f) an ability to audit information provided by DDMI with respect to the sale of diamonds.

50. In addition to these general transparency requirements, there are further points discussed below that the Applicants view as critical to ensuring a fair process. Given that there are ongoing discussions occurring between DDMI and the Applicants at this stage, I have only provided high level comments on certain aspects of what is required of any potential realization process.

An Auction Process Should be Required

51. As a general statement, diamond evaluation and pricing is a complicated, dynamic, and often confidential process. There are a number of different ways that diamond producers market and sell their diamonds. As is set out in the Croese Affidavit, this can include through supply contracts, auctions, tenders, and negotiated spot sales.

52. As is also set out in the Croese Affidavit, DDMI's Sale Proposal proposes to use new supply agreements (term contracts) and spot auctions to sell the diamonds.

53. Dominion's auction process involves inviting clients to view the diamonds, holding viewing appointments over 6-8 working days (with approximately 50 appointments), using a reserve price to ensure sufficient value is realized for the diamonds, even if a temporary drop in demand occurs, and using an ascending clock auction process where participating clients bid until there is a winner. In the Applicants' view, this process maximizes realization for Dominion's diamonds.

54. It is my understanding that Rio Tinto sells a large portion of its diamonds from the Diavik Mine through long-term supply contracts, as opposed to an auction process similar to the one described above. The Applicants are concerned that DDMI will continue to use its existing long-term contracts (or similar long-term supply contracts) in its sale of the Additional Diamond Collateral. In Dominion's view, there are two primary issues with the use of long-term supply contracts to sell diamonds:

(a) In general, long-term supply contracts may result in a lower price (1 to 5%) being paid for diamonds than auction sales due to the commitment to take future volumes without knowing market demand.

(b) Due to the nature of the ongoing business relationship created by a long-term supply contract, the purchasing counter-parties are often granted certain accommodations that in this case could result in a lower valuing being paid for the Additional Diamond Collateral, including for example cross-subsidizing diamonds from different sources which may be of differing values. This results in a higher price being paid for lower quality diamonds and a lower price being paid for higher quality diamonds.

55. Rio Tinto (DDMI's parent company) is a significant player in the rough diamond market and has access to and sells rough diamonds from its other diamond mines to its customers. Rio Tinto's global marketing and sales strategy may not involve maximizing value for Dominion's share of production from the Diavik Mine. DDMI could sell the Additional Diamond Collateral pursuant to long term supply contracts or through spot sales with existing customers at a discount to then prevailing market rates. DDMI may also be motivated to sell the Additional Diamond Collateral without considering market factors relating to current supply and demand which would achieve the highest pricing for its goods.

56. Dominion has previously requested that DDMI consider profitability when determining its operating costs budgets. However, DDMI will not provide its average diamond pricing information to Dominion or anyone else. As such, there is no way for Dominion to assess the price paid by DDMI's purchasers with respect to its long-term contract sales.

57. In the Applicants' view, an auction process (with a minimum floor price) is the most transparent and effective way to realize value for diamonds. Dominion is prepared to permit DDMI to sell the Additional Diamond Collateral on its behalf through ascending bid auctions with reserve pricing established by DDMI.

58. Selling the Additional Diamond Collateral through an auction at reasonable intervals is the only way to ensure value is maximized. An auction process, which opens the sale up to hundreds of potential buyers (as opposed to a limited number of contract customers), could expose the Additional Diamond Collateral to a higher number of potential purchasers than existing Rio Tinto contract customers. This increased customer exposure creates market tension and can yield a higher price, giving comfort to the Applicants' stakeholders that the best possible price is being achieved for the Additional Diamond Collateral. It is ultimately a fairer and more transparent process.

DDMI's Proposed Fee Is Unreasonable

59. At paragraph 9(f) of the Croese Affidavit, Mr. Croese states that pursuant to DDMI's proposed DDMI Sale Proposal, DDMI will deduct 2.5% from the net sale proceeds of the Additional Diamond Collateral as a handling, sorting, sales and cash collecting fee. Mr. Croese states that this fee is consistent with fees charged by affiliates of Rio (DDMI's parent company) to arm's length third parties for similar services in their commercial profit making arrangements.

60. In my view, this fee is too high. Many of the costs associated with selling diamonds are fixed and should not change in any material way if DDMI sells the Additional Diamond Collateral. Indeed, as Mr. Croese notes in his affidavit, DDMI already has "existing secure and well-established infrastructure" in place to sell DDMI's share of the diamonds from the Diavik Mine, and DDMI's diamond team will handle the Additional Diamond Collateral in the same way it handles its own share of production.

61. If Dominion were to sell the Additional Diamond Collateral, I would expect the fee charged as a handling, sorting, sales and cash collecting fee would be not more than 1%. As stated above, an appropriate alternative solution is to allow Dominion to sell the Additional Diamond Collateral and pay the net proceeds to DDMI on account of the amounts owing for the Cover Payments, particularly given that Dominion anticipates charging a significantly lower fee for these services than DDMI does. As stated earlier, Dominion will be prepared to sell the Additional Diamond Collateral on the terms set out in the Revised Monetization Process and will be able to do so for a 1% fee.

Other Protections Required to Ensure a Fair Process

62. The tax issues that arise in various jurisdictions with respect to the sale of diamonds are complex. Any sales process implemented by DDMI will have to give due consideration to the tax requirements of all relevant jurisdictions, including allocation of tax liability and subsequent reassessment, and ensure that the chain of title to the Additional Diamond Collateral is one that effectively maximizes sale proceeds.

63. Similarly, as is set out in my April Affidavit, there are certain royalties payable on Dominion's share of diamonds from the Diavik Mine. Any sales process implemented by DDMI will have to ensure that liability for these royalties are properly allocated.

(6) Sealing Order

64. In light of the commercially sensitive, proprietary and confidential information contained in Confidential Exhibits 1 and 2, the Applicants ask that these exhibits be sealed on the court record. I do not believe that any stakeholder will be prejudiced by this relief.

SWORN BEFORE ME at Calgary, Alberta, this 28th day of October, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Morgan E. Crilly
Barrister & Solicitor

KRISTAL KAYE

This is Exhibit "P" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 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, COMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC*
PROVINCE OF	)	
ALBERTA	)	

I, Jordan Bierkos, of the City of Calgary, in the Province of Alberta, Barrister and Solicitor, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated June 16, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 16 day of June, 2020.

Jordan Bierkos

A Commissioner for
Oaths/Notary Public in and for
the Province of Alberta

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT #3 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

JS
June 19, 2020
Justice Eidsvik

AFFIDAVIT #3 OF THOMAS CROESE
Sworn on June 16, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

TMC

A copy of the JVA is attached to my affidavit sworn on April 30, 2020 ("**April 30 Affidavit**).

3. In swearing this affidavit (the "**Croese Affidavit #3**"), I have reviewed the JVA; the affidavits of Kristal Kaye sworn in the within proceedings on April 21, May 6, and May 13, 2020 (collectively, the "**Kaye Affidavits**"); the reports of the court-appointed Monitor, FTI Consulting Canada Inc. ("**FTI**"), and any supplements thereto (collectively, the "**FTI Reports**"); as well as the Bench Briefs of DDMI and the appendices thereto filed on May 28, 2020 ("**May 28 Bench Brief**") and June 12, 2020 ("**June 12 Bench Brief**").

DDMI's Position to the Monitor's Proposed Amendments to the SARIO and SISP

4. DDMI made submissions at the original return of Dominion's application on May 29, 2020 with respect to concerns it had with the fashion by which the transaction documents had been crafted. The May 29, 2020 application was scheduled to continue and conclude on June 3, 2020. On June 2, 2020, the Monitor recommended changes to the SARIO and SISP. Dominion advised of its intention to adjourn its application on the morning of June 3, 2020.

5. On June 11, 2020, McCarthy Tétrault LLP provided its response to the Monitor's recommended changes by emailing blacklines of the SARIO and SISP to counsel to the Monitor and counsel to Dominion. Attached as **Exhibit "A"** is a true copy of the cover email and the attachments to the email which, for clarity, include the blackline comments on the SARIO and SISP. Attached as **Exhibit "B"** is a true copy of Dominion's response to the proposed changes.

6. DDMI had largely accepted the comments of the Monitor on the SISP save and except two minor clarifying changes.

7. With respect to the SARIO, DDMI relented on its request that it be granted leave to realize on the diamonds upon the happening of certain trigger events. DDMI maintains its requests that all of Dominion's share of production be held at the PSF and that the Court issue a declaration that no charges other than the Administration Charge and D&O Charge may be granted in priority to the security held by.

8. The full nature and extent of DDMI's position on the relief sought by Dominion will be contained in DDMI's brief of argument including the blacklines of the SISP and SARIO that set out DDMI's position relative to the Monitor's proposed changes .

Tmc

9. For present purposes, however, DDMI would note that:

   (a) It did not and does not oppose the Stalking Horse Bid and DIP financing term sheet;

   (b) Its submissions at the May 29, 2020 application centred around its concern that the structure of the proposed SISP will not result in a purchase of Dominion's interest in the Diavik Diamond Mine thus leaving DDMI exposed for the value of the Cover Payments it is making and without a viable and solvent joint venture partner that is able to meet its ongoing obligations under the JVA;

   (c) Its involvement in these proceedings is involuntary and has been necessitated by Dominion's insolvency. DDMI is required to take steps to protect its interest including by attempting to ensure that: (i) the SISP results in a solvent purchaser acquiring Dominion's interest in the Diavik Diamond Mine; and (ii) such purchaser is sufficiently capitalized to repay the Cover Payments in full in cash upon closing and fulfill the executory obligations as joint venture partner under the JVA and associated agreements including the Closure Security Agreement.

10. DDMI has offered to meet with the Washington Group to discuss the Rio Condition. The Washington Group has indicated that it wishes to defer such a meeting until its Stalking Horse Bid is approved. DDMI wishes to assure the Court that it will meet with the Washington Group to discuss the Rio Condition if the Stalking Horse Bid is approved.

Dominion's Allegations regarding Operation of the Diavik JVA

11. Counsel at McCarthy Tétrault LLP ("**McCarthy Tétrault**") have informed me that on June 12, 2020, Dominion filed an Amended Application together with the June 12 Bench Brief with this Honourable Court. I understand from counsel that a section of the Dominion Brief repeats certain complaints first made by Dominion in respect of the Manager's operation of the Diavik Mine in a letter dated April 27, 2020, and summarized – though the letter is not attached as an exhibit – in Ms. Kaye's affidavit sworn on May 6, 2020.[1]

12. I was surprised to learn of the repetition of these allegations in the Dominion Brief. First, whatever operational disagreements Dominion may now be raising before the Court, such

[1] At para. 6.

TMC

concerns did not prevent Dominion from approving the program and budget for 2020 – 2025 which will govern the operation of the Diavik Mine until its anticipated closure.[2]

13. Second, I have been advised by counsel at McCarthy Tétrault that on April 27, 2020, they received correspondence from counsel for Dominion alleging breaches of the JVA and a failure by the Manager to act in good faith. In addition, Dominion demanded the Manager undertake to cease operations at the mine and "alter financing requirements". Dominion's counsel also stated that if these demands were not met by May 8, 2020, they had instructions to commence an action in the British Columbia Supreme Court for such alleged breaches with the stated remedies to be sought including injunctive relief.

14. I have dealt with Dominion's representatives in respect of the JVA since 2018, and this was the first occasion – outside the context of these proceedings – that it had threatened legal action if the Manager did not immediately comply with its demands.

15. Attached hereto and marked as **Exhibits "C"**, **"D"**, **"E"**, and **"F"** to this Affidavit are true copies of the correspondence exchanged between counsel for Dominion and counsel for DDMI on April 27, May 5, May 13, and May 15, 2020, respectively.

16. During the process of my final review of this Affidavit, counsel for Dominion emailed a letter and unfiled Notice of Civil Claim with counsel's advice that the "... Notice of Civil Claim ... was submitted for filing today [June 16] with the British Columbia Supreme Court Registry." Attached hereto and marked as **Exhibits "G"** and **"H"** to this Affidavit are true copies of the correspondence received and unfiled Notice of Civil Claim, respectively.

17. DDMI disputes the allegations made by Dominion in the Notice of Civil Claim and will vigorously defend the claim.

[2] As discussed in paragraph 35 of my April 30 Affidavit *et seq*.

Current and Projected Cover Payments under the JVA

18. As at June 12, 2020, DDMI has made $51.2 million in Cover Payments as summarized below:

Date	Amount (millions)
May 21	$16.0
May 21	$17.6
June 12	$12.0
June 12	$5.6
Total	**$51.2**

19. The estimated Cover Payments to be made from June 15 – October 31 is estimated to be $54.3 million as summarized below:

Date	Amount (millions)
June	$10.0
July	$14.0
August	$11.9
September	$8.7
October	$9.7
Total	**$54.3**

20. All diamonds produced by the Diavik Mine are evaluated (directly or through extrapolation from a sample) by Diamonds International Canada Limited (DICAN), a Yellowknife-based company providing independent resource evaluation and diamond valuation services to

TMC

the government of the Northwest Territories in addition to the government of Ontario. DICAN is an incorporated joint venture between the Aboriginal Diamonds Group Ltd and WWW International Diamond Consultants Limited. As such, DICAN is the body responsible for conducting the government royalty valuations that have been referred to by the parties to these proceedings. DICAN is independent from both DDMI and Dominion.

21. DICAN values production from the Diavik mine on a monthly basis. At each valuation, DICAN assesses the value of production from the Diavik Mine, which it then later uses to compare assessed value to royalties, which are paid based on sales prices. For diamonds that are mechanically riffled (usually the smaller size categories) or those that are split by auction (usually the larger size categories) and therefore joint venture diamonds at the time of valuation, DICAN will apply the same values to DDMI's and Dominion's share. For the rest of diamonds, which are intelligently riffled, the values per carat may differ. Even though DDMI does not know the value applied to Dominion's share, it is generally expected to be consistent with the values attributed to DDMI's share of production.

22. DDMI holds at the PSF Dominion's share of the diamonds produced (delivered from the mine and cleaned and sorted at the PSF) since the shipment cut-off that took place on April 22, 2020, the date of Dominion's initial CCAA filing. Since that date, two government valuations have taken place on May 18, 2020 and June 8, 2020. DDMI applied the DICAN values (for DDMI's share of production) to Dominion's share of diamonds that is already split through mechanical or intelligent riffling. Confidential Exhibit "1" sets out the results of such valuation.

Future Financial Obligations of the Diavik JVA

23. In paragraph 24 of the Croese Affidavit #2, I noted that Dominion's share of the December 31, 2019 calculation of closure costs and reclamation liabilities in the amount of $365.3 million for the Diavik Mine were subject to the Closure Security Agreement (the "**CSA**") between DDMI and Dominion, which was filed as confidential exhibit to the same Affidavit. In paragraph 25 of my evidence, I confirmed that on January 1, 2021, Dominion is required to post an additional $35 million under the CSA to meet is proportionate share of such costs and liabilities.

24. Dominion's 40% of the $365.3 million of estimated closure costs and reclamation liabilities is $146.2 million. The $365.3 million is an order of magnitude estimate. A prefeasibility study related to the closure and rehabilitation of the Diavik Mine was commenced in November, 2018 and is due to be completed in April 2021. While it is too early in the study process to draw any definitive conclusions, recent experience in similar prefeasibility closure studies is that the closure and rehabilitation cost estimate could increase.

25. DDMI is hopeful that there will be a purchaser of Dominion's 40% interest in the Diavik mine including because if the additional $35 million of letters credit are not posted, then Dominion's current closure and rehabilitation shortfall measured against the December 31, 2019 estimate will be $41.1 million. As indicated, there is a reasonable likelihood that such shortfall could grow as time advances. Under the CSA, DDMI would have the right to make a Cash Call (and subsequent Cover Payment if the Cash Call is not paid) for any shortfall between security required to be provided by Dominion or its successor.

The DDMI SIF – Sales and Marketing Fee

26. In the June 12 Bench Brief, Dominion notes that the DDMI SIF contained a proposed fee for the sale and marketing of its diamonds in the amount of 2.5%. There is a suggestion that such a fee represents a significant financial benefit to DDMI. In fact, a fee of 2.5%, particularly when bench-marked against a recent transaction is commercially reasonable.

27. The run of mine diamonds that are delivered to both DDMI and Dominion from the PSF are sorted by size but are not sorted into quality, colour or shape. As such, each bag of diamonds packed at the PSF will contain a mix of high value stones, very low value stones and everything in between. Furthermore, while the diamonds are clean to the point of being valued by DICAN, they have not been cleaned to the standard where they are ready for sale.

28. As, when and if monetization of diamonds occurs either by Dominion or DDMI, the diamonds will have to be moved overseas in order to finish off the sorting and cleaning processes as well as presenting the goods to potential purchasers. Both Dominion and DDMI sell the majority of their diamonds in Antwerp. This point is further illustrated by the fact that $116 million of Dominion's current diamond inventory is in India and Belgium. It is also the case the Splitting Protocol in Paragraph 4 provides that certain diamonds are to be delivered to Antwerp.

29. Now shown to me and marked as **Exhibit "I"** is a true copy of a news release issued by Mountain Province Diamonds Inc. (**"Mountain Province"**). Mountain Province is a 49% participant with De Beers Canada Inc. in the Gahcho Kué diamond mine located in the Northwest Territories. The news release reports that Mountain Province entered into an agreement to sell US$ 50 million of diamonds to Dunebridge Worldwide Ltd. (**"Dunebridge"**). The fee charged by Dunebridge is stated to be calculated at 10% of the value for each sale.

30. DDMI's response to the other issues and concerns raised by Dominion relative to the DDMI SIF in its June 12 Bench Brief will be set out in DDMI's bench brief.

Free Cash Flow

31. In paragraph 35 of my April 30 Affidavit, I advised the Court that both Participants had approved a program and budget for the period 2020 – 2025 (the **"Diavik JVA Budget"**) pursuant to a Management Committee Resolution, executed by Dominion on December 2, 2019. In paragraph 41 of the same Affidavit, I explained that a comprehensive Operating Review had been undertaken by the Manager in response to the COVID-19 pandemic; and in paragraph 42(a), I went on to inform the Court that the Operating Review had concluded that under the Diavik JVA Budget – and assuming continued operations of the Diavik Mine as opposed to entering care and maintenance– there was a projected free cash flow benefit of approximately $100 million in 2020, based on the Manager's assessment of reasonable diamond sales assumptions.

32. I have reviewed Dominion's submissions in its June 12 Bench Brief and note the misunderstanding Dominion seemingly has with respect to my evidence on this point. The testimony cannot be taken to mean that the Diavik Mine would generate $100 million of positive free cash flow in 2020. The fundamental point that I was making was a relative one. Specifically, that placing Diavik Mine on care and maintenance as opposed to continuing to operate the Diavik Mine would result in $100 million less cash flow being generated. The primary reason for this is that no diamonds would be produced and so no diamonds could be sold. The Free Cash Flow generation of the Diavik Mine is further illustrated by the information contained in Confidential Exhibit 1.

TMC

DDMI Sealing Order

33. DDMI will apply to seal the Confidential Exhibit 1. The confidential exhibit contains information which is confidential and commercially sensitive. Disclosure of the spreadsheet would cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the spreadsheets or the information contained therein.

34. I make this Affidavit in response to Dominion's Amended Application returnable June 19, 2020.

Process for Commissioning of this Affidavit

35. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

    (a) I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on my ID;

    (b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

    (c) the Commissioner and I have a paper copy of this Affidavit before us;

    (d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

    (e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

TMC

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video conference on June 16, 2020)

A COMMISSIONER FOR OATHS in and for the Province of Alberta)

THOMAS CROESE

TMC

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**AFFIDAVIT #3 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

Clerk's Stamp

AFFIDAVIT #3 OF THOMAS CROESE
Sworn on June 16, 2020

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

A copy of the JVA is attached to my affidavit sworn on April 30, 2020 ("**April 30 Affidavit**).

3. In swearing this affidavit (the "**Croese Affidavit #3**"), I have reviewed the JVA; the affidavits of Kristal Kaye sworn in the within proceedings on April 21, May 6, and May 13, 2020 (collectively, the "**Kaye Affidavits**"); the reports of the court-appointed Monitor, FTI Consulting Canada Inc. ("**FTI**"), and any supplements thereto (collectively, the "**FTI Reports**"); as well as the Bench Briefs of DDMI and the appendices thereto filed on May 28, 2020 ("**May 28 Bench Brief**") and June 12, 2020 ("**June 12 Bench Brief**").

DDMI's Position to the Monitor's Proposed Amendments to the SARIO and SISP

4. DDMI made submissions at the original return of Dominion's application on May 29, 2020 with respect to concerns it had with the fashion by which the transaction documents had been crafted. The May 29, 2020 application was scheduled to continue and conclude on June 3, 2020. On June 2, 2020, the Monitor recommended changes to the SARIO and SISP. Dominion advised of its intention to adjourn its application on the morning of June 3, 2020.

5. On June 11, 2020, McCarthy Tétrault LLP provided its response to the Monitor's recommended changes by emailing blacklines of the SARIO and SISP to counsel to the Monitor and counsel to Dominion. Attached as **Exhibit "A"** is a true copy of the cover email and the attachments to the email which, for clarity, include the blackline comments on the SARIO and SISP. Attached as **Exhibit "B"** is a true copy of Dominion's response to the proposed changes.

6. DDMI had largely accepted the comments of the Monitor on the SISP save and except two minor clarifying changes.

7. With respect to the SARIO, DDMI relented on its request that it be granted leave to realize on the diamonds upon the happening of certain trigger events. DDMI maintains its requests that all of Dominion's share of production be held at the PSF and that the Court issue a declaration that no charges other than the Administration Charge and D&O Charge may be granted in priority to the security held by.

8. The full nature and extent of DDMI's position on the relief sought by Dominion will be contained in DDMI's brief of argument including the blacklines of the SISP and SARIO that set out DDMI's position relative to the Monitor's proposed changes .

9. For present purposes, however, DDMI would note that:

   (a) It did not and does not oppose the Stalking Horse Bid and DIP financing term sheet;

   (b) Its submissions at the May 29, 2020 application centred around its concern that the structure of the proposed SISP will not result in a purchase of Dominion's interest in the Diavik Diamond Mine thus leaving DDMI exposed for the value of the Cover Payments it is making and without a viable and solvent joint venture partner that is able to meet its ongoing obligations under the JVA;

   (c) Its involvement in these proceedings is involuntary and has been necessitated by Dominion's insolvency. DDMI is required to take steps to protect its interest including by attempting to ensure that: (i) the SISP results in a solvent purchaser acquiring Dominion's interest in the Diavik Diamond Mine; and (ii) such purchaser is sufficiently capitalized to repay the Cover Payments in full in cash upon closing and fulfill the executory obligations as joint venture partner under the JVA and associated agreements including the Closure Security Agreement.

10. DDMI has offered to meet with the Washington Group to discuss the Rio Condition. The Washington Group has indicated that it wishes to defer such a meeting until its Stalking Horse Bid is approved. DDMI wishes to assure the Court that it will meet with the Washington Group to discuss the Rio Condition if the Stalking Horse Bid is approved.

Dominion's Allegations regarding Operation of the Diavik JVA

11. Counsel at McCarthy Tétrault LLP ("**McCarthy Tétrault**") have informed me that on June 12, 2020, Dominion filed an Amended Application together with the June 12 Bench Brief with this Honourable Court. I understand from counsel that a section of the Dominion Brief repeats certain complaints first made by Dominion in respect of the Manager's operation of the Diavik Mine in a letter dated April 27, 2020, and summarized – though the letter is not attached as an exhibit – in Ms. Kaye's affidavit sworn on May 6, 2020.[1]

12. I was surprised to learn of the repetition of these allegations in the Dominion Brief. First, whatever operational disagreements Dominion may now be raising before the Court, such

[1] At para. 6.

concerns did not prevent Dominion from approving the program and budget for 2020 – 2025 which will govern the operation of the Diavik Mine until its anticipated closure.[2]

13. Second, I have been advised by counsel at McCarthy Tétrault that on April 27, 2020, they received correspondence from counsel for Dominion alleging breaches of the JVA and a failure by the Manager to act in good faith. In addition, Dominion demanded the Manager undertake to cease operations at the mine and "alter financing requirements". Dominion's counsel also stated that if these demands were not met by May 8, 2020, they had instructions to commence an action in the British Columbia Supreme Court for such alleged breaches with the stated remedies to be sought including injunctive relief.

14. I have dealt with Dominion's representatives in respect of the JVA since 2018, and this was the first occasion – outside the context of these proceedings – that it had threatened legal action if the Manager did not immediately comply with its demands.

15. Attached hereto and marked as **Exhibits "C"**, "**D**", "**E**", and "**F**" to this Affidavit are true copies of the correspondence exchanged between counsel for Dominion and counsel for DDMI on April 27, May 5, May 13, and May 15, 2020, respectively.

16. During the process of my final review of this Affidavit, counsel for Dominion emailed a letter and unfiled Notice of Civil Claim with counsel's advice that the "... Notice of Civil Claim ... was submitted for filing today [June 16] with the British Columbia Supreme Court Registry." Attached hereto and marked as **Exhibits "G"** and **"H"** to this Affidavit are true copies of the correspondence received and unfiled Notice of Civil Claim, respectively.

17. DDMI disputes the allegations made by Dominion in the Notice of Civil Claim and will vigorously defend the claim.

[2] As discussed in paragraph 35 of my April 30 Affidavit *et seq.*

Current and Projected Cover Payments under the JVA

18. As at June 12, 2020, DDMI has made $51.2 million in Cover Payments as summarized below:

Date	Amount (millions)
May 21	$16.0
May 21	$17.6
June 12	$12.0
June 12	$5.6
Total	**$51.2**

19. The estimated Cover Payments to be made from June 15 – October 31 is estimated to be $54.3 million as summarized below:

Date	Amount (millions)
June	$10.0
July	$14.0
August	$11.9
September	$8.7
October	$9.7
Total	**$54.3**

20. All diamonds produced by the Diavik Mine are evaluated (directly or through extrapolation from a sample) by Diamonds International Canada Limited (DICAN), a Yellowknife-based company providing independent resource evaluation and diamond valuation services to

the government of the Northwest Territories in addition to the government of Ontario. DICAN is an incorporated joint venture between the Aboriginal Diamonds Group Ltd and WWW International Diamond Consultants Limited. As such, DICAN is the body responsible for conducting the government royalty valuations that have been referred to by the parties to these proceedings. DICAN is independent from both DDMI and Dominion.

21. DICAN values production from the Diavik mine on a monthly basis. At each valuation, DICAN assesses the value of production from the Diavik Mine, which it then later uses to compare assessed value to royalties, which are paid based on sales prices. For diamonds that are mechanically riffled (usually the smaller size categories) or those that are split by auction (usually the larger size categories) and therefore joint venture diamonds at the time of valuation, DICAN will apply the same values to DDMI's and Dominion's share. For the rest of diamonds, which are intelligently riffled, the values per carat may differ. Even though DDMI does not know the value applied to Dominion's share, it is generally expected to be consistent with the values attributed to DDMI's share of production.

22. DDMI holds at the PSF Dominion's share of the diamonds produced (delivered from the mine and cleaned and sorted at the PSF) since the shipment cut-off that took place on April 22, 2020, the date of Dominion's initial CCAA filing. Since that date, two government valuations have taken place on May 18, 2020 and June 8, 2020. DDMI applied the DICAN values (for DDMI's share of production) to Dominion's share of diamonds that is already split through mechanical or intelligent riffling. Confidential Exhibit "1" sets out the results of such valuation.

Future Financial Obligations of the Diavik JVA

23. In paragraph 24 of the Croese Affidavit #2, I noted that Dominion's share of the December 31, 2019 calculation of closure costs and reclamation liabilities in the amount of $365.3 million for the Diavik Mine were subject to the Closure Security Agreement (the "**CSA**") between DDMI and Dominion, which was filed as confidential exhibit to the same Affidavit. In paragraph 25 of my evidence, I confirmed that on January 1, 2021, Dominion is required to post an additional $35 million under the CSA to meet is proportionate share of such costs and liabilities.

24. Dominion's 40% of the $365.3 million of estimated closure costs and reclamation liabilities is $146.2 million. The $365.3 million is an order of magnitude estimate. A prefeasibility study related to the closure and rehabilitation of the Diavik Mine was commenced in November, 2018 and is due to be completed in April 2021. While it is too early in the study process to draw any definitive conclusions, recent experience in similar prefeasibility closure studies is that the closure and rehabilitation cost estimate could increase.

25. DDMI is hopeful that there will be a purchaser of Dominion's 40% interest in the Diavik mine including because if the additional $35 million of letters credit are not posted, then Dominion's current closure and rehabilitation shortfall measured against the December 31, 2019 estimate will be $41.1 million. As indicated, there is a reasonable likelihood that such shortfall could grow as time advances. Under the CSA, DDMI would have the right to make a Cash Call (and subsequent Cover Payment if the Cash Call is not paid) for any shortfall between security required to be provided by Dominion or its successor.

The DDMI SIF – Sales and Marketing Fee

26. In the June 12 Bench Brief, Dominion notes that the DDMI SIF contained a proposed fee for the sale and marketing of its diamonds in the amount of 2.5%. There is a suggestion that such a fee represents a significant financial benefit to DDMI. In fact, a fee of 2.5%, particularly when bench-marked against a recent transaction is commercially reasonable.

27. The run of mine diamonds that are delivered to both DDMI and Dominion from the PSF are sorted by size but are not sorted into quality, colour or shape. As such, each bag of diamonds packed at the PSF will contain a mix of high value stones, very low value stones and everything in between. Furthermore, while the diamonds are clean to the point of being valued by DICAN, they have not been cleaned to the standard where they are ready for sale.

28. As, when and if monetization of diamonds occurs either by Dominion or DDMI, the diamonds will have to be moved overseas in order to finish off the sorting and cleaning processes as well as presenting the goods to potential purchasers. Both Dominion and DDMI sell the majority of their diamonds in Antwerp. This point is further illustrated by the fact that $116 million of Dominion's current diamond inventory is in India and Belgium. It is also the case the Splitting Protocol in Paragraph 4 provides that certain diamonds are to be delivered to Antwerp.

29. Now shown to me and marked as **Exhibit "I"** is a true copy of a news release issued by Mountain Province Diamonds Inc. ("**Mountain Province**"). Mountain Province is a 49% participant with De Beers Canada Inc. in the Gahcho Kué diamond mine located in the Northwest Territories. The news release reports that Mountain Province entered into an agreement to sell US$ 50 million of diamonds to Dunebridge Worldwide Ltd. ("**Dunebridge**"). The fee charged by Dunebridge is stated to be calculated at 10% of the value for each sale.

30. DDMI's response to the other issues and concerns raised by Dominion relative to the DDMI SIF in its June 12 Bench Brief will be set out in DDMI's bench brief.

Free Cash Flow

31. In paragraph 35 of my April 30 Affidavit, I advised the Court that both Participants had approved a program and budget for the period 2020 – 2025 (the "**Diavik JVA Budget**") pursuant to a Management Committee Resolution, executed by Dominion on December 2, 2019. In paragraph 41 of the same Affidavit, I explained that a comprehensive Operating Review had been undertaken by the Manager in response to the COVID-19 pandemic; and in paragraph 42(a), I went on to inform the Court that the Operating Review had concluded that under the Diavik JVA Budget – and assuming continued operations of the Diavik Mine as opposed to entering care and maintenance– there was a projected free cash flow benefit of approximately $100 million in 2020, based on the Manager's assessment of reasonable diamond sales assumptions.

32. I have reviewed Dominion's submissions in its June 12 Bench Brief and note the misunderstanding Dominion seemingly has with respect to my evidence on this point. The testimony cannot be taken to mean that the Diavik Mine would generate $100 million of positive free cash flow in 2020. The fundamental point that I was making was a relative one. Specifically, that placing Diavik Mine on care and maintenance as opposed to continuing to operate the Diavik Mine would result in $100 million less cash flow being generated. The primary reason for this is that no diamonds would be produced and so no diamonds could be sold. The Free Cash Flow generation of the Diavik Mine is further illustrated by the information contained in Confidential Exhibit 1.

DDMI Sealing Order

33. DDMI will apply to seal the Confidential Exhibit 1. The confidential exhibit contains information which is confidential and commercially sensitive. Disclosure of the spreadsheet would cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the spreadsheets or the information contained therein.

34. I make this Affidavit in response to Dominion's Amended Application returnable June 19, 2020.

Process for Commissioning of this Affidavit

35. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

    (a) I have shown the Commissioner the front and back of my current government-issued photo identification ("**ID**") and the Commissioner has compared my video image to the information on my ID;

    (b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

    (c) the Commissioner and I have a paper copy of this Affidavit before us;

    (d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

    (e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video conference on June 16, 2020)

A COMMISSIONER FOR OATHS in and for the Province of Alberta)

Jordan Bierkos
Barrister & Solicitor

THOMAS CROESE

This is Exhibit "Q" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC and DOMINION FINCO INC.
APPLICANTS	AD HOC COMMITTEE OF BONDHOLDERS (DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP)
PARTY FILING THIS DOCUMENT	AD HOC COMMITTEE OF BONDHOLDERS (DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP)
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Torys LLP 4600 Eighth Avenue Place East 525 - Eighth Ave SW Calgary, AB T2P 1G1 Attention: Kyle Kashuba Telephone: + 1 403.776.3744 Fax: +1 403.776.3800 Email: kkashuba@torys.com Attention: Andrew Gray Telephone: + 1 416.865.7630 Fax: + 1 416.865.7380 Email: agray@torys.com File No. 2001-05630

AFFIDAVIT OF FREDERICK VESCIO
Sworn on October 7, 2020

I, Frederick Vescio, of the City of Minneapolis, in the State of Minnesota, Managing Director of Houlihan Lokey, Inc., **MAKE OATH AND SAY THAT**:

KK

My Background & the Role of Houlihan Lokey

1. I am a Managing Director with Houlihan Lokey, Inc. ("**Houlihan Lokey**"). Houlihan Lokey is a leading global investment bank with expertise in financial restructuring, mergers and acquisitions, capital markets and valuation.

2. I have been a member of the Financial Restructuring Group with Houlihan Lokey for more than 10 years. I have been involved in many court-supervised and out-of-court restructurings, including restructurings involving Westinghouse, American Airlines, American Tire Distributors, Peabody Energy, Parker Drilling, U.S. Airways, OneCall, Capmark Financial, Arch Coal, Indiana Toll Road, and Foresight Energy. I have executed transactions in the mining sector, among other industries.

3. Houlihan Lokey is the financial advisor to the ad hoc committee (the "**Committee**") of holders of the 7.125% senior secured second lien notes (the "**Notes**") owed the equivalent of approximately CAD$750,000,000 by Dominion Diamond Mines ULC (together with the other applicants in these proceedings, the "**Company**"). I have been personally involved in representing the Committee in these proceedings since May 2020.

4. I have personal knowledge of the matters and facts hereinafter deposed to.

Shareholder's Stalking Horse Bid

5. In the course of its mandate, Houlihan Lokey has been centrally involved in seeking, reviewing and assessing an extensive amount of information regarding the Company. This has included, among other things, the review and consideration of information and materials made available by the Company and its representatives in the course of the sale and investment solicitation process in these proceedings (the "**SISP**").

6. I have reviewed the Asset Purchase Agreement between Dominion Diamond Mines ULC, Dominion Diamond Holdings LLC and Dominion Marketing Corporation, as vendors, their parent, Washington Diamond Investments LLC, and Canadian Diamond Holdings L.P., CA Canadian Diamond Mines ULC, as purchasers (the "**APA**") and, leaving aside

KK

issues of purchase price addressed below, I note the following significant deficiencies from the perspective of Noteholders and the Company's stakeholders as a whole:

a. The APA provides for no deposit or other discipline to ensure that the proposed purchaser honours its obligations to complete the transaction. It is unclear whether the proposed purchaser would suffer any consequences from its own breach or failure.

b. The Company has not disclosed any information about the creditworthiness, solvency or structure of the proposed purchasing entity. It is currently unknown what its leverage or capital structure would be. It is therefore not possible to assess whether or for how long the purchaser could honour its commitments and avoid another insolvency.

c. In its court filings, the Company argues for the desirability of re-starting operations at the Ekati Mine sooner rather than later. Despite the Company's statements that an early re-start is desirable, the proposed APA transaction imposes no obligation whatsoever on the proposed purchaser as to if and when operations at the Ekati Mine will be re-started.

d. The APA contains numerous substantive closing conditions. These include important conditions regarding the need to: (i) enter into undefined agreements acceptable to the proposed purchaser with both governmental authorities and surety companies on critical reclamation liabilities; (ii) obtain regulatory approvals for antitrust/competition law and other matters, details of which have not been provided; and (iii) receive governmental approvals for the transfer of all leases, permits, licenses and other operating authorizations.

7. In my respectful view, even if the APA was otherwise worthy of approval at any point-in-time, it should first be required to satisfactorily address the foregoing deficiencies.

The APA's Purchase Price

KK

8. The APA stipulates a cash purchase price of U.S.$126,107,000 at first instance. However, it provides for a dollar-for-dollar reduction to the extent that the Company's interim facility has a balance of less than U.S.$55,000,000 at closing. Accordingly, given the Company's new liquidity prospects, the cash purchase price under the APA may be as low as U.S.$71,107,000.

9. Houlihan has been asked by the Committee to assess the adequacy of the proposed purchase price on the basis of conventional valuation methodologies.

10. Houlihan Lokey has prepared an analysis of the total enterprise value for the assets to be sold under the APA using net present value calculations for the Company's projected cash flow generation in the years-to-come. Discounted cash flow projections is a conventional and widely-accepted valuation methodology for businesses of this kind.

11. It is important to note that the cash flow projections used in Houlihan's analysis are based on the Company's own projections. Houlihan has adjusted for the fact that the APA excludes the Company's Diavik Mine interests.

12. Houlihan's valuation analysis on this basis is set out in Exhibit "**A**" to my affidavit. This exhibit shows that the value represented by the APA transaction is well below fair value. I note the following:

    (i) our analysis reveals that the implied total enterprise value of the assets to be sold under the APA is U.S.$302 million using a 10.0% discount rate; and

    (ii) even if we use a 25% discount rate our calculations reveal an implied total enterprise value for the purchased assets of U.S.$174 million.

APA Transaction is not Necessary

13. The Company's liquidity position and prospects have improved very significantly in recent days. With the re-opening of the diamond sales market, the Company has held a successful auction of a large batch of diamond inventory and additional diamond sales are now possible.

KK

14. Houlihan Lokey has prepared a liquidity analysis up to two future dates: (i) the month ended December 2020; and (ii) the month ended March 2021. This analysis is set out in Exhibit "**B**" to my affidavit. In each case, the analysis uses information provided by the Company and is based on the assumptions set out in Exhibit "A".

15. Notably, our analysis provides for funding to purchase the fuel which the Company says is required to enable an early re-start of operations at the Ekati Mine.

16. Our liquidity analysis reveals that the Company is in a sustainable liquidity position that permits the time and opportunity to pursue better alternatives to the APA's proposed transaction if it continues to have available to it DIP financing in an amount not less than the maximum amount which has been made available to it so far in these proceedings.

17. The liquidity conclusions of Houlihan Lokey specifically include that:

    (i) if the restructuring process continues to the end December 2020, the ending DIP balance would be C$56.8 million and there would be C$4.4 million of cash; and

    (ii) if the restructuring process continues to the end of March 2021, the ending DIP balance would be C$42.6 million and there would be C$3.2 million of cash.

Recent Developments

18. Following the completion of the SISP process, the Company has experienced materially positive changes that position it to pursue better alternatives than the transaction proposed under the APA including, among other things:

    a. The diamond sales market has re-opened and the Company, among others, has conducted a successful auction of a large batch of diamond inventory.

    b. The Company's successful diamond sale has greatly improved its liquidity position and prospects, and it has opened up a greater range of options.

KK

c. General capital market conditions have improved steadily since the initiation of the SISP.

19. For all these reasons, it is my considered view that prospects for an alternative sales transaction or plan of arrangement or compromise in these proceedings have very significantly improved in recent days.

20. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear this affidavit. I, however, was linked by way of video technology to the Commissioner for Oaths ("Commissioner") notarizing this document. The following steps have been or will be taken by the Commissioner or me:

a. I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on the ID.

b. The Commissioner has taken a screenshot of the front and back of my ID and will retain it.

c. The Commissioner and I have a paper copy of the affidavit before us, including exhibits.

d. The Commissioner and I have reviewed each page of this affidavit and exhibits to verify the pages are identical and have initialed each page in the lower right corner.

e. At the conclusion of our review of the affidavit and exhibits, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this affidavit.

f. I will send the signed affidavit including exhibits electronically to the Commissioner.

21. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta, this 7th day of October 2020.

Notary Public and Commissioner for Oaths in and for the Province of Alberta

Frederick Vescio

c. General capital market conditions have improved steadily since the initiation of the SISP.

19. For all these reasons, it is my considered view that prospects for an alternative sales transaction or plan of arrangement or compromise in these proceedings have very significantly improved in recent days.

20. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear this affidavit. I, however, was linked by way of video technology to the Commissioner for Oaths ("Commissioner") notarizing this document. The following steps have been or will be taken by the Commissioner or me:

a. I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on the ID.

b. The Commissioner has taken a screenshot of the front and back of my ID and will retain it.

c. The Commissioner and I have a paper copy of the affidavit before us, including exhibits.

d. The Commissioner and I have reviewed each page of this affidavit and exhibits to verify the pages are identical and have initialed each page in the lower right corner.

e. At the conclusion of our review of the affidavit and exhibits, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this affidavit.

f. I will send the signed affidavit including exhibits electronically to the Commissioner.

21. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta,)
this 7th day of October 2020.)
)
)
)
Notary Public and Commissioner for Oaths in)
and for the Province of Alberta)

Kyle D. Kashuba
Barrister & Solicitor

Frederick Vescio

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF FREDERICK VESCIO
SWORN BEFORE ME THIS 7th DAY OF OCTOBER, 2020

Commissioner for Oaths and Notary Public
in and for the Province of Alberta

Kyle D. Kashuba
Barrister & Solicitor

KK

000885

Exhibit A
NPV Valuation Excluding Diavik

- The following valuation adjusts cash flow projections provided by the Company to exclude Diavik
- Cash flows were discounted using a range of discount rates from 10% to 25%, leading to a NPV range of $412 million to $540 million. After adjusting for Ekati ARO obligations of $238 million(1), the Implied TEV range is $174 million to $302 million

	2020E	2021E	2022E	2023E	2024E	2025E	2026E	2027E	2028E
EBITDA	**$63**	**$214**	**$326**	**$341**	**$104**	**$31**	**$38**	**$41**	**$10**
Unlevered Free Cash Flow	**$23**	**$113**	**$263**	**$247**	**($5)**	**$11**	**$32**	**$77**	**$37**
Less: Unlevered FCF attributable to NCI (2)	*2*	*(11)*	*(32)*	*(35)*	*(12)*	*(4)*	*(5)*	*(10)*	*(6)*
Unlevered Free Cash Flow to DDM	**$25**	**$102**	**$231**	**$211**	**($17)**	**$7**	**$27**	**$66**	**$31**

Valuation Using NPV

	Discount Rate						
	10.00%	*12.50%*	*15.00%*	*17.50%*	*20.00%*	*22.50%*	*25.00%*
Implied TEV	**$540**	**$514**	**$489**	**$467**	**$447**	**$429**	**$412**
Less: Ekati ARO NPV(1)	*(238)*	*(238)*	*(238)*	*(238)*	*(238)*	*(238)*	*(238)*
Implied TEV after ARO	**$302**	**$275**	**$251**	**$229**	**$209**	**$191**	**$174**

Sources: VDR 4.10.1 Project Jewel CIP Model_VDR, VDR 11.4.5 Project Jewel ARO Summary_vVDR, VDR 4.11.2 Restart Reconciliation
Notes: All figures USD millions unless otherwise noted; 2020E includes only November and December; 2020E includes approximately $1.84mm USD of unbudgeted restart costs; Discount rates are for illustrative purposes and based on estimates from equity research reports on public peers
(1) After taking into account the minority JV partner's 11.11% share of the gross ARO NPV of $268mm
(2) Net cash flow attributable to the 11.11% Non-Controlling Interest JV partner

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF FREDERICK VESCIO
SWORN BEFORE ME THIS 7th DAY OF OCTOBER, 2020

Commissioner for Oaths and Notary Public
in and for the Province of Alberta

Kyle D. Kashuba
Barrister & Solicitor

KK

Exhibit B
Scenario I: Process Extended to the End of December 2020

- If the process were to be extended to the end of December 2020, under the current terms of the DIP, the ending DIP balance would be $56.8mm CAD, with $4.4mm CAD of cash, and a peak DIP balance of $56.8mm CAD
- This analysis was done using materials provided by the Company with few adjustments to illustrate an extension of the process, including:
  - Extending CCAA Professionals Fees and Critical Vendor Payments
  - Including $27mm CAD of diesel purchases across November and December 2020
  - Including incremental DIP draws and pay downs, along with FX impacts on any DIP draw, and monthly DIP facility interest
  - Including discounted net proceeds from the diamond sale occurring during the week of September 25th 2020, and monthly diamond sales representing one-fourth of the remaining inventory in each of November 2020 and December 2020, assuming a 10% discount to Book Value and an 80% Net Sales Margin to account for further expenses incurred to sell these diamonds (as compared to the implied 87% Net Sales Margin on the first tranche of the September sale)

Scenario I: Extension to the End of December 2020

	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21
Operating Receipts	$37,110	$21,666	$30,404	$30,404			
Operating Disbursements	(11,617)	(28,801)	(41,864)	(61,176)			
Net Cash Flow from Operations	**$25,493**	**($7,135)**	**($11,460)**	**($30,772)**			
Cash Flow from Financing	196	(17,802)	12,671	9,603			
Net Change in Cash	**$25,689**	**($24,937)**	**$1,211**	**($21,170)**			
Beginning Cash	$23,578	$49,267	$24,331	$25,542			
Net Change in Cash	25,689	(24,937)	1,211	(21,170)			
Ending Cash	**$49,267**	**$24,331**	**$25,542**	**$4,372**			
Beginning DIP Balance	$42,600	$42,600	$28,400	$42,600			
Draw / (Paydown)	--	(14,200)	14,200	14,200			
Ending DIP Balance	**$42,600**	**$28,400**	**$42,600**	**$56,800**			

Sources: VDR 4.2.7 Cash Forecast to 31 December 2020, Affidavit of K. Kaye Sworn September 18 2020. Sixth Report of the Monitor Dated September 22 2020
Note: All amounts CAD $000s unless otherwise noted; $1.33 USD/CAD assumed for projections

Exhibit B
Scenario II: Process Extended to the End of March 2021

- If the process were to be extended to the end of March 2021, under the current terms of the DIP, the ending DIP balance would be $42.6mm CAD, with $3.2mm CAD of cash, and a peak DIP balance of $71.0mm CAD
- This analysis was done using materials provided by the Company with few adjustments to extend the process, including:
  - Extending CCAA Professionals Fees and Critical Vendor Payments
  - Including $27mm CAD of diesel purchases across November and December 2020
  - Including incremental DIP draws and pay downs, along with FX impacts on any DIP draw, and monthly DIP facility interest
  - Including discounted net proceeds from the diamond sale occurring during the week of September 25th 2020, and monthly diamond sales representing one-fourth of the remaining inventory in each of November 2020, December 2020, January 2021 and March 2021, assuming a 10% discount to Book Value, and an 80% Net Sales Margin to account for further expenses incurred to sell diamonds in November and December 2020 only (as compared to the implied 87% Net Sales Margin on the first tranche of the September sale)
  - Including monthly operating cash flows from the Company monthly model, assuming a 10% discount to Book Value for sales from production, with an adjustment to the receipt of sales originally forecasted for February 2021, which will likely be received in March 2021

Scenario II: Extension to the End of March 2021

	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21
Operating Receipts	$37,110	$21,666	$30,404	$30,404	$38,005	$--	$75,876
Operating Disbursements	(11,617)	(28,801)	(35,980)	(48,134)	(37,027)	(41,102)	(46,255)
Net Cash Flow from Operations	**$25,493**	**($7,135)**	**($5,576)**	**($17,730)**	**$978**	**($41,102)**	**$29,621**
Cash Flow from Financing	196	(17,802)	12,671	10,905	3,388	15,652	(29,974)
Net Change in Cash	**$25,689**	**($24,937)**	**$7,095**	**($6,825)**	**$4,366**	**($25,450)**	**($353)**
Beginning Cash	$23,578	$49,267	$24,331	$31,426	$24,601	$28,967	$3,517
Net Change in Cash	25,689	(24,937)	7,095	(6,825)	4,366	(25,450)	(353)
Ending Cash	**$49,267**	**$24,331**	**$31,426**	**$24,601**	**$28,967**	**$3,517**	**$3,164**
Beginning DIP Balance	$42,600	$42,600	$28,400	$42,600	$56,800	$56,800	$71,000
Draw / (Paydown)	--	(14,200)	14,200	14,200	--	14,200	(28,400)
Ending DIP Balance	**$42,600**	**$28,400**	**$42,600**	**$56,800**	**$56,800**	**$71,000**	**$42,600**

Sources: VDR 4.2.7 Cash Forecast to 31 December 2020, VDR 4.10.1 Project Jewel CIP Model_VDR, Affidavit of K. Kaye Sworn September 18 2020, Sixth Report of the Monitor Dated September 22 2020
Note: All amounts CAD $000s unless otherwise noted; $1.33 USD/CAD assumed for projections

APPENDIX A

Certificate of Commissioning by Videoconference

I, Kyle Kashuba, Commissioner of Oaths in and for the Province of Alberta, took the Affidavit of Frederick Vescio via videoconference on October 7, 2020 (the "Affidavit").

The affiant and I followed the process outlined by the Alberta Court of Queen's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was unsafe for the deponent and I to be physically present together.

Commissioner for Oaths and Notary
Public in and for the Province of Alberta

Kyle D. Kashuba
Barrister & Solicitor

This is Exhibit "R" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**BENCH BRIEF OF DIAVIK DIAMOND MINES (2012) INC.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis / Nathan Stewart Tel: 403-260-3531 / 3710 / 3536 / 3534 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

---

BENCH BRIEF OF DIAVIK DIAMOND MINES (2012) INC.

IN SUPPORT OF THE APPLICATION TO PERMIT DDMI TO REALIZE ON COVER PAYMENT SECURITY
TO BE HEARD BY
THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK

October 30, 2020 at 10:00 A.M.

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

(i) Background 2

(ii) The Realization Process 2

(iii) The SARIO 4

III. ISSUES 5

IV. LAW 5

V. ARGUMENT 9

(i) No Sale of Diavik Mine (or Ekati) 9

(ii) Balancing of Prejudice 10

(iii) JVA Rights / PPSA 10

(iv) Dominion's Right of Redemption 12

(v) The DICAN Valuation 13

VI. RELIEF REQUESTED 18

VII. LIST OF AUTHORITIES 19

I. INTRODUCTION

1. The Stalking Horse Bid of Washington Group, which ultimately did not include Diavik, has fallen apart and will not close. The SISP did not otherwise unearth any executable bids for Diavik. Dominion Diamond owes DDMI $119.52 million in Cover Payments, plus interest (presently estimated to be in the amount of $2.37 million) and legal fees, costs and expenses. It is appropriate for DDMI to sell the diamonds it holds as security (the "**DDMI Collateral**") in an attempt to recover the outstanding Cover Payments. DDMI does not expect there to be a serious contest raised by interested stakeholders to this proposition.

Affidavit #4 of Thomas Croese, sworn on October 19, 2020 at para. 5 ["Croese Affidavit #4"].

2. When the Stalking Horse Bid SISP was launched, the Monitor, Dominion Diamond and the stakeholders that supported the process, asserted the value of collateral to be held by DDMI should equal no more than the Cover Payment debt; with such value to be determined in accordance with the GNWT's monthly royalty valuation performed by DICAN (the "**DICAN Gross Valuation**").

3. The factual bases that underpinned the amount of collateral to be held included the contention that the SISP would likely bring forth a resolution to the outstanding Cover Payments. The facts have changed. It is quite certain that Dominion Diamond's interest in Diavik will not be purchased. Even more certain is the fact that Dominion Diamond will never be able to meet its payment obligations under the JVA. Dominion Diamond has never had any intention of making the Cash Calls under the JVA or repaying its Cover Payment indebtedness. The Court indicated that the issue of the amount of collateral to be held could be revisited. DDMI thus also applies for an order to allow it to hold all of Dominion Diamond's production until the Cover Payments are repaid in full.

4. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Affidavit #4 of Thomas Croese, sworn on October 19, 2020 (the "**Fourth Croese Affidavit**").

II. STATEMENT OF FACTS

(i) Background

5. Pursuant to Section 9.4(b) of the JVA, the amount of any Cover Payment shall: (i) constitute indebtedness due from the defaulting Participant to the non-defaulting Participant; and, (ii) be secured by, a mortgage of and security interest in such Participant's right, title and interest in, to, and under, whenever acquired or arising, its Participating Interest and the Assets (each as defined in the JVA) (the "**Security**").

[TAB 1].

6. DDMI's security interest for the Cover Payments is first-ranking, including under and pursuant to the Intercreditor Agreements.

Copies of the Intercreditor Agreements are attached to the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, as Exhibits "A" and "B" thereto.

(ii) The Realization Process

7. The precise details of DDMI's proposed realization process (the "**Realization Process**") are contemplated to be attached to the order sought in connection with the within application. The Realization Process has not yet been attached to the draft order owing to the fact that DDMI is consulting with interested parties with respect to the proposed Realization Process.

8. At a high level, the Realization Process provides that:

(a) the DDMI Collateral shall, whenever possible, be treated in the same or a substantially similar fashion as the DDMI production from the Diavik Mine;

(b) DDMI shall shall be expressly authorized and empowered, but not obligated, to do any of the following where it considers it necessary or desirable in respect of the collateral which DDMI is realizing upon (the "**DDMI Realization Collateral**"):

(i) transport the DDMI Realization Collateral from the Diavik Mine production sorting facility in Yellowknife, Northwest Territories (the "**PSF**") to Antwerp, Belgium;

(ii) clean, sort, value and market the DDMI Realization Collateral to and with the assistance of any Person;

(iii) sell, transfer and convey DDMI Realization Collateral to any Person on such terms and conditions of sale as DDMI, in its discretion, may deem or consider appropriate;

(iv) receive and collect all monies and accounts now owed or hereafter owing to Dominion Diamond in respect of the DDMI Realization Collateral and to exercise all remedies of Dominion Diamond in collecting such monies, including, without limitation, to enforce any security held by Dominion Diamond in respect of the DDMI Realization Collateral;

(v) take any steps reasonably incidental to the exercise of these powers as may be required to realize upon the DDMI Realization Collateral in a manner that is consistent with standard processes and procedures for diamond sales;

(vi) and in each case where DDMI takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including Dominion Diamond, and without interference from any other persons.

(c) upon the completion of a sale of all or any portion of the DDMI Realization Collateral (each, a "**Transaction**"), Dominion Diamond's interest in the DDMI Realization Collateral that is subject to such sale shall vest absolutely in the applicable purchaser, free and clear of and from any and all claims and encumbrances; and,

(d) The proceeds resulting from any Transaction shall be distributed:

(i) first, to all fees, costs and expenses incurred by or on behalf of DDMI in the implementation of the Realization Process and the completion of the Transaction including, without limitation, a fee equal to 2.5% of the gross

value of any Transaction payable to DDMI for handling, sorting, selling and collecting proceeds;

(ii) second, to DDMI, in satisfaction of all indebtedness, liabilities and obligations owing by Dominion Diamond to DDMI for Cover Payments (including accrued and unpaid interest thereon); and

(iii) the balance to Dominion Diamond's creditors, or as may be directed by the Court.

(iii) The SARIO

9. On June 19, 2020, DDMI sought the right to hold the entirety of Dominion Diamond's share of production from the Diavik Mine, as opposed to a share of production based on the DICAN Gross Valuation. In holding that the share of production be based on the DICAN Gross Valuation, the Court stated:

> DDMI has argued that they should have the ability to hold the whole 40 percent production that is coming in light of their cover payments that they're making, which are sort of like a DIP, as I had indicated in my prior judgment on this. But it seems to me right now, based on the evidence that I have in front of me, that it's not necessary for DDMI to have the ability to hold all of the 40 percent of the diamonds and that just the amounts that can be determined by the independent evaluator should be held, the -- the amounts that should cover the cover payments. And I understand that this is a moving target, so to the extent that we need to revisit this issue down the road, well, then DDMI, when it's appropriate -- because we'll come to that -- can raise this as an issue.
>
> **Transcript of proceedings in Action No. 2001-05630 (June 19, 2020) at 141:9-141:18 [TAB 2].**

10. Paragraph 16 of the Second Amended and Restated Initial Order (the "**SARIO**") was thus granted on June 19, 2020 and provides, in pertinent part:

> […] DDMI, in its capacity as manager under the Diavik JVA, be and is hereby authorized to hold an amount of Dominion's share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI (the "Dominion Products") at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "PSF") and the value of the Dominion Products shall be determined based on royalty valuations performed from time to time at the PSF by the Government of the Northwest Territories. […]

(e) on the happening of any of the following dates, events or ocurrences, or with leave of the Court, DDMI shall be entited to apply to this Honourable Court to seek an Order allowing it to exercise rights and remedies as against the Dominion Products:

(i) the date that the within CCAA proceedings are terminated;

(ii) the date that the Interim Lenders take any action to enforce the Interim Lenders' Charge, whether pursuant to the Interim Financing Term Sheet, the Definitive Documents or at law generally;

(iii) any time after the Phase 1 Bid Deadline, when there is no Phase 1 Qualified Bid or Phase 2 Qualified Bid (including the Stalking Horse Bid) which includes the assets owned by Dominion in the Diavik Joint Venture; and

(iv) November 1, 2020.

11. Paragraph 65 of the SARIO provides:

65. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

12. On September 25, 2020, the Court granted an order suspending the requirement implicit in Paragraph 16 of the SARIO that DDMI deliver excess DDMI Collateral to DDMI.

III. ISSUES

DDMI's position with respect to the issues to be determined is:

(a) The Realization Process should be approved; and

(b) DDMI should not be required to deliver DDMI Collateral to Dominion Diamond until the Cover Payments are repaid in full unless the Court, on application by an interested party, orders otherwise.

IV. LAW

13. The Court has broad statutory and inherent jurisdiction to grant the relief sought by DDMI. Section 11 of the CCAA states:

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor

> company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> ***Companies Creditors' Arrangement Act*, R.S.C., 1985, c. C-36 [the "CCAA"], at s. 11 [TAB 5].**

14. Courts have confirmed on numerous occasions and in various situations that where factual circumstances change, the supervising CCAA Court must seek to balance the interests of the parties, even if that means revisiting an issue that was addressed in an initial order.

15. For instance, in *Canada North Group*, in considering a comeback clause that was identical to paragraph 65 of the SARIO, Justice Topolniski stated:

> "Recourse through the comeback clause is available when circumstances change. As explained in ***Re Pacific National Lease Holding Corp***:
>
> [I]n supervising a proceeding under the C.C.A.A. **orders are made, and orders are varied as changing circumstances require**. Orders depend upon a careful and delicate balancing of a variety of interests and of problems."
>
> ***Canada North Group Inc. (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 at para. 50 [emphasis original] [TAB 3], quoting *Re Pacific National Lease Holding Corp* (1992), 15 CBR (3d) 265, 72 BCLR (2d) 368 (CA) at para. 30, 1992 CanLII 427 (BC CA) at para. 32 [TAB 4].**

16. Section 58(2) of the Northwest Territories *Personal Property Security Act* (the "**PPSA**") provides, in pertinent part:

> 58. (2) Subject to sections 36, 37, 37.1 and 38 and subsection (3) of this section, on default under a security agreement
>
> (a) the secured party has, unless otherwise agreed, **the right to take possession of the collateral** or otherwise enforce the security agreement by any method permitted by law;
>
> ***Personal Property Security Act*, S.N.W.T. 1994, c. 8 ["PPSA"], at s. 58(2)(a) [emphasis added] [TAB 6].**

17. Sections 59(2), 59(3) and 59(5) of the PPSA provide, in pertinent part:

> 59 (2) After seizing or repossessing the collateral, a secured party may dispose of it in its existing condition or after repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to
>
> (a) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of

the collateral and any other reasonable expenses incurred by the secured party, and

(b) the satisfaction of the obligations secured by the security interest of the secured party disposing of the collateral,

and any surplus shall be dealt with in accordance with section 60.

(3) Collateral may be disposed of

(a) by private sale;

(b) by public sale, including a public auction and sale by closed or open tender;

(c) as a whole or in parts or in commercial units; or

(d) if the security agreement so provides, by lease.

…

(5) The secured party may delay disposition of all or part of the collateral.

PPSA, at ss. 59(2), 59(3), and 59(5) [TAB 6].

18. Section 60(2) of the PPSA provides:

(2) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested parties, be accounted for and paid, in the following order:

(a) a person who has a subordinate security interest in the collateral

(i) and who has, prior to the distribution of the proceeds, registered a financing statement using the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed as serial number goods, or

(ii) whose security interest was perfected by possession at the time the collateral was seized

(b) any other person with an interest in the surplus, if the other person has given a written notice of that interest to the secured party prior to the distribution, and

(c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of claim of any person referred to in paragraph (a), (b) or (c) is not prejudiced by payment to anyone under this section.

PPSA, at s. 60(2) [TAB 6].

19. Section 62(1) of the PPSA provides:

62. (1) At any time before the secured party has disposed of the collateral or contracted for disposition under section 59 or before the secured party is deemed to have irrevocably elected to retain the collateral under section 61, any person entitled to receive a notice of disposition under subsection 59(6) or (10) may, unless that person otherwise agrees in writing after default, redeem the collateral by

(a) tendering payment of the monetary obligations secured by the collateral together with a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for disposition, if such expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement; and

(b) agreeing to fulfill any other obligations secured by the collateral.

PPSA, at s. 62(1) [TAB 6].

20. Section 63(2) of the PPSA provides:

63. (2) On application by a debtor, a creditor of a debtor, a secured party, a Sheriff or any person with an interest in the collateral, the Supreme Court may

(a) make any order, including a binding declaration of a right and injunctive relief, that is necessary to ensure compliance with this Part or sections 17, 36, 37, 37.1 and 38;

(b) give directions to any person regarding the exercise of rights or the discharge of obligations under this Part or sections 17, 36, 37, 37.1 and 38;

(c) relieve a person from compliance with the requirements of this Part or sections 17, 36, 37, 37.1 and 38;

(d) stay enforcement of rights provided in this Part or sections 17, 36, 37, 37.1 and 38;

(e) make any order, including a binding declaration of right and injunctive relief, that is necessary to ensure protection of the interests of any person in the collateral.

PPSA, at s. 63(2) [TAB 6].

21. Section 77 of the *Mining Regulations* (Northwest Territories) (the "**Mining Regulations**") provides, in pertinent part:

> 77 …
>
> (2) Subject to section 77.1, until they have been valued by a mining royalty valuer, precious stones may not be
>
> (a) removed from a mine, other than in a bulk sample or in a concentrate for the purposes of establishing the grade and the value of the stones in a mineral deposit,
>
> (b) cut,
>
> (c) polished,
>
> (d) sold; or
>
> (e) transferred.
>
> (3) The operator of a mine shall provide, in the Northwest Territories, any facilities and equipment, other than computer equipment, necessary for a mining royalty valuer to value any precious stones produced from the mine.
>
> (4) For the purposes of these regulations, facilities referred to in subsection (3) are deemed to be part of the mine and any transfer of the precious stones from one part of the mine to another is deemed not to be a removal of the stones from the mine. **…**
>
> (6) As soon as any precious stones have been processed into a saleable form, they must be presented to a mining royalty valuer for valuation.

***Mining Regulations*, NWT Reg 015-2014 ["Mining Regulations"], at ss. 1(1), 77(2), (3), (4), (6) [TAB 7]. The Mining Regulations define "precious stone" as follows: "precious stone means a diamond, a sapphire, an emerald or a ruby."**

V. ARGUMENT

(i) No Sale of Diavik Mine (or Ekati)

22. The relief sought by DDMI must be considered against the backdrop of the material adverse change resulting from the fact that there is no sale and the challenges associated with the valuation of diamond collateral in the current market. It must also be considered with reference to the unfairness that would result from requiring DDMI to deliver collateral to Dominion Diamond in the current circumstances. In sum, the SISP Procedures have confirmed that (i) there will not be a sale of Dominion Diamond's participating interest in the Diavik Mine; (ii) the market

view that the value of Dominion Diamond's participating interest in the Diavik Mine is less than the aggregate of the obligations in arrears and future obligations including closure and remediation costs; and (iii) DDMI will necessarily have to recover the Cover Payment indebtedness from the DDMI Collateral.

23. Pursuant to paragraph 16(e) of the SARIO, DDMI was expressly authorized to apply to this Honourable Court for an order allowing it to exercise rights and remedies against the DDMI Collateral, *inter alia*, "at any time after the Phase 1 Bid Deadline Phase 1 Bid Deadline, when there is no Phase 1 Qualified Bid or Phase 2 Qualified Bid (including the Stalking Horse Bid) which includes the assets owned by Dominion in the Diavik Joint Venture". This precondition has been met as there is no executable bid which includes Dominion Diamond's interest in the Diavik Mine.

(ii) Balancing of Prejudice

24. DDMI is producing, providing, improving, and maintaining all Products, including the DDMI Collateral, at its own risk and expense. The DDMI Collateral ***would not exist*** without DDMI's continued operation of the Diavik Mine - and the Diavik Mine cannot continue to produce unless DDMI continues to make Cover Payments.

25. If the DDMI Collateral or any portion thereof is returned to Dominion Diamond prior to repayment of the Cover Payments and the balance of the DDMI Collateral turns out to be insufficient to repay the Cover Payments, then DDMI will not be able to subsequently recover such loss from Dominion Diamond because it is insolvent.

26. It would be unfair and prejudicial to force DDMI to choose between either: (i) completely foregoing the benefits of the ongoing operation of the Diavik Mine; or, (ii) providing diamonds to Dominion Diamond in the face of Dominion Diamond's insolvency and the fact that it is unable to and will not pay post-filing obligations in respect of the Diavik Mine.

(iii) JVA Rights / PPSA

27. Absent the CCAA stay, DDMI would be able to assert common law, contractual and statutory lien rights against the DDMI Collateral that would entitle it to maintain possession of and sell Dominion Diamond's share of production. Specifically, section 9.4(c) of the JVA provides, in part:

> "… Upon default being made in the payment of the indebtedness referred to in Section 9.4 (b) when due ***the non-defaulting Participant may*** on 30 days' notice to the defaulting Participant ***exercise any or all of the rights and remedies available to it as a secured party*** at common law, by statute or hereunder ***including the right to sell the property subject to a mortgage and charge hereunder*** …" [emphasis added]

[TAB 1]

28. The 30 day notice period set out in section 9.4(c) has been abridged upon the insolvency of Dominion Diamond, pursuant to section 3(d) of the Diavik Joint Venture Amending Agreement (No. 2), which states in relevant part that:

> "Notwithstanding anything to the contrary in this Agreement or in the Original JVA, **all of the notice required in Section 9.4 of the Original JVA as amended shall be abridged** such that no advance notice is required under any of the provisions of said Section 9.4 in the event that: **…**
>
> (ii) if a Participant becomes or acknowledges that it is insolvent, makes a voluntary assignment under the *Bankruptcy and Insolvency Act* or files a proposal under the *Bankruptcy and Insolvency Act* or seeks protection under the *Companies' Creditors Arrangement Act*, or any other debt moratorium or restructuring legislation; or **…**" [emphasis added]

[TAB 1]

29. The Realization Process, while dealing with a very unique type of collateral, is modelled on the basic and well-understood principles encompassed within personal property security legislation. Section 56(2) of the PPSA codifies that where (as here) a debtor is in default in the provisions of a security agreement, the rights of the secured creditor include both the rights arising under the security agreement and Part V of the PPSA.

30. Section 63 of the PPSA establishes the broad jurisdiction of the Court to make orders relating to realization and enforcement:

> **63.** (1) In this section, "secured party" includes a receiver.
>
> (2) On application by a debtor, a creditor of a debtor, a secured party, a Sheriff or any person with an interest in the collateral, the Supreme Court may
>
> (a) make any order, including a binding declaration of a right and injunctive relief, that is necessary to ensure compliance with this Part or sections 17, 36, 37, 37.1 and 38;

(b) give directions to any person regarding the exercise of rights or the discharge of obligations under this Part or sections 17, 36, 37, 37.1 and 38;

(c) relieve a person from compliance with the requirements of this Part or sections 17, 36, 37, 37.1 and 38;

(d) stay enforcement of rights provided in this Part or sections 17, 36, 37, 37.1 and 38;

(e) make any order, including a binding declaration of right and injunctive relief, that is necessary to ensure protection of the interests of any person in the collateral.

PPSA, at s. 63 [TAB 6].

31. Part V of the Northwest Territories PPSA is substantially identical to Part 5 of the *Personal Property Security Act* (Alberta).

32. The jurisdiction for the relief sought by DDMI is clear and unambiguous. Part V of the PPSA authorizes a secured party to take possession of the collateral (s. 58(2)(a)), to dispose of the collateral once seized (s. 59(2)), to dispose by public or private sale (s. 59(3) and to dispose or all or part of the collateral (s. 59(3)). It also permits the secured party to delay the disposition of the collateral (s. 59(5)). All of the actions that will or may occur under the Realization Process (i.e., DDMI may delay disposition based on market conditions) are expressly contemplated by Part V of the PPSA.

33. The transparency and value optimization that will occur within and as part of the Realization Process will provide for an enforcement process that is at once commercially reasonable and good faith. Those basic protections that will be afforded to all stakeholders in these CCAA proceedings are also requirements imposed by section 65(3) of the PPSA.

(iv) Dominion's Right of Redemption

34. Redemption rights in respect of personal property are codified by section 62 of the PPSA. The section permits either a debtor or a subordinate secured creditor, at any time prior to disposition, to redeem the collateral by tendering payment of the monetary obligations secured by the collateral and associated enforcement expense. If Dominion Diamond or other creditors elect, they can redeem; there is no restriction on it doing so.

35. Section 60(2) of the PPSA provides, in relevant part, that: "Where a security agreement secures an indebtedness and the secured party … *has disposed of it in accordance with section 59 or otherwise*, any surplus shall, … be accounted for and paid". It must be noted that PPSA provides for the payment of surplus funds to subordinate parties only ***after*** realization, when values have been crystallized. There is no mechanism in the PPSA by which a secured creditor is required to pre-emptively account for potential proceeds; or, to appraise and return property to the debtor on the basis that the expected proceeds ***may*** some day be in excess of the secured obligations (which, in the present circumstances, is unlikely with respect to the Dominion Diamond product).

PPSA, at s. 60(2) [TAB 6].

36. The Realization Process proposed by DDMI is wholly consistent with the aforementioned principles. DDMI is the first-ranking, senior secured creditor of Dominion Diamond (subject only to the priority charges granted in the within proceedings), to the extent of the Cover Payment indebtedness. The proceeds of any DDMI Collateral should first be applied to Dominion Diamond's outstanding Cover Payment indebtedness, in accordance with the priority in respect of such proceeds, before flowing to any other person. Further, the 2.5% handling, sorting, sales and cash collection fee from the proceeds prior to applying such proceeds to Dominion Diamond's indebtedness is modeled by section 59 of the PPSA. Such amount is consistent with that charged by affiliates of DDMI's parent company, Rio Tinto plc, to arm's-length third parties for similar services. The Realization Process has been designed to optimize recoveries in respect of the diamond collateral, which is to the benefit of Dominion Diamond and all of its stakeholders. If, upon realization - when the value of the DDMI Collateral is certain and Dominion Diamond's right of redemption extinguished - the Cover Payment indebtedness becomes fully satisfied, ***then at that time*** it will be appropriate to flow any excess funds to subordinate parties.

PPSA, at s. 59(2)(a)-(b) [TAB 6]; Croese Affidavit #4, at para. 9(f).

(v) The DICAN Valuation

37. Mr. Croese has deposed in detail as-to the current market uncertainty in the diamond market and corresponding lack of confidence in recent price projections. Diamonds are not a readily tradable commodity; the DICAN Gross Valuation provided by Diamonds International Canada Limited ("**DICAN**") is required by Northwest Territories law to estimate future royalty

obligations and is used to establish a ***provisional*** holding value for the diamond production. The Mining Regulations acknowledge that the valuation provided by a royalty valuer may differ from the actual realizable value of such diamonds. Section 69 of the Mining Regulations provides that where the operator and valuer cannot agree on the market value of precious stones, the market value shall be, "the maximum amount that could be realized from the sale of the stones on the open market after they are sorted into market assortments".

Mining Regulations, at ss. 69(9), 77(2), (3), (4), (6), 77.1 [TAB 7];
Affidavit #3 of Thomas Croese, sworn on June 16, 2020 at para. 20 ["Croese Affidavit #3"];
Croese Affidavit #4, at paras. 15, 16(a).

38. DDMI's experience has been that the DICAN Gross Valuation does not match realized gross value in sales to third parties. In each of 2017, 2018 and 2019, DICAN's average valuation of DDMI's share of Diavik diamonds under the DICAN Gross Valuation was higher than the actual realized gross value in sales to third parties. The average overvaluation exceeded 10% in the second half of 2019 and grew further still in the first half of 2020. The difficulty in estimating the gross value of diamonds in such volatile markets is further demonstrated by gross sales of DDMI's share of Diavik Mine production to third parties in September and October being in excess of the DICAN Gross Valuation. Further, as noted in Mr. Croese's evidence, the DICAN Gross Valuation does not account for fees or expenses of any type. These associated fees and expenses were described as follows in the Sixth Report of the Monitor:

> Sales are shown after deducting profit margin in Belgium, sorting expenses in India, Government Royalties, Private Royalties and CZ NCI partner portion of sale which is assigned to cash calls receivable

Sixth Report of the Monitor, dated September 22, 2020 [the "Sixth Monitor's Report"], at Appendix "A", Note 1; Croese Affidavit #4, at paras. 13, 15, 16(a).

39. Dominion Diamond has not provided information on the fees and expenses associated with its net recoveries. However, as demonstrated by Dominion Diamond's recent sales and highlighted in the Affidavit of Frederick Vescio, sworn on October 7, 2020 (the "**Vescio Affidavit**"), there is often a substantial difference between the gross and net value of diamonds, due to such fees and expenses. Mr. Frederick Vescio's evidence shows that the net sales margins for the first tranche of Dominion Diamond's September 2020 sale was 87% (implying fees and expenses of 13%, which are not accounted for in the DICAN Gross Valuation). Mr Vescio's analysis goes

on to forecast a net sales margin of 80% on future sales (implying fees and expenses of 20%), indicating that such a level would not be unreasonable to assume. The chart below summarizes the fees and expenses that Dominion Diamond would have paid on the recent sales based on the evidence in Mr. Vescio's affidavit:

Dominion Sale Fee and Expense Summary (millions)			
Fees and Expenses (%)	**Fees and Expenses ($)**	**Gross Value**	**Net Value**
13%	$7.9	$60.9	$53.0

40. Dominion Diamond's recent diamond sales are illustrative of the challenges in the current market due to the COVID-19 pandemic, which has had a significant negative effect on liquidity and pricing in the diamond markets. In her affidavit sworn on September 18, 2020, Ms. Kaye testified that the Applicants were selling diamonds with a book value of $58 million USD. At the date of her affidavit, a first tranche of diamonds had been sold for gross $46 million USD. A second tranche with an estimated gross value of $8 million USD was due to be sold the week after her affidavit. Without the results of the second sale it is hard to be sure, but her testimony implies that the diamonds were likely to have been sold at $4 million USD, or 7%, below their book value. In the Vescio Affidavit, various liquidity analyses have been prepared that are stated to use information provided by Dominion Diamond. The liquidity analyses assume that future diamond sales are carried out at a 10% discount to book value (before the deduction of fees and expenses as described above). Dominion Diamond does not appear to have obtained book value in its recent transactions, and its largest creditor does not expect that book value will be obtained upon sale of the remaining diamond inventory.

Affidavit of Frederick Vescio, sworn on October 7, 2020, at Exhibit "B".

41. Because the DICAN Gross Valuation is not carried out at the point of sale, in light of the significant degree of uncertainty at present regarding the trajectory of the diamond market, there is a material risk that the realizable value of the DDMI Collateral will decline between the date of valuation and the date of sale. Specifically: (i) the DICAN Gross Valuation often occurs months before final sale of the subject product; (ii) liquidity in the diamond market has greatly declined due to the COVID-19 pandemic; and, (iii) as described in further detail below, the diamond market is currently subject to downward price pressures, which make take years to reverse. There is also further uncertainty associated with a "second wave" of the COVID-19 pandemic.

Croese Affidavit #4, at para. 16(b).

42. A secured creditor who faces a circumstance where its debtor is in default should not be (and is not typically) required to return a portion of its collateral based on estimated value. This is inherently unfair to the secured creditor. It does not accord with basic principles of security enforcement, as codified in Part V of the PPSA, where the debtor may redeem by payment of the debt in full but is not entitled to reclaim a portion of its property by suggesting that the creditor may be paid in full at a later date. In such circumstances, given the current state of the diamond market, Dominion Diamond's insolvency, and the recent material adverse changes in the within proceedings, DDMI would be significantly and likely irreversibly prejudiced.

43. The Affidavit of Jennifer Alambre, sworn October 4, 2020, contains (at Exhibit "**R**") a September 14, 2020 article entitled "Diamond market faces rough ride as fears of second coronavirus wave mount" published by S&P market. The article describes 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." In light of this, Dominion Diamond is also not committed to taking its own product to market – it recognizes the current uncertainty and indicates that it will only sell if there are favourable market conditions. As is noted in the Sixth Report of the Monitor:

> "Operating receipts include the proceeds of diamond sales during the week ending September 18, 2020. The Fourth Cash Flow Statement does not include proceeds of sales that may occur during the week ending September 25, 2020 or any future sales that may occur during the forecast period **due to uncertainty around the size and pricing that may be realized from such sales**. As noted above, the Applicants may consider additional diamond sales, should the economics be favourable." [emphasis added].

Sixth Monitor's Report, at para. 31(a).

44. WWW Diamond Forecasts Ltd. ("**WWW Forecasts**"), an affiliate of WWW International Diamond Consultants Limited (which is in turn one of the two DICAN joint venturers) has recently stated that: "The diamond market is under extreme stresses across the entire pipeline ... Economic uncertainty is unlikely to dissipate in the near-term which will continue to be a drag on any recovery in diamond jewellery sales." Further, in June 2020, WWW Forecasts recognized that "[t]here are so many variables in play that forecasting what might happen in the retail markets this year is akin to reading the tea leaves at the bottom of a tea cup".

Croese Affidavit #4, at paras. 18, 22 and Confidential Exhibits "2" and "3".

45. ALROSA and De Beers, the world's two largest diamond producers, have seen drastic declines in diamond sales in 2020. ALROSA's diamond sales in the second quarter of 2020 were 92% lower than first quarter sales and 91% lower than 2019 second quarter sales. De Beers experienced similar 2020 second quarter decreases of 94% (as compared to 2020 first quarter sales) and 96% (as compared to 2019 second quarter sales). On a combined basis, ALROSA and De Beers account for approximately seventy percent of global rough diamond sales by value.

Croese Affidavit #4, at para. 23.

46. The DICAN Gross Valuation also does not account for obligations that may rank ahead of the security granted under the Diavik JV. In this regard, the SARIO granted five separate priority charges in favour of various beneficiaries. Two of those charges (being the Administration Charge in the amount of $3.5 million and the Directors' Charge in the amount of $4.0 million) rank in priority to DDMI's security under the Diavik JVA. DDMI appreciates that there may not be amounts outstanding on the charges and that, to the extent there is an amount owing, it may not be fair or appropriate to allocate such amount to the DDMI Collateral given the nature of the within proceedings. The priority charges are further examples of claims that may not be accounted for by the DICAN Gross Valuation and the flaws arising from attempting to equate realizable value of collateral to the DICAN Gross Valuation. Such charges may reduce DDMI's recovery on Cover Payment indebtedness owing to it.

47. In these circumstances, the DICAN Gross Valuation is likely to materially overstate realizable value. As the DDMI Collateral represents DDMI's sole readily available and realizable collateral for the Cover Payments (which were made on Dominion Diamond's behalf and directly funded the costs to extract and produce the DDMI Collateral), any continued reliance on the DICAN Gross Valuation will significantly and irreversibly prejudice DDMI. Dominion Diamond will suffer no such corresponding prejudice if the Realization Process is approved.

VI. RELIEF REQUESTED

48. DDMI respectfully requests that this Honourable Court grant the relief sought by DDMI in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2020

McCarthy Tétrault LLP

Per: *"McCarthy Tétrault LLP"*
Sean F. Collins / Walker W. MacLeod / Pantelis Kyriakakis / Nathan Stewart
Counsel for Diavik Diamond Mines (2012) Inc.

VII. LIST OF AUTHORITIES

Evidence

1. Excerpts from the JVA;

2. Transcript of proceedings in Action No. 2001-05630 (June 19, 2020);

Cases

3. *Canada North Group Inc. (Companies' Creditors Arrangement Act)*, 2017 ABQB 550, rev'd on other grounds 2019 ABCA 314, leave to appeal to SCC granted March 26, 2020 (38871);

4. *Re Pacific National Lease Holding Corp* (1992), 1992 CanLII 427 (BC CA), 15 CBR (3d) 265, 72 BCLR (2d) 368 (CA);

Legislation

5. *Companies Creditors' Arrangement Act*, R.S.C., 1985, c. C-36;

6. *Personal Property Security Act*, S.N.W.T. 1994, c.8;

7. *Mining Regulations*, N.W.T. Reg. 015-2014.

This is Exhibit "S" referred to in the Affidavit of

Katie Doran

sworn before me this 10th day of November, 2020.

A Commissioner for Oaths in and for the Province of Alberta

KAREN ANDERSON
A Commissioner for Oaths
In and for Alberta
My Commission Expires March 28, 2023

ENTERED

110181

COM
Oct 30 2020
J. Eidsvik

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.
DOCUMENT	**BENCH BRIEF OF DIAVIK DIAMOND MINES (2012) INC.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis / Nathan Stewart Tel: 403-260-3531 / 3710 / 3536 / 3534 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

---

BENCH BRIEF OF DIAVIK DIAMOND MINES (2012) INC.

IN RESPONSE TO THE BENCH BRIEFS SUBMITTED BY CREDIT SUISSE AG AND DOMINION DIAMOND MINES ULC IN OPPOSITION TO THE APPLICATION TO PERMIT DDMI TO REALIZE ON COVER PAYMENT SECURITY
TO BE HEARD BY
THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK

October 30, 2020 at 10:00 A.M.

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 1

(i) The Realization Process is Transparent and Commercially Reasonable 1

(ii) The Realization Process Is Consistent with Secured Transactions Law 5

(iii) The Relief Sought By DDMI Is Consistent With the SARIO and the Direction of This Honourable Court 7

(iv) Dominion Diamond Has Waived Any Valuation of the DDMI Collateral, and Credit Suisse is Bound by That Waiver 9

(v) The Credit Suisse Brief and the Dominion Brief Both Contain Numerous Inaccuracies 10

III. RELIEF REQUESTED 15

IV. LIST OF AUTHORITIES 16

I. INTRODUCTION

1. This Brief of Argument is submitted by Diavik Diamond Mines (2012) Inc. ("**DDMI**") in response to the Bench Brief submitted by Credit Suisse AG ("**Credit Suisse**") on October 28, 2020 (the "**Credit Suisse Brief**"), and the Bench Brief submitted by Dominion Diamond Mines ULC ("**Dominion Diamond**"), and the other CCAA applicants in these proceedings, on October 28, 2020 (the "**Dominion Brief**"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Affidavit #4 of Thomas Croese, sworn on October 19, 2020 and the Affidavit #5 of Thomas Croese, sworn on October 29, 2020, as context may require.

2. The DDMI Realization Process (as defined below) is transparent, commercially reasonable, and protects the interests of all of Dominion Diamond's stakeholders. For instance, the DDMI Realization Process includes more robust reporting requirements than those set out under the Washington DIP Term Sheet (as defined below), to which Dominion Diamond and Credit Suisse are both parties. Further, the DDMI Realization Process contains provisions intended to ensure that DDMI and Dominion Diamond's interests are aligned, and the majority of the potential commercial issues raised by Dominion Diamond and Credit Suisse have been addressed in the recent revisions to the DDMI Realization Process. The remainder of the issues identified by Dominion Diamond and Credit Suisse in response to the within Application consist of misstatements of fact, inaccurate assumptions, and accusations without evidence.

3. Further, there is no merit to the suggestion by Credit Suisse that DDMI's proposed relief is contrary to the JVA. Rather, the DDMI Realization Process is wholly consistent with the terms of the JVA, as well as the law of secured transactions generally.

II. ARGUMENT

(i) The Realization Process is Transparent and Commercially Reasonable

4. A copy of DDMI's revised Monetization Process (the "**DDMI Realization Process**"), as served upon the Service List on October 28, 2020, is attached as Schedule "**A**" hereto.

5. Credit Suisse and Dominion Diamond are parties to the Washington DIP Term Sheet (as defined below). Pursuant to the Washington DIP Term Sheet, Washington Diamond

Lending, LLC ("**Washington**"), and Dominion Diamond's first-lien lenders under its existing revolving credit facility (the "**First Lien Lenders**"), agreed to provide interim financing to Dominion Diamond in the within proceedings. Credit Suisse is the administrative agent and collateral agent of the First Lien Lenders, and Washington is a related party to Dominion Diamond. The purpose of the Washington DIP Term Sheet was to provide funds for Dominion Diamond and the other CCAA applicants to pursue a "Permitted Restructuring Transaction" under the SISP. Under the Washington DIP Term Sheet, a "Permitted Restructuring Transaction" would include, *inter alia*, a transaction executed under the SISP which does not include Dominion Diamond's interest in the JV, but maintains all liens and other rights of Credit Suisse, on behalf of the First Lien Lenders, against, *inter alia*, Dominion Diamond's portion of diamond production from the Diavik Mine.

Affidavit of John Startin, sworn on May 21, 2020, at paras. 37, 39-40; Second Amended and Restated Initial Order, issued June 19, 2020, at Schedule "A" ["Washington DIP Term Sheet"].

6. Specifically, pursuant to the Amended and Restated Interim Financing Term Sheet, dated as of June 15, 2020 (the "**Washington DIP Term Sheet**"), between Dominion Diamond, as borrower, and the lenders from time to time party thereto, as lenders, Washington was approved as the interim lender in the within proceedings. The Washington DIP Term Sheet provides for an enforcement and realization process (the "**Washington Realization Process**") on behalf of the interim lenders thereunder, including with respect to diamond sales.

7. This Honourable Court has previously stated that, in making Cover Payments, DDMI is analogous to an interim lender.

8. As a party to the Washington Realization Process, Credit Suisse received the benefit of an enforcement and realization process which was less transparent, and far less friendly, than the DDMI Realization Process to which it now objects. Every alleged issue identified by Credit Suisse with respect to the DDMI Realization Process is ***at least*** equally present in the Washington Realization Process. As demonstrated below, the DDMI Realization Process incorporates greater protections, oversight, and transparency than the Washington Realization Process.

9. The Washington Realization Process is described in paragraph 24 of the Washington DIP Term Sheet, and provides, in relevant part:

> 24. REMEDIES: … In addition, ***upon the occurrence of an Event of Default, Washington Diamond may***, on behalf of itself and each of the Interim Lenders,

in its sole and absolute discretion, subject to the Court Orders including any notice provision contained therein:

…

(c) ***exercise the powers and rights of a secured party under the Personal Property Security Act (Alberta), or any federal, provincial, territorial or state legislation of similar effect***; and

(d) ***exercise all such other rights and remedies under*** this Term Sheet, the Court Orders and ***Applicable Law***.

…

If the Participating Credit Facility Interim Lender Call Right or the Participating Credit Facility Interim Lender Put Obligation is exercised, ***the proceeds resulting from recovery from the sale of the Collateral constituting diamonds shall be distributed: (i) first, to all costs and expenses incurred by or on behalf of the Existing Credit Facility Agent; (ii) second, to the Participating Credit Facility Lenders in respect of their pro-rata contributions to the Interim Facility; (iii) third, to the Participating Credit Facility Lenders in respect of their pro rata contributions to the Existing Credit Facility, and (iv) fourth, to the remaining Existing Credit Facility Lenders who are not Participating Credit Facility Interim Lenders in respect of their pro rata contributions to the Existing Credit Facility***. … In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, provided that Washington Diamond has not issued a notice triggering the Participating Credit Facility Interim Lender Put Obligation and the Existing Credit Facility Agent has not issued a Diamonds Sale Request, ***Washington Diamond shall be permitted to liquidate the diamond inventory, with the proceeds being distributed in priority as among the Interim Facility Lender and the Existing Credit Facility Lenders in accordance with the Lien priority provisions hereof***. …

- ***Any disposition of diamonds shall be permitted to be sold in one or more transactions, in Washington Diamond's sole and absolute discretion, including without limitation, with respect to the timing, process, and manner of such disposition***; and

- ***Washington Diamond shall have no liability of any kind to the Existing Credit Facility Agent or the Existing Credit Facility Lenders with respect to the disposition of any diamonds***, including without limitation the ***timing, process, and manner of disposition***, and the Existing Credit Facility Agent and the Existing Credit Facility Lenders covenant not to sue or otherwise take any action with respect to such disposition, except for any claims that Washington Diamond's conduct with respect to the process and manner of such disposition(s) constitutes gross negligence or willful misconduct.

The Parties acknowledge and agree that any sale of diamonds by auction, and any direct to customer sale in a manner generally consistent with past practice, shall be deemed by all parties to be commercially reasonable.

Washington DIP Term Sheet, at s. 24.

10. The Washington Realization Process thus:

(a) provided Washington would have absolute discretion with respect to the timing, process, and manner of the disposition of diamond collateral;

(b) included a priority waterfall that would flow funds to subordinate parties without any further determination by this Honourable Court as to priority;

(c) did not contain any information rights, or restrictions on the timing or manner or sales, in the form now sought by Credit Suisse and Dominion Diamond;

(d) specifically approved direct to customer sales, rather than requiring auctions;

(e) contained no requirement that Washington "maximize" sales values;

(f) contained no "incentive" to obtain value beyond the interim financing indebtedness;

(g) did not address the tax and royalty issues now raised by Dominion Diamond; and,

(h) permitted Washington to hold diamonds and to exercise the rights of a secured party in accordance with the law of secured transactions.

11. The DDMI Realization Process, including the Procedure for Sale of DDMI Collateral, contains many additional protections not found in the Washington Realization Process. The DDMI Realization Process provides that, *inter alia*:

(a) "Dominion shall have and shall continue to have all right, title and interest in the DDMI Collateral throughout the sales process and until completion of a Sale. ***DDMI shall take good faith and commercially reasonable steps in order to effectuate the Sales in a tax efficient manner***";

(b) "timing of sales must as much as possible be ***aligned to market cycles*** placing the right volume of product aligned with market demand";

(c) DDMI must treat the DDMI Collateral in the same manner as it treats its own production, which aligns DDMI's interests with those of Dominion Diamond;

(d) DDMI must provide information to Dominion Diamond, the Monitor, and Credit Suisse, including diamond sorting results, sales invoices, auction participation results, and price curves;

(e) Dominion Diamond shall have audit rights with respect to such records;

(f) Dominion Diamond will have the ability to periodically inspect the DDMI Collateral; and,

(g) DDMI shall facilitate quarterly / half-yearly meetings with Dominion Diamond, the Monitor and Credit Suisse to review market and sales results and permit on-site or virtual tours and/or meetings to introduce key team members and show key processes and infrastructure.

12. This Honourable Court approved the Washington Realization Process, and Dominion Diamond and Credit Suisse both supported and were parties to the Washington DIP Term Sheet. That those same parties now oppose the more commercially reasonable Realization Process demonstrates that their opposition is a tactical manoeuver.

(ii) The Realization Process Is Consistent with Secured Transactions Law

13. As set out in the Bench Brief submitted by DDMI on October 20, 2020 (the "**October 20 Brief**"), the relief sought by DDMI in the within Application is consistent with the *Personal Property Security Act*, S.N.W.T. 1994, c. 8 (the "**PPSA**"). Further, and contrary to Credit Suisse's assertions, holding the entirety of the DDMI Collateral is entirely consistent with the JVA and the well-established principles of the law of secured transactions. The arbitrary limitations on DDMI's security rights proposed by Credit Suisse - including restrictions on DDMI's right to hold and dispose of the DDMI Collateral and subsequently account to DDMI and its creditors for any excess proceeds - are not supported in law.

14. *Secured Transactions in Personal Property in Canada*, a leading text by Professor Richard McLaren ("**McLaren**"), describes a secured creditor's right to possession of collateral as follows:

> "***A secured party may take possession of collateral*** before default, pursuant to the terms of the security agreement or ***after default, as the first step towards pursuing its remedies***. In either case the obligations of the secured party are similar.

> A lender in possession of its borrower's property, before or after default, does not hold it as an absolute owner. ***If the loan is repaid at maturity or if the delinquent borrower cures its default, the property will have to be returned.*** From one point of view, the lender in possession is merely a custodian or bailee for the true owner and owes duties of preservation and care with respect to the property temporarily entrusted to it. From another point of view, ***the lender is holding property in which it has an interest and which may become its own***. …"
>
> **Richard H. McLaren, *Secured Transactions in Personal Property in Canada*, 3rd ed. (Thomson Reuters Canada Limited: Toronto, 2013, 2016) at §9.01[1] [e-looseleaf] ["McLaren, *Secured Transactions*"] [TAB 1], citing *Personal Property Security Act*, R.S.O 1990, c. P-10, at s. 17 [TAB 2]; see also *Personal Property Security Act*, S.N.W.T. 1994, c. 8 ["PPSA"], at s. 17 [TAB 3].**

15. McLaren's statement was made with reference to the *Personal Property Security Act* (Ontario) (the "**ON PPSA**"), but the PPSA contains equivalent provisions. McLaren proceeds to state that:

> Upon default, ***the normal course for the secured party to follow***, if the secured party decided to assert its security rights immediately instead of suing the debt to judgment, ***is to take possession of the collateral***.
>
> … Under the Act, ***the right to possession is absolute once default has occurred***. …
>
> **McLaren, *Secured Transactions*, at §9.02[3][d] [TAB 1].**

16. With reference to section 64 of the ON PPSA, which is equivalent to section 60(2) of the PPSA, McLaren states:

> Section 64 of the revised Act deals with the distribution of all realized proceeds other than those required to satisfy the security interest and expenses of the secured party making the disposition. … ***The secured party must both account for the disposition and pay over any surplus proceeds to any entitled parties***.
>
> **McLaren, *Secured Transactions*, at §9.02[4][b] [TAB 1].**

17. The various provincial and territorial *Personal Property Security Acts* thus contemplate that a secured creditor may take possession of collateral with a value beyond the exact dollar value of the secured obligations. Where a secured creditor is in possession of collateral beyond the amount required to satisfy the debtor's obligations, the procedure is not to estimate the value of the collateral prior to sale; instead, the creditor has a right to realize upon the goods so secured and **subsequently** to account for any excess proceeds thereof.

18. The JVA contemplates the same process. Section 9.4(c) of the JVA states, in relevant part:

> ***Each Participant hereby grants to the other***, as security for repayment of the indebtedness referred to in Section 9.4 (b) above together with interest thereon, reasonable legal fees and all other reasonable costs and expenses incurred in collecting payment of such indebtedness and enforcing such security interest, ***a mortgage of and security interest in such Participant's right, title and interest in, to and under, whenever acquired or arising, its Participating Interest and the Assets.*** ... ***Upon default being made in the payment of the indebtedness referred to in Section 9.4 (b) when due the nondefaulting Participant may*** on 30 days' notice to the defaulting Participant ***exercise any or all of the rights and remedies available to it as a secured party at common law, by statute or hereunder including the right to sell the property subject to a mortgage and charge hereunder***. …

19. Credit Suisse has asserted that "if DDMI wishes to retain all production from the Diavik Mine, the JVA provides it with a process to do so. Pursuant to section 9.4(e) of the JVA … DDMI may elect to purchase all right, title and interest of Dominion in the Diavik Joint Venture …". Credit Suisse is correct that DDMI may purchase Dominion Diamond's Participating Interest upon default in the making of cash calls, under and pursuant to section 9.4(e) of the JVA. However, this is not the **only** means by which DDMI might obtain possession of all of Dominion's production under the JVA. Any assertion to the contrary is inconsistent with the clear and unequivocal wording of the JVA (providing that DDMI has a security interest in all of Dominion Diamond's right, title, and interest to the Assets, whenever arising, and may sell the property subject to its security interest) and the well-established principles of the law of secured transactions (providing that a secured creditor is absolutely entitled to take possession of collateral upon default, to sell the collateral, and to account for excess proceeds).

(iii) The Relief Sought By DDMI Is Consistent With the SARIO and the Direction of This Honourable Court

20. Credit Suisse and Dominion Diamond have both argued that the SARIO is a final, entered order which has not been appealed. In connection with this argument, it has been asserted that the circumstances today are the same as they were when the SARIO was granted.

21. As set out in the October 20 Brief, this Honourable Court expressly directed that DDMI may apply to revisit the percentage amount of Diavik Mine production to be held as collateral:

> DDMI has argued that they should have the ability to ***hold the whole 40 percent production*** … right now, based on the evidence that I have in front of me, that it's not necessary for DDMI to have the ability to hold all of the 40 percent … ***to the extent that we need to revisit this issue down the road, well, then DDMI,*** when it's appropriate … ***can raise this as an issue***.
>
> **Transcript of proceedings in Action No. 2001-05630 (June 19, 2020) at 141:9-141:18 [TAB 4].**

22. The fact that this Court has expressly granted leave to revisit the issue is a complete answer to the positions propounded by Credit Suisse and Dominion Diamond. Moreover, there have been multiple developments since June 19, 2020, such that it is appropriate to return to this issue. Among other things:

(a) the SISP has collapsed without any executable bid having been received for Dominion Diamond's interest in the Diavik Mine;

(b) the significant disruption to the global diamond market as result of the COVID-19 pandemic has become more evident, as evidenced by ALROSA and De Beers' diamond sales in the second quarter of 2020 having decreased by over 90% as compared with first quarter sales and 2019 second quarter sales;

(c) despite Credit Suisse's assertions, it is by no means clear that the COVID-19 pandemic has "peaked" or that pandemic-related restrictions will be relaxed;

(d) as described more fully in the October 20 Brief, WWW International, a party related to DICAN, believes that diamond prices are likely to continue to fall; and,

(e) Credit Suisse has recently indicated that it believes "the Agent should not be required to stand by while its collateral is further diminished if ***a going-concern outcome is likely to fail***", and further that, "[w]hile the Agent remains supporting of a going concern transaction for the Applicants, they are not prepared to continue underwriting ***a further sale process for an indefinite period of time*** at the current burn-rate".

Bench Brief of Credit Suisse AG, submitted on October 29, 2020, at paras. 4, 12 ["Second Credit Suisse Brief"].

(iv) Dominion Diamond Has Waived Any Valuation of the DDMI Collateral, and Credit Suisse is Bound by That Waiver

23. The JVA and the Diavik Credit Agreement Subordination Agreement contain express waivers of any pre-sale valuation of the DDMI Collateral, which waivers bind both Dominion Diamond and Credit Suisse. Credit Suisse has alleged that the proposed Realization Process is inconsistent with the terms of the JVA and paragraph 16 of the SARIO; yet, at the same time, Credit Suisse seeks to obtain indirectly through court order those rights that it has expressly disclaimed pursuant to its own binding agreements with both of the Participants.

24. Section 9.4 of the JVA, as amended, provides in pertinent part that:

> … ***In the event the non-defaulting Participant enforces the mortgage or security interest pursuant to the terms of this section, the defaulting Participant waives*** any available right of redemption from and after the date of judgment, ***any required valuation or appraisement of the mortgaged or secured property prior to sale,*** any available right to stay execution or to require a marshalling of assets and any required bond in the event a receiver is appointed. Nothing in this section 9.4(c) shall constitute a waiver or abridgement of any right of a lender to whom a Participant has granted security, provided, however, that ***nothing in this sentence shall limit the effectiveness of that waiver as against the Participant, or as against such a secured lender to the Participant or any other person to the extent the secured lender or other person is asserting a right of the Participant which the Participant has waived.***

25. Section 1 of the Diavik Credit Agreement Subordination Agreement states:

> 1. Subordination
>
> ***The Agent, for itself and on behalf of the Secured Parties, hereby agrees that the mortgages, charges, assignments and security interests in DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA created by the Secured Parties' Security (the "Secured Parties' Charge") are fully subordinate to the terms of the JVA (and the respective rights of the parties thereunder)*** and the Secured Parties' Charge shall be fully subordinate in priority to any mortgage, security interest or other security now or hereafter held by DDMI (2012) in DDDLP's Participating Interest, Net Profit Royalty and the Assets pursuant to the JVA (as in effect on the date hereof, or as amended from time to time with the consent of the Agent) (the "DDMI (2012) Charge"). The foregoing acknowledgement and grant of priority shall be effective notwithstanding the respective dates of execution of, advance of monies under, registration or perfection of, notice or demand under, enforcement of the Secured Parties' Charge and the DDMI (2012) Charge. The parties hereto agree that the Secured Parties' security interest in any other assets or property (other than DDDLP's Participating

> Interest, Net Profit Royalty and the Assets pursuant to the JVA) is not subordinated, affected, diminished or otherwise compromised hereby.
>
> **Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, at Exhibit "A", s. 1 ["Subordination Agreement"].**

26. Further, section 4 of the Diavik Credit Agreement Subordination Agreement states:

> 4. Joint Venture Agreement
>
> ***Notwithstanding anything to the contrary contained in the Secured Parties' Security, the Agent agrees for itself and on behalf of the Secured Parties that the enforcement rights of the Agent and the Secured Parties with respect to the Secured Parties' Charge must be exercised in accordance and in compliance with the applicable terms of the JVA*** including without limitation paragraph 15.2(d) thereof. Without limiting the generality of the foregoing, to the extent the Agent becomes entitled to a share of diamond production from the Diavik project, the Agent will be bound by, and entitled to the benefit of, the Protocol Agreement.
>
> **Subordination Agreement, at s. 4.**

27. The effect of paragraph 16(e) of the SARIO is to determine the **quantity** of diamonds to be held by DDMI as security. The clause does not require additional valuation prior to realization; nor does it permit Credit Suisse to claim that its security interest requires such valuation, or Dominion Diamond to claim that it is entitled to same pursuant to its ownership interest. Any assertion to the contrary is precluded by the JVA and the Diavik Credit Agreement Subordination Agreement.

(v) The Credit Suisse Brief and the Dominion Brief Both Contain Numerous Inaccuracies

28. The Credit Suisse Brief and the Dominion Brief contain numerous inaccuracies, speculation, meritless accusations, and false assumptions.

The DDMI Collateral Would Not Exist Without the Cover Payments

29. Credit Suisse has taken issue with DDMI's assertion that the DDMI Collateral "would not exist" without DDMI's payment of the Cover Payments, and the associated continued operation of the Diavik Mine. Credit Suisse instead posits that "[t]he Dominion Products exist because Dominion has made cash call payments of approximately $760 million in respect of the Diavik mine over the past three years".

Bench Brief submitted by Credit Suisse, AG, on October 28, 2020, at para. 43 ["Credit Suisse Brief"].

30. Similarly, Dominion Diamond has stated that "Dominion (or its predecessor) has contributed in excess of $3 billion to the operation of the Diavik JV. It stretches credulity for DDMI to now assert … that the security DDMI holds over Dominion's 40% interest in the Diavik JV has no value".

Bench Brief submitted by Dominion Diamond Mines ULC *et al*., on October 28, 2020, at para. 55 ["Dominion Brief"].

31. The Washington Companies paid $1.2 billion to acquire Dominion Diamond Corp., a predecessor entity to Dominion Diamond, in 2017, of which approximately $500 million was an equity investment by The Washington Companies.

Affidavit of Krystal Kaye, sworn on April 21, 2020, at para. 25.

32. The submissions by Dominion Diamond and Credit Suisse are a red herring. Cash calls satisfied by Dominion Diamond (or its predecessors) prior to the commencement of these proceedings are sunk costs, which were expended to ensure the continued operation of the Diavik Mine at the relevant times, and for which Dominion Diamond (and by extension its stakeholders) has already received a corresponding benefit, *i.e.* its share of production. Those past expenditures have no relation to the current value of Dominion Diamond's Participating Interest. By its nature, the value of a mine will decline over time as product is removed and processed. Further, if Credit Suisse were correct, then DDMI could have ceased making Cover Payments in April - that is, it could have ceased paying suppliers, employees, and other operating costs - and the DDMI Collateral would somehow have continued to accrue despite the non-operation of the Diavik Mine. Credit Suisse's assertion is an attempt to re-characterize DDMI's Cover Payments, which this Honourable Court stated are analogous to interim financing.

Dominion's Participating Interest Is Not Valuable Security

33. Credit Suisse and Dominion Diamond have both asserted that when calculating its security position, DDMI has not considered DDMI's security interest in Dominion's Participating Interest in the Diavik Mine, such that DDMI is allegedly under-valuing its Cover Payment collateral.

Credit Suisse Brief, at paras. 36, 37, 48(j); Dominion Brief, at para. 5.

34. Further, Credit Suisse argues that "if DDMI wishes to retain all production from the Diavik Mine … [t]he relief currently sought by DDMI is a request to achieve this result without also assuming the associated burdens …".

Credit Suisse Brief, at para. 37.

35. As stated in the October 20 Brief, "the SISP Procedures have confirmed that … the market view [is] that the value of Dominion Diamond's participating interest in the Diavik Mine is less than the aggregate of the obligations in arrears and future obligations including closure and remediation costs". The only Cover Payment collateral with any realizable value or equity is Dominion's share of production from the Diavik Mine. DDMI has appropriately characterized its security position with respect to Dominion Diamond's Participating Interest and Assets under the JVA, and Dominion Diamond and Credit Suisse have each failed to offer credible evidence refuting that characterization.

Bench Brief submitted by Diavik Diamond Mines (2012) Inc., on October 20, 2020, at para. 22 ["October 20 Brief"].

36. Credit Suisse has further noted that "[a]s the Ekati Mine remains on care and maintenance, ***no newly-mined diamonds or other replacement collateral in any form has been generated for the benefit of the First Lien Lenders***." That observation must be considered in light of Credit Suisse's recent statement that "[Dominion Diamond's] obligations [to Credit Suisse] are secured by first-priority liens on ***substantially all of the Applicants' assets***." Credit Suisse has effectively admitted that the DDMI Collateral is not "collateral … for the benefit of the First Lien Lenders", and that it does not consider Dominion Diamond's Participating Interest to be valuable collateral.

Second Credit Suisse Brief, at paras. 7, 10.

<u>The Realization Process Does Not Grant DDMI An "Advantage"</u>

37. Credit Suisse argues that holding and monetizing Dominion's share of the Diavik Mine production will give DDMI "an advantage over Dominion and its stakeholders". That is incorrect; DDMI will account to Dominion Diamond and its creditors with respect to the excess proceeds of the Realization Process, if any. The process of sale and subsequent accounting will preserve the relative legal entitlement of Dominion Diamond, its creditors, and any other interested parties to such excess proceeds. DDMI does not receive any "advantage" in doing so. To the contrary, the

process protects DDMI, an innocent and involuntary creditor. If one were to accept Credit Suisse's argument, if DDMI is forced to hand back Diamonds before the Cover Payments are paid, and the remaining Collateral is insufficient to repay the Cover Payments, then Credit Suisse and the lenders it represents will have received a windfall, contrary to the Diavik Credit Agreement Subordination Agreement, at DDMI's expense.

The Realization Process Aligns DDMI's Interests With Dominion's

38. The assertion by Credit Suisse that DDMI is not incentivized to produce value above the Cover Payment indebtedness is without merit. The Realization Process provides that, to the extent possible, the Participants' respective shares of Diavik Mine production will be treated alike. DDMI's interests are thus aligned with Dominion Diamond's. There is no reasonable basis on which it might be claimed that DDMI would intentionally sell its own production in a commercially unreasonable manner. If Credit Suisse is concerned about this possibility, and believes that the realizable value of the DDMI Collateral is greater than the outstanding Cover Payment indebtedness, then it is entitled to redeem the Cover Payment security. As stated in the October 20 Brief: "If Dominion Diamond or other creditors elect, they can redeem; there is no restriction on it doing so."

October 20 Brief, at para. 34; Credit Suisse Brief, at paras. 48(c)-(e).

39. Credit Suisse has not sought to redeem the DDMI Collateral and monetize such collateral itself; presumably, it wishes to leave the ***clear risk*** that the DDMI Collateral may not be sufficient to satisfy the Cover Payment indebtedness with DDMI.

The Realization Process Treats All Production Fairly

40. The Credit Suisse Brief criticizes the use of the phase "the DDMI Collateral shall, whenever possible, be treated in the same or a substantially similar fashion as the DDMI production from the Diavik Mine" in the Realization Process. That term is necessitated by the fact that DDMI has not been permitted to sell the DDMI Collateral, but has continued to sell its own share of production. It is intended to ensure DDMI does not incur liability for having previously sold its own share of production, not to permit DDMI to act in a commercially unreasonable manner. In other words, it is not possible to treat DDMI Collateral produced in any given month in the exact same manner as DDMI's share of production from the same month, if part of DDMI's

share of that month's production has already been sold prior to approval of the Realization Process.

Credit Suisse Brief, at para. 48(h) [emphasis original].

Credit Suisse's Accusations Regarding Cover Payment Manipulation Are Without Merit

41. Credit Suisse states that "[t]here is nothing in the proposed DDMI Realization Process that would preclude DDMI from manipulating cash calls to ensure that all Dominion's share of production from the Diavik Mine is retained for its own benefit".

Credit Suisse Brief, at para. 48(a).

42. This is a significant and improper accusation to make without ***any*** reliable or accurate evidence, whatsoever. Essentially, Credit Suisse has claimed that DDMI *will* act in bad faith. Any such argument is wholly inappropriate, speculative, and without merit. Having accused DDMI of seeking relief "just in case" some future events might come to pass, it is remarkable that Credit Suisse immediately engaged in the same behavior.

43. Credit Suisse's misguided argument on this point is based on the flawed analysis of Krystal Kaye, which has been rebutted in the Affidavit #5 of Thomas Croese, sworn October 29, 2020 (the "**Croese Affidavit #5**"). The evidence on which Credit Suisse relies is inaccurate. Ms. Kaye stated that payments are over the Approved JV Budget by 18.9%. As set out in Croese Affidavit #5, the total cash call amount within the Approved JV Budget for fiscal 2020 is $576.5 million, when adjusted for closure securitisation Cash Calls, which were initially included and then subsequently removed. The total estimated cash calls for this annual fiscal period are $579.8 million. On an annualized basis, the Joint Venture is projected to be over budget by approximately 0.6% and Dominion's share of the deficit is approximately $1.3 million. Ms. Kaye's evidence is based on Dominion Diamond's own Cash Call schedule, which understated Dominion's Cash Call obligations by approximately $14.7 million. This Court should give no weight to Credit Suisse's unfounded speculations. Dominion Diamond relies upon the same evidence in asserting that DDMI has been consistently over budget, and those submissions should be disregarded as well.

Affidavit #5 of Thomas Croese, sworn on October 29, 2020, at paras. 4-5 ["Croese Affidavit #5"].

Dominion Diamond's Accusations Regarding Operations Are Not Evidence

44. Both Credit Suisse and Dominion Diamond rely upon Dominion Diamond's litigation against DDMI in British Columbia, in asserting that DDMI is acting in a commercially unreasonable manner and is consistently over budget in operating the Diavik Mine. Those allegations are just that - allegations. Dominion Diamond has taken no steps in the British Columbia litigation since DDMI's security for costs application, and the litigation is currently stayed.

Croese Affidavit #5, at para. 8.

It Is Reasonable Not to Apply For CEWS Benefits at this Time

45. With respect to CEWS, as described in further detail in Croese Affidavit #5, DDMI is currently evaluating its eligibility under, and the desirability of applying for, CEWS benefits. The decision to apply for CEWS, and the quantum of such an application, is impacted by a number of factors including the basis for calculating the subsidy (given that it does not appear that DDMI's sales operations have been impacted in the same manner as Dominion Diamond's). Further, DDMI is considering the operating status of the JV, particularly the possibility that it may become unviable in the absence of a viable partner or repayment of the Cover Payment obligations.

Croese Affidavit #5, at para. 13.

III. RELIEF REQUESTED

46. DDMI respectfully requests that this Honourable Court grant the relief sought by DDMI in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of October, 2020

McCarthy Tétrault LLP

Per: *"McCarthy Tétrault LLP"*
Sean F. Collins / Walker W. MacLeod / Pantelis Kyriakakis / Nathan Stewart
Counsel for Diavik Diamond Mines (2012) Inc.

IV. LIST OF AUTHORITIES

Secondary Sources

1. Richard H. McLaren, *Secured Transactions in Personal Property in Canada*, 3rd ed. (Thomson Reuters Canada Limited: Toronto, 2013, 2016) [e-looseleaf];

Legislation

2. *Personal Property Security Act*, R.S.O 1990, c. P-10;

3. *Personal Property Security Act*, S.N.W.T. 1994, c.8;

Evidence

4. Transcript of proceedings in Action No. 2001-05630 (June 19, 2020).

SCHEDULE “A”
DDMI REALIZATION PROCESS

Monetization Process

1. Dominion Diamond Mines ULC ("**Dominion**") and Diavik Diamond Mines (2012) Inc. ("**DDMI**") are successors in interest to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

2. On April 22, 2020, Dominion sought and obtained protection from its creditors pursuant to an order issued by the Court of Queen's Bench of Alberta (the "**Court**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") in Court File No. 2001-05630 (the "**CCAA Proceedings**"). FTI Consulting Canada Inc. has been appointed as the monitor of Dominion pursuant to the CCAA (the "**Monitor**").

3. This Monetization Process shall govern the disposition of Dominion's share of production from the Diavik Diamond Mine located in the North Slave Region of the Northwest Territories, Canada (the "**Diavik Mine**") that is not otherwise identified in paragraph 2 of the Order (Delivery of Diamonds) issued in the CCAA Proceedings on May 8, 2020 (the "**DDMI Collateral**"). In order to optimize the value of the DDMI Collateral for all stakeholders, the DDMI Collateral must be disposed of in a commercially reasonable manner, in a fair and transparent process and, recognizing that the DDMI production from the Diavik Mine (the "**DDMI Production**") may already be subject to agreement for sale, is intended to be treated in a manner no less favourable than the DDMI Production wherever possible.

4. DDMI is hereby empowered and authorized, but not obligated, to act at once in respect of the DDMI Collateral, and is hereby expressly empowered and authorized to do any of the following, at all times acting in a commercially reasonable manner and in accordance with the procedure set out in Schedule "A", where DDMI considers it reasonably necessary or desirable:

   (a) transport the DDMI Collateral from the production sorting facility in Yellowknife, Northwest Territories (the "**PSF**") to Antwerp, Belgium;

   (b) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons including, without limitation, persons who are affiliates of DDMI, from time to time and on whatever basis, including on a temporary basis, on terms and conditions that are commercially reasonable and

consistent with standard processes and procedures of DDMI, or persons who are affiliates of DDMI, to assist with the exercise of DDMI's powers and duties in respect of the DDMI Collateral;

(c) clean, sort, value and market the DDMI Collateral to and with the assistance of any person;

(d) sell, transfer and convey the DDMI Collateral to any person in accordance with the procedure set out in Schedule "A" hereto;

(e) receive and collect on Dominion's behalf all monies and accounts now owed or hereafter owing to Dominion in respect of the DDMI Collateral and to exercise all remedies of Dominion in collecting such monies, including, without limitation, to enforce any security held by Dominion in respect of the DDMI Collateral;

(f) disburse all monies and accounts that are received and collected in respect of the DDMI Collateral in accordance with the priorities set forth in paragraph 8 of this Monetization Process;

(g) take any steps reasonably incidental to carrying out the procedure set out in Schedule "A";

(h) and in each case where DDMI takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including Dominion, and without interference from any other persons.

5. Upon the completion of a disposition of all or any portion of the DDMI Collateral (each, a "**Sale**"), Dominion's and DDMI's interest in the DDMI Collateral that is subject to such Sale shall vest absolutely in the applicable purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, 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 including, without limiting the generality of the foregoing:

(a) any encumbrances or charges created by any order in the CCAA proceeding involving Dominion; and;

(b) any charges, security interests or claims evidenced by registrations pursuant to any personal property registry system in a Canadian jurisdiction.

6. DDMI shall not be acting as, and shall not be deemed to act as, Dominion's agent as a result of carrying out the provisions of this Monetization Process and shall not become liable for or obligated to perform any liability, indebtedness or obligation of Dominion as a result of carrying out the provisions of this Monetization Process, completing any Sales or distributing any proceeds resulting therefrom. All Sales shall be permitted to be completed in one or more transactions, in DDMI's sole and absolute discretion, including without limitation, with respect to the timing, process, and manner of such Sale provided the Sale complies with the provisions of Schedule "A". Other than liabilities that DDMI expressly agrees to incur in writing in respect of any Sale, DDMI shall have no liability of any kind to any person with respect to any Sale including, without limitation, the timing, process, and manner of such Sale, and no person shall sue or otherwise take any action against DDMI with respect to such Sale except for:

(a) claims that DDMI expressly agrees to incur in writing in respect of any Sale; or

(b) claims that DDMI's conduct with respect to the process and manner of such Sale constituted gross negligence or willful misconduct or did not comply with the provisions of Schedule "A".

7. For certainty, Dominion shall have and shall continue to have all right, title and interest in the DDMI Collateral throughout the sales process and until completion of a Sale. DDMI shall take good faith and commercially reasonable steps in order to effectuate the Sales in a tax efficient manner.

8. The proceeds resulting from any Sale shall be distributed promptly after receipt thereof in accordance with the following:

(a) first, towards all taxes or royalties applicable to DDMI Collateral that rank in priority to the security provided for in Article 9.4 of the JVA;

(b) second, to all fees, costs and expenses incurred by or on behalf of DDMI in the implementation of the Realization Process and the completion of the Sale including, without limitation, a fee equal to 2.5% of the gross value of any Sale payable to DDMI in relation to handling, sorting, selling and collecting proceeds;

(c) third, to DDMI, in satisfaction of outstanding Cover Payments (as such term is defined in the JVA) and interest thereon made by DDMI pursuant to Article 9.4 of the JVA including reasonable legal fees and all other reasonable costs and expenses incurred by DDMI in collecting payment of such indebtedness and enforcing such security interest;

(d) fourth, to Credit Suisse AG, Cayman Islands Branch (the "**Administrative Agent**") in satisfaction of all indebtedness, liabilities and obligations owing by Dominion under the credit agreement (as amended or supplemented from time to time) dated as of November 1, 2017 among, inter alia, Dominion, the Administrative Agent and various lenders from time to time party thereto including, without limitation, principal, interest, reasonable legal fees and all other reasonable costs and expenses incurred by the Administrative Agent;

(e) fifth, to Wilmington Trust, National Association, as trustee (the "**Second Lien Trustee**"), in satisfaction of all indebtedness, liabilities and obligations owing by Dominion under the 7.125% senior secured second lien notes issued pursuant to a trust indenture dated as of October 23, 2017 (as amended or supplemented from time to time) among, inter alia, Dominion and the Second Lien Trustee including, without limitation, principal, interest, reasonable legal fees and all other reasonable costs and expenses incurred by the Second Lien Trustee; and

(f) sixth, to Dominion, to be held in a segregated trust account at a chartered Canadian bank and distributed in accordance with a distribution order or other order of the Court.

9. Subject to DDMI complying with any order in the CCAA proceedings, nothing in this Monetization Process shall prevent DDMI from exercising all such other rights and remedies available to it under applicable law.

10. DDMI will report to Dominion, the Monitor and the Administrative Agent as the representative of Dominion's first lien lenders (the "**First Lien Lenders**") on the Monetization Process in accordance with the provisions of Schedule "A" on a monthly basis and when otherwise reasonably requested by Dominion, the Monitor or the Administrative Agent. Any such reporting to the Administrative Agent shall be deemed to be made without any representation or warranty from DDMI to the Administrative Agent or the First Lien Lenders and, with respect to such reporting, DDMI shall not have any liability to the Administrative Agent, the First Lien Lenders or any other person resulting from such parties' use of such reporting or any errors therein.

11. The Monitor or any person with an interest in the DDMI Collateral may seek advice or directions from the Court in respect of the Monetization Process on reasonable notice to all other interested persons. All persons with an interest in the DDMI Collateral shall act in good faith and in a commercially reasonable manner in respect of the Monetization Process. Any Sale of the DDMI Collateral by auction, and any direct to customer sale in a manner generally consistent with past practice or as authorized by this Monetization Process, shall be and is hereby deemed to be commercially reasonable.

SCHEDULE "A"
PROCEDURE FOR SALE OF DDMI COLLATERAL

Key Principles

Striving for diamond production value optimization by following a number of key principles across all sales:

1. Product must be fully cleaned and sorted in a wide variety of diamond categories (sizes, colours, clarities, shapes) to be able to offer the right products to the right customers. This sorting process needs to be executed in a safe and secure operation.

2. Timing of sales must as much as possible be aligned to market cycles placing the right volume of product aligned with market demand.

3. Optionality of sales channels (contracts, auctions, tenders, negotiated spot sales) provides flexibility, market/price/customer insights and fast product placement and monetization pathways, provided that DDMI Collateral will not be sold under long term supply contracts that provide pricing at a discount to the prevailing market.

4. A professional experienced well-equipped team is required to execute the sales process, optimize the sale proceeds (taking into consideration the existing circumstances facing the diamond market) and collect cash in a fast and cost-efficient manner.

Proposed Sales and Marketing Process

To the extent it agrees to exercise its right to sell the DDMI Collateral pursuant to Section [4] of the Monetization Process, DDMI will follow the following process:

1. DDMI or persons who are affiliates of or retained by DDMI will handle the DDMI Collateral in a commercially reasonable manner and generally apply the same processes, audits and analysis as such persons utilizes with any equivalent DDMI Production.

2. DDMI or persons who are affiliates of or retained by DDMI will insure, import, clean, sort, value and sell the DDMI Collateral using their existing secure infrastructure, including existing experienced teams, security systems, diamond stock tracking software, sorting technology and experts, pricing methods, contracts (other than long term contracts providing for pricing which may represent a discount to the prevailing market), auction platform, and industry network.

3. The DDMI Collateral will be sorted and valued using tthe same sorting product line, Diavik Mine samples and pricebook that is applied to any equivalent DDMI Production.

4. DDMI or persons who are affiliates of or retained by DDMI will sort and phase the DDMI Collateral over the Q4 2020 and Q1/Q2 2021 periods to avoid a high volume of product being offered at once and to help optimize sales proceeds unless, in DDMI's reasonable business judgment, market conditions would allow a higher volume of product to be sold without negatively impacting the market.

5. DDMI or persons who are affiliates of or retained by DDMI will sell all diamonds that are subject to being split at the Antwerp Facility under the current Joint Venture Splitting

Protocol (i.e., boart, near gem and “Selected Diamonds”) using an auction or closed tender process and with distribution of proceeds being made in accordance with the Monetization Process.

6. DDMI shall:

   a. provide to Dominion, the Monitor and the Administrative Agent (subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Administrative Agent) diamond sorting results (size and quality analysis);

   b. provide to the Monitor (subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Monitor), copies of actual sales invoices, including itemized lists of deductions for taxes and royalties and DDMI’s handling, sales and cash collection fee and auction logs showing bidding participation and price curves for different product segments (market demand, market prices);

   c. permit an independent and internationally recognized accounting firm to audit the records and information identified above, at Dominion's sole cost and expense (subject to entering into commercially reasonable confidentiality arrangements with such accounting firm including without limitations confidentiality arrangements with respect to information which such accounting firm may share with any other Person including, without limitation, Dominion, the Monitor and/or the Administrative Agent).

7. DDMI will (subject to entering into commercially reasonable confidentiality and restrictions on use arrangements with Dominion) permit Dominion to have periodic access to the DDMI Collateral, at Dominion's cost, upon reasonable notice for the purpose of verifying and assessing value of the DDMI Collateral. Dominion shall accord with DDMI's safety and security policies and procedures when viewing the DDMI Collateral.

8. DDMI will (subject to entering into commercially reasonable confidentiality and restrictions on use arrangements with Dominion) facilitate quarterly / ½ yearly meetings with Dominion, the Monitor and the Agent to review market and sale results and permit on-site (if and when appropriate and safe) or virtual tours and/or meetings to introduce key team members and show key processes & infrastructure.