

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

JS
June 19, 2020
Justice Eidsvik



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 #2**

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
File No. 2001-05630

AFFIDAVIT OF ERIC HOFF
Sworn on June 17, 2020

I, Eric Hoff, of the City of Waltham, in the State of Massachusetts, Senior Research Analyst of DDJ Capital Management, LLC, **MAKE OATH AND SAY THAT:**

1. I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief, and where so stated I believe the same to be true. I swear

Handwritten signature consisting of the letters 'E' and 'H' in a stylized, cursive font.

this affidavit in supplement to my prior affidavit in these proceedings sworn on May 6, 2020 (the “**Prior Affidavit**”).

2. As stated in my Prior Affidavit, DDJ Capital Management, LLC (“**DDJ**”) is a Waltham, Massachusetts-based investment adviser registered with the U.S. Securities and Exchange Commission. DDJ manages funds and accounts for corporate, state and local pension plans, Taft-Hartley plans and other institutional investors. It is a limited liability company formed under the laws of the Commonwealth of Massachusetts.
3. DDJ acts as an investment intermediary insofar as it manages and provides advisory services for client accounts. In that role, DDJ exercises discretionary control over more than US\$134,000,000 of the approximately US\$550,000,000 in principal amount of 7.125% secured second lien notes (“**Notes**”) issued by Dominion Diamond Mines ULC (“**Dominion Diamond**” or the “**Company**”).
4. To ensure that the Noteholders’ interests are properly represented, DDJ has been an active participant in the Company’s proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) through its membership on the ad hoc committee of Noteholders (the “**Committee**”). The other members of the Committee are Barings LLC and Brigade Capital Management LP. The three Committee members collectively hold a majority of all of the Notes, and they are in close contact with other substantial Noteholders.
5. I swear this affidavit in support of the Committee’s response to the Company’s application to be heard on June 19, 2020. The Committee is proposing, among other things, that the Company be authorized and directed to accept the Interim Financing Term Sheet being offered by certain members of the Committee and attached hereto as Exhibit “A” (the “**Noteholder DIP**”) in lieu of the Amended and Restated Interim Financing Term Sheet with Washington Diamond Lending, LLC and Credit Suisse AG for which it seeks Court approval on June 19, 2020 (the “**Amended Shareholder DIP**”).

The Company’s Flawed Process

6. The Committee began raising red flags about the carriage and direction of the Company’s CCAA proceedings as soon as it became involved. Even though the world finds itself in truly extraordinary times, with a worldwide pandemic and an unprecedented global economic

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shutdown that has also completely shut down the international diamond sales market, the Company seemed determined from the outset to pursue a fast track sales process.

7. The Company is hardly alone in experiencing short term financial distress. Countless other businesses are in similar circumstances, yet we are not witnessing widespread fire sales of companies across the spectrum. It was puzzling to me that the Company was leaning decidedly in the direction of a quick sale from the moment it initiated these CCAA proceedings because companies typically seek to avoid distressed sales in order to enhance recovery for all existing stakeholders. On the contrary, companies usually look to pursue more orderly processes that consider both possible sales or investments and plans of arrangement or compromise before determining the best course of action.
8. Compounding those early warning signs was the Company's announcement that it was considering an insider proposal from its current ownership group (the "**Shareholder**"). The Company disclosed that the Shareholder's proposal offered interim financing that would permit the Company to run a prompt sales process, but only if the Company could be induced to accept the Shareholder's terms for the effective repurchase of the Company's business and assets by way of a stalking horse bid (the "**Shareholder Bid**").
9. In my experience, repurchase bids from existing owners are unusual but not unprecedented. It is, however, highly unusual for the restructuring process from the outset to revolve around a stalking horse bid from the existing ownership group.
10. A circumstance where the process is being driven by an ownership stalking horse bid calls for the highest standard of governance protocols, and a variety of checks and balances should be implemented to safeguard the integrity of the process. In the case of the Company, all of this seems to be decidedly lacking. The Company has rested most of its assurances on representations that a lone "independent" director is making pertinent decisions. That is an extraordinary amount to ask of one individual but, more importantly, the Company has failed to provide fulsome and transparent information about the extent of that one director's past and present relationships, dealings and communications with the Shareholders. Similar information is also lacking about the Company's other representatives.



11. Although I take some comfort from the involvement of the court-appointed monitor, the complexity and uniqueness of this Company and the diamond market render it a difficult challenge for any court-appointed monitor to properly scrutinize and independently verify the appropriateness of the activities, recommendations and decisions of Company representatives who may be cloaked in the veil of first-hand knowledge and experience.
12. In closely observing these CCAA proceedings, it has been evident to me that the Company remains fully aligned with the Shareholder notwithstanding the significant insider concerns that have been raised to date. There is little to suggest any contradiction or independent testing of the Shareholder's demands. Instead, the Company has repeatedly and vehemently defended the Shareholder at every step. Conversely, the Company has shown little timidity in fighting major stakeholders who have a real and continuing economic interest in the Company as a going concern, including the Committee, the Note indenture trustee, the Company's critical joint venture partner, and anyone who has dared to challenge the Shareholder's agenda.
13. That Shareholder agenda is, in my view, very clear. The offer of DIP financing is quite simply a means-to-an-end for the Shareholder. The real prize at stake is the linked stalking horse bid. In short, if the Shareholder has its way, it will profit from the harm occasioned to the Noteholders and other stakeholders – in the end, it could own the same assets as before the Company experienced this short-term distress, but with far less debt on the balance sheet. Notably, the debt shed would be comprised almost entirely of the Noteholders' secured position.
14. Although the Company and the Shareholder have made efforts to distinguish approval of the Shareholder's stalking horse bid from the ultimate approval of it or another transaction later in these CCAA proceedings, the stalking horse bid, particularly in the hands of a closely-involved insider, provides great advantage and opportunity to the Shareholder.
15. This conclusion is evident in the zeal with which the Shareholder is fighting to achieve stalking horse status. It strains credulity to suggest that the Shareholder is acting in a benevolent manner by creating "a floor price" for all bids. If the Shareholder's intentions were true, the Shareholder could still create a "floor price" simply by submitting an even-handed bid as part of the competitive process in the Company's proposed Sale and Investment Solicitation Process ("SISP"). That it is fighting so hard to get the inside track in the sales process by

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submitting a stalking horse bid is patent evidence of the advantages that the Shareholder perceives in playing that role relative to other bidders.

16. In addition to the consequences associated with the Shareholder having an inside track, I am greatly concerned that the Shareholder, as the stalking horse bidder, would gain rights and powers that it would exploit to the relative disadvantage of the Company's stakeholders. I believe that we have already witnessed the Shareholder's willingness to exploit leverage given to it. By way of example, I note that the Amended Shareholder DIP served on June 15, 2020 contains a new provision that expressly prohibits the payment of any stakeholder's expenses in these proceedings if, in effect, they pertain to anything that challenges the interests and objectives of the Shareholder. Such a provision acts as an omen of the manner in which the Shareholder is likely to conduct itself if handed any levers.
17. Following the May 29 and June 3 hearings, it was self-evident that the Company's decision to move forward with the Shareholder as the stalking horse bidder had created a great amount of waste, mistrust and acrimony and that these proceedings were on the wrong track. I therefore hoped that the Company's representatives would effectively "reboot" and take a fresh new direction and approach. Instead, with the filing of the Company's application record for the June 19, 2020 hearing, it is now evident that most of its time and efforts since the most recent hearing on June 3, 2020 have been dedicated to doubling down on cramming the Shareholder's agenda on the Company's stakeholders.

The Company's Application

18. Very late on Friday, June 12, 2020, the Company partially served its application for the June 19, 2020 hearing. The application included the new Shareholder Bid and SISP, but it was missing what is arguably the most critical component that is driving the process and its timelines – the Amended Shareholder DIP. A cover email addressed to all counsel simply said that the term sheet remained the subject of inter-creditor discussions between the Shareholder and the lenders under the Company's senior secured credit facility (the "**1st Lien Lenders**"). The email went on to say that the term sheet would be served as soon as practical ahead of June 19, 2020. As it turns out, the Amended Shareholder DIP was not served until late on Monday, June 15, 2020.

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19. Overall, the Company's application is very disappointing. There is nothing to suggest that the Company learned any lessons from its past mishandling of the process. Instead, it has forged ahead along the same path and has not achieved any real gains for its stakeholders as it remains firmly entrenched alongside the Shareholder. It seems to me that the entirety of the Company's focus since the last hearing has been on dressing up the highly conditional and vague Shareholder Bid to give the impression that it is something else.

The Shareholder Bid

20. The Shareholder Bid reflects no meaningful improvements to the previously filed proposed stalking horse term sheet. It still provides for recovery of only a fraction of the Company's overall debt obligations, with 100% of that small recovery going to the 1st Lien Lenders. In fact, the Shareholder Bid seems cynically designed to offer cash that is just barely sufficient to repay the debt of the 1st Lien Lenders while leaving absolutely no recovery for holders of the Notes.
21. The Shareholder Bid is changed only in form, and not in substance. It is now set forth in a lengthier standard asset purchase agreement that contains extensive representations and warranties, covenants, and other typical terms that create an inference of firmness relative to the former 11-page term sheet.
22. The new Shareholder Bid does not, however, hold up to closer scrutiny. Its numerous deficiencies include the following:
- (a) The Shareholder Bid remains subject to a broad financing condition that effectively gives the Shareholder a free option to acquire the Company's business and assets until at least July 31, 2020. Moreover, it is also drafted in a highly favourable way for the Shareholder. For example, if the Shareholder fails to satisfy the financing condition by July 31, 2020, the Shareholder Bid does not automatically terminate. Instead, the Company would simply have the right, and not the obligation, to terminate the Shareholder Bid, and that right can be exercised only with the consent of the 1st Lien Lenders. This provides no protection to the Noteholders and other stakeholders, and it concentrates critical decision-making and control of the process in only a few hands.

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- (b) The Shareholder has the power of optionality as to whether the Company's interests in the Diavik mine are or are not included in the transaction. Diavik is one of the Company's two major assets. It is not simply tangential. Granting the Shareholder a free option to include or exclude the Diavik interests creates great uncertainty. This uncertainty relates not only to the Company's ownership interests, but also the associated reclamation liabilities for which the 1st Lien Lenders have issued letters of credit and can assert recovery claims against the Company's non-Diavik assets.
- (c) There is little new clarity as to what obligations of the Company the Shareholder would or would not assume as part of the Shareholder Bid. The Shareholder retains the option until very late in the process to designate which contracts it chooses, in its discretion, to assume or strand behind. Although the Company's materials suggest that improvement has been achieved because the Shareholder has committed to assuming up to \$20 million of "cure cost" liabilities, that commitment relates only to the maximum amount of payments that the Shareholder may make for contracts it chooses to assume. If the Shareholder elects not to assume any contracts, the value of that commitment is nil.
- (d) Uncertainty also remains with respect to which employees will retain a job with the Company. Despite a general statement that the Shareholder will take on substantially all employees in the repurchased business, there are clear rights to leave behind whomever the Shareholder designates.
- (e) There are very extensive conditions. These include a requirement that the Shareholder enter into new agreements acceptable to it with respect to reclamation liabilities, including with governmental authorities and bonding companies. A myriad of other material conditions includes regulatory and other approvals.
- (f) In addition to all other conditions, the Shareholder Bid is qualified by a broadly worded material change clause that permits the Shareholder to back out with impunity if conditions worsen to the detriment of the Shareholder.
- (g) At US\$126-US\$131 million, the purchase price remains far lower than the value that the Company and the Shareholder had attributed to the Company's business and assets at any time before these proceedings, and inconsistent with both the basis on which the

Noteholders had been induced to invest in the Company and the Company's earlier indications in these proceedings that its financial difficulties were caused by short-term factors. Efforts in the Company's materials to fluff up the total purchase price are misleading. For example, the proposed conditional bonding arrangements for reclamation liabilities contemplate a continuation of substantially existing arrangements and do not constitute payment of value by the Shareholder for the benefit of the Company's stakeholders.

Why the Shareholder wants to be the Stalking Horse Bidder

23. Stalking horse bids generally come with significant advantages relative to other bids in a sales process. In particular, insider stalking horse bids like the one currently proposed are especially advantageous to the bidder. Based on my experience, I note the following preferential benefits that the Shareholder would gain if the Shareholder Bid were to be approved:
- (a) The Shareholder would stand to earn a large break-up fee of US\$2,522,140 and expense reimbursement of US\$2,250,000 if the Company selected a different transaction. These provisions not only create a potential windfall for an otherwise out-of-the-money equity holder and protect its downside risks, but they also create a steeper hill for other bidders. In fact, other bidders would also be required to overbid by yet another US\$1,000,000 under the terms of the proposed SISP. In short, competing bids would have to be superior to the Shareholder Bid by at least US\$5,772,140.
 - (b) The Shareholder would gain a huge head start in conducting due diligence and in further developing, negotiating and advancing its bid. It could gain immediate access to critical business partners which other bidders might not have until much later in the SISP process. All bids of this kind will turn heavily on support from governmental authorities, employees, surety companies, joint venture owners, and other critical partners. The Shareholder's big head start would allow it to satisfy conditionality long before other bidders and create valuable momentum in its favour. Competing bids that tried to play catch-up would face the risk of being disqualified or ranked inferior in the SISP process if they retained more conditions because they had not been afforded the same time and access.

- (c) The Shareholder Bid may serve as deterrent on other potential bidders. To anyone else considering a competing bid, it may seem that the process is too well stacked in favour of an insider stalking horse bid, supported by 1st Lien Lenders who would be barely paid out by the Shareholder Bid and who would not be incentivized to seek higher value. This dynamic, especially in the current macroeconomic climate, can cause prospective bidders to simply walk away and thereby enhances the probability of the Shareholder Bid being successful.
- (d) Psychology often works in favour of a stalking horse bidder. Given that it is allotted so much time and attention, stalking horse bidders hope to achieve psychological buy-in to their bid on the part of those running the process, and a perception that they are the path of least resistance. Later comers typically face an uphill battle in gaining the same level of attention.
- (e) The Shareholder Bid is treated differently than bids in the SISF in a number of important respects, including that the Shareholder is not required to pay a deposit and has assurances that it will automatically proceed through the process without facing disqualification risk.
- (e) Through its control of the purse strings, the Shareholder would be able to further promote its own agenda while frustrating the objectives of others. As noted above, we have already witnessed how the Shareholder might exploit this lever.
- (f) The Shareholder may also be able to impede or frustrate investigations into its own role in the collapse of the Company and the potential great loss of debt investment that it helped induce.

Why the Stalking Horse Bid is Harmful to the Process

- 24. The Company argues that there are benefits to the proposed Shareholder stalking horse bid, largely because the Company's financial advisor says that it helps create a "floor price" for the Company's assets. Based on both my personal experience and the advice of the Committee's financial advisor, Houlihan Lokey, I disagree with this claim.
- 25. Indeed, I believe that the insider stalking horse bid would be very harmful to the process for numerous reasons, including:

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- (a) The involvement of an insider stalking horse bid serves to chill the bidding process. To sophisticated market participants, the process attains the appearance of being stacked in favour of the insider. Such an outcome is even more likely to occur if the 1st Lien Lenders, looking only to get paid out themselves and not being interested in any recovery for other stakeholders, support the Shareholder. Other potential bidders looking from the outside in will be deterred from expending their time, resources and money when insiders with no interest in achieving any higher and better bids are seen as the ones driving the process.
- (b) As stated above, the bar for competing bids would be set higher by the requirement that they be superior to the Shareholder Bid by at least US\$5,772,140. This hurdle may deter potential bidders from participating in the process, and, if superior bids did clear this higher bar, US\$4,772,140 that would be otherwise paid to the Company's stakeholders would be diverted to the Shareholder. There is no justifiable basis for the equity holder of an insolvent company receiving this kind of windfall.
- (c) In the absence of far better checks and balances for the obvious conflicts of interest in play, this scenario would lend itself wide open to Shareholder manipulation. This is self-evident when the Shareholder would be wearing so many hats – namely, as current owner, controller of the purse strings as DIP lender, and stalking horse bidder. Any semblance of a level playing field and transparent process would be lost.
- (d) The Shareholder Bid is not a firm and unconditional purchase commitment. On the contrary, it remains weak, vague and highly conditional. This creates only the illusion of a “floor price”, and it lends itself to the risks of bait pricing and re-trading.
- (e) The Shareholder would be in prime position to meddle in the process. It would have considerable powers and authority, with few checks and balances. Meanwhile, seemingly no one driving the process, including the Company's representatives and advisors, would be incentivized to seek a better and higher price for the Company's assets. Such an outcome is a recipe for disaster.
- (f) It is evident that the Shareholder has fostered a poisonous relationship with key stakeholders and business partners including, but not limited to, its critical joint venture partner and the Noteholders. These CCAA proceedings have already exhibited substantial

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acrimony, mistrust and dysfunction. Perpetuating the Shareholder's prominence in these proceedings will almost certainly worsen the process and lead to further instability and higher risk. Such continued dysfunction will serve to work directly against what the goal should be – the maximization of recovery for the Company's stakeholders collectively.

- (g) Contrary to the argument that it creates a "floor price", I believe that the Shareholder Bid creates a "ceiling price". The Company's true long-term value need not be argued and determined at this point. That can be left to a fair market process. But having the Court approve a Shareholder Bid with a price that is vastly below the price at which the Noteholders were induced to invest three years ago risks being seen by potential bidders as tacit approval of its reasonableness. In effect, the Shareholder Bid price would create a new target price, as it is rare that competing bidders stray dramatically from the pricing in approved stalking horse bids.
 - (h) Approval of the Shareholder Bid would create a dangerous precedent in support of an extraordinarily unusual insider process that would result in the enrichment of subordinate ranking equity holders and selective unsecured creditors while wiping out a massive secured debt investment.
 - (i) There are signs that the diamond inventory market is starting to re-open, which would dramatically change the complexion of these proceedings, including with respect to the need or appropriateness of interim financing or even a sales transaction.
26. If the Shareholder is proceeding in good faith with its bid, there is no reason that the Shareholder cannot simply submit a bid in the SISP process on a level playing field with all other bidders.

Interim Financing

27. As has been reported by the Monitor and the Company, the Committee submitted a DIP financing proposal in the Company's initial solicitation process. The Committee's proposal was highly competitive and, in my view, set forth better terms than the Shareholder proposal eventually selected by the Company because it did not have the prominent conditionality associated with the Shareholder Bid.

28. Following the last Court hearing, the Committee's legal counsel corresponded with the Company and the Monitor to express the Committee's continuing dissatisfaction with the process. In response, the Company's legal advisors arranged a call with legal counsel to the Committee and the Monitor on Friday, June 5, 2020.
29. On that June 5, 2020 call, I am advised by the Committee's legal counsel that the Company's legal counsel expressed a willingness to review any renewed DIP proposal that the Committee was prepared to submit. Company counsel, however, cautioned that timelines were very strict and that it would need to make a final decision on the path forward within three business days, on Wednesday, June 10, 2020.
30. On the following day, Saturday, June 6, 2020, I am advised that the Committee's legal counsel had a call with the 1st Lien Lenders' legal counsel about the prospect of the Committee and the 1st Lien Lenders submitting a joint DIP financing proposal with the Committee in lieu of the prior Shareholder/1st Lien Lender financing proposal. It is my understanding that not only were the Company and the Monitor were made aware of these discussions, but that the Company itself in fact encouraged this dialogue.
31. In the coming days, the Committee and its advisors diligently and in good faith pursued this opportunity with the 1st Lien Lenders while keeping the Company updated on developments. Unfortunately, on Wednesday, June 10, 2020, the Company's decision deadline, the Committee's legal advisors were informed that the 1st Lien Lenders had decided to maintain their support for a proposed amended DIP financing facility with the Shareholder. The Committee's legal advisors notified the Company of this development and that, in light of such circumstances, it would be unable to comply with the Company's deadline and would instead await receipt of the Company's court materials to respond accordingly.
32. The Company partially served its application late on Friday, June 12, 2020. However, the Amended Shareholder DIP was not served until late on Monday, June 15, 2020. Accordingly, the Committee was unable to review and react to the Amended Shareholder DIP until Tuesday, June 16, 2020.
33. Upon reviewing it, the Committee was very disappointed that the Amended Shareholder DIP contained no improvements from the perspective of the Company's stakeholders. It is also less

attractive than interim financing proposals that the Committee has put forward. Specifically, given that the Amended Shareholder DIP remains inexorably tied to the Shareholder Bid, in my view the Amended Shareholder DIP is vastly inferior to the Committee's proposals.

34. Accordingly, the Committee is seeking that the Company be directed and authorized to enter into the Noteholder DIP in lieu of the Amended Shareholder DIP. The Noteholder DIP is modeled closely on the Amended Shareholder DIP and accordingly contains substantively the same terms and conditions. Like the Amended Shareholder DIP, it contemplates the implementation of a SISP on terms to be approved by the Court.
35. Attached as Exhibit "B" is a blacklined version of the Noteholder DIP showing differences with the Amended Shareholder DIP. These differences overwhelmingly relate only to the elimination of inter-creditor provisions between the Shareholder and the 1st Lien Lenders. Their elimination simplifies the financing proposal to its betterment and the advantage of the Company.
36. The interest rate in the Noteholder DIP is marginally higher than in the Amended Shareholder DIP in order to bring it closer to market terms and satisfy the internal investment requirements of the Noteholders for financings of this nature. The Amended Shareholder DIP engaged in bait pricing because any reduced market interest rate in the Amended Shareholder DIP would be easily recaptured and more than offset by the monetary and tactical benefits associated with the break-up fee, expense reimbursement and preferential advantages in the linked Shareholder Bid. In any case, I calculate that the total interest differential between the Noteholder DIP and the Amended Shareholder DIP for the duration of these proceedings amounts to only US\$484,000 based on the Company's budgeted needs. This is a small fraction of the costs associated with the Shareholder Bid, and nominal in relation to what is at stake in these proceedings.
37. The only other meaningful difference between the Noteholder DIP and the Amended Shareholder DIP is that the Noteholder DIP does not come with any strings attached relating to a stalking horse bid. The Committee has openly disclosed that it is diligently working on a proposed bid in the SISP based in part on a credit bid structure. However, unlike the Shareholder, it is not seeking to get a leg up on all competing bidders by obtaining up-front stalking horse bid advantages and privileges.

- 38. The foregoing constitute the principal, and in my view only material, differences between the Noteholder DIP and the Amended Shareholder DIP. The Noteholder DIP’s terms are equally or more beneficial to the Company and the Company’s collective stakeholders. The Noteholder DIP also treats the 1st Lien Lenders in the same manner as the Amended Shareholder DIP. Given that the 1st Lien Lenders evidently approved of the Amended Shareholder DIP, it would not be credible for them to oppose the fairness and appropriateness of the terms of the Noteholder DIP. The ranking of the charges in the Noteholder DIP, relative to existing 1st Lien Lender and other charges, is identical to the ranking of the charges in the Amended Shareholder DIP.
- 39. The decision as to the better path comes down to, in my view, arguments regarding the relative disadvantages or advantages of proceeding with an insider stalking horse bid from the outset of the proposed SISP. For all the reasons stated above and more, I am strongly of the belief that an open, level and transparent process that does not involve a Shareholder stalking horse bid will far better serve the objectives of these proceedings and the collective interests of the Company’s stakeholders.
- 40. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear in this Affidavit. I, however, was linked by way of video technology to the Notary Public notarizing this document.
- 41. I swear this Affidavit in opposition to the present application by the Company, and in support of the Committee’s responding request for an Order directing and authorizing Dominion Diamond and certain of its affiliates to immediately execute and deliver the Noteholder DIP.
- 42. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta,)
 this 17th day of June, 2020.)
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 _____)
 Notary Public or Commissioner for Oaths in)
 and for the Province of Alberta)



ERIC HOFF

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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
File No. 2001-05630

AFFIDAVIT OF ERIC HOFF
Sworn on June 17, 2020

I, Eric Hoff, of the City of Waltham, in the State of Massachusetts, Senior Research Analyst of DDJ Capital Management, LLC, **MAKE OATH AND SAY THAT:**

1. I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief, and where so stated I believe the same to be true. I swear

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7. The Company is hardly alone in experiencing short term financial distress. Countless other businesses are in similar circumstances, yet we are not witnessing widespread fire sales of companies across the spectrum. It was puzzling to me that the Company was leaning decidedly in the direction of a quick sale from the moment it initiated these CCAA proceedings because companies typically seek to avoid distressed sales in order to enhance recovery for all existing stakeholders. On the contrary, companies usually look to pursue more orderly processes that consider both possible sales or investments and plans of arrangement or compromise before determining the best course of action.
8. Compounding those early warning signs was the Company's announcement that it was considering an insider proposal from its current ownership group (the "**Shareholder**"). The Company disclosed that the Shareholder's proposal offered interim financing that would permit the Company to run a prompt sales process, but only if the Company could be induced to accept the Shareholder's terms for the effective repurchase of the Company's business and assets by way of a stalking horse bid (the "**Shareholder Bid**").
9. In my experience, repurchase bids from existing owners are unusual but not unprecedented. It is, however, highly unusual for the restructuring process from the outset to revolve around a stalking horse bid from the existing ownership group.
10. A circumstance where the process is being driven by an ownership stalking horse bid calls for the highest standard of governance protocols, and a variety of checks and balances should be implemented to safeguard the integrity of the process. In the case of the Company, all of this seems to be decidedly lacking. The Company has rested most of its assurances on representations that a lone "independent" director is making pertinent decisions. That is an extraordinary amount to ask of one individual but, more importantly, the Company has failed to provide fulsome and transparent information about the extent of that one director's past and present relationships, dealings and communications with the Shareholders. Similar information is also lacking about the Company's other representatives.

11. Although I take some comfort from the involvement of the court-appointed monitor, the complexity and uniqueness of this Company and the diamond market render it a difficult challenge for any court-appointed monitor to properly scrutinize and independently verify the appropriateness of the activities, recommendations and decisions of Company representatives who may be cloaked in the veil of first-hand knowledge and experience.
12. In closely observing these CCAA proceedings, it has been evident to me that the Company remains fully aligned with the Shareholder notwithstanding the significant insider concerns that have been raised to date. There is little to suggest any contradiction or independent testing of the Shareholder's demands. Instead, the Company has repeatedly and vehemently defended the Shareholder at every step. Conversely, the Company has shown little timidity in fighting major stakeholders who have a real and continuing economic interest in the Company as a going concern, including the Committee, the Note indenture trustee, the Company's critical joint venture partner, and anyone who has dared to challenge the Shareholder's agenda.
13. That Shareholder agenda is, in my view, very clear. The offer of DIP financing is quite simply a means-to-an-end for the Shareholder. The real prize at stake is the linked stalking horse bid. In short, if the Shareholder has its way, it will profit from the harm occasioned to the Noteholders and other stakeholders – in the end, it could own the same assets as before the Company experienced this short-term distress, but with far less debt on the balance sheet. Notably, the debt shed would be comprised almost entirely of the Noteholders' secured position.
14. Although the Company and the Shareholder have made efforts to distinguish approval of the Shareholder's stalking horse bid from the ultimate approval of it or another transaction later in these CCAA proceedings, the stalking horse bid, particularly in the hands of a closely-involved insider, provides great advantage and opportunity to the Shareholder.
15. This conclusion is evident in the zeal with which the Shareholder is fighting to achieve stalking horse status. It strains credulity to suggest that the Shareholder is acting in a benevolent manner by creating "a floor price" for all bids. If the Shareholder's intentions were true, the Shareholder could still create a "floor price" simply by submitting an even-handed bid as part of the competitive process in the Company's proposed Sale and Investment Solicitation Process ("SISP"). That it is fighting so hard to get the inside track in the sales process by

submitting a stalking horse bid is patent evidence of the advantages that the Shareholder perceives in playing that role relative to other bidders.

16. In addition to the consequences associated with the Shareholder having an inside track, I am greatly concerned that the Shareholder, as the stalking horse bidder, would gain rights and powers that it would exploit to the relative disadvantage of the Company's stakeholders. I believe that we have already witnessed the Shareholder's willingness to exploit leverage given to it. By way of example, I note that the Amended Shareholder DIP served on June 15, 2020 contains a new provision that expressly prohibits the payment of any stakeholder's expenses in these proceedings if, in effect, they pertain to anything that challenges the interests and objectives of the Shareholder. Such a provision acts as an omen of the manner in which the Shareholder is likely to conduct itself if handed any levers.
17. Following the May 29 and June 3 hearings, it was self-evident that the Company's decision to move forward with the Shareholder as the stalking horse bidder had created a great amount of waste, mistrust and acrimony and that these proceedings were on the wrong track. I therefore hoped that the Company's representatives would effectively "reboot" and take a fresh new direction and approach. Instead, with the filing of the Company's application record for the June 19, 2020 hearing, it is now evident that most of its time and efforts since the most recent hearing on June 3, 2020 have been dedicated to doubling down on cramming the Shareholder's agenda on the Company's stakeholders.

The Company's Application

18. Very late on Friday, June 12, 2020, the Company partially served its application for the June 19, 2020 hearing. The application included the new Shareholder Bid and SISP, but it was missing what is arguably the most critical component that is driving the process and its timelines – the Amended Shareholder DIP. A cover email addressed to all counsel simply said that the term sheet remained the subject of inter-creditor discussions between the Shareholder and the lenders under the Company's senior secured credit facility (the "**1st Lien Lenders**"). The email went on to say that the term sheet would be served as soon as practical ahead of June 19, 2020. As it turns out, the Amended Shareholder DIP was not served until late on Monday, June 15, 2020.

19. Overall, the Company's application is very disappointing. There is nothing to suggest that the Company learned any lessons from its past mishandling of the process. Instead, it has forged ahead along the same path and has not achieved any real gains for its stakeholders as it remains firmly entrenched alongside the Shareholder. It seems to me that the entirety of the Company's focus since the last hearing has been on dressing up the highly conditional and vague Shareholder Bid to give the impression that it is something else.

The Shareholder Bid

20. The Shareholder Bid reflects no meaningful improvements to the previously filed proposed stalking horse term sheet. It still provides for recovery of only a fraction of the Company's overall debt obligations, with 100% of that small recovery going to the 1st Lien Lenders. In fact, the Shareholder Bid seems cynically designed to offer cash that is just barely sufficient to repay the debt of the 1st Lien Lenders while leaving absolutely no recovery for holders of the Notes.
21. The Shareholder Bid is changed only in form, and not in substance. It is now set forth in a lengthier standard asset purchase agreement that contains extensive representations and warranties, covenants, and other typical terms that create an inference of firmness relative to the former 11-page term sheet.
22. The new Shareholder Bid does not, however, hold up to closer scrutiny. Its numerous deficiencies include the following:
- (a) The Shareholder Bid remains subject to a broad financing condition that effectively gives the Shareholder a free option to acquire the Company's business and assets until at least July 31, 2020. Moreover, it is also drafted in a highly favourable way for the Shareholder. For example, if the Shareholder fails to satisfy the financing condition by July 31, 2020, the Shareholder Bid does not automatically terminate. Instead, the Company would simply have the right, and not the obligation, to terminate the Shareholder Bid, and that right can be exercised only with the consent of the 1st Lien Lenders. This provides no protection to the Noteholders and other stakeholders, and it concentrates critical decision-making and control of the process in only a few hands.

- (b) The Shareholder has the power of optionality as to whether the Company's interests in the Diavik mine are or are not included in the transaction. Diavik is one of the Company's two major assets. It is not simply tangential. Granting the Shareholder a free option to include or exclude the Diavik interests creates great uncertainty. This uncertainty relates not only to the Company's ownership interests, but also the associated reclamation liabilities for which the 1st Lien Lenders have issued letters of credit and can assert recovery claims against the Company's non-Diavik assets.
- (c) There is little new clarity as to what obligations of the Company the Shareholder would or would not assume as part of the Shareholder Bid. The Shareholder retains the option until very late in the process to designate which contracts it chooses, in its discretion, to assume or strand behind. Although the Company's materials suggest that improvement has been achieved because the Shareholder has committed to assuming up to \$20 million of "cure cost" liabilities, that commitment relates only to the maximum amount of payments that the Shareholder may make for contracts it chooses to assume. If the Shareholder elects not to assume any contracts, the value of that commitment is nil.
- (d) Uncertainty also remains with respect to which employees will retain a job with the Company. Despite a general statement that the Shareholder will take on substantially all employees in the repurchased business, there are clear rights to leave behind whomever the Shareholder designates.
- (e) There are very extensive conditions. These include a requirement that the Shareholder enter into new agreements acceptable to it with respect to reclamation liabilities, including with governmental authorities and bonding companies. A myriad of other material conditions includes regulatory and other approvals.
- (f) In addition to all other conditions, the Shareholder Bid is qualified by a broadly worded material change clause that permits the Shareholder to back out with impunity if conditions worsen to the detriment of the Shareholder.
- (g) At US\$126-US\$131 million, the purchase price remains far lower than the value that the Company and the Shareholder had attributed to the Company's business and assets at any time before these proceedings, and inconsistent with both the basis on which the

Noteholders had been induced to invest in the Company and the Company's earlier indications in these proceedings that its financial difficulties were caused by short-term factors. Efforts in the Company's materials to fluff up the total purchase price are misleading. For example, the proposed conditional bonding arrangements for reclamation liabilities contemplate a continuation of substantially existing arrangements and do not constitute payment of value by the Shareholder for the benefit of the Company's stakeholders.

Why the Shareholder wants to be the Stalking Horse Bidder

23. Stalking horse bids generally come with significant advantages relative to other bids in a sales process. In particular, insider stalking horse bids like the one currently proposed are especially advantageous to the bidder. Based on my experience, I note the following preferential benefits that the Shareholder would gain if the Shareholder Bid were to be approved:
- (a) The Shareholder would stand to earn a large break-up fee of US\$2,522,140 and expense reimbursement of US\$2,250,000 if the Company selected a different transaction. These provisions not only create a potential windfall for an otherwise out-of-the-money equity holder and protect its downside risks, but they also create a steeper hill for other bidders. In fact, other bidders would also be required to overbid by yet another US\$1,000,000 under the terms of the proposed SISP. In short, competing bids would have to be superior to the Shareholder Bid by at least US\$5,772,140.
 - (b) The Shareholder would gain a huge head start in conducting due diligence and in further developing, negotiating and advancing its bid. It could gain immediate access to critical business partners which other bidders might not have until much later in the SISP process. All bids of this kind will turn heavily on support from governmental authorities, employees, surety companies, joint venture owners, and other critical partners. The Shareholder's big head start would allow it to satisfy conditionality long before other bidders and create valuable momentum in its favour. Competing bids that tried to play catch-up would face the risk of being disqualified or ranked inferior in the SISP process if they retained more conditions because they had not been afforded the same time and access.

- (c) The Shareholder Bid may serve as deterrent on other potential bidders. To anyone else considering a competing bid, it may seem that the process is too well stacked in favour of an insider stalking horse bid, supported by 1st Lien Lenders who would be barely paid out by the Shareholder Bid and who would not be incentivized to seek higher value. This dynamic, especially in the current macroeconomic climate, can cause prospective bidders to simply walk away and thereby enhances the probability of the Shareholder Bid being successful.
- (d) Psychology often works in favour of a stalking horse bidder. Given that it is allotted so much time and attention, stalking horse bidders hope to achieve psychological buy-in to their bid on the part of those running the process, and a perception that they are the path of least resistance. Later comers typically face an uphill battle in gaining the same level of attention.
- (e) The Shareholder Bid is treated differently than bids in the SISF in a number of important respects, including that the Shareholder is not required to pay a deposit and has assurances that it will automatically proceed through the process without facing disqualification risk.
- (e) Through its control of the purse strings, the Shareholder would be able to further promote its own agenda while frustrating the objectives of others. As noted above, we have already witnessed how the Shareholder might exploit this lever.
- (f) The Shareholder may also be able to impede or frustrate investigations into its own role in the collapse of the Company and the potential great loss of debt investment that it helped induce.

Why the Stalking Horse Bid is Harmful to the Process

- 24. The Company argues that there are benefits to the proposed Shareholder stalking horse bid, largely because the Company's financial advisor says that it helps create a "floor price" for the Company's assets. Based on both my personal experience and the advice of the Committee's financial advisor, Houlihan Lokey, I disagree with this claim.
- 25. Indeed, I believe that the insider stalking horse bid would be very harmful to the process for numerous reasons, including:

- (a) The involvement of an insider stalking horse bid serves to chill the bidding process. To sophisticated market participants, the process attains the appearance of being stacked in favour of the insider. Such an outcome is even more likely to occur if the 1st Lien Lenders, looking only to get paid out themselves and not being interested in any recovery for other stakeholders, support the Shareholder. Other potential bidders looking from the outside in will be deterred from expending their time, resources and money when insiders with no interest in achieving any higher and better bids are seen as the ones driving the process.
- (b) As stated above, the bar for competing bids would be set higher by the requirement that they be superior to the Shareholder Bid by at least US\$5,772,140. This hurdle may deter potential bidders from participating in the process, and, if superior bids did clear this higher bar, US\$4,772,140 that would be otherwise paid to the Company's stakeholders would be diverted to the Shareholder. There is no justifiable basis for the equity holder of an insolvent company receiving this kind of windfall.
- (c) In the absence of far better checks and balances for the obvious conflicts of interest in play, this scenario would lend itself wide open to Shareholder manipulation. This is self-evident when the Shareholder would be wearing so many hats – namely, as current owner, controller of the purse strings as DIP lender, and stalking horse bidder. Any semblance of a level playing field and transparent process would be lost.
- (d) The Shareholder Bid is not a firm and unconditional purchase commitment. On the contrary, it remains weak, vague and highly conditional. This creates only the illusion of a “floor price”, and it lends itself to the risks of bait pricing and re-trading.
- (e) The Shareholder would be in prime position to meddle in the process. It would have considerable powers and authority, with few checks and balances. Meanwhile, seemingly no one driving the process, including the Company's representatives and advisors, would be incentivized to seek a better and higher price for the Company's assets. Such an outcome is a recipe for disaster.
- (f) It is evident that the Shareholder has fostered a poisonous relationship with key stakeholders and business partners including, but not limited to, its critical joint venture partner and the Noteholders. These CCAA proceedings have already exhibited substantial

acrimony, mistrust and dysfunction. Perpetuating the Shareholder's prominence in these proceedings will almost certainly worsen the process and lead to further instability and higher risk. Such continued dysfunction will serve to work directly against what the goal should be – the maximization of recovery for the Company's stakeholders collectively.

- (g) Contrary to the argument that it creates a "floor price", I believe that the Shareholder Bid creates a "ceiling price". The Company's true long-term value need not be argued and determined at this point. That can be left to a fair market process. But having the Court approve a Shareholder Bid with a price that is vastly below the price at which the Noteholders were induced to invest three years ago risks being seen by potential bidders as tacit approval of its reasonableness. In effect, the Shareholder Bid price would create a new target price, as it is rare that competing bidders stray dramatically from the pricing in approved stalking horse bids.
 - (h) Approval of the Shareholder Bid would create a dangerous precedent in support of an extraordinarily unusual insider process that would result in the enrichment of subordinate ranking equity holders and selective unsecured creditors while wiping out a massive secured debt investment.
 - (i) There are signs that the diamond inventory market is starting to re-open, which would dramatically change the complexion of these proceedings, including with respect to the need or appropriateness of interim financing or even a sales transaction.
26. If the Shareholder is proceeding in good faith with its bid, there is no reason that the Shareholder cannot simply submit a bid in the SISP process on a level playing field with all other bidders.

Interim Financing

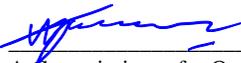
27. As has been reported by the Monitor and the Company, the Committee submitted a DIP financing proposal in the Company's initial solicitation process. The Committee's proposal was highly competitive and, in my view, set forth better terms than the Shareholder proposal eventually selected by the Company because it did not have the prominent conditionality associated with the Shareholder Bid.

28. Following the last Court hearing, the Committee's legal counsel corresponded with the Company and the Monitor to express the Committee's continuing dissatisfaction with the process. In response, the Company's legal advisors arranged a call with legal counsel to the Committee and the Monitor on Friday, June 5, 2020.
29. On that June 5, 2020 call, I am advised by the Committee's legal counsel that the Company's legal counsel expressed a willingness to review any renewed DIP proposal that the Committee was prepared to submit. Company counsel, however, cautioned that timelines were very strict and that it would need to make a final decision on the path forward within three business days, on Wednesday, June 10, 2020.
30. On the following day, Saturday, June 6, 2020, I am advised that the Committee's legal counsel had a call with the 1st Lien Lenders' legal counsel about the prospect of the Committee and the 1st Lien Lenders submitting a joint DIP financing proposal with the Committee in lieu of the prior Shareholder/1st Lien Lender financing proposal. It is my understanding that not only were the Company and the Monitor were made aware of these discussions, but that the Company itself in fact encouraged this dialogue.
31. In the coming days, the Committee and its advisors diligently and in good faith pursued this opportunity with the 1st Lien Lenders while keeping the Company updated on developments. Unfortunately, on Wednesday, June 10, 2020, the Company's decision deadline, the Committee's legal advisors were informed that the 1st Lien Lenders had decided to maintain their support for a proposed amended DIP financing facility with the Shareholder. The Committee's legal advisors notified the Company of this development and that, in light of such circumstances, it would be unable to comply with the Company's deadline and would instead await receipt of the Company's court materials to respond accordingly.
32. The Company partially served its application late on Friday, June 12, 2020. However, the Amended Shareholder DIP was not served until late on Monday, June 15, 2020. Accordingly, the Committee was unable to review and react to the Amended Shareholder DIP until Tuesday, June 16, 2020.
33. Upon reviewing it, the Committee was very disappointed that the Amended Shareholder DIP contained no improvements from the perspective of the Company's stakeholders. It is also less

attractive than interim financing proposals that the Committee has put forward. Specifically, given that the Amended Shareholder DIP remains inexorably tied to the Shareholder Bid, in my view the Amended Shareholder DIP is vastly inferior to the Committee's proposals.

34. Accordingly, the Committee is seeking that the Company be directed and authorized to enter into the Noteholder DIP in lieu of the Amended Shareholder DIP. The Noteholder DIP is modeled closely on the Amended Shareholder DIP and accordingly contains substantively the same terms and conditions. Like the Amended Shareholder DIP, it contemplates the implementation of a SISP on terms to be approved by the Court.
35. Attached as Exhibit "B" is a blacklined version of the Noteholder DIP showing differences with the Amended Shareholder DIP. These differences overwhelmingly relate only to the elimination of inter-creditor provisions between the Shareholder and the 1st Lien Lenders. Their elimination simplifies the financing proposal to its betterment and the advantage of the Company.
36. The interest rate in the Noteholder DIP is marginally higher than in the Amended Shareholder DIP in order to bring it closer to market terms and satisfy the internal investment requirements of the Noteholders for financings of this nature. The Amended Shareholder DIP engaged in bait pricing because any reduced market interest rate in the Amended Shareholder DIP would be easily recaptured and more than offset by the monetary and tactical benefits associated with the break-up fee, expense reimbursement and preferential advantages in the linked Shareholder Bid. In any case, I calculate that the total interest differential between the Noteholder DIP and the Amended Shareholder DIP for the duration of these proceedings amounts to only US\$484,000 based on the Company's budgeted needs. This is a small fraction of the costs associated with the Shareholder Bid, and nominal in relation to what is at stake in these proceedings.
37. The only other meaningful difference between the Noteholder DIP and the Amended Shareholder DIP is that the Noteholder DIP does not come with any strings attached relating to a stalking horse bid. The Committee has openly disclosed that it is diligently working on a proposed bid in the SISP based in part on a credit bid structure. However, unlike the Shareholder, it is not seeking to get a leg up on all competing bidders by obtaining up-front stalking horse bid advantages and privileges.

EXHIBIT A


A Commissioner for Oaths in and for the Province of Alberta

INTERIM FINANCING TERM SHEET

Dominion Diamond Mines ULC

Mihai Tomos
Barrister & Solicitor

Dated as of June 17, 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;

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 by the Interim Lenders in their sole and absolute discretion. 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 the other Interim Lenders may, at their 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 the other Interim Lenders or as they may direct (if the other Interim Lenders accept 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(s) (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. **ADMINISTRATIVE AGENT AND COLLATERAL AGENT** Such administrative agent and collateral agent as the Initial Lenders may designate (the "**Agent**").

4. **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 shall include the parties set forth on Schedule "**D**" hereof and

such other subsidiaries and affiliates of the Borrower as the Interim Lenders may require.

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

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

6. **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 both 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**”) and Advances to be used to make Permitted Payments on account of obligations that accrued on or after October 1, 2020 through the Outside Date (“**October Advances**”), each Interim Lender shall fund solely its pro rata share of each Phase 1 and Phase 2 Advance and October Advance based on such Interim Lender’s share of the total Commitments in respect of Phase 1 and Phase 2 Advances and October Advances set out in Part I of Schedule “F”.

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.

7. 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 and the Agent, subject to the DIP Budget, (iv) the Existing Credit Facility Lenders, subject to the DIP Budget, (v) the AHNCM, subject to the DIP Budget, and (vi) the Indenture Trustee, 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 the Required Interim Lenders in their sole and absolute discretion 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.

8. 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 the Required Interim Lenders, 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 Required Interim Lenders, in their sole and absolute discretion must be satisfied with any provision of the Amended Initial Order (or any subsequent Court Order) relating to the Interim Facility or the SISP. The Amended Initial Order shall, without limitation, (i) approve this Term Sheet (subject only to such modifications as may be acceptable to the Required Interim Lenders in their sole and absolute discretion), (ii) authorize the Borrower to borrow up to the Facility Amount under the Interim Facility, (iii) grant to the Interim Lenders and the Agent on behalf of 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 Required Interim Lenders, in their sole and absolute discretion.
- (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, or any other matter that affects the Interim Lenders, without the written consent of the Required Interim Lenders, in their sole and absolute discretion.
- (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 Interim Lenders shall be satisfied, acting reasonably, that the amount, quality, value and location of the Credit Parties' diamond inventory is substantially the same as has been disclosed by the Applicants to the Interim Lenders and otherwise in the CCAA Proceedings.

9. COSTS AND EXPENSES

The Borrower shall reimburse the Interim Lenders and the 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 the Agent or any of their affiliates in connection with the negotiation, development, and implementation of the 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.

10. INTERIM FACILITY SECURITY:

All Interim Financing Obligations shall be secured by the Interim Lenders' Charge. The Required Interim Lenders, or the Agent on their behalf, 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.

11. INTER-COMPANY ADVANCES:

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

12. 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.

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

14. **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.

15. **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, subject to modifications to appropriately reflect the terms of this term sheet, including without limitation, by way of removing expenses and other costs relating to any stalking horse bid and by way of adding the reimbursable expenses and other costs provided herein. 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 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 (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 the Required Interim Lenders, in their sole and absolute 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 the Required Interim Lenders, in their sole and absolute discretion, the prior DIP Budget shall remain in effect.

At any time, the Updated DIP Budget is accepted by the Required Interim Lenders, 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 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 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.

16. 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.

17. 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 (v) and (vi) 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).

18. 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 LIBOR (or 1%, whichever is greater) plus 700 bps, 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.

19. 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.

**20. MANDATORY
REPAYMENTS:**

Unless otherwise consented to in writing by the Required Interim Lenders, 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.

21. **REPS AND
WARRANTIES:**

Each of the Credit Parties on a joint and several basis, represents and warrants to the Interim Lenders and the Agent, upon which the Interim Lenders and the Agent 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, and (B) 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 any agreement effecting a Successful Bid 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.

22. 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 Agent, the Interim Lenders and the AHNCM reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Credit Parties and to the Credit Parties’ critical business partners including, without limitation, governmental authorities, employee representatives and joint venture partners, and (ii) cause management, the financial advisor and/or legal counsel of each Credit Party to cooperate with reasonable requests for information by the Agent, the Interim Lenders and the AHNCM 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 Agent and the Interim Lenders 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 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, and preserve all permits, rights, licenses and similar entitlements necessary or desirable for the Credit Parties’ businesses and operations;
- (i) Provide the Interim Lenders, the Agent, the AHNCM 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, or the SISP shall be reasonably satisfactory to the Required Interim Lenders;
- (j) Take all actions necessary or available to defend the Court Orders that affect the Interim Lenders, 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 in their reasonable discretion;

- (k) Promptly provide notice to the Interim Lenders, the Agent, the AHNCM 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 Interim Lenders, the Agent, the AHNCM 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 Required Interim Lenders and their 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 and the Agent deem appropriate, to satisfy the Interim Lenders, the Agent and their counsel and their 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 the Agent and cause the Agent, on behalf of the Interim Lenders, to be listed as the loss payee or additional insured (as applicable) on such insurance policies in accordance with the respective interests of the Interim Lenders in the Interim Financing Obligations;

- (p) Pay all Interim Lender Expenses and expenses of the Agent and the AHNCM in accordance with the DIP Budget;
- (q) Promptly upon becoming aware thereof, provide details of the following to the Interim Lenders and the Agent and the AHNCM:
 - (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 15;
- (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 Agent, is not likely to be stayed in the CCAA Proceedings, the applicable Credit Party, in consultation with the Required Interim Lenders and the 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 Agent, determine is necessary, which Recognition Order shall be in form and substance satisfactory to the Required Interim Lenders and the 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

- (v) Protect, secure and safeguard all their diamond inventory in a diligent manner satisfactory to the Required Interim Lenders and the Agent, and cause their respective subsidiaries and other affiliates to do the same, and diligently collect from their respective subsidiaries and affiliates any receivables and other amounts collectible from them.

**23. 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:

- (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 the Required Interim Lenders, 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 the Required Interim Lenders, 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 Required Interim Lenders in their sole and absolute discretion;

- (f) Except as may be otherwise ordered by the Court, 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, the Agent and the AHNCM, 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 Required Interim Lenders in their reasonable discretion;
- (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 Required Interim Lenders, 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 Required Interim Lenders, 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 Required Interim Lenders, 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 Required Interim Lenders, 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 Required Interim Lenders, 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;
- (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;
- (u) Enter into any transactions or agreements with any affiliates or other related persons; or
- (v) Sell, transfer, move or relocate any diamond inventory wherever it may be held.

**24. 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 24 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 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, (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 Supermajority Interim Lenders, 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 Required Interim Lenders, 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 Required Interim Lenders, 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 Required Interim Lenders;
- (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 the Required Interim Lenders in their 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 the Required Interim Lenders, 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 Required Interim Lenders, in their sole and absolute discretion.

25. REMEDIES:

Upon the occurrence of an Event of Default, and subject to the Court Orders, the Agent, at the direction of the Required Interim Lenders, shall 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, the Agent, at the direction of the Required Interim Lenders, shall, on behalf of itself and each of the Interim Lenders, 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.

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.

26. INDEMNITY AND RELEASE:

The Credit Parties agree, on a joint and several basis, to indemnify and hold harmless each of the Interim Lenders, the Agent 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 and the Agent 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, 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:

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. The Interim Lenders also have the right to sell participations, subject to customary limitations on voting rights acceptable to the Required Interim Lenders in their sole discretion, in their respective Advances or Commitments.

32. **CREDIT BIDDING:** In any sale of any Credit Party's Collateral, the Interim Lenders shall be permitted, in their sole and absolute discretion, to credit bid up to the full amount of the then outstanding Interim Financing Obligations and the AHNCM shall be permitted, in their sole and absolute discretion, to credit bid up to the full amount of the 7.125% senior secured second lien notes issued by the Borrower.
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 Agent, 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 presentes conferent gue le present acte et sous les documents y relatifs furent rediges en anglais c't 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). Where in this Term Sheet any matter requires the consent or approval of the Interim Lenders, unless otherwise specifically stated such consent or approval right may be exercised by the Required Interim Lenders.
41. **SUPPORT OF TRANSACTION** By executing this Term Sheet, the Credit Parties agree that they will:
- (a) Cooperate with the Interim Lenders and the Agent with respect to the SISP and the implementation thereof, and 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 involving the Applicants, any of their assets or stock, or any plan of arrangement, reorganization or liquidation under any bankruptcy, insolvency or similar laws, except as provided for in the SISP and otherwise permitted by this Term Sheet;
 - (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 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), except as provided for in the SISP and otherwise permitted by this Term Sheet;
 - (d) Not object to the Interim Facility or the SISP 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, 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.

The Borrower and the Guarantors shall indicate their respective acceptance of the terms hereof by returning to the Interim Lenders executed counterparts hereof not later than 12:00 p.m., Toronto time, on June 20, 2020. This term sheet will automatically expire at such time if the Interim Lenders have not received such executed counterparts in accordance with the preceding sentence.

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

By: 

Name: David J. Breazzano
Title: President

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

By: _____
Name:
Title:

**WESTERN ASSET MANAGEMENT
COMPANY, LLC**

By: _____
Name:
Title:

The Borrower and the Guarantors shall indicate their respective acceptance of the terms hereof by returning to the Interim Lenders executed counterparts hereof not later than 12:00 p.m., Toronto time, on June 20, 2020. This term sheet will automatically expire at such time if the Interim Lenders have not received such executed counterparts in accordance with the preceding sentence.

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

By: _____
Name: David J. Breazzano
Title: President

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

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

**WESTERN ASSET MANAGEMENT
COMPANY, LLC**

By: _____
Name:
Title:

The Borrower and the Guarantors shall indicate their respective acceptance of the terms hereof by returning to the Interim Lenders executed counterparts hereof not later than 12:00 p.m., Toronto time, on June 20, 2020. This term sheet will automatically expire at such time if the Interim Lenders have not received such executed counterparts in accordance with the preceding sentence.

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

By: _____

Name: David J. Breazzano

Title: President

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

By: _____

Name:

Title:

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

By: _____



Name: Adam Wright

Title: Manager, U.S. Legal Affairs

Accepted and agreed as of June __, 2020:

DOMINION DIAMOND MINES ULC

By: _____
Name:
Title:

**WESTERN DIAMOND
INVESTMENTS, LLC**

By: _____
Name: Joseph M. Racicot
Title:

**DOMINION DIAMOND HOLDINGS,
LLC**

By: _____
Name: Joseph M. Racicot
Title:

DOMINION FINCO INC.

By: _____
Name: Joseph M. Racicot
Title:

**DOMINION DIAMOND DELAWARE
COMPANY, LLC**

By: _____
Name: Kristal Kaye
Title:

**DOMINION DIAMOND CANADA
ULC**

By: _____
Name: Kristal Kaye
Title:

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 8.

"Advance Request Certificate" has the meaning given thereto in Section 6.

"AHNCM" means the members of the ad hoc committee of the Borrower's 7.125% senior secured second lien notes in the CCAA Proceedings, comprising on the date of the Term Sheet DDJ Capital Management, LLC, Barings LLC, and Brigade Capital Management LP.

"AHNCM Bid" means any bid or offer submitted by some or all of the AHNCM pursuant to the SISP.

"Amended Initial Order" has the meaning given thereto in Section 8(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 22(t).

"Bankruptcy Court Order" has the meaning given thereto in Section 22(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 18(a).

“**Criminal Rate**” has meaning given thereto in Section 18(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 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, which financial projections may be amended from time to time in accordance with Section 15. 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 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 24.

“**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 6.

“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 4.

“Indemnified Persons” has the meaning given thereto in Section 26.

“Indenture Trustee” means Wilmington Trust, National Association, as trustee under the Borrower’s 7.125% senior secured second lien notes.

“Initial DIP Budget” has the meaning given thereto in Section 15.

“Initial Order” has the meaning given thereto in the Recitals.

“Interim Facility” has the meaning given thereto in Section 6.

“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 8.

“**Interim Lender Expenses**” has the meaning given thereto in Section 9.

“**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 CD\$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 14.

“**Monitor**” has the meaning given thereto in Section 13.

“**Non-Consenting Lender**” means any Interim Lender 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 the other Interim Lenders 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 19.

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

“**Other Currency**” has the meaning given thereto in Section 19.

“**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 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) 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 (vi) 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) a transaction pursuant to an AHNCM Bid;
- (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 Existing Credit Facility 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 22(t).

"Required Interim Lenders" means those Interim Lenders holding a majority of the Commitments and any outstanding Advances held by all Interim Lenders.

“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.

“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 Required Interim Lenders.

“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.

“Supermajority Interim Lenders” means those Interim Lenders holding at least 68% of the Commitments and outstanding Advances held by all Interim Lenders.

“Term Sheet” means this interim financing 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 15.

“Updated DIP Budget” has the meaning given thereto in Section 15.

“Variance Report” has the meaning given thereto in Section 15.

“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 Interim Financing Term Sheet made as of June 17, 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.

5. 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

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 no later than June 19, 2020.
2. The Amended Initial Order, which shall have approved the DIP and the SISP, 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 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. DDJ Capital Management, LLC, on behalf of certain funds and/or accounts that it manages and/or advises	\$22,916,667	45.45%
2. Brigade Capital Management LP, acting as investment advisor on behalf of certain managed funds and accounts	\$22,916,667	45.45%
3. Western Asset Management Company, LLC	\$9,166,666	18.18%
TOTAL	\$55,000,000	100%

PART II.

COMMITMENTS IN RESPECT OF OCTOBER ADVANCES

Interim Lender	Commitments	Share of Total Commitments
1. DDJ Capital Management, LLC, on behalf of certain funds and/or accounts that it manages and/or advises	\$2,083,333	45.45%
2. Brigade Capital Management LP, acting as investment advisor on behalf of certain managed funds and accounts	\$2,083,333	45.45%
3. Western Asset Management Company, LLC	\$833,334	18.18%
TOTAL	\$5,000,000	100%

EXHIBIT B

AMENDED AND RESTATED INTERIM FINANCING TERM SHEET


A Commissioner for Oaths in
and for the Province of Alberta

Dominion Diamond Mines ULC

Dated as of June ~~15~~, 17, 2020

Mihai Tomos
Barrister & Solicitor

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:

- BORROWER:** Dominion Diamond Mines ULC, an unlimited liability company formed under the laws of British Columbia (the "**Borrower**").
- 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~~ by the Interim Lenders in their 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~~ the other Interim Lenders may, at ~~its~~ their 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~~ the other Interim Lenders or as they may direct (if the other Interim Lenders accept 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(s) (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. ADMINISTRATIVE AGENT AND COLLATERAL AGENT Such administrative agent and collateral agent as the Initial Lenders may designate (the “Agent”).

4. ~~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~~ shall include the parties set forth on Schedule “~~D-hereof~~” hereof and such other subsidiaries and affiliates of the Borrower as the Interim Lenders may require.

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

5. ~~4-~~ DEFINED TERMS:

Unless otherwise defined herein, capitalized words and phrases used in this Term Sheet have the meanings given thereto in Schedule “A”.

6. ~~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 both 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”) and Advances to be used to make Permitted Payments on account of obligations that accrued on or after October 1, 2020 through the Outside Date (“October Advances”), each Interim Lender shall fund solely its pro rata share of each Phase 1 and Phase 2 Advance and October Advance based on such Interim Lender’s share of the total Commitments in respect of Phase 1 and Phase 2 Advances and October 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.

7. ~~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 and the Agent, subject to the DIP Budget ~~and~~, (iv) the Existing Credit Facility Lenders, subject to the DIP Budget, (v) the AHNCM, subject to the DIP Budget, and (vi) the Indenture Trustee, 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.

8. ~~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, or 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~~ Required 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 to the Interim Lenders and the Agent on behalf of 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 SISF 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 SISF.
- (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 SISF, ~~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 SISF 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.~~ Interim Lenders shall be satisfied, acting reasonably, that the amount, quality, value and location of the Credit Parties’ diamond inventory is substantially the same as has been disclosed by the Applicants to the Interim Lenders and otherwise in the CCAA Proceedings.

9. ~~8.~~ COSTS AND

The Borrower shall reimburse the Interim Lenders and the ~~Existing Credit~~

EXPENSES

~~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 the Agent or any of their affiliates ~~and the Existing Credit Facility Agent~~ in connection with the negotiation, development, and implementation of the 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.

10. ~~9.~~ INTERIM FACILITY SECURITY:

All Interim Financing Obligations shall be secured by the Interim Lenders’ Charge. The Required Interim Lenders, or the Agent on their behalf, 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.

11. ~~10.~~ INTER-COMPANY ADVANCES:

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

12. ~~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.

13. ~~12.~~ MONITOR:

The monitor in the CCAA Proceedings shall remain FTI Consulting Canada, Inc. (the “**Monitor**”).

14. ~~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.

15. ~~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,~~ subject to modifications to appropriately reflect the terms of this term sheet, including without limitation, by way of removing expenses and other costs relating to any stalking horse bid and by way of adding the reimbursable expenses and other costs provided herein. 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.

16. ~~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.

17. ~~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 ~~(vii)~~ and ~~(viii)~~ 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).

18. ~~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~~ **LIBOR (or 1%, whichever is greater) plus 700 bps**, 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~~ **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 ~~Tenn~~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.

19. ~~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.

20. ~~19.~~ **MANDATORY REPAYMENTS:**

Unless otherwise consented to in writing by ~~(x)the~~ 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.

21. ~~20.~~ **REPS AND**

Each of the Credit Parties on a joint and several basis, represents and warrants to the Interim Lenders and the Agent, upon which the Interim

WARRANTIES:

Lenders and the Agent 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, and ~~(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.

22. ~~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 Agent, the~~ Interim Lenders and the Existing Credit Facility Agent AHNCM reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Credit Parties and to the Credit Parties’ critical business partners including, without limitation, governmental authorities, employee representatives and joint venture partners, 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 Agent, the~~ Interim Lenders and the Existing Credit Facility Agent AHNCM 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~~Agent and the 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, and preserve all permits, rights, licenses and similar entitlements necessary or desirable for the Credit Parties’ businesses and operations;
- (i) Provide the ~~Required~~ Interim Lenders, the ~~Existing Credit Facility~~ Agent, the AHNCM 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~~, the AHNCM 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~~, the AHNCM 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~~ 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 ~~and the Agent~~ deem appropriate, to satisfy ~~(x) Required~~ the Interim Lenders, the Agent and their counsel and ~~(y) Existing Credit Facility Agent and its~~ their 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 the Agent and cause ~~Washington Diamond~~the Agent, on behalf of the Interim Lenders, to be listed as the loss payee or additional insured (as applicable) on such insurance policies in accordance with the respective interests of the Interim Lenders in the Interim Financing Obligations;
- (p) Pay all Interim Lender Expenses and expenses of the ~~Existing Credit Facility~~ Agent and the AHNCM 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 and the AHNCM:
 - (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 S1SP;
- (s) Deliver the Budgets and Variance Reports required under Section ~~415~~415;
- (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
- (v) Protect, secure and safeguard all their diamond inventory in a diligent manner satisfactory to the Required Interim Lenders and the Agent, and cause their respective subsidiaries and other affiliates to do the same, and diligently collect from their respective subsidiaries and affiliates any receivables and other amounts collectible from them.

23. ~~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~~**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, 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~~ Agent and the ~~date hereof~~ AHNCM, 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;~~ in their reasonable discretion;
- (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;
- (u) Enter into any transactions or agreements with any affiliates or other related persons; or
- (v) Sell, transfer, move or relocate any diamond inventory wherever it may be held.

24. ~~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~~24 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~~ 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~~ 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~~ the Required Interim Lenders in ~~its~~ their 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~~ the Required Interim Lenders, 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~~
- (q) ~~(q) — Existing Credit Facility Agent, in each case,~~ in their sole and absolute discretion.

25. 24. REMEDIES:

Upon the occurrence of an Event of Default, and subject to the Court Orders, ~~Washington Diamond may, and~~ the Agent, 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~~ the Agent, 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,~~ 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 (i), 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.~~

- (e) The ~~Parties~~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.

REPURCHASE:

~~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, the Agent 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 and the Agent 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~~ 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. The Interim Lenders also have the right to sell participations, subject to customary limitations on voting rights acceptable to the Required Interim Lenders in their sole discretion, in their respective Advances or Commitments.

32. **CREDIT BIDDING:**

In any sale of any Credit Party's Collateral, ~~Washington Diamond, on behalf of itself and each of the other~~ the Interim Lenders shall be permitted, in ~~its~~ their 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~~ and the AHNCM shall be permitted, in their sole and absolute discretion, to credit bid up to the full amount of the 7.125% senior secured second lien notes issued by the Borrower.

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 Agent, 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 presentes conferment que le present acte et sous les documents y relatifs furent rediges en anglais c't leur demande.*
38. **GOVERNING LAW AND JURISDICTION:** This ~~Term~~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). Where in this Term Sheet any matter requires the consent or approval of the Interim Lenders, unless otherwise specifically stated such consent or approval right may be exercised by the

Required Interim Lenders.

41. SUPPORT OF TRANSACTION

By executing this Term Sheet, ~~each Interim Lender, each Existing Credit Facility Lender, and the Existing~~the Credit Facility Agent Parties agree that ~~it~~they will:

- (a) Cooperate with ~~each other~~the Interim Lender, ~~Existing Credit Facility Lender~~Lenders and the ~~Existing Credit Facility~~ Agent with respect to the SISP, ~~the Stalking Horse Transaction or~~ and 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, except as provided for in the SISP and otherwise permitted by this Term Sheet;
- (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), except as provided for in the SISP and otherwise permitted by this Term Sheet;
- (d) Not object to the Interim Facility, or 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~~The Borrower and the Guarantors shall indicate their respective acceptance of the terms hereof by returning to the Interim Lenders executed counterparts hereof not later than 12:00 p.m., Toronto time, on June 20, 2020. This term sheet will automatically expire at such time if the Interim Lenders have not received such executed counterparts in accordance with the preceding sentence.

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

By: _____
Name: David J. Breazzano
Title: President

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

By: _____
Name:
Title:

WESTERN ASSET MANAGEMENT
COMPANY, LLC as investment
manager and agent on behalf of certain
of its clients

By: _____
Name:
Title:

Accepted and agreed as of June __, 2020:

DOMINION DIAMOND MINES ULC

By: _____

Name:

Title:

WESTERN DIAMOND
INVESTMENTS, LLC

By: _____

Name: Joseph M. Racicot

Title:

DOMINION DIAMOND HOLDINGS,
LLC

By: _____

Name: Joseph M. Racicot

Title:

DOMINION FINCO INC.

By: _____

Name: Joseph M. Racicot

Title:

DOMINION DIAMOND DELAWARE
COMPANY, LLC

By: _____

Name: Kristal Kaye

Title: _____

DOMINION DIAMOND CANADA ULC

By: _____

Name: Kristal Kaye

Title: _____

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 ~~7.8~~.

“**Advance Request Certificate**” has the meaning given thereto in Section ~~5.6~~.

“**AHNCM**” means the members of the ad hoc committee of the Borrower’s 7.125% senior secured second lien notes in the CCAA Proceedings, comprising on the date of the Term Sheet DDJ Capital Management, LLC, Barings LLC, and Brigade Capital Management LP.

“**AHNCM Bid**” means any bid or offer submitted by some or all of the AHNCM pursuant to the SISP.

“**Amended Initial Order**” has the meaning given thereto in Section ~~7.8~~(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 ~~21.22~~(t).

“**Bankruptcy Court Order**” has the meaning given thereto in Section ~~21.22~~(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~~18(a).

“**Criminal Rate**” has meaning given thereto in Section ~~17~~18(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 ~~14-15~~14-15. 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 ~~23-24~~23-24.

“**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 ~~5-6~~.

“**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 ~~3-4~~.

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

[“**Indenture Trustee**” means Wilmington Trust, National Association, as trustee under the Borrower’s 7.125% senior secured second lien notes.](#)

[“**Initial DIP Budget**”](#) has the meaning given thereto in Section ~~14-15~~.

“**Initial Order**” has the meaning given thereto in the Recitals.

“**Interim Facility**” has the meaning given thereto in Section ~~5-6~~.

“**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 ~~7.8~~.

“**Interim Lender Expenses**” has the meaning given thereto in Section ~~8.9~~.

“**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 CD~~11~~\$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 ~~13.14~~.

“**Monitor**” has the meaning given thereto in Section ~~12.13~~.

“**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~~ the other Interim Lenders 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 ~~18.19~~.

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

“**Other Currency**” has the meaning given thereto in Section ~~18.19~~.

“**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 S1SP 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 ~~J-V~~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;~~ a transaction pursuant to an AHNCM Bid;
- (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 SISF; or
- (iii) a transaction for the Non-Diavik Assets (as defined in the SISF) 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 SISF; and (c) maintains all liens and other rights held by the Existing Credit Facility 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~~22(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~~ Required Interim Lenders.

“**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~~ interim financing 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 ~~14.15.~~ 14.15.

“**Updated DIP Budget**” has the meaning given thereto in Section ~~14.15.~~ 14.15.

“**Variance Report**” has the meaning given thereto in Section ~~14.15.~~ 14.15.

~~“**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, 17,~~ 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.

5. 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**

**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
<u>1. DDJ Capital Management, LLC, on behalf of certain funds and/or accounts that it manages and/or advises</u>	<u>\$22,916,667</u>	<u>45.45%</u>
<u>2. Brigade Capital Management LP, acting as investment advisor on behalf of certain managed funds and accounts</u>	<u>\$22,916,667</u>	<u>45.45%</u>
<u>3. Western Asset Management Company, LLC</u>	<u>\$9,166,666</u>	<u>18.18%</u>
1. Washington Diamond Lending, LLC <u>TOTAL</u>	<u>\$55,000,000</u>	<u>100%</u>

PART II.

COMMITMENTS IN RESPECT OF OCTOBER ADVANCES

Interim Lender	Commitments	Share of Total Commitments
<u>1. DDJ Capital Management, LLC, on behalf of certain funds and/or accounts that it manages and/or advises</u>	<u>\$2,083,333</u>	<u>45.45%</u>
<u>2. Brigade Capital Management LP, acting as investment advisor on behalf of certain managed funds and accounts</u>	<u>\$2,083,333</u>	<u>45.45%</u>
<u>3. Western Asset Management Company, LLC</u>	<u>\$833,334</u>	<u>18.18%</u>
1. Washington Diamond Lending, LLC <u>TOTAL</u>	<u>\$5,000,000</u>	<u>100%</u>

Document comparison by Workshare 9.5 on Wednesday, June 17, 2020 5:09:45 PM

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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	267
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Moved to	4
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