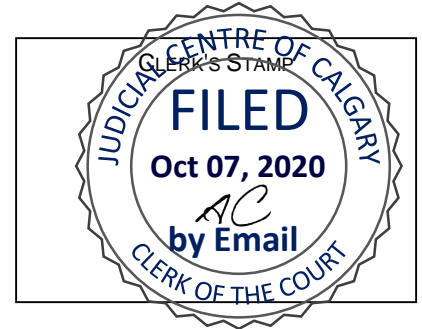


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Oct 14 2020
J. Eidsvik



COURT FILE NUMBER

2001-05630

COURT

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

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

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

DOCUMENT

APPLICATION
(APPROVAL AND VESTING ORDER)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

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

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Date: October 14, 2020

Time: 9:45 a.m.

Where: Calgary Courts Centre, 601 – 5th Street S.W., Calgary (Virtual Courtroom Via Webex)

Before: The Honourable Justice Eidsvik

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The applicants, Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC ("**Washington Diamond**"), Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), Dominion Finco Inc., and Dominion Diamond Marketing Corporation ("**Dominion Marketing**") (collectively, "**Dominion**" or the "**Applicants**") seek an order substantially in the form attached hereto as Schedule "**A**" (the "**Approval and Vesting Order**"), among other things:
 - (a) approving the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement (as may be further amended from time to time in accordance with the terms thereof and the Approval and Vesting Order, the "**APA**") by and among, Dominion Diamond, Dominion Holdings, and Dominion Marketing, as vendors (the "**Dominion Vendors**"), Canadian Diamond Holdings L.P. and CA Canadian Diamond Mines ULC, as purchasers (the "**Stalking Horse Purchasers**"), and Washington Diamond, as parent to the Dominion Vendors, a copy of which is attached as Schedule "**C**" to the second amended and restated initial order ("**SARIO**") granted by this Court on June 19, 2020, as amended by an Amendment to Asset Purchase Agreement substantially in the form attached as **Schedule "B"** to this Application to address any consequential amendments as may be necessary to address the addition of Dominion Marketing to these proceedings pursuant to the Order of this Court granted September 25, 2020;
 - (b) authorizing and directing the Dominion Vendors to complete the Transaction subject to the terms of the APA, to perform their obligations under the APA and any ancillary documents related thereto, and to take such additional steps and

execute such additional documents (including any further amendments to the APA) as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Acquired Assets (as defined in the APA) to the Stalking Horse Purchasers; and

- (c) upon delivery of a Monitor's certificate to the Stalking Horse Purchasers substantially in the form set out in Schedule "B" to the Approval and Vesting Order, all of the Dominion Vendors' right, title, and interest in and to the Acquired Assets (as defined in the APA) shall vest absolutely in the name of each applicable Stalking Horse Purchaser or its Designated Purchasers (as defined in the APA) free and clear of all interests, liens, charges, and encumbrances other than permitted encumbrances on the terms set out in the Approval and Vesting Order.
2. Such further and other relief as counsel may request and this Honourable Court may deem appropriate.

Grounds for making this application:

Background

3. The Applicants' ability to conduct their business and generate revenue has been constrained by a number of factors including their highly-leveraged capital structure. Dominion's financial woes have been exacerbated by Covid-19, outstanding cash calls, increasing debt owing to suppliers, and significant interest payments owing to creditors.
4. On April 22, 2020, upon the application of the Applicants, this Court granted an initial order (the "**Initial Order**") with respect to the Applicants under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").
5. In their Application to this Court for the Initial Order, the Applicants advised that their restructuring plan while under CCAA protection would involve, among other things, efforts to undertake a sale and investment solicitation process to maximize the value of the Applicants' business and property for the benefit of stakeholders.
6. On June 19, 2020, upon the application of the Applicants, this Court granted the SARIO that, among other things, (a) approved a sale investment solicitation process (the "**SISP**") to be implemented by the Applicants' financial advisor, Evercore, with the oversight of the

Monitor; and (b) approved a Stalking Horse Bid by an affiliate of the Stalking Horse Purchasers for purposes of the SISP.

7. The SISP had been preceded by three strategic review processes aimed at, among other things, soliciting the sale of Dominion's assets to a third party. The first two of these strategic processes were undertaken by Dominion with the assistance of a bank-owned financial advisor in each of 2015 and 2016 and did not result in a sale. The third strategic process was undertaken in 2017 and resulted in the acquisition of one formal offer to acquire the company, being the offer made by the Stalking Horse Bidder, which thereby became the equity owner of Dominion.

The Implementation and Result of the SISP

8. A sales process was implemented by Evercore, with the oversight of the Monitor, over a five month period, from the commencement of these CCAA proceedings on April 22, 2020, to the formal commencement of the SISP on June 19, 2020, through to the announcement of the Stalking Horse Bid as the successful bid under the SISP on September 15, 2020.
9. The Stalking Horse Bid, the definitive form of which is the APA, contemplates that the Stalking Horse Bidder will assume substantially all of the go-forward operating liabilities of the Dominion Vendors (excluding the Diavik Interest), including all obligations (a) of the Dominion vendors under Dominion's go-forward operational contracts and joint venture agreements; (b) to employees and unions (including obligations under Dominion's collective bargaining agreements and pension plan); (c) to Indigenous groups; and (d) to the Government of the Northwest Territories.
10. It is the view of the Applicants, in consultation with Evercore, that:
 - (a) the Transaction contemplated by the APA provides material value to Dominion and is in the best interests of Dominion's stakeholders generally, including but not limited to the interests of Northern communities, Northern Indigenous groups, employees and contractors (and Northern-based employees and contractors in particular), the environment, and creditors; and
 - (b) the SISP approved by this Court provided for a transparent process that was run in a fair and impartial manner, considered the interests of all parties, provided a reasonable opportunity for all interested parties to submit competing offers for

Dominion's assets, was conducted with integrity, and did not involve unfairness to any party.

11. No other bids for a sale of the assets, or investment in the business, of Dominion were submitted or available for acceptance by the did deadline, as twice extended.
12. The APA is the best available executable restructuring option available to Dominion in the context of these CCAA proceedings.
13. The Applicants do not have better viable alternatives to the Transaction contemplated by the APA.
14. The Monitor oversaw the implementation of the SISP, was kept apprised of its progress, and is supportive of the Transaction contemplated by the APA.
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Affidavit or other evidence to be used in support of this application:

16. The Applicants intend to rely upon the following materials:
 - (a) Affidavits of Brendan Bell, sworn May 21, 2020, June 12, 2020, and October 4, 2020;
 - (b) the Affidavits of John Startin, sworn May 21, 2020, June 12, 2020, and October 5, 2020;
 - (c) the Affidavit of Jennifer Alambre, sworn October 4, 2020;
 - (d) the Seventh Report of the Monitor, to be filed and
 - (e) such further and other evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

17. Part 6, Division 1 of the *Alberta Rules of Court* (AR 124/2010); and
18. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable acts and regulations:

19. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended; and
20. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

21. None.

How application is proposed to be heard or considered:

22. Via Webex before the Honourable Madam Justice K.M. Eidsvik.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

Approval and Vesting Order

CLERK'S STAMP

COURT FILE NUMBER 2001-05630

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

JUDICIAL CENTRE CALGARY

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

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

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /
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peter.bychawski@blakes.com /
claire.hildebrand@blakes.com /
morgan.crilly@blakes.com

Fax No.: 604.631.3309

DATE ON WHICH ORDER WAS PRONOUNCED: October 14, 2020

LOCATION OF HEARING: Calgary

NAME OF JUDGE WHO MADE THIS ORDER: The Hon. Madam Justice K. Eidsvik

UPON THE APPLICATION by Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Holdings, LLC (“**Dominion Holdings**”), and Dominion Diamond Marketing Corporation (“**Dominion Marketing**” and together with Dominion Diamond and Dominion Holdings, the “**Sellers**”) for, *inter alia*, an order (i) approving the sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement (as may be further amended from time to time in accordance with the terms thereof and this Order, the “**Purchase Agreement**”) dated as of June 29, 2020, and amended as of October [●], 2020 by and among, *inter alios*, the Sellers, as sellers, and CA Canadian Diamond Mines ULC and Canadian Diamond Holdings, L.P., as purchasers (collectively, the “**Contracting Purchasers**”), a copy of which is attached as **Schedule “A”** hereto, (ii) vesting in the Contracting Purchasers and any Designated Purchaser that has been duly designated by the Contracting Purchasers in accordance with the Purchase Agreement (collectively, the “**Purchasers**” and each, a “**Purchaser**”) all of the Sellers’ right, title and interest in and to the Acquired Assets, free and clear of all Encumbrances other than the Permitted Encumbrances (as defined below), and (iii) granting related relief;

AND UPON having read the Application, the Affidavits of Brendan Bell sworn May 21, 2020, June 12, 2020, and October 4, 2020, the Affidavits of John Startin sworn May 21, 2020, June 12, 2020, and October 5, 2020; and the Affidavit of Jennifer Alambre, sworn October 4, 2020; **AND UPON** reading the Seventh Report of FTI Consulting Canada Inc. (the “**Monitor**”), filed;

AND UPON hearing counsel for the Applicants, counsel for the Purchasers, counsel for the Monitor, counsel for Credit Suisse AG, Cayman Islands Branch, and those other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other Person is required to have been served with notice of this Application and time for service of this Application is abridged to that actually given.

DEFINED TERMS

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.

APPROVAL OF TRANSACTION

3. The Purchase Agreement is hereby approved in its entirety. The Transaction is hereby approved and the execution of the Purchase Agreement by the Sellers is hereby authorized, ratified, confirmed and approved, with such minor amendments as the Sellers may deem necessary with the consent of the Monitor. The Sellers are hereby authorized and directed to complete the Transaction subject to the terms of the Purchase Agreement, to perform their obligations under the Purchase Agreement and any ancillary documents related thereto (collectively, the “**Transaction Documents**”), and to take such additional steps and execute such additional documents (including any further amendments to the Purchase Agreement) as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Acquired Assets to the Purchasers.

VESTING OF PROPERTY

4. Upon delivery of a Monitor’s certificate to the Purchasers substantially in the form set out in Schedule “**B**” hereto (the “**Monitor’s Certificate**”), all of the Sellers’ right, title and interest in and to the Acquired Assets described in the Purchase Agreement shall vest absolutely in the name of each applicable Purchaser or Designated Purchaser free and clear of and from any and all caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgements, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges as created by the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020 (as amended and restated on May

1, 2020, further amended on May 15, 2020, and further amended and restated on June 19, 2020, and as may be further amended, restated or supplemented from time to time, the “**Initial Order**”) or any other Orders granted in the within CCAA proceedings;

- (b) any charges, security interests or claims evidenced by registrations, filing or publication pursuant to (i) the *Personal Property Security Act*, SNWT 1994, c 8 (NWT); (ii) the *Personal Property Security Act*, RSO 1990, c P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c P-7 (Alberta); (iii) the *Personal Property Security Act*, RSBC 1996, c 359 (British Columbia); (iv) the Uniform Commercial Code (U.C.C.); (v) the *Land Titles Act*, RSNWT 1988, c 8 (the “**Land Titles Act (NWT)**”); the (vi) *Northwest Territories Mining Regulation*, SOR/2014-68; and (vii) any other personal or real property registration system;
- (c) any charges, security interests or claims evidenced by registrations at the Canadian Intellectual Property Office or similar intellectual property offices in Canada or elsewhere in the world; and
- (d) any liens or claims of lien under the (i) *Miners Lien Act*, RSNWT 1988, c M-12 (NWT); and (ii) the *Garage Keepers’ Lien Act*, RSA 2000, c G-2 (Alberta);

but in each case, excluding the permitted encumbrances listed in Schedule “**E**” hereto (collectively, the “**Permitted Encumbrances**”), and for greater certainty, this Court orders that all Claims including Encumbrances, other than Permitted Encumbrances, affecting or relating to the Acquired Assets, are hereby expunged, discharged and terminated as against the Acquired Assets. Except as set forth in the last sentence of Section 7.1(a) of the Purchase Agreement, the Purchasers’ acquisition of the Acquired Assets shall be free and clear of any “successor liability” Liabilities or Claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing; *provided* that nothing in this sentence shall limit Purchasers’ agreement to assume the Assumed Liabilities in accordance with the terms of the Purchase Agreement.

5. Without limiting paragraph 4, upon delivery of the Monitor’s Certificate, all right, title and interest in and to any assets held by any other Applicant that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller, shall vest absolutely in the name of each applicable Purchaser or

Designated Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, and for greater certainty, all such assets shall constitute Acquired Assets and each other Applicant shall constitute a Seller hereunder with respect to any such Acquired Assets.

6. Upon delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acquired Assets including, without limitation, those referred to at paragraph 7 of this Order (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to (i) accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchasers clear title to the Acquired Assets subject only to Permitted Encumbrances, and (ii) take such steps as are necessary to give effect to the terms of this Order and the Purchase Agreement. Presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest free and clear of any Encumbrances other than Permitted Encumbrances.
7. Without limiting the generality of foregoing paragraph 6:
 - (a) each applicable Registrar under the Government of the Northwest Territories - Department of Industry, Tourism and Investment, including the Mining Recorder's Office of the Northwest Territories and all other government ministries and authorities in the Northwest Territories exercising jurisdiction with respect to the Acquired Assets, and each applicable Registrar under the Crown-Indigenous Relations and Northern Affairs Canada (Nunavut), including the Mining Recorder's Office of Nunavut shall and is hereby authorized, requested and directed to transfer in the name of one or more of the Purchasers, the mining leases, mineral claims and surface leases listed in Schedule "**C**" hereto free and clear of all Encumbrances, including without limitation, the Encumbrances listed in Schedule "**D**" hereto, other than the Permitted Encumbrances; and

- (b) the applicable Registrar of the Canadian Intellectual Property Office shall be and is hereby authorized and directed to (i) cancel and discharge those Encumbrances, if any, other than the Permitted Encumbrances, registered against the estate or interest of the Sellers in and to the Acquired Assets, and (ii) transfer all of the right, title and interest of the Sellers in and to the Acquired Assets free and clear of and from any and all Encumbrances, if any, other than the Permitted Encumbrances.
8. No further authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Acquired Assets shall be required for the Closing and post-Closing implementation of the Transaction contemplated in the Purchase Agreement.
9. Upon delivery of the Monitor's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the NWT Land Registrar in accordance with section 175 of the *Land Titles Act* (NWT), and notwithstanding that the appeal period in respect of this Order has not elapsed.
10. Upon completion of the Transaction, the Sellers and all Persons who claim by, through or under the Sellers in respect of the Acquired Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Acquired Assets, save and except for the Persons entitled to the benefit of the Permitted Encumbrances (but solely with respect to and to the extent of such Permitted Encumbrances), shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption, or other Claim or Encumbrance whatsoever in respect of or to the Acquired Assets, and to the extent that any such Persons remain in the possession or control of any of the Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate or interest in and to the Acquired Assets, they shall forthwith deliver possession thereof to the applicable Purchaser or Designated Purchaser.
11. Following completion of the Transaction, the Sellers are hereby permitted to complete, execute and file any necessary application, articles of amendment, certificate of amendment or such other documents or instruments as may be required to change their respective legal names, to the extent required pursuant to any of the Transaction

Documents, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable governmental authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any applicable federal, provincial or state legislation.

12. The Purchasers and each Designated Purchaser shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for their own use and benefit without any interference of or by any Person claiming by, through or against the Sellers.
13. Immediately upon Closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Monitor or the Sellers.
14. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchasers.
15. For the purposes of determining the nature and priority of Encumbrances, net proceeds from sale of the Acquired Assets (the "**Net Proceeds**") shall stand in the place and stead of the Acquired Assets from and after delivery of the Monitor's Certificate and all Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets, and instead shall attach to the Net Proceeds from the sale of the Acquired Assets with the same priority as they had with respect to the Acquired Assets immediately prior to the sale, as if the Acquired Assets had not been sold and remained in the possession or control of the person have that possession or control immediately prior to the sale. The Net Proceeds shall be distributed or otherwise disbursed in accordance with the Distribution Order of the Honourable Madam Justice K. Eidsvik dated as of the date hereof.
16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Monitor and the Sellers are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Sellers' records pertaining to the Sellers' past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in accordance with applicable law.

MISCELLANEOUS MATTERS

17. Notwithstanding:

- (a) the pendency of these proceedings CCAA proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) in respect of the Sellers and any bankruptcy order issued pursuant to any such applications;
- (c) any application for a receivership order; or
- (d) the provisions of any federal or provincial statute,

the vesting of the Acquired Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Sellers and shall not be void or voidable by creditors of the Sellers, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Monitor, the Sellers, the Purchasers and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
19. This Honourable Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order, the Purchase Agreement, all amendments thereto, in connection with any disputes involving the Applicants, and to adjudicate, if necessary, any and all disputes concerning the Applicants and related in any way to the Transaction; *provided, however*, that in the event that this Honourable Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, including Delaware, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist

the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

20. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

ASSET PURCHASE AGREEMENT

[TO BE ADDED]

[SEE SCHEDULE "C" TO SARIO GRANTED JUNE 19, 2020]

SCHEDULE "B"
FORM OF MONITOR'S CERTIFICATE

CLERK'S STAMP

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED</i> AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, DOMINION FINCO INC. AND DOMINION DIAMOND MARKETING CORPORATION
DOCUMENT	<u>MONITOR'S CERTIFICATE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP Barristers and Solicitors 3500 Bankers Hall East 855 – 2 nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309

RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice K. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 22, 2020 (as amended and restated on May 1, 2020, further amended on May 15, 2020, and further amended and restated on June 19, 2020, and as may be further amended, restated or supplemented from time to time, the "**Initial Order**"), FTI Consulting Canada Inc. was appointed as the monitor (in such capacity, and not in its personal or corporate capacity, the "**Monitor**") of the undertaking, property and assets of Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), Dominion Finco Inc., and Dominion Diamond Marketing Corporation ("**Dominion Marketing**" and, together with Dominion Diamond and Dominion Holdings, the "**Sellers**").
- B. Pursuant to an Order of the Court dated October [14], 2020, the Court approved the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement (as may be amended from time to time in accordance with the terms thereof and this Order, the "**Purchase Agreement**") dated as of June 29, 2020, and amended as of October [●], 2020 by and among, *inter alios*, the Sellers, as sellers, and CA Canadian Diamond Mines ULC and Canadian Diamond Holdings, L.P., as purchasers (collectively, the "**Contracting Purchasers**"), and provided for the vesting in the Contracting Purchasers and any Designated Purchaser that has been duly designated by the Contracting Purchasers in accordance with the Purchase Agreement (collectively, the "**Purchasers**" and each, a "**Purchaser**") all of the Sellers' right, title and interest in and to the Acquired Assets, free and clear of all encumbrances other than the Permitted Encumbrances, which vesting is to be effective with respect to the Acquired Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming (i) the Payment by the Purchasers of the Purchase Price for the Acquired Assets; and (ii) receipt of each of the Conditions Certificates confirming that each of the conditions to Closing as set out in Article 8 and Article 9 of the Purchase Agreement have been satisfied or waived by the Sellers and the Purchasers.

- C. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchasers have paid and the Sellers have received payment in full of the Purchase Price for the Acquired Assets payable on the Closing Date pursuant to the Purchase Agreement; and
2. The Sellers and the Purchasers have each delivered to the Monitor the Conditions Certificates evidencing that all applicable conditions to Closing as set out in Article 8 and Article 9 of the Purchase Agreement have been satisfied or waived, as applicable.
3. This Certificate was delivered by the Monitor at Calgary, Alberta on _____, 2020, at _____ [a.m./p.m.]

FTI Consulting Canada Inc., in its capacity as Monitor and not in its personal or corporate capacity

Per: _____
Name

SCHEDULE "C"

MINING CLAIMS, MINERAL LEASES AND SURFACE LEASES

[TO BE ADDED]

SCHEDULE "D"
ENCUMBRANCES
[TO BE ADDED]

SCHEDULE "E"
PERMITTED ENCUMBRANCES
[TO BE ADDED]

SCHEDULE "B"

Amendment to Asset Purchase Agreement

AMENDMENT TO ASSET PURCHASE AGREEMENT

This Amendment (this “Amendment”) is entered into as of October [●], 2020, among Canadian Diamond Holdings, L.P., a Delaware limited partnership (“Purchaser Holdco”), CA Canadian Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Purchaser Holdco (“Canadian Purchaser” and, together with Purchaser Holdco, “Purchasers”), Dominion Diamond Marketing Corporation, a private company incorporated under the federal laws of Canada (“Dominion Marketing”), Dominion Diamond Holdings, LLC, a Delaware limited liability company (“Dominion Holdings”), and Dominion Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Dominion Holdings (“DDM” and, together with Dominion Holdings, the “APA Seller Parties” and, the APA Seller Parties together with Dominion Marketing, the “Sellers”), and Washington Diamond Investments, LLC, a Delaware limited liability company (“Parent” and, together with the Purchasers and the Sellers, the “Parties”), and amends that certain Asset Purchase Agreement dated as of June 29, 2020 (the “Agreement”), among the Purchasers, the APA Seller Parties, and the Parent. Capitalized terms not otherwise defined in this Amendment shall have the respective meanings set forth in the Agreement.

WHEREAS, the Parties wish to amend the terms of the Agreement to include Dominion Marketing as a Seller under the Agreement pursuant to the terms hereof; and

WHEREAS, the Parties desire to enter into this Amendment to amend the Agreement pursuant to Section 12.3 thereof, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained in this Amendment, the Parties hereby acknowledge and agree as follows:

1. Sellers. The Parties acknowledge and agree that Dominion Marketing shall be, for all purposes of the Agreement, a Seller, as such term is defined and used in the Agreement. Dominion Marketing hereby agrees to be bound to the Agreement as a “Seller” thereunder.

2. Acquired Subsidiaries. The Parties acknowledge and agree that the issued and outstanding equity interests in Dominion Marketing shall constitute Excluded Assets and that Dominion Marketing shall not constitute an Acquired Subsidiary, as such terms are used and defined in the Agreement. The Acquired Assets shall include all of Dominion Marketing’s right, title, and interest in that certain sorting building located on leased land in Yellowknife. The Parties further acknowledge and agree that Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V. shall continue to constitute Acquired Subsidiaries and that the issued and outstanding equity interests held by any Seller, including Dominion Marketing, in Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V. shall constitute Acquired Assets.

3. Excluded Assets. The Parties acknowledge and agree that that certain commercial lease dated June 1, 2016 among, *inter alia*, Dominion Marketing and 60198338 Canada Inc. shall constitute both an Excluded Contract and an Excluded Asset, as such terms are defined and used in the Agreement.

4. Rio Condition. The Parties shall acknowledge and agree that the Rio Condition was not satisfied on or before July 31, 2020 and as a result, pursuant to and in accordance with Section 2.7 of the Agreement, the Parties shall proceed with the Acquisition on the terms and subject to the conditions set forth in the Agreement, and the Diavik Joint Venture Interest shall become an Excluded Asset and the terms set forth in the Agreement are deemed to be amended as set forth in Section 2.7 of the Agreement. In addition, the Purchasers shall not acquire the Claims or causes of action asserted in that certain proceeding captioned Dominion Diamond Mines ULC v. Diavik Diamond Mines (2012) Inc., No. S206419 currently pending in the Supreme Court of British Columbia, Vancouver Registry, it being understood that such Claims and causes of action shall constitute Excluded Assets, Notwithstanding Section 2.7 of the Agreement, the Sellers shall (i) use commercially reasonable efforts to obtain and deliver to Purchasers all accounting and other records and information necessary for Purchasers to comply with financial reporting, audit, tax and other regulatory requirements, (ii) enforce the rights of Sellers to obtain such information pursuant to the terms of the Diavik Joint Venture (or assign such rights to Purchasers to enforce on their own behalf), and (iii) otherwise cooperate acting reasonably with Purchasers to obtain such information.

[NTD: Parties to insert agreed upon tax provisions relating to revised structure set out herein.]

5. Effect of Amendment. The Parties acknowledge and agree that this Amendment satisfies all requirements of the Parties to duly amend the Agreement pursuant to Section 12.3 of the Agreement. This Amendment shall govern and control with respect to any conflict between the terms set forth in this Amendment on the one hand, and the terms set forth in the Agreement, on the other hand.

6. Effectiveness; Waiver. Subject to any required approvals by the CCAA Court, this Amendment shall be effective as of the date first written above following the execution of this Amendment by the parties hereto. Any reference in the Agreement to “this Agreement” shall hereafter be deemed to refer to the Agreement as amended by this Amendment, and any reference in the Seller Disclosure Letter to “the Agreement” shall refer to the Agreement as amended by this Amendment. All references in the Agreement and the Seller Disclosure Letter to “the date hereof” or “the date of this Agreement” shall refer to June 29, 2020. The execution, delivery and performance of this Amendment shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Parties under, the Agreement.

7. Counterparts. The parties hereto may execute this Amendment in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. The parties hereto may deliver executed signature pages to this Amendment by facsimile or email transmission. No Party may raise as a defense to the formation or enforceability of this Amendment, and each Party forever waives any such defense, either (a) the use of email transmission to deliver a signature or (b) the fact that any signature was signed and subsequently transmitted by email transmission.

8. Governing Law. This Amendment shall be governed by and construed and enforced in accordance with the laws of Alberta and the laws of Canada applicable therein. The Parties hereby further agree that the CCAA Court shall have jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this Amendment.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

The parties sign this Amendment as of the date first written above.

PURCHASER HOLDCO:

CANADIAN DIAMOND HOLDINGS, L.P.

By:

Its:

CANADIAN PURCHASER:

CA CANADIAN DIAMOND MINES ULC

By:

Its:

SELLERS:

DOMINION DIAMOND HOLDINGS, LLC

By:
Its:

DOMINION DIAMOND MINES ULC

By:
Its:

PARENT:

WASHINGTON DIAMOND INVESTMENTS, LLC

By:
Its:

DOMINION MARKETING:

**DOMINION DIAMOND MARKETING
CORPORATION**

By:
Its: