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COURT FILE NUMBER 2001-05630
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT 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 ARRANGEMENT
OF DOMINION DIAMOND MINES ULC, DOMINION
DIAMOND DELAWARE COMPANY LLC, DOMINION
DIAMOND CANADA ULC, WASHINGTON DIAMOND
INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS,
LLC AND DOMINION FINCO INC.

DOCUMENT FIFTH REPORT OF FTI CONSULTING CANADA INC., IN
ITS CAPACITY AS MONITOR 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.

June 18, 2020

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FIFTH REPORT OF THE MONITOR

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INTRODUCTION

1. On April 22, 2020, Dominion Diamond Mines ULC (“**DDM**”), Dominion Diamond Delaware Company LLC (“**DDD**”), Dominion Diamond Canada ULC; Washington Diamond Investments, LLC (“**WDI**”), Dominion Diamond Holdings, LLC (“**DDH**”) and Dominion Finco Inc. (collectively, “**Dominion**” or the “**Applicants**”) were granted an initial order (the “**Initial Order**”) commencing proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
2. The Initial Order appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”) and established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until May 2, 2020.
3. On May 29, 2020, the Applicants made an application (the “**Second ARIO Application**”) for a second Amended and Reinstated Initial Order (the “**Second ARIO**”) including, among other things, the following relief:
 - a. approving a financial advisor agreement (the “**Financial Advisor Agreement**”) dated April 22, 2020 between the Applicants and Evercore Group L.L.C. (the “**Financial Advisor**” or “**Evercore**”) and authorizing the Applicants to continue the engagement of the Financial Advisor on the terms set out in the Financial Advisor Agreement;
 - b. granting a charge in favour of the Financial Advisor as security for amounts payable under the Financial Advisor Agreement;
 - c. authorizing and empowering the Applicants to obtain and borrow under a credit facility (the “**Interim Facility**”) pursuant to a term sheet (the “**Interim Financing Term Sheet**”) among the Applicants and Washington Diamond Lending, LLC and the other lenders party thereto (collectively, the “**Interim Lenders**”), provided that borrowings under the Interim Facility shall not exceed US\$60.0 million;

- d. granting a charge in favour of the Interim Lenders to secure all obligations under the Interim Facility;
 - e. approving procedures for a sales and investment solicitation process (the “**SISP**”);
 - f. authorizing DDH and DDM (collectively, the “**Sellers**”) to execute a stalking horse term sheet (the “**Stalking Horse Term Sheet**”) with an affiliate of Washington Diamond Investments Holdings II, LLC (the “**Stalking Horse Bidder**”), authorizing the Sellers to negotiate and finalize a definitive stalking horse agreement of purchase and sale substantially in accordance with the Stalking Horse Term Sheet (the “**Stalking Horse Bid**”) and approving the Sellers’ obligation to pay the break-up fee and expense reimbursements provided for in the Stalking Horse Term Sheet;
 - g. granting a charge in favour of the Stalking Horse Bidder as security for the payment of the break-up fee and expense reimbursement provided for under the Stalking Horse Term Sheet;
 - h. approving a key employee retention plan (the “**KERP**”);
 - i. granting a charge in favor of certain key employees as security for the amounts payable under the KERP; and
 - j. extending the Stay of Proceedings until and including August 31, 2020.
4. On May 26, 2020, the Monitor served its Fourth Report (the “**Fourth Report**”), in advance of the Second ARIO Application.
5. On May 29, 2020, the Court commenced hearing the Second ARIO Application. Certain stakeholders submitted that it was inappropriate for the Court to approve the Stalking Horse bid on the basis only of the Stalking Horse Term Sheet, in the absence of an agreed form of Stalking Horse asset purchase agreement. The hearing was not completed because the

parties were unable to complete their submissions in the time available, and the Court ordered the continuation of the hearing on Wednesday, June 3, 2020 (the “**Continuation Hearing**”). The Court granted the Stay Extension but only until and including June 4, 2020.

6. On June 2, 2020, the Monitor served a Supplement to its Fourth Report (the “**Supplement**”), in advance of the Continuation Hearing. In the Supplement, the Monitor reviewed the provisions that the Applicants and DDMI had proposed for the Second ARIO and the SISP, and:
 - a. in Appendix “K”, provided the Monitor's commentary on the proposed provisions in the Second ARIO;
 - b. in Appendix “L”, provided the Monitor's commentary on the proposed provisions in the SISP; and
 - c. in Appendix “M”, provided the form of Second ARIO and SISP being proposed by the Monitor (the “**Appendix “M” Second ARIO**” and the “**Appendix “M” SISP**”, respectively).
7. At the Continuation Hearing, the Applicants requested an adjournment of their application in order to seek additional clarification from the Stalking Horse Bidder with respect to the assumption of executory contracts to which the Applicants are parties, and the payment of cure costs thereunder. The Court granted the Applicants’ request to adjourn the Second ARIO Application until June 19, 2020. The Court granted the Stay Extension until and including June 19, 2020.
8. On June 12, 2020, the Applicants served an Amended Application seeking approval of the same relief as at the Second ARIO Application with the following modifications:
 - a. a modified Second ARIO (the “**June 12 Second ARIO**”);

- b. a modified SISP (the “**June 12 SISP**”); and
- c. a stay extension to September 28, 2020 (the “**Stay Extension**”).

At the time of service, the Applicants informed the Service List that the June 12 Second ARIO did not have attached to it the Interim Financing Term Sheet referred to therein, but that a copy would be provided to the Service List as soon as possible. The Applicants explained that the delay was a result of ongoing discussions between the proposed Interim Lenders regarding an intercreditor issue.

- 9. Attached as a schedule to the June 12 Second ARIO is the form of Asset Purchase Agreement (the “**Stalking Horse APA**”) agreed to between the Applicants and the Stalking Horse Bidder. The June 12 Second ARIO and the June 12 SISP also proposed certain modifications to the Appendix “M” Second ARIO and the Appendix “M” SISP.
- 10. On June 15, 2020 the Applicants served a modified Interim Financing Term Sheet (the “**June 15 Interim Financing Term Sheet**”) as a proposed schedule to the June 12 Second ARIO.

PURPOSE

- 11. The purpose of this Fifth Report is to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to:
 - a. the events occurring since the adjournment of the Continuation Hearing;
 - b. the Stalking Horse APA, including the purchase price and treatment of pre-filing trade creditors thereunder;
 - c. the June 15 Interim Financing Term Sheet;

- d. an alternative Interim Financing Term Sheet (the “**Noteholder Interim Financing Term Sheet**”) being offered by certain members of the Ad Hoc Committee of Noteholders;
- e. the status of independent legal opinions being prepared by counsel to the Monitor (the “**Security Opinion**”) regarding the validity and enforceability of the security held by the Applicant's senior secured first lien syndicate (the “**Existing Credit Facility Lenders**”), the senior secured second lien noteholders (“**Noteholders**”) and Diavik Diamond Mines Inc. (“**DDMI**”);
- f. a summary of the updated cash flow statement (the “**Third Cash Flow Statement**”) prepared by the Applicants for the 28 weeks ending October 30, 2020, including the key assumptions on which the Third Cash Flow Statement is based;
- g. Dominion’s application for the Stay Extension;
- h. the application by Wilmington Trust, National Association, in its capacity as Trustee, Notes Collateral Agent, Paying Agent, Transfer Agent and Registrar in respect of the senior secured second lien notes (the “**2L Trustee**”) for an order authorizing and directing the Applicants to pay the reasonable post-filing fees and expenses of the Trustee and its counsel, Dentons Canada LLP and Dentons US LLP, in connection with the CCAA Proceedings. (the “**2L Trustee Costs Application**”); and
- i. the Monitor's conclusions and recommendations with respect to the relief requested by the Applicants in the Second ARIO Application, as amended.

TERMS OF REFERENCE

12. In preparing this report, the Monitor has relied upon certain information (the “**Information**”) including Dominion’s unaudited financial information, books and records and discussions with senior management (“**Management**”).

13. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
14. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
15. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
17. All capitalized terms that are used but not defined in this Report are intended to bear their meanings as defined in the Fourth Report or previous reports of the Monitor.

EVENTS SINCE THE CONTINUATION HEARING

18. At 7:47 a.m. Mountain time on Wednesday, June 10, the Monitor sent an email to the Service List (a copy of which is attached as Appendix "A" to this Report), advising of the following suggested deadlines for the service of materials in advance of the June 19 hearing:
 - a. the Applicants' application materials and briefs by end of day on Friday, June 12;
 - b. any Respondents' application materials and briefs by end of day on Tuesday, June 16;
 - c. any reply materials from the Applicants by 12:00 p.m. Mountain time on Thursday, June 18; and

- d. the Monitor's report by 12:00 p.m. Mountain time on Thursday, June 18.
19. The following materials have been served by the parties in advance of the hearing on June 19, 2020:
- a. at 9:30 p.m. Mountain time on Friday, June 12, the Applicants served their application materials (other than the June 15 Interim Financing Term Sheet) and Bench Brief;
 - b. at 3:59 p.m. Mountain time on Monday, June 15, the 2L Trustee sent an email to the Service List, advising that the 2L Trustee would be proceeding on June 19 with its fee application, which had been originally set down to be heard on May 15, 2020 but adjourned *sine die*;
 - c. at 6:15 p.m. Mountain time on Monday, June 15, the Applicants served the June 15 Interim Financing Term Sheet on the Service List;
 - d. at 9:18 p.m. Mountain time on Tuesday, June 16, DDMI served the Affidavit No. 3 of Thomas Croese on the Service List;
 - e. at 9:24 p.m. Mountain time on Tuesday, June 16, Matthew Quinlan served the Affidavit of Matthew Quinlan on the Service List with respect to his claim against Dominion for amounts owed to him in respect of a pre-filing settlement agreement;
 - f. at 12:47 p.m. Mountain time on Wednesday, June 17, DDMI served its Bench Brief on the Service List;
 - g. at 5:47 p.m. Mountain time on Wednesday, June 17, the Ad Hoc Committee of Noteholders served its Bench Brief and the Affidavit No. 2 of Eric Hoff on the Service List;

- h. at 10:46 p.m. Mountain time on Wednesday, June 17, the 2L Trustee served its Bench Brief on the Service List; and
 - i. at 11:36 p.m. Mountain time on Wednesday, June 17, Credit Suisse AG in its capacity as agent to the senior secured lender syndicate served its Bench Brief on the Service List.
20. At 9:30 a.m. Mountain time on Thursday, June 18, the Monitor sent an email to the Service List, proposing a schedule and suggested time limits for the June 19 hearing. Attached as Appendix “B” to this Report is a copy of that email.

PURCHASE PRICE UNDER THE STALKING HORSE APA

21. As noted above, the Continuation Hearing was adjourned so that greater clarification could be obtained about the assumption of executory contracts and the payment of cure costs in the Stalking Horse Term Sheet.
22. In the Supplement, the Monitor provided an illustrative purchase price summary under the Stalking Horse Bid including both cash consideration and assumed liabilities. In that analysis, assumed operating liabilities were not quantified, but instead the Monitor noted that the amount of the assumed operating liabilities was to be determined amongst the parties in due course and would depend on, among other things, which contracts are to be disclaimed or terminated prior to closing.
23. Subsequently, the Sellers and the Stalking Horse Bidder have agreed to the terms of the Stalking Horse APA, which specifies that the Stalking Horse Bidder is to make available a Cure Funding Amount (the definition of which is described below) of up to US \$20 million (C \$27.2 million), less any amounts that the Applicants are authorized to pay and have not yet paid under the Third Cash Flow Statement and an Order of the Court, to remedy Dominion’s monetary defaults existing as at the Stalking Horse APA closing date under contracts that are to be assigned. Based on discussions with the Applicants, it is the

Monitor's understanding that all or substantially of the Cure Funding Amounts would be used.

24. Based on the CAD/USD exchange rate as at June 15, 2020 of 1.3604, and after deducting forecast Critical Supplier Payments yet to be made but provided for in the Third Cash Flow Statement of approximately US \$2.4 million (C \$3.3 million), the Cure Funding Amount is estimated to result in payments to pre-filing trade creditors of approximately US \$17.6 million (C\$ 24.0 million).

25. The estimated payments to trade creditors under the Stalking Horse APA in respect of pre-filing amounts are summarized in the table below:

Estimated Payments to Trade Creditors Under the Stalking Horse APA		
	(US \$ millions)	(C \$ millions)
Critical Supplier Payments to June 5, 2020	\$ 1.3	\$ 1.7
Additional Critical Supplier Payments in the Third Cash Flow Statement	2.4	3.3
Total Critical Supplier Payments	3.7	5.0
Cure Funding Amount under the Stalking Horse APA	17.6	24.0
Total Payments to Pre-filing Trade Creditors	21.3	29.0
Reported Pre-filing Amounts Due to Trade Creditors	\$ (30.2)	\$ (41.1)
<i>Proportion of Trade Creditors to be Paid under the Stalking Horse APA</i>	70.4%	70.4%

26. Overall, certain pre-filing trade creditors will receive payments totaling approximately C\$29.0 million or 70% of Dominion's total pre-filing trade accounts payable. For greater clarity, the Stalking Horse APA does not provide that all pre-filing trade creditors will receive a payment but rather that, should the Stalking Horse Bid be successful, cure costs will be paid to select trade suppliers in order to remedy Dominion's monetary defaults in order to facilitate an assignment of applicable executory contracts to the Stalking Horse Bidder. The assignment/cure cost mechanism in the Stalking Horse APA is described in greater detail below.

27. The illustrative purchase price for Dominion's assets under the Stalking Horse APA including the addition of the Cure Funding Amount is summarized in the table below:

Illustrative Purchase Price Summary (US \$ millions)	Ekati + Corporate	Diavik JV Interest	Total
Cash Purchase Price	126 - 131	0	126 - 131
Reclamation, Letters of Credit and Guarantees	224	99	323
Unfunded Pension Balance	17	0	17
DDMI Cover Payments	0	55 - 70	55 - 70
Cure Funding Amount	18	0	18
Total Illustrative Purchase Price	\$385 - \$390	\$154 - \$169	\$539 - \$559
Total Illustrative Purchase Price (C \$ millions)	\$531 - \$538	\$213 - \$233	\$744 - \$771

28. The Monitor views the clarification regarding the assumption of executory contracts and cure payments to be a positive development. While it is not known at this time exactly which executory contracts will be assumed by the Stalking Horse Bidder, that is not unusual at the early stages of a SISP. It is customary for bidders to require due diligence during the SISP before determining precisely what executory contracts they wish to assume, or exclude, from their final binding bids. The Applicants have confirmed that this diligence and identification process will be carried out with the Stalking Horse Bidder as promptly as possible and the results will be completed and made available to other bidders in the SISP as far in advance of the Phase 2 Bid Deadline as possible. The Monitor does not view the payment of unsecured creditors by way of curing monetary defaults to be in violation of the absolute priority rules and, in the Monitor's experience, it is common practice in assets purchase and sale transactions in Canadian insolvency proceedings.
29. The Monitor also views the significant additional US\$20 million of funding that has been committed by the Stalking Horse Bidder to make cure payments to be a positive development. Approximately 70% of the Applicants' pre-filing unsecured debts will be paid, which is a relatively high percentage. This also sets a baseline for other SISP bidders, who can submit a superior bid, should they offer to assume and cure more executory contracts than the Stalking is offering to assume and cure.
30. It is noted that the amounts due to trade suppliers and estimated proportionate recoveries are presented before consideration of any contingent creditor claims that may result from contracts that may be disclaimed during the CCAA Proceedings. The Monitor has not approved the disclaimer of any contracts in the CCAA Proceedings to date.

CONTRACT ASSIGNMENT AND CURE COST PAYMENTS UNDER THE STALKING HORSE APA

31. For the benefit of the Court and the Applicants' stakeholders, the Monitor has summarized the procedures and mechanisms in the Stalking Horse APA that will facilitate the assumption of executory contracts and the payment of cure costs, as follows.

Defined Terms Relevant to the Assumption of Executory Contracts

- a. at closing, the purchasers will assume the “Assumed Liabilities”¹ which include, among other things, all liabilities of a seller under “Assigned Contracts”;²
- b. “Assigned Contracts” include two subcategories of contracts:³
 - i. “Essential Contracts”; and
 - ii. “Other Contracts”;
- c. the purchasers will not assume any liabilities of any seller under “Excluded Contracts”;⁴

Mechanism for the Identification of the Essential Contracts, Other Contracts and Excluded Contracts

- d. Schedule “F” to the Stalking Horse APA (“**Schedule F**”) will list all executory contracts to which any seller is a party and shall also, for each executory contract:
 - i. identify the seller's good-faith estimate of the Cure Amount (the definition of which is described below); and

¹ Stalking Horse APA, s. 2.3
² Stalking Horse APA, s. 2.3(a)
³ Stalking Horse APA, s. 2.1(l)
⁴ Stalking Horse APA, s. 2.4(b), 2.2(c)

- ii. categorize the contract as an Essential Contract, an Other Contract or an Excluded Contract;
- e. the Applicants have advised the Monitor that as soon as Schedule “F” is completed, it will be posted in the VDR so that other bidders in the SISP can access it. The Applicants will do that as soon as reasonably possible prior to the Phase 2 Bid Deadline under the SISP and the Monitor, in consultation with Evercore, is of the view that two weeks prior to the Phase II bid deadline would be sufficient;
- f. the purchasers shall have the sole discretion to determine which contracts are Assigned Contracts and shall have the right, up to five business days before the date of the application for the Assignment Order (the definition of which is described below), to change the categorization of a contract as between Essential Contracts, Other Contracts and Excluded Contracts;⁵ and
- g. if, prior to closing, the purchasers discover an executory contract that should have been listed in Schedule “F”, or the sellers have entered into an executory contract since the execution of the Stalking Horse APA (a “**Previously Omitted Contract**”), the sellers must notify the purchasers of such contract, and the Cure Amount relating thereto, and the purchasers must designate such contract as an Essential Contract, an Other Contract or an Excluded Contract. If a Previously Omitted Contract is designated as an Essential Contract or an Other Contract, the counterparty will be notified and if the parties cannot consent to the assignment thereof and the Cure Amount, the sellers will seek an Assignment Order respecting that contract;⁶

⁵ Stalking Horse APA, s. 2.6(a)

⁶ Stalking Horse APA, s. 2.6(b)

Mechanism for the Assignment of the Assigned Contracts and the Disclaimer of Excluded Contracts

- h. the sellers are obligated to use commercially reasonable efforts obtain all consents from counterparties necessary to assign the Assigned Contracts to the Stalking Horse Bidder;⁷
- i. the purchasers may request modifications or amendments to Assigned Contracts and the sellers are obligated to cooperate and seek to obtain counterparty's agreement to same;⁸
- j. if the purchasers are unable to obtain a counterparties' consent to assign an Assigned Contract, the purchasers are obligated to use commercially reasonable efforts to obtain the Assignment Order in respect of such Assigned Contracts, prior to the closing date of the transaction;⁹
- k. the "Assignment Order" is to be an order of this Honourable Court, in form and substance acceptable to the sellers and purchasers, acting reasonably, assigning to the purchasers any Assigned Contract for which the sellers have not obtained the counterparty's consent; and
- l. the sellers cannot disclaim any Assigned Contracts without the consent of the purchasers but are free to seek to do so with respect to any Excluded Contracts, from and after the date that is five business days prior to the application for the Assignment Order.¹⁰

⁷ Stalking Horse APA, s. 2.6(a)

⁸ Stalking Horse APA, s. 2.6(a)

⁹ Stalking Horse APA, s. 2.6(a)

¹⁰ Stalking Horse APA, s. 2.6(c)

The Mechanism for the Payment of Cure Amounts

- m. “Cure Amounts” are the amounts required to be paid pursuant to the Assignment Order(s) to remedy all the sellers' monetary defaults under Assigned Contracts as at the closing date, to be paid by way of agreement with a counterparty;¹¹
- n. if a Cure Amount is payable for the assignment of any Assigned Contract, the sellers shall pay such Cure Amounts, either in accordance with the consent agreed to with the counterparty, or in accordance with the Assignment Order;¹²
- o. after closing, the purchasers shall make available to the sellers the “Cure Funding Amount” for use by the sellers to pay the Cure Amounts related to Assigned Contracts;¹³ and
- p. the Cure Funding Amount shall be US\$20 million, less any payments made by the Applicants after the execution of the Stalking Horse APA. These forecast amounts are summarized in the Table above;

Closing Conditions Related to Executory Contracts

- q. the following events or occurrences, among others, are conditions precedent to the purchasers' obligations to consummate the purchase and sale transaction pursuant to the Stalking Horse APA:
 - i. the granting of Assignment Order(s) in form and substance acceptable to the sellers and purchasers, acting reasonably, and such order(s) being final;¹⁴

¹¹ Stalking Horse APA, s. 2.6(c)

¹² Stalking Horse APA, s. 2.6(a)

¹³ Stalking Horse APA, s. 2.6(a)(iii), s. 6.17

¹⁴ Stalking Horse APA, s. 1.1, 8.1

- ii. all consents necessary for the assignment of the Essential Contracts must have been obtained, or Assignment Order(s) must have been granted authorizing the assignment of the Essential Contracts;¹⁵ and
- iii. the Cure Amount for the Essential Contracts must not (other than the Diavik JVA) exceed the Cure Funding Amount.¹⁶

PROPOSED REVISIONS TO THE SECOND ARIO AND SISP

32. The June 12 Second ARIO and the June 12 SISP being sought by the Applicants differ in some respects from the Appendix “M” Second ARIO and the Appendix “M” SISP proposed by the Monitor in the Supplement.
33. In its Bench Brief served on June 17, 2020, DDMI proposed certain revisions to the Appendix “M” Second ARIO and the Appendix “M” SISP, which had previously been sent to the Monitor and the Applicants at 8:40 a.m. Mountain time on June 11, 2020 (the “**DDMI Proposed Revisions**”).
34. Because the Monitor provided a full commentary on the Appendix “M” Second ARIO and the Appendix “M” SISP in the Supplement, in this Report, the Monitor is only providing comments on the substantive revisions being proposed by the Applicants and DDMI to the Appendix “M” Second ARIO and the Appendix “M” SISP. The following Appendices are attached to this Report for ease of reference:
- a. Appendix “C” – Blackline showing Applicants' changes from the Appendix “M” Second ARIO to the June 12 Second ARIO;
 - b. Appendix “D” – Blackline showing Applicants' changes from the Appendix “M” SISP to the June 12 SISP; and

¹⁵ Stalking Horse APA, s. 8.7

¹⁶ Stalking Horse APA, s. 8.7

- c. Appendix “E” – Blackline showing the DDMI Proposed Revisions to the Appendix “M” SISP.

Second ARIO

Paragraph	Proposed Revision	Monitor's Comments
13	The Applicants propose moving the Stay Extension from August 31, 2020 to September 28, 2020	This change is appropriate in the Monitor’s view, given the passage of time since the May 29 application. It does not materially prejudice any party, because the Interim Facility will provide liquidity for this entire period.
16	DDMI proposes that it be allowed to hold all of Dominion's share of diamond production from the Diavik Mine, not just amounts the value of which is equal in value to the Cover Payments.	As a matter of principle, the Monitor does not agree with this revision. DDMI should be entitled to hold Dominion's diamonds in an amount that is sufficient to cover the amount of the cumulative Cover Payments made by DDMI, but not to hold diamonds of a value exceeding the cumulative Cover Payments.

16(e)	DDMI proposes that it be permitted to make an application to the Court for permission to exercise rights and remedies not just on the happening of the triggering events proposed by the Monitor, but at any time.	The Monitor does not agree that it is justifiable to grant leave to DDMI in advance to make an application at any time. The triggering events in paragraph 16 of the Appendix “M” Second ARIO were deliberately chosen as events and times at which it would be logical for DDMI to have the right to apply to the Court without seeking to lift the stay. The Monitor believes that if DDMI wishes to make a court application to exercise a remedy at a different time, it should be required to apply to lift the stay, as is the case for any other creditor.
41	DDMI proposes that the Court-ordered release of the Applicants, SISP Advisor, Monitor and Stalking Horse Bidder with respect to the conduct of the SISP be made “subject to” DDMI's rights under the Diavik JVA (as set out in paragraph 45).	The Monitor understands that DDMI's concern is to ensure that this paragraph does not inadvertently release any of DDMI’s rights, remedies or claims under the Diavik JVA. The Monitor agrees that this is a reasonable qualification to paragraph 41. Rather than the broad wording proposed in DDMI's draft, the Monitor suggests that the same purpose could be achieved by adding a sentence at the end paragraph 41 that states: “Nothing in this paragraph 41 shall have the effect of releasing any rights, remedies or claims of DDMI under the Diavik JVA.” This change would be consistent with paragraph 45 of Second ARIO, to which no party is objecting.

42	The Applicants have removed reference to the approval of the Stalking Horse Term Sheet and seek approval of the Stalking Horse APA, with any subsequent amendments as may be approved by the Monitor.	This change is appropriate and does not materially prejudice any party.
45	The Applicants propose that the granting of the Second ARIO be without prejudice not just to the rights of DDMI under the Diavik JVA, but also to the rights of Dominion thereunder.	This change is appropriate and does not materially prejudice any party.
57(a)	DDMI proposes that expansive wording be removed from the provision subordinating certain Court-ordered charges to DDMI's security interest under the Diavik JVA.	The Monitor agrees that this proposed revision is appropriate. The additional wording introduces potential uncertainty and limiting the wording to "any Encumbrances under Article 9 of the Diavik JVA" preserves all parties' rights to the fullest extent by referring only to the security interest of DDMI under the Diavik JVA.

58	DDMI proposes a provision that prohibits any Court-ordered charge other than the Administration Charge and the D&O Charge from being granted priority over the Diavik Collateral without DDM's consent in writing.	The Monitor considered this proposed revision by DDMI in the Supplement to the Fourth Report and remains of the view that, for the reasons stated there, this revision is not justified.
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SISP

Paragraph	Proposed Revision	Monitor's Comments
5, 13, 21, 22(j), 27(a), 28, 30	The Applicants propose moving the SISP milestones back by approximately ten days.	<p>These changes are appropriate, given the passage of time since the May 29 application. They do not materially prejudice any party, because the Interim Facility will provide liquidity for this entire period.</p> <p>The Financial Advisor has confirmed its agreement with the revised timeline for the SISP.</p>

22(c)	<p>The Applicants propose the deletion of the provision requiring that all Qualified Phase 2 Bids provide for payment in full in cash of all Cover Payments, and the assumption of all of Dominion's obligations under the Diavik JVA and associated agreements with DDML.</p>	<p>Given the detailed mechanism and additional clarity that is now embodied in the Stalking Horse APA regarding the assumption of executory contracts and the payment of cure costs (including but not limited to the Diavik JVA), the Monitor suggests that paragraph 22(c) be replaced with the following: “identifies all executory contracts of the Applicants that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, what cure payments shall be paid, the manner in which they shall be paid, and the timing of such payments;”</p> <p>This clarity from Phase 2 Bidders is necessary so that all Qualified Phase 2 Bids can be judged against the Stalking Horse APA, with respect to their treatment of executory contracts.</p>
35	<p>Similar to the change in paragraph 22(c), the Applicants propose the deletion of the provision requiring that all Cover Payments must be paid in cash in full on closing.</p>	<p>The Monitor supports the removal of these words, given the proposed revision to paragraph 22(c), which addresses all executory contracts equally.</p>

38	The Applicants propose that the list of potential credit bidders who must repay the Interim Financing in a credit bid, be expanded to include Noteholders.	The Monitor agrees this revision is appropriate.
38	DDMI proposes that in any credit bid, all Dominion obligations to DDMI must be repaid in full in cash, not just the Cover Payments.	The Monitor does not support this revision, given the proposed revision to paragraph 22(c), which affects all executory contracts equally.
38	DDMI proposes that the language giving primacy to intercreditor agreements over the SISP be limited to paragraph 38 of the SISP, not the entire SISP.	The Monitor agrees with this clarifying revision.

41(c)	DDMI has raised with the Monitor the statement that all Phase 1 and Phase 2 Qualified Bidders be granted equal information and access to various parties as is made available to the Stalking Horse Bidder. The list of parties to whom access is to be made available is stated to include DDMI, the NWT government and sureties. DDMI asked the Monitor to clarify that this clause should not have the effect of binding DDMI to obligations to unknown third parties.	The Monitor suggests adding a sentence at the end of this paragraph stating: “Nothing in this paragraph creates binding obligations of third parties, including but not limited to DDMI, the Government of the Northwest Territories, or sureties.”
41(e)	The Applicants propose clarifying wording, preserving the Court's discretion to not approve any bid in the SISP.	This change is appropriate and does not materially prejudice any party. It is consistent with the Monitor's view of the Court's broad discretion.

SECURITY OPINIONS

35. The Monitor has instructed its legal counsel to complete an independent review of the validity and enforceability of security held by the Existing Credit Facility Lenders, the Noteholders and DDMI, over the property of Dominion. The Applicants' assets are located in multiple jurisdictions and the loan and security documentation is governed by the laws of different jurisdictions, which has necessitated the retention of agent counsel in the United States and the Northwest Territories to complete the review. The Monitor will report on the outcome of the Security Opinions in due course.

JUNE 15 INTERIM FINANCING TERM SHEET

36. The Monitor has reviewed the June 15 Interim Financing Term Sheet and remains supportive of the proposed Interim Facility, for the reasons set out in the Fourth Report. The only substantive revisions to this document are:

- a. Paragraph 22(f) – this is the negative covenant preventing the payment by the Applicants of professional fees for the purpose of challenging the Stalking Horse Transaction. The Monitor has already commented on this provision in Appendix “L” of the Supplement to the Fourth Report; and
- b. Paragraph 24 – this revision relates exclusively to rights as between the different interim lenders. The Monitor does not object to this provision, as it does not impact the rights of the Applicants or other stakeholders.

AD HOC COMMITTEE OF NOTEHOLDERS INTERIM FINANCING TERM SHEET

37. Affidavit No. 2 of Eric Hoff was filed in support of an application by the Ad Hoc Committee of Noteholders for an order authorizing and directing the Applicants to accept the Noteholders Interim Financing Term Sheet. It sets out Mr. Hoff's concerns with respect to Dominion's application to approve the Interim Financing Term Sheet and SISF which include, among other things, the following:

- a. the purchase price in the Stalking Horse APA and the expectation that it would result in no recovery to the Notes;
 - b. the conditionality of the Stalking Horse APA;
 - c. the break fee, expense reimbursements and overbid amounts provided for under the Stalking Horse APA which would be applicable should the financing condition be removed and which may total approximately \$5.8 million; and
 - d. other concerns around the fairness and impact on the sales process of the Stalking Horse APA.
38. The Noteholder Interim Financing Term Sheet has similar commercial terms to the June 15 Interim Financing Term Sheet with the following key exceptions:
- a. it is not tied to the acceptance of the Stalking Horse APA or any other stalking horse bid; and
 - b. the interest rate is LIBOR (or 1%, whichever is greater) plus 700 basis points as compared to 5.25% under the Interim Financing Term Sheet.
39. The Monitor has commented on the relative merits of the Interim Financing Term Sheet put forward by the Interim Lenders, including the corresponding Stalking Horse Term Sheet, in the Fourth Report and Supplement.
40. The Monitor has subsequently reviewed the commercial terms of the Noteholders Interim Financing Term Sheet and had discussions with Evercore and the Applicants.
41. Evercore has provided the Monitor with its analysis concluding that the economics and terms of the June 15 Interim Financing Term Sheet are more favourable than the Noteholders Interim Financing Term Sheet and confirmed its view that while the Stalking Horse APA is subject to more conditionality than is typical, it provides a reasonable

potential for a going concern restructuring transaction, sets price expectations for prospective bidders and incentivises competing bids which will maximize the potential value of the Applicants' assets.

42. Overall, the Monitor remains of the view that the June 15 Interim Financing Term Sheet, including its associated costs and the corresponding Stalking Horse APA, make it the most favourable option available to the Applicants in the circumstances and more favourable than the Noteholders Interim Financing Term Sheet.

THIRD CASH FLOW STATEMENT

43. The Second Cash Flow Statement, which was included as an Appendix "F" to the Fourth Report, was based on the assumption that interim financing would be available to Dominion during the week ended June 5, 2020. As the Applicants have not yet had access to interim financing, they have incurred large variances against the Second Cash Flow Statement as a result of timing differences while financing proceeds and corresponding payments for expenses incurred during the CCAA Proceedings are delayed.
44. Rather than providing a detailed analysis of the variances against the Second Cash Flow Statement at this time, Management, in conjunction with the Financial Advisor, has prepared the Third Cash Flow Statement for the 28 weeks ending October 30, 2020 which reflects updated assumptions around timing of payments and is to serve as the DIP Budget under the Interim Facility, should it be approved. A copy of the Third Cash Flow Statement is attached as Appendix "F".

45. The Third Cash Flow Statement is summarized as follows:

<i>(\$ thousands)</i>	April 22 to June 5 Actuals	June 6 to October 30 Forecast	April 22 to October 30 Total
Operating Receipts			
Sales	\$ -	\$ -	\$ -
Total Operating Receipts	-	-	-
Operating Disbursements			
Payroll and Benefits	4,948	15,559	20,507
Consultants and Contractors	1,297	4,946	6,244
Rent	309	392	701
Equipment Leases	1,413	3,778	5,191
Underground Mining Costs	-	2,646	2,646
Travel	37	1,115	1,152
Insurance	2,418	2,048	4,467
IT & Software	581	2,433	3,014
IBA Payments	-	1,899	1,899
Power	-	756	756
Site Maintenance & Environment	164	3,867	4,031
CCAA Professional Fees	584	33,889	34,473
Critical Vendors Accounts Payable	1,746	3,254	5,000
Net Taxes	(365)	-	(365)
Winter Road & Ramp-up Costs	-	5,901	5,901
Other	-	14,406	14,406
Total Operating Disbursements	13,132	96,889	110,022
Net Change in Cash from Operations	(13,132)	(96,889)	(110,022)
Financing			
Intercompany Receipts / (Disbursements)	(121)	894	773
Interest & Bank Charges	(732)	(4,465)	(5,197)
DIP Facility Interest	-	(923)	(923)
Government Support Program	1,849	1,530	3,379
DIP Facility Draw	-	85,200	85,200
Net Change in Cash from Financing	996	82,237	83,233
Net Change in Cash	(12,136)	(14,652)	(26,789)
Opening Cash	26,823	14,687	26,823
Ending Cash	\$ 14,687	\$ 34	\$ 34

46. The key assumptions of the Third Cash Flow Statement are largely consistent with those of the Second Cash Flow Statement and are summarized as follows:

- a. operating receipts will be nil during the period as Dominion is, generally unable to transport its inventory in the normal course to market due to restrictions relating to the COVID-19 pandemic;
- b. operating disbursements relate primarily to ordinary course payments to run Dominion's corporate office and care and maintenance operations at Ekati;
- c. the Third Cash Flow Statement includes approximately \$5.0 million of payments of pre-filing amounts due to critical suppliers that may be required to avoid disruption of key supplies and services, of which \$1.7 million has been incurred to date, and \$3.3 million is forecast to be incurred during the Forecast Period;
- d. professional fees are forecast to be approximately \$34.5 million during the period. A summary of the fees forecast to be incurred by role are set out in the table below:

(\$ thousands)	Weeks 1 - 7	Weeks 8 - 28	Weeks 1 - 28
Role	Actuals	Forecast	Total
Financial Advisor	\$ -	\$ 10,493	\$ 10,493
Legal Counsel to Applicants	584	6,416	7,000
US Legal Counsel to Applicants	-	2,421	2,421
Monitor	-	2,750	2,750
Legal Counsel to Monitor	-	1,675	1,675
Legal Counsel to The Washington Companies	-	5,964	5,964
Agent Advisor & Legal Counsel to the Existing Credit Facility Lenders	-	3,195	3,195
Other	-	975	975
Total Professional Fees	\$ 584	\$ 33,889	\$ 34,473

The professional fees are forecast based on the assumption that the Stalking Horse Bid conditions are waived or satisfied and that the Stalking Horse Transaction or a superior transaction has closed within the timelines of the SISF; and

- e. interim financing of approximately \$85.2 million is forecast to be advanced by the Interim Lenders during the period under the Interim Facility.

47. As set out in the Third Cash Flow Statement, the Applicants are in urgent need of immediate funding to support Dominion's ordinary course operations, care and maintenance expenses and the restructuring costs associated with the CCAA Proceedings.

2L TRUSTEE COST APPLICATION

48. The Monitor remains of the view that there is currently insufficient justification to support the relief sought in the 2L Trustee Cost Application, for the following reasons:

- a. it does not appear that payment by Dominion of the 2L Trustee's costs is necessary for their effective participation in these proceedings. The 2L Trustee has been effectively participating in these proceedings, absent the payment of its costs;
- b. the 2L Trustee has a contractual priority, and has a first claim against any moneys received by the 2L Trustee on behalf of the Noteholders, from which it would receive reimbursement of its costs. If the Noteholders are "in the money" in these proceedings because a party submits a bid that is superior to the Stalking Horse APA (as the Ad Hoc Committee has advised the Court it will be doing), the 2L Trustee's costs would very likely be reimbursed; and
- c. the 2L Trustee has not provided any estimate of its costs, so it is impossible to determine the impact thereof on the Applicants' cashflow projections.

STAY EXTENSION

49. The Monitor's comments with respect to Dominion's application for the Stay Extension are as follows:

- a. the Third Cash Flow Statement forecasts that the anticipated proceeds of the Interim Facility will provide the Applicants with sufficient liquidity during the term of the proposed Stay Extension;
- b. the Applicants require the Stay Extension in order to undertake the SISF in conjunction with the Financial Advisor;
- c. there will be no material prejudice to the Applicants' creditors and other stakeholders as a result of the Stay Extension;

- d. the Applicants are acting in good faith and with due diligence; and
- e. Dominion's overall prospects of effecting a viable restructuring will be enhanced by the Stay Extension.

CONCLUSION AND RECOMMENDATION

50. Overall, the Financial Advisor Agreement, June 15 Interim Financing Term Sheet, SISP, Stalking Horse APA and KERP provide a comprehensive restructuring plan for the Applicants, while allowing for a fair and transparent process to identify the most favourable restructuring transaction for all stakeholders.

51. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the June 12 Second ARIO and the SISP, with the revisions suggested by the Monitor in paragraph 34 above.

All of which is respectfully submitted this 18th day of June, 2020.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants



Deryck Helkaa
Senior Managing Director



Tom Powell
Senior Managing Director

APPENDIX “A”

Email from the Monitor's Counsel to the Service List
dated June 10, 2020

Shierman, Lindsay

From: Donna Kathler <KathlerD@bennettjones.com>
Sent: Wednesday, June 10, 2020 7:47 AM
To: Afshan Naveed; Alexandre Larouche; Andrew Astritis; Andrew Raven; Ashley Taylor; Brad Wiffen; Swift, Brandi; Brendan O'Neill; Cathy VanAsseldonk; Charles Ang; Chris Simard; Christa Nicholson; Christopher Jennings; Claire Hildebrand; Munro, Craig; David Budd; Dean Hitesman; Demara Mills; Helkaa, Deryck; Doug Nishimura; Olver, Dustin; Elana Pratt; Elvina Hussein; Emily Paplawski; Felicia Perlman; Gunnar Benediktsson; Ian Blackstock; James MacLellan; Jeff Citron; Jeff Vallis; Jeline Nantes; Jerritt Pawlyk; Joel Levitin; John Policano; John Pringle; John Regush; John Rooney; John Salmas; John Sandrelli; Jordan Schultz; Joseph Bellisimo; Karen Fellowes; Katie Robinson; Kent Anderson; Kevin Barr; Kurtis Letwin; Kyle Kashuba; Lance Williams; Linc Rogers; Shierman, Lindsay; Madori Sakamoto; Marc Wasserman; Mark Freake; Mary Buttery; Mary Paterson; Matthew Quinlan; Melody Yiu; Michael De Lellis; Michael Partridge; Michael Selnes; Miriam Dominguez; Morgan Cilly; Neil Narfason; Nicholas Avis; Norine Maaswinkel; Peter Bychawski; Peter Rubin; Robert Fitzgerald; Kleebaum, Robert; Ron Meisler; Ross Johnson; Sam Alberts; Scott Watson; Shannan Hill; Simon Archer; Spencer Norris; Sue Danielisz; Tara Berish; Terrence Warner; Powell, Tom; Tony Demarinis; Vicki Tickle; Wayne Day; Zachary Rodgers
Subject: Dominion Diamond Mines - Filing Deadlines for June 19 Hearing

See below from Chris Simard

Service List,

When the company's application was adjourned last week, Eidsvik J. referred to the parties observing a filing schedule set by the monitor. We are proposing the following schedule for all materials to be delivered in connection with the June 19, 2020 hearing:

- Additional application materials of the Company and bench brief, if any, by end of day Friday, June 12;
- Any respondents' application materials including bench briefs filed by any other party by end of day Tuesday, June 16;
- Monitor's report by noon Mountain Thursday, June 18; and
- Any reply materials of the company by noon Mountain Thursday, June 18.

We have also been advised by counsel to the Trustee of the 2L Notes that it reserves the right to set down for hearing on June 19, its previously-adjourned and as yet unheard application to have its fees paid. If the Trustee does so, we will advise the Service List of any required changes to this filing schedule.



Chris Simard
Bennett Jones LLP

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. [403 298 4485](tel:4032984485) | F. [403 265 7219](tel:4032657219)
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APPENDIX “B”

Email from the Monitor's Counsel to the Service List
dated June 18, 2020

Shierman, Lindsay

From: Chris Simard <SimardC@bennettjones.com>
Sent: Thursday, June 18, 2020 9:39 AM
To: peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.crilly@blakes.com; Claire.hildebrand@blakes.com; Fperlman@mwe.com; Helkaa, Deryck; Powell, Tom; Shierman, Lindsay; Olver, Dustin; Munro, Craig; Kleebaum, Robert; Michael Selnes; mbuttery@cassels.com; mwasserman@osler.com; epaplowski@osler.com; jlevitin@cahill.com; boneill@goodmans.ca; bwiffen@goodmans.ca; mpartridge@goodmans.ca; jcitron@goodmans.ca; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; wmacleod@mccarthy.ca; scollins@mccarthy.ca; ataylor@mccarthy.ca; tdemarinis@torys.com; kkashuba@torys.com; quinlm3@telus.net; JPawlyk@bmlp.ca; Ross.Johnson@ca.ey.com; Neil.Narfason@ca.ey.com; KBarr@blg.com; JVallis@blg.com; jordan.schultz@dentons.com; john.sandrelli@dentons.com; miriam.dominguez@dentons.com; alexandre.larouche@justice.gc.ca; kanderson@millerthomson.com; twarner@millerthomson.com; snorris@millerthomson.com; gunnar.benediktsson@nortonrosefulbright.com; ARaven@ravenlaw.com; AAstritis@ravenlaw.com; cvanasseldonk@ravenlaw.com; EHussein@fieldlaw.com; DNishimura@fieldlaw.com; lwilliams@cassels.com; sdanielisz@cassels.com; MDeLellis@osler.com; nicholsonc@jssbarristers.ca; Donna.Kathler; j.pringle@mckercher.ca; lan.Blackstock@gov.nt.ca; sam.alberts@dentons.com; john.salmas@dentons.com; jmaclellan@blg.com; swatson@parlee.com; cang@parlee.com; john.regush@dentons.com; tara.berish@osfi-bsif.gc.ca; Swift, Brandi; chrisjennings66@me.com; ataylor@stikeman.com; navis@stikeman.com; krobinson@parlee.com; jbellissimo@cassels.com; dbudd@cassels.com; MYiu@connectlaw.ca; kurtis.letwin@dentons.com; dean.hitesman@dentons.com; mark.freake@dentons.com; MPaterson@osler.com; MSakamoto@blg.com; zrodgers@ravenlaw.com; sarcher@goldblattpartners.com; EPratt@osler.com; nmaaswinkel@blg.com; dmills@blg.com; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com; wday@rpaadvisors.com; jrooney@rpaadvisors.com; jpolicano@rpaadvisors.com; afshan.naveed@dentons.com; cperkins@eckertseamans.com
Subject: [EXTERNAL] RE: Dominion Diamonds CCAA - Proposed Schedule for Court Hearing at 9:15 a.m. Mountain Time on Friday, June 19, 2020

Sorry, I hit send too soon. See one **correction** in the email below.



Chris Simard
Bennett Jones LLP

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. [403 298 4485](tel:4032984485) | F. [403 265 7219](tel:4032657219)
E. simardc@bennettjones.com



From: Chris Simard <SimardC@bennettjones.com>

Sent: Thursday, June 18, 2020 9:37 AM

To: peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.crilly@blakes.com; Claire.hildebrand@blakes.com; Fperlman@mwe.com; deryck.helkaa@fticonsulting.com; tom.powell@fticonsulting.com; lindsay.shierman@fticonsulting.com; dustin.olver@fticonsulting.com; craig.munro@fticonsulting.com; robert.kleebaum@fticonsulting.com; Chris Simard <SimardC@bennettjones.com>; Michael Selnes <SelnesM@bennettjones.com>; mbuttery@cassels.com; mwasserman@osler.com;

epaplowski@osler.com; jlevitin@cahill.com; boneill@goodmans.ca; bwiffen@goodmans.ca; mpartridge@goodmans.ca; jcitron@goodmans.ca; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; wmacleod@mccarthy.ca; scollins@mccarthy.ca; ataylor@mccarthy.ca; tdemarinis@torys.com; kakashuba@torys.com; quinlm3@telus.net; JPawlyk@bmlp.ca; Ross.Johnson@ca.ey.com; Neil.Narfason@ca.ey.com; KBarr@blg.com; JVallis@blg.com; jordan.schultz@dentons.com; john.sandrelli@dentons.com; miriam.dominguez@dentons.com; alexandre.larouche@justice.gc.ca; kanderson@millerthomson.com; twarner@millerthomson.com; snorris@millerthomson.com; gunnar.benediktsson@nortonrosefulbright.com; ARaven@ravenlaw.com; AAstritis@ravenlaw.com; cvanasseldonk@ravenlaw.com; EHussein@fieldlaw.com; DNishimura@fieldlaw.com; lwilliams@cassels.com; sdanielisz@cassels.com; MDeLellis@osler.com; nicholsonc@jssbarristers.ca; Donna Kathler <KathlerD@bennettjones.com>; j.pringle@mckercher.ca; lan_Blackstock@gov.nt.ca; sam.alberts@dentons.com; john.salmas@dentons.com; jmaclellan@blg.com; swatson@parlee.com; cang@parlee.com; john.regush@dentons.com; tara.berish@osfi-bsif.gc.ca; Brandi.Swift@fticonsulting.com; chrisjennings66@me.com; ataylor@stikeman.com; navis@stikeman.com; krobison@parlee.com; jbellissimo@cassels.com; dbudd@cassels.com; MYiu@connectlaw.ca; kurtis.letwin@dentons.com; dean.hitesman@dentons.com; mark.freaker@dentons.com; MPaterson@osler.com; MSakamoto@blg.com; zrodgers@ravenlaw.com; sarcher@goldblattpartners.com; EPratt@osler.com; nmaaswinkel@blg.com; dmills@blg.com; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com; wday@rpaadvisors.com; jrooney@rpaadvisors.com; jpolicano@rpaadvisors.com; afshan.naveed@dentons.com; cperkins@eckertseamans.com

Subject: Dominion Diamonds CCAA - Proposed Schedule for Court Hearing at 9:15 a.m. Mountain Time on Friday, June 19, 2020

Service List,

We are writing with respect to the hearing before Eidsvik J. at 9:15 a.m. Mountain time on Friday, June 19. As you know, that hearing is a continuation of the application originally heard on Friday, May 29, 2020, and then continued but adjourned on June 3, 2020. Not all parties who wished to make submissions on May 29 were able to do so, as we ran out of time. The Monitor would like to ensure that the hearing proceeds in an orderly fashion and that all parties have an opportunity to be heard. Accordingly, the Monitor proposes the following protocol for the hearing on Friday. We recognize that we are not in a position to impose time limits on any party, but have suggested the following time limits:

1. Dominion's Application for Approval of the Second Amended and Restated Initial Order (to proceed first)

- Introduction by Monitor (up to 10 minutes)
- Dominion to make its application (up to 75 minutes)
- All parties who wish to make submissions in support of Dominion's application (up to 20 minutes each)
- All parties who wish to make submissions in opposition to Dominion's application or submissions proposing revisions to the Order being sought by Dominion (up to 20 minutes each)
- Reply by Dominion (up to 20 minutes)
- Submissions by Monitor (up to 30 minutes)

2. 2L Trustee's Application for Payment of Fees (to proceed second)

- 2L Trustee to make its application (up to 20 minutes)
- All parties who wish to make submissions in support of the 2L Trustee's application (up to 10 minutes each)
- All parties who wish to make submissions in opposition to the 2L Trustee's application ~~or submissions proposing revisions to the Order being sought by Dominion~~ (up to 10 minutes each)
- Submissions by Monitor (up to 10 minutes)

Thank you



Chris Simard
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Bennett Jones is committed to mitigating the spread of COVID-19. We have transitioned to a remote work environment and continue to provide complete and uninterrupted service to our clients. Visit our COVID-19 Resource Centre (<https://www.bennettjones.com/COVID-19>) for timely legal updates.

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APPENDIX “C”

Blackline showing Applicants' changes from the
Appendix "M" Second ARIO to the
June 12 Second ARIO

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 AND DOMINION FINCO INC.**

DOCUMENT **SECOND AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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

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

Fax No.: 604.631.3309

File: 00180245/000013

DATE ON WHICH ORDER WAS PRONOUNCED: June 3¹⁹, 2020

LOCATION OF HEARING: Calgary

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

UPON the application of Dominion Diamond Mines ULC ("Dominion Diamond"), Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, and Dominion Finco Inc. (collectively, the "**Applicants**"); **AND UPON** having read the Applicants' Notice of Application, filed, the Affidavits of Brendan Bell, sworn May 21, ~~2020 and June 12, 2020~~, filed, the Affidavit of Patrick Merrin, sworn May 11, 2020 (the "**Merrin Affidavit**"), filed, the Affidavits of John Startin, sworn May 21, 2020 (the "**Startin May Affidavit**") ~~and June 12, 2020~~, the Affidavits of Thomas Croese, sworn May 7, 2020 and May 28, 2020, respectively, filed, and the Affidavit of Service of ~~Renee Dubeau[-]~~ sworn ~~May 28 June [-]~~, 2020, filed; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application; **AND UPON** hearing counsel for the Applicants, counsel for the Monitor, counsel for Diavik Diamond Mines (2012) Inc. ("**DDMI**") and any other counsel present; **AND UPON** reading the Fourth Report of FTI Consulting Canada Inc. (the "**Monitor**"), ~~and the Supplement to the Fourth Report, both~~ of the Monitor, and the Fifth Report of the Monitor, each filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

- (a) subject to DDMI's rights in respect of the Dominion Products (as defined herein) as set forth at paragraph 16 of this Order, remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");
- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property;
- (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and
- (d) be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Kristal Kaye sworn April 21, 2020 or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. To the extent permitted by law, the Applicants shall be entitled but not required to make, in each case in accordance with the Definitive Documents (as defined below), the following advances or payments of the following expenses, incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order; and
 - (c) with the consent of the Monitor, obligations owing for goods and services supplied to the Applicants prior to the date of this Order if, in the opinion of the Applicants after consultation with the Monitor, the supplier or vendor of such goods or services is necessary for the operation or preservation of the Business or Property, provided that such payments shall not exceed \$5,000,000 in the aggregate without prior authorization by this Court.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay, in each case in accordance with the Definitive Documents, all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

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

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

- (i) employment insurance,
- (ii) Canada Pension Plan, and
- (iii) income taxes,

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

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

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

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

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

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order, provided however that the Applicants are authorized to pay interest accruing under the Existing Credit Facility in the ordinary course in accordance with the DIP Budget (as such terms are defined in the Interim Financing Term Sheet);
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject in each case to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:
- (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$2,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
 - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
 - (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

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

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

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Subject to paragraph 16 of this Order, until and including ~~August 31~~September 28, 2020, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
 - (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien;
 - (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment; or
 - (f) prevent DDMI from making Diavik JVA Cover Payments in accordance with the terms of the Diavik JVA.

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

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided however, that DDMI, in its capacity as manager under the Diavik JVA, be and is hereby authorized to hold an amount of Dominion Diamond's share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI (the "**Dominion Products**") at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "**PSF**") and the value of the Dominion Products shall be determined based on royalty valuations performed from time to time at the PSF by the Government of the Northwest Territories. DDMI shall hold the Dominion Products in trust, and subject to the following conditions:
 - (a) DDMI shall segregate the Dominion Products from DDMI's share of production from the Diavik Mine pursuant to and in accordance with the Agreement to establish a Protocol for Diamond Splitting Production, dated January 7, 2003, as amended, modified, supplemented or restated from time to time;
 - (b) DDMI shall provide adequate safeguarding of, and insurance coverage for, the Dominion Products;
 - (c) DDMI shall provide each of Dominion Diamond and the Monitor with reporting and records on the Dominion Products as may be requested by Dominion Diamond or the Monitor;

- (d) DDMI shall permit reasonable access to Dominion Diamond and the Monitor to attend at the PSF and audit or inspect the Dominion Products;
- (e) on the happening of any of the following dates, events or occurrences, DDMI shall be entitled to apply to this Honourable Court to seek an Order allowing it to exercise rights and remedies as against the Dominion Products:
 - (i) the date that the within CCAA proceedings are terminated;
 - (ii) the date that the Interim Lenders take any action to enforce the Interim Lenders' Charge, whether pursuant to the Interim Financing Term Sheet, the Definitive Documents or at law generally;
 - (iii) any time after the Phase 1 Bid Deadline, when there is no Phase 1 Qualified Bid or Phase 2 Qualified Bid (including the Stalking Horse Bid) which includes the assets owned by Dominion in the Diavik Joint Venture; and
 - (iv) November 1, 2020.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$4,000,000, as security for the indemnity provided

in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs [5554](#) and [5756](#) herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:
- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
 - (c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders or DDMI (but with respect to DDMI, only

with respect to the Diavik Mine and only to the extent that the Monitor determines will not prejudice the SISP) and their counsel on a periodic basis of financial and other information as agreed to between the Applicants and the Interim Lenders or DDMI which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders or DDMI;

- (d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders or DDMI, which information shall be reviewed with the Monitor and delivered to the Interim Lenders or DDMI and their counsel on a periodic basis or as otherwise agreed to by the Interim Lenders or DDMI;
- (e) fulfill the role contemplated for the Monitor in the SISP Procedures (as defined below) (including, without limitation, in respect of the granting or withholding of the Monitor's consent to the exercise of certain rights or discretions, the disclosure of certain information and materials to bidders under the SISP Procedures, the filing of certain reports to the Court, and the oversight of all SISP Procedures activities) and respond to all reasonable enquiries of the Applicants' creditors in relation thereto;
- (f) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

- (k) perform such other duties as are required by this Order or by this Court from time to time.
25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.
26. The Monitor shall provide any creditor of the Applicants and each of the Interim Lenders and DDMI with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.
29. The Monitor and its legal counsel shall pass their accounts from time to time.
30. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$3,500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~55~~[54](#) and ~~57~~[56](#) hereof.

INTERIM FINANCING AND INTERIM LENDER'S CHARGE

31. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Facility**") pursuant to the [Amended and Restated](#) Interim Financing Term Sheet dated as of ~~May 24~~[June \[-\]](#), 2020 (the "**Interim Financing Term Sheet**") among, the Applicants, Washington Diamond Lending, LLC and the other lenders party thereto (collectively in such capacity, the "**Interim Lenders**"), and the other parties thereto, in order to finance the Applicants' working capital requirements and other general corporate purposes and permitted capital expenditures set forth in the Interim Financing Term Sheet, provided that borrowings under such credit facility shall not exceed the principal amount of US\$60 million unless permitted by further order of this Court and agreed to by the Interim Lenders.
32. The Interim Facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet attached hereto as **Schedule "A"**, as such Interim Financing Term Sheet may be amended in accordance with its terms with the consent of the Monitor.

33. The Applicants are hereby authorized and empowered to execute and deliver the Interim Financing Term Sheet and such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the **“Definitive Documents”**), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the Interim Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lenders under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order or any other Order granted by this Court in these CCAA proceedings.
34. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the **“Interim Lenders’ Charge”**) on the Property other than the Excluded Assets (as defined in the Interim Financing Term Sheet) to secure all Interim Financing Obligations (as defined in the Interim Financing Term Sheet), which Interim Lenders’ Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Interim Lenders’ Charge shall not secure any obligation existing before the date this Order is made. The Interim Lenders’ Charge shall have the priority set out in paragraphs ~~55~~54 and ~~57~~56 hereof.
35. Notwithstanding any other provision of this Order:
- (a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders’ Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lenders’ Charge, the Interim Lenders may (i) immediately cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lenders’ Charge and make demand, accelerate payment, and give other notices; (ii) upon five (5) days’ notice to the Applicants and the Monitor, apply to this Court for the appointment of a receiver, receiver and manager or interim

receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and (iii) with leave of the Court, exercise any other rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents, and Interim Lenders' Charge; and

- (c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.
36. The Interim Lenders shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any Interim Financing Obligations.
37. This Order is subject to provisional execution and, if any of the provisions of this Order in connection with the Definitive Documents or the Interim Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (each, a "**Variation**") whether by subsequent order of this Court or any other court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the Interim Lenders under this Order (as made prior to the Variation) or the Definitive Documents, with respect to any advances made prior to the Interim Lenders being given written notice of the Variation and the Interim Lenders shall be entitled to rely on this Order as issued (including, without limitation, the Interim Lenders' Charge) for all advances so made.

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

38. Capitalized terms utilized in paragraphs 38 to ~~45~~46 of this Order that are not otherwise defined in this Order shall have the meanings ascribed to them in the Procedures for the Sale and Investment Solicitation Process (the “**SISP Procedures**”) in the form attached as **Schedule “B”** hereto.
39. The SISP Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.
40. The Applicants, the Monitor and their respective advisors (including the SISP Advisor) are hereby authorized and directed to carry out the SISP Procedures and to take such steps and execute such documentation as may be necessary or incidental to the SISP Procedures.
41. Each of the Applicants, the SISP Advisor and the Monitor and their respective affiliates, partners, directors, employees, advisors (including the SISP Advisor), agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP Procedures or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). The Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) and its directors, employees, advisors and agents (solely in connection with the Stalking Horse Bid and the SISP Procedures) shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Stalking Horse Bid, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court).
42. ~~Subject to approval by the Monitor,~~ Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and Dominion Diamond Mines ULC, as vendors (collectively, the “**Dominion Vendors**”), are hereby authorized to ~~negotiate~~execute and ~~finalize~~enter into a definitive stalking horse agreement of purchase and sale ~~(the “Stalking Horse Bid”)~~ among the Dominion Vendors, as sellers, and the Stalking Horse Bidder, as purchaser, which shall be substantially ~~in accordance with~~on the terms ~~of~~set out in the

stalking horse ~~term sheet~~ agreement of purchase and sale attached hereto as **Schedule "C"** (the "**Stalking Horse Bid**"), subject to such amendments, additions and/or deletions as may be negotiated between the Dominion Vendors and the Stalking Horse ~~Term Sheet~~ Bidder and approved by the Monitor. The Stalking Horse Bid submitted by the Stalking Horse Bidder, ~~on the terms set out in the Stalking Horse Term Sheet and to be memorialized in the Stalking Horse Bid~~, is hereby approved as the Stalking Horse Bid pursuant to and for purposes of the SISP Procedures, provided that nothing herein approves the sale to and the vesting of any assets or property in the Stalking Horse Bid pursuant to the Stalking Horse ~~Term Sheet or the Stalking Horse Bid~~ and that the approval of the sale and vesting of such assets and property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bidder is the Successful Bidder pursuant to the SISP Procedures.

43. The Dominion Vendors' obligation to pay the Break-Up Fee and Expense Reimbursement pursuant to and in accordance with the Stalking Horse ~~Term Sheet~~ Bid is hereby approved.
44. The Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Break-Up Fee and Expense Charge**") on the Property as security for the payment of the Break-Up Fee and Expense Reimbursement by the Dominion Vendors pursuant to and in accordance with the Stalking Horse ~~Term Sheet or, following its execution, the Stalking Horse~~ Bid. The Break-Up Fee and Expense Charge shall have the priority set out in paragraphs ~~55~~54 and ~~57~~56 hereof.
45. This Order is granted without prejudice to the rights and remedies of Dominion Diamond and DDMI under the Diavik JVA.
46. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants, the SISP Advisor and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP Procedures, but only to the extent desirable or required to carry out the SISP Procedures. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Applicants and the Property, and if it does not complete

such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

KERP AND THE KERP CHARGE

47. The Key Employee Retention Plan (the “**KERP**”) as described in the Merrin Affidavit, is hereby approved.
48. The Applicants are hereby authorized and directed to enter into the KERP with those employees (the “**Key Employees**”) listed in Confidential Exhibit “A” to the Merrin Affidavit (the “**Confidential Merrin Affidavit Exhibit**”).
49. The Applicants are hereby authorized and directed to pay a lump sum payment (the “**Incentive Bonus**”) to each of the Key Employees in the amount set out in the Confidential Merrin Affidavit Exhibit, to be paid as follows:
 - (a) the first one-third of the Incentive Bonus shall be paid to each Key Employee on the earlier of June 6, 2020 and their last day of employment (if the Key Employee is terminated without cause); and
 - (b) the remaining two-thirds of the Incentive Bonus shall be paid to each Key Employee on the earlier of November 6, 2020, their last day of employment (if the Key Employee is terminated without cause) and the closing of any restructuring transaction.
50. Payments to Key Employees under the KERP will only be made if, at the date the relevant payment of the Incentive Bonus is due, as described in paragraph ~~48~~49, the Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.
51. The Key Employees shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property as security for the amounts payable to the Key Employees pursuant to the KERP, which charge shall not exceed an aggregate amount

of \$580,000. The KERP Charge shall have the priority set out in paragraphs ~~55~~54 and ~~57~~56 hereof.

~~52. The Confidential Merrin Affidavit Exhibit shall, notwithstanding Division 4 of Part 6 of the Alberta Rules of Court, Alta Reg 124/2010, be sealed in the Court file, kept confidential, and not form part of the public record. The Confidential Merrin Affidavit Exhibit shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order, and shall not be opened upon further order of this Court.~~

FINANCIAL ADVISOR AGREEMENT AND FINANCIAL ADVISOR'S CHARGE

~~52.~~ 52. ~~53.~~ The agreement dated as of April 8, 2020 between Dominion Mines and Evercore Group L.L.C. (the "**Financial Advisor**") (as amended on April 22, 2020, the "**Financial Advisor Agreement**"), as set out in Exhibit "E" to the Startin May Affidavit, pursuant to which the Applicants have engaged the Financial Advisor to provide the services referenced therein is hereby approved, *nunc pro tunc*, including, without limitation, the payment of the Monthly Fee, Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee contemplated thereby, and the Applicants are authorized to continue the engagement of the Financial Advisor on the terms set out in the Financial Advisor Agreement.

~~53.~~ 53. ~~54.~~ The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge on the Property as security for the Monthly Fee, Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee (in each case as defined in the Financial Advisor Agreement), as follows:

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

Management Transaction Fee, Financing Fee, and Minimum Financing Fee (in each case on the terms set out in the Financial Advisor Agreement as approved by this Order). The Financial Advisor Charge shall have the priority set out in paragraphs ~~55~~54 and ~~57~~56 hereof.

VALIDITY AND PRIORITY OF CHARGES

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

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

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

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

Fourth – Break-Up Fee and Expense Charge; and

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

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

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

(a) the KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders' Charge and the Financial Advisor Charge shall rank subordinate to any Encumbrances under Article 9 of the Diavik JVA in respect of the assets owned by the Diavik Joint Venture and the Borrower's interest in the Diavik Joint Venture;

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

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

58. ~~59.~~ The Charges, the Interim Financing Term Sheet and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees and/or the Interim Lenders thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA, or any bankruptcy or receivership order made in respect of the Applicants;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or

- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, licence, permit or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Interim Financing Term Sheet and the other Definitive Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Term Sheet, or the execution, delivery or performance of the Definitive Documents; and
 - (iii) the payments made by the Applicants pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

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

SERVICE AND NOTICE

60. ~~61.~~ The Monitor shall (i) without delay, publish in the *Globe and Mail* and *The Northern Miner* a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner

prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

63. ~~64.~~ Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels’ email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Website.

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

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

GENERAL

66. ~~67.~~ The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
67. ~~68.~~ Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
68. ~~69.~~ Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.
69. ~~70.~~ This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
70. ~~71.~~ Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
71. ~~72.~~ This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Document comparison by Workshare 10.0 on Tuesday, June 16, 2020 6:37:45 PM

Input:	
Document 1 ID	iManage://bjwork.legal.bjlocal/WSLegal/24828868/4
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Document 2 ID	iManage://bjwork.legal.bjlocal/WSLegal/24934658/1
Description	#24934658v1<bjwork.legal.bjlocal> - June 12 Second ARIO
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	62
Deletions	58
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	122

APPENDIX “D”

Blackline showing Applicants' changes from the
Appendix "M" SISP to the June 12 SISP

Procedures for the Sale and Investment Solicitation Process

On April 22, 2020, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., Dominion Diamond Mines ULC (“**DDM**”), Dominion Diamond Delaware Company LLC and Dominion Diamond Canada ULC (collectively, the “**Applicants**”) obtained an Initial Order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) from the Alberta Court of Queen’s Bench (the “**Court**”) that, among other things, commenced the CCAA proceedings (the “**CCAA Proceedings**”), granted an initial stay of proceedings in respect of the Applicants (the “**Stay**”) and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”). On May 1, 2020, the Applicants obtained an amended and restated version of the Initial Order from the Court (the “**Amended and Restated Initial Order**”) that, among other things, extended the Stay. On June 3, 2020, the Applicants obtained a further amended and restated version of the Initial Order from the Court (the “**Second Amended and Restated Initial Order**”) that, among other things, approved the DIP (as defined below) and approved the Sale and Investment Solicitation Process (the “**SISP**”) set forth herein to determine whether a Successful Bid (as defined below) can be obtained.

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

Defined Terms

1. In addition:
 - (a) “**Agent**” means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement¹;

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

- (b) “**Agent Advisors**” shall mean Osler, Hoskin & Harcourt LLP, Cahill Gordon & Reindel LLP and RPA Advisors, or any one of them;
- (c) “**Business Day**” means a day, other than a Saturday or Sunday, on which banks are open for business in Calgary, Alberta;
- (d) “**Cover Payments**” has the same meaning as in the Diavik JVA;
- (e) “**CSA**” means the Closure Security Agreement dated December 13 2019 between DDMI and DDM;
- (f) “**DIP**” means the Interim Facility provided to Dominion Diamond Mines ULC and certain of its affiliates by Washington Diamond Lending, LLC (the “**Washington Interim Lender**”) and the Agent and/or one or more First Lien Lenders (in their capacity as lenders under the DIP, the “**First Lien Interim Lenders**”) as approved by the Second Amended and Restated Initial Order;
- (g) “**DDMI**” means Diavik Diamond Mines (2012) Inc.;
- (h) “**Diavik Diamond Mine**” means the Diavik diamond mine located in Lac de Gras, Northwest Territories;
- (i) “**Diavik Interest**” means DDM’s Participating Interest (as such term is defined in the Diavik JVA) under and pursuant to the Diavik JVA, including the Dominion Products;
- (j) “**Dominion Products**” has the meaning ascribed to it in the Second Amended and Restated Initial Order;
- (k) “**Existing Credit Agreement**” means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, the Agent, and each of the other parties and lenders party thereto (the “**First Lien Lenders**”), as amended, restated, supplemented or otherwise modified from time to time.
- (l) “**Non-Diavik Assets**” means the Applicants’ right, title and interest in all Property other than the Diavik Interest (including, for the avoidance of doubt the Applicants’ right, title, and interest in the Ekati Diamond Mine located in Lac de Gras, Northwest Territories, which is operated by DDM);
- (m) “**SISP Advisor**” means Evercore Group LLC, as retained by the Applicants to conduct the SISP.

Sale and Investment Solicitation Process Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for, (i) a sale or partial sales of (A) all, substantially all, or certain of the assets, property and undertakings (collectively, the “**Property**”) of the Applicants and certain of their subsidiaries (together with the Applicants, the “**Dominion Diamond Group**”); (B) the Diavik Interest; or (C) the Non-Diavik Assets or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Dominion Diamond Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property of the Dominion Diamond Group, or a combination thereof (the “**Opportunity**”).
3. The Applicants have received a bid from Washington Diamond Investment Holdings II, LLC (the “**Stalking Horse Bidder**”) which constitutes a qualified bid for all purposes and at all times under this SISP (the “**Stalking Horse Bid**”), and which Stalking Horse Bid shall serve as the “stalking horse” bid for purposes of this SISP. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal (each as defined below). A copy of the Stalking Horse Bid is available to all Phase 1 Qualified Bidders (as defined below).
4. The SISP set forth herein describes the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Dominion Diamond Group and its Property, including a copy of the Stalking Horse Bid, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below), and the approval thereof by the Court. The Monitor shall oversee the SISP and in particular shall oversee the SISP Advisor in connection therewith. The Applicants are required to assist and support the efforts of the SISP Advisor and the Monitor as provided for herein. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have exclusive jurisdiction to hear and resolve such dispute.
5. Certain bid protections (i.e. break fee and expense reimbursement) have been approved in respect of the Stalking Horse Bid, subject to the conditions set forth therein, by the Court pursuant to the Second Amended and Restated Interim Order. No other bidder may request or receive any form of bid protection as part of any offer made pursuant to the SISP.

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

<u>Event</u>	<u>Date</u>
SISP Advisor to distribute Teaser Letter to Potential Bidders	As soon as practical
SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR	As soon as practical
Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 14 of the SISP)	By July 10 <u>20</u> , 2020
SISP Advisor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Successful Bid	Within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate
Sale Approval hearing in respect of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	By July 27 <u>August 6</u> , 2020
Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 22 of the SISP)	By August 21 <u>31</u> , 2020
Auction Commencement Date (if needed)	August 24 <u>September 3</u> , 2020
Deadline for selection of final Successful Bid	August 28 <u>September 7</u> , 2020 or at such later date as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate
Deadline for completion of definitive documentation in respect of Successful Bid	September 11 <u>21</u> , 2020
Deadline for filing of Approval Motion in respect of Successful Bid	September 9 <u>21</u> , 2020
Anticipated Deadline for closing of the	

Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	September 14²⁸, 2020
Anticipated Deadline for closing of Successful Bid being the Target Closing Date	September 23^{October 7}, 2020 or such earlier date as is achievable
Outside Date by which the Successful Bid must close	October 31, 2020

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable after the granting of the Second Amended and Restated Initial Order:
 - (a) the SISP Advisor shall cause a notice of the SISP and such other relevant information which the SISP Advisor, in consultation with the Applicants and the Monitor, considers appropriate to be published in the *Globe & Mail* and such other publications as the SISP Advisor may consider appropriate; and
 - (b) the Dominion Diamond Group shall issue a press release setting out the notice and such other relevant information regarding the Opportunity as it may consider appropriate, with Canada Newswire designating dissemination in Canada.
7. The SISP Advisor shall prepare and distribute a summary describing the Opportunity (a “**Teaser Letter**”), outlining the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP, for distribution to potential bidders as soon as practical.
8. A confidential virtual data room (the “**VDR**”) in relation to the Opportunity will be made available by the SISP Advisor to Potential Bidders that have executed the NDA (as defined below). The VDR will be available as soon as practical. Following the completion of “Phase 1”, but prior to the completion of “Phase 2”, additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Dominion Diamond Group and the Opportunity. The Applicants may establish separate VDRs (including “clean rooms”), if the Applicants and the SISP Advisor reasonably determine that doing so would further the Dominion Diamond Group and any Potential Bidders’ compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

9. In order to participate in the SISP, an interested party must deliver to the SISP Advisor at the address specified in **Appendix “A”** hereto (including by email), and prior to the

distribution of any confidential information by the SISP Advisor to such interested party (including access to the VDR), an executed non-disclosure agreement in form and substance satisfactory to the Applicants (an “**NDA**”), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by the Successful Bid (as defined below). Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA with the Applicants, a “**Potential Bidder**”) each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the express written consent of the Applicants. Prior to the Applicants’ executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Applicants of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a “**Financing Party**”) shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Applicants in the event that it elects to act as a Potential Bidder.

10. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 9, will be deemed a “**Phase 1 Qualified Bidder**” and will be promptly notified of such classification by the SISP Advisor. For the avoidance of doubt, the Stalking Horse Bidder is a Phase 1 Qualified Bidder.
11. The SISP Advisor, with the assistance of the Applicants, will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) a confidential information memorandum providing additional information considered relevant to the Opportunity (a “**CIM**”) and provide an unredacted copy of the Staking Horse Bid as soon as practicable. The SISP Advisor, the Applicants, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.
12. The SISP Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) with access to the VDR. The SISP Advisor, the Applicants and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a template letter of intent (the “**Template LOI**”) and a proposed Purchase and Sale Agreement, based on the Stalking Horse Bid (“**Template PSA**”).
13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an “**LOI**”) (each such LOI, provided in accordance with paragraph 14 below, a “**Phase 1 Qualified Bid**”), to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix “A”** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on July ~~10~~**20**, 2020, or such other date or time as may be

agreed by the Applicants with the consent of the Monitor (the “**Phase 1 Bid Deadline**”). To the extent possible, the Phase 1 Qualified Bid should follow the format as set out in the Template LOI.

14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a “**Phase 1 Qualified Bid**” by the Applicants, the Monitor and the SISP Advisor, if the LOI complies at a minimum with the following:
- (a) it has been duly executed by all required parties;
 - (b) it is received by the Phase 1 Bid Deadline;
 - (c) it provides written evidence, satisfactory to the Applicants, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;
 - (d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;
 - (e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;
 - (f) an outline of any additional due diligence required to be conducted in order to submit a binding offer;
 - (g) it clearly indicates:
 - (i) the Phase 1 Qualified Bidder is seeking to acquire (A) all or substantially all of the Property, (B) the Diavik Interest or (C) the Non-Diavik Assets, whether through an asset purchase, a share purchase or a combination thereof (either one being, a “**Sale Proposal**”) or some other portion of the Property (a “**Partial Sale Proposal**”); or
 - (ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business (an “**Investment Proposal**”); and
 - (iii) that the Sale Proposal or Investment Proposal, as the case may be, will at a minimum and on closing, provide cash proceeds which are equal to the aggregate total of: (A) the amount of cash payable under the Stalking

Horse Bid if it does not provide for a credit bid or, if the Stalking Horse Bid does provide for a credit bid, the amount of cash payable thereunder together with the amount of obligations being credit bid thereunder, *plus* (B) the amount of the expense reimbursement and break fee (if any) payable to the Stalking Horse Bidder, *plus* (C) a minimum overbid amount of US\$1 million (the amounts set forth in this paragraph 14(g)(iii), the “**Minimum Purchase Price**”); provided, however, the Applicants may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet the Minimum Purchase Price (such bids, “**Aggregated Bids**”) (the amount of the Minimum Purchase Price shall be confirmed by the Sale Advisor with Potential Bidders);

- (h) it contains such other information as may be reasonably requested by the SISP Advisor, in consultation with the Applicants and the Monitor;
- (i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;
- (j) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the purchase price or price range in U.S. dollars and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - (ii) any contemplated purchase price adjustment;
 - (iii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;
 - (iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) information sufficient for the SISP Advisor, the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (k) in the case of an Investment Proposal, it identifies the following:

- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Dominion Diamond Group or its business in U.S. dollars;
 - (iii) the underlying assumptions regarding the *pro forma* capital structure;
 - (iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) information sufficient for the SISP Advisor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - (vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.
15. The Applicants with the consent of the Monitor, may waive compliance with any one or more of the requirements specified herein and deem any such non-compliant LOI to be a Phase 1 Qualified Bid; *provided* that the SISP Advisor shall consult with the Stalking Horse Bidder in advance and on a no-names basis regarding the general nature of any waiver being contemplated.

Assessment of Phase 1 Qualified Bids and Subsequent Process

16. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Successful Bid (as defined below).
17. Following the Phase 1 Bid Deadline, the Applicants shall determine, in accordance with the requirements of paragraph 14, the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a “**Phase 1 Successful Bid(s)**” and which Phase 1 Qualified Bidder(s) shall be deemed a “**Phase 2 Qualified Bidder(s)**”.
18. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. The Stalking Horse Bid constitutes a Phase 1 Successful Bid and the Stalking Horse Bidder is a Phase 2 Qualified Bidder for all purposes under the SISP, other than the Auction (as defined below). Notwithstanding any other provision hereof, in order to participate in the Auction, the Stalking Horse Bidder shall have waived, or confirmed satisfaction of, any financing condition contained in the Stalking Horse Bid.

19. The SISP Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Successful Bid within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor and the Monitor, deem appropriate.
20. In the event that no Phase 1 Successful Bids are received (other than the Stalking Horse Bid), the Applicants, with the assistance and support of the SISP Advisor and the Monitor, shall promptly proceed to seek Court approval of the Stalking Horse Bid; *provided, however*, that the Applicants may (i) extend the Phase 1 Bid Deadline with the consent of the Monitor, the Stalking Horse Bidder, and the Agent Advisors, or (ii) seek Court approval of an amendment to, or termination of, the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to his/her/its Sale Proposal or Investment Proposal shall submit a binding offer (a “**Binding Offer**”) (a) in the case of a Sale Proposal, in the form of the Template PSA provided in the VDR, along with a marked version showing edits to the original form of Template PSA provided in the VDR, or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Applicants and the Monitor (each, such binding offer submitted in accordance with paragraph 25 below, a “**Phase 2 Qualified Bid**”) in each case to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix “A”** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on August ~~24~~³¹, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (as maybe extended, the “**Phase 2 Bid Deadline**”).
22. A Binding Offer will only be considered as a “**Phase 2 Qualified Bid**” by the Applicants if the binding offer:
 - (a) has been received by the Phase 2 Bid Deadline;
 - (b) is a Binding Offer (i) to purchase (A) all, substantially all, or a portion of the Property; (B) Diavik Interest; or (C) the Non-Diavik Assets or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business, on terms and conditions reasonably acceptable to the Applicants;
 - ~~(c) where the Diavik Interest is being purchased, all Core Liabilities set forth in paragraph (c) of the definition thereof under the Stalking Horse Bid and DDM's obligations under the CSA and any other agreement between any of the Applicants and DDMI must be assumed by the Phase 2 Qualified Bidder in connection with any such purchase with the exception that the Core Liabilities~~

~~comprised of DDM's obligations under the Diavik JVA with respect to Cover Payments must be indefeasibly repaid in cash in full, upon closing;~~

- (c) ~~(d)~~ is not subject to any financing conditionality;
- (d) ~~(e)~~ is unconditional, other than upon the receipt of the Approval Order (as defined below) and satisfaction of any other conditions expressly set forth in the binding offer;
- (e) ~~(f)~~ includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property of the Dominion Diamond Group in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;
- (f) ~~(g)~~ provides for the payments of an amount at least equal to the Minimum Purchase Price unless it is a part of a bid the qualifies as an Aggregated Bid;
- (g) ~~(h)~~ the Binding Offer must be accompanied by a letter which confirms that the Binding Offer: (i) may be accepted by the Applicants by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date;
- (h) ~~(i)~~ does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;
- (i) ~~(j)~~ is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the “**Deposit**”), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court and the terms described in paragraph 35 below;
- (j) ~~(k)~~ contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before ~~September 23~~ **October 7**, 2020, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the

“**Target Closing Date**”) and in any event no later than October 31, 2020 (the “**Outside Date**”); and

- (k) ~~(j)~~ contains an agreement that the Phase 2 Qualified Bidder submitting such bid, if not chosen as the Successful Bidder, shall serve, without modification to such bid, as a Backup Bidder (as defined below), in the event the Successful Bidder fails to close; *provided, however*, that, the Stalking Horse Bidder shall not be required to serve as Backup Bidder, except to the extent the Stalking Horse Bidder or its affiliates elect to submit an overbid in the Auction.
23. The Applicants with the consent of the Monitor may waive strict compliance with any one or more of the requirements specified above (for greater certainty, other than paragraph 22(c) above) and deem any such non-compliant Binding Offer to be a Phase 2 Qualified Bid.

Selection of Successful Bid

24. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.
25. The Applicants with the consent of the Monitor, will (a) review and evaluate each Phase 2 Qualified Bid and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Phase 2 Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to the paragraphs below. Any Successful Bid shall be subject to approval by the Court.
26. In the event there is at least one Phase 2 Qualified Bid in addition to the Stalking Horse Bid (provided that the Stalking Horse Bidder has waived or confirmed any financing condition contained in the Stalking Horse Bid has been waived or satisfied), the Applicants shall identify the Successful Bid through an Auction (as defined below).
27. **Auction:** In the event that an Auction (the “**Auction**”) is required in accordance with the terms of this SISP, it shall be conducted in accordance with the procedures set forth in this paragraph.
- (a) The Auction shall commence at a time to be designated by the Applicants on ~~August 24~~ **September 3**, 2020, at the Calgary offices of Blakes, Cassels, and Graydon LLP or such other place and time as determined by the Applicants and continue thereafter until completed, subject to such adjournments as the Applicants may consider appropriate; *provided* that if circumstances do not permit the Auction to be held in person, the Applicants shall work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be held via videoconference, teleconference, or such other reasonable means as the

Applicants deem appropriate. The Applicants reserve the right to cancel or postpone the Auction.

- (b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Phase 2 Qualified Bidder participating in the Auction.
- (c) Except as otherwise permitted in the Applicants' discretion, only the Applicants, the SISP Advisor, the Monitor, the Agent and the Phase 2 Qualified Bidders, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Phase 2 Qualified Bidder is eligible to participate in the Auction.
- (d) Phase 2 Qualified Bidders shall appear at the Auction, or through a duly authorized representative.
- (e) Except as otherwise set forth herein, the Applicants may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction provided that such rules are (i) not inconsistent with the Second Amended Initial Order, the SISP, the DIP, the CCAA, or any order of the Court entered in connection with these CCAA Proceedings, (ii) disclosed to each Phase 2 Qualified Bidder, and (iii) designed, in the Applicants' business judgment, to result in the highest and otherwise best offer.
- (f) The Applicants will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction shall designate a single individual to be its spokesperson during the Auction.
- (g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Applicants or any other person, without the express written consent of the Applicants, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders.
- (h) Prior to the Auction, the Applicants shall identify the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid shall constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than US\$1 million cash in excess of the Opening Bid or in such amounts as to be determined by the Applicants, with the consent of the Monitor, prior to, and announced at, the Auction. For the purposes of facilitating bidding the Applicants may ascribe a monetary value to non-cash considerations, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) shall provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Applicants. Further, in the event that an Aggregated

Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Applicants to facilitate bidding by the participants in the Aggregated Bid.

- (i) All Phase 2 Qualified Bidders shall have the right to, at any time, request that the Applicants announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Applicants' announcement of the then-current highest and best bid.
 - (j) Each participating Phase 2 Qualified Bidder shall be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction shall continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder that the Applicants determine has submitted the highest and otherwise best Phase 2 Qualified Bid of the Auction. At such time and upon the conclusion of the bidding, the Auction shall be closed and the final remaining Phase 2 Qualified Bidder shall be the Successful Bidder.
 - (k) Upon selection of a Successful Bidder, the Applicants shall require the Successful Bidder to deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion (as defined below).
 - (l) The Applicants shall not consider any bids submitted after the conclusion of the Auction.
28. The Applicants shall have selected the final Successful Bid and the Backup Bid by no later than ~~August 28~~September 7, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than September ~~4~~11, 2020, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Applicants with the consent of the Monitor and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. The Applicants shall not extend or otherwise vary the Outside Date except with the written consent of the Monitor and the Agent. In the case of a Successful Bid and Backup Bid that includes the purchase of the Diavik Interest, the Applicants shall also require the written consent of DDMI to any extension or variation of the Outside Date.
29. Notwithstanding anything in the SISP to the contrary, if an Auction is conducted, the Phase 2 Qualified Bidder with the next highest or otherwise best Phase 2 Qualified Bid at the Auction, as determined by the Applicants, will be designated as the backup bidder (the "**Backup Bidder**"); *provided* that the Stalking Horse Bidder shall not be a Backup Bidder, unless it elects to provide an overbid in the Auction. The Backup Bidder shall be

required to keep its initial Phase 2 Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the "**Backup Bid**") open until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date.

Approval of Successful Bid

30. The Applicants shall apply to the Court (the "**Approval Motion**") for an order approving the Successful Bid and the Backup Bid (as applicable) and vesting title to any purchased Property in the name of the Successful Bidder or the Backup Bidder (as applicable) (the "**Approval Order**"). The Approval Motion will be held on a date to be scheduled by the Applicants and confirmed by the Court upon application by the Applicants, who shall use their best efforts to schedule the Approval Motion on or before September ~~14~~²⁸, 2020, subject to Court availability. The Approval Motion may be adjourned or rescheduled by the Applicants without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the Service List prior to the Approval Motion. The Applicants shall consult with the Successful Bidder and the Backup Bidder regarding the application material to be filed by the Applicants for the Approval Motion, which material shall be acceptable to the Successful Bidder, acting reasonably.
31. All Phase 2 Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid.

Deposits

32. The Deposit(s):
 - (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a trust account;
 - (b) received from the Successful Bidder shall:
 - (i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of the Approval Order, upon closing of the approved transaction;
 - (ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Applicants and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable directly to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;
 - (c) received from the Backup Bidder, unless it is subsequently selected as the Successful Bidder, shall be fully refunded, to the Back-Up Bidder on or before the earlier of (i) two (2) Business Days after the date of the closing to the Successful Bid; or (ii) October 31, 2020;

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

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

“As is, Where is”

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

Free Of Any And All Claims And Interests

35. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the “**Claims and Interests**”) pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder ~~which, for the avoidance of doubt, to the extent the sale includes the Diavik Interest, such transaction documents must provide for the indefeasible payment in cash in full on closing of the aggregate of all outstanding and unpaid Cover Payments.~~

Credit Bidding

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

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

38. Any other party or parties holding a valid, enforceable, and properly perfected security interest in the Property, including the Agent on behalf of the First Lien Lenders under the Existing Credit Agreement, or any lender party thereto, and, the holders or indenture trustee of the Applicants’ 7.125% secured second lien notes, may, subject in all respects to such party’s compliance with the SISF and the terms thereof, credit bid the amount of debt secured by such lien as part of any transaction contemplated by the SISF; provided,

however, that such transaction shall also provide for the indefeasible and irrevocable repayment in full in cash on the date of closing of any such transaction of any and all obligations secured by a security interest in the Property that is to be acquired under such transaction that is senior to the security interest held in such Property by the party submitting such credit bid unless the holder or indenture trustee or agent of any such senior security interest otherwise agrees (it being understood and agreed that, (a) with respect to the Property the Interim Lender holds a super-priority security interest, senior to all other security interests in the Property, except as expressly set forth in the DIP Term Sheet and with respect to the court-ordered charges created in favour of the Interim Lender under the Second Amended and Restated Initial Order, and (b) any obligations of the Applicants with respect to any Cover Payments made pursuant to, or reclamation obligations associated with, the Diavik Interest must be either refinanced or collateralized in a manner similar to that contemplated by the Stalking Horse Bid or indefeasibly and irrevocably repaid in full in cash on the date of closing of any such transaction to the extent any credit bid pertains to the Diavik Interest). Any credit bid by the Agent under the Existing Credit Agreement, or any lender party thereto or any holder or holders or indenture trustee of the Applicants' 7.15% secured second lien notes shall provide for the indefensible and irrevocable repayment in full in cash on the date of closing of any such transaction of all Interim Financing Obligations (as defined in the DIP), including those Interim Financing Obligations attributable to October Advances (as defined in the DIP). Nothing contained herein is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

Confidentiality

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

Further Orders

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

Additional Terms

41. In addition to any other requirement of this SISP:
- (a) The SISP Advisor and the Applicants, in consultation with the Monitor, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without

limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by the Applicants' creditors as a high potential bidder.

- (b) The exercise of any right or discretion given to the Applicants or the SISP Advisor by the SISP shall, in the case of the Applicants, be exercised on their behalf solely by a special committee of DDM's directors comprised of one or more persons who have confirmed in writing to the Monitor that they do not have any conflict of interest in the subject matter or any material personal or business relationship of any kind with a SISP bidder or a person related to a SISP bidder (including, without limitation, the Stalking Horse Bidder). In addition, the exercise of any right or discretion on the part of the Applicants or the SISP Advisor in respect of any of the following shall require the express consent of the Monitor: the determination of Phase 1 Qualified Bids and Phase 2 Qualified Bids, the selection of Successful Bids, and any discretion afforded by paragraphs 27(e) and 27(h).
- (c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation which is no less complete and timely than is granted by the Applicants or the SISP Advisor, or their representatives, to the Stalking Horse Bidder or its representatives, pursuant to the SISP. This shall include, without limitation, reasonable access to Rio Tinto plc, The Government of the Northwest Territories and sureties on the basis contemplated by the section titled "Commercially Reasonable Efforts" in the Stalking Horse Bid and reasonable access to the Applicants' books, records, financial information, management, advisors and business partners. The SISP Advisor and the Monitor shall review all information and materials provided by the Applicants or their representatives to the DIP lenders or their representatives pursuant to the DIP and, to the extent that the SISP Advisor and the Monitor are of the view that any such information or materials are materially relevant to a Potential Bidder or Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, then such information or materials shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders.
- (d) With respect to the Stalking Horse Bid, the Applicants and the Stalking Horse Bidder shall, by no later than August 7, 2020, enter into a definitive binding purchase and sale agreement on the terms contemplated by the Stalking Horse Bid, copies of which shall be promptly provided in unredacted form to all Phase 2 Qualified Bidders.
- (e) Nothing in this SISP shall ~~create the presumption or inference~~require that a Successful Bid, Backup Bid or any other bid ~~should or~~ must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP on application of any interested party.

- (f) Prior to the seeking of Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

Appendix "A"

TO THE SISP ADVISOR:

Evercore
55 East 52nd Street, 42nd floor
New York, NY 10055
Attention: John Startin
Phone: 212-453-5577
E-Mail: John.Startin@evercore.com

WITH A COPY TO:

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

WITH A COPY TO:

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

TO THE MONITOR:

FTI Consulting Canada Inc.
520 5th Ave SW
Calgary AB T2P 3R7
Attention: Deryck Helkaa
Phone: 403-454-6031
E-Mail: deryck.helkaa@fticonsulting.com

WITH A COPY TO:

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

Attention: Chris Simard

Phone: 403-298-4485

Email: simardc@bennettjones.com

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Input:	
Document 1 ID	iManage://bjwork.legal.bjlocal/WSLegal/24831670/3
Description	#24831670v3<bjwork.legal.bjlocal> - SISP - June 2 Monitor Proposed Version
Document 2 ID	iManage://bjwork.legal.bjlocal/WSLegal/24934663/1
Description	#24934663v1<bjwork.legal.bjlocal> - June 12 SISP
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	31
Deletions	30
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	61

APPENDIX “E”

Blackline showing DDMI's proposed revisions to
the Appendix "M" SISP

Procedures for the Sale and Investment Solicitation Process

On April 22, 2020, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., Dominion Diamond Mines ULC (“**DDM**”), Dominion Diamond Delaware Company LLC and Dominion Diamond Canada ULC (collectively, the “**Applicants**”) obtained an Initial Order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) from the Alberta Court of Queen’s Bench (the “**Court**”) that, among other things, commenced the CCAA proceedings (the “**CCAA Proceedings**”), granted an initial stay of proceedings in respect of the Applicants (the “**Stay**”) and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”). On May 1, 2020, the Applicants obtained an amended and restated version of the Initial Order from the Court (the “**Amended and Restated Initial Order**”) that, among other things, extended the Stay. On June 3, 2020, the Applicants obtained a further amended and restated version of the Initial Order from the Court (the “**Second Amended and Restated Initial Order**”) that, among other things, approved the DIP (as defined below) and approved the Sale and Investment Solicitation Process (the “**SISP**”) set forth herein to determine whether a Successful Bid (as defined below) can be obtained.

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

Defined Terms

1. In addition:
 - (a) “**Agent**” means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement¹;

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

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- (b) “**Agent Advisors**” shall mean Osler, Hoskin & Harcourt LLP, Cahill Gordon & Reindel LLP and RPA Advisors, or any one of them;
- (c) “**Business Day**” means a day, other than a Saturday or Sunday, on which banks are open for business in Calgary, Alberta;
- (d) “**Cover Payments**” has the same meaning as in the Diavik JVA;
- (e) “**CSA**” means the Closure Security Agreement dated December 13 2019 between DDMI and DDM;
- (f) “**DIP**” means the Interim Facility provided to Dominion Diamond Mines ULC and certain of its affiliates by Washington Diamond Lending, LLC (the “**Washington Interim Lender**”) and the Agent and/or one or more First Lien Lenders (in their capacity as lenders under the DIP, the “**First Lien Interim Lenders**”) as approved by the Second Amended and Restated Initial Order;
- (g) “**DDMI**” means Diavik Diamond Mines (2012) Inc.;
- (h) “**Diavik Diamond Mine**” means the Diavik diamond mine located in Lac de Gras, Northwest Territories;
- (i) “**Diavik Interest**” means DDM's Participating Interest (as such term is defined in the Diavik JVA) under and pursuant to the Diavik JVA, including the Dominion Products;
- (j) “**Dominion Products**” has the meaning ascribed to it in the Second Amended and Restated Initial Order;
- (k) “**Existing Credit Agreement**” means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, the Agent, and each of the other parties and lenders party thereto (the “**First Lien Lenders**”), as amended, restated, supplemented or otherwise modified from time to time.
- (l) “**Non-Diavik Assets**” means the Applicants’ right, title and interest in all Property other than the Diavik Interest (including, for the avoidance of doubt the Applicants’ right, title, and interest in the Ekati Diamond Mine located in Lac de Gras, Northwest Territories, which is operated by DDM);
- (m) “**SISP Advisor**” means Evercore Group LLC, as retained by the Applicants to conduct the SISP.

Sale and Investment Solicitation Process Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for, (i) a sale or partial sales of (A) all, substantially all, or certain of the assets, property and undertakings (collectively, the “**Property**”) of the Applicants and certain of their subsidiaries (together with the Applicants, the “**Dominion Diamond Group**”); (B) the Diavik Interest; or (C) the Non-Diavik Assets or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Dominion Diamond Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property of the Dominion Diamond Group, or a combination thereof (the “**Opportunity**”).
3. The Applicants have received a bid from Washington Diamond Investment Holdings II, LLC (the “**Stalking Horse Bidder**”) which constitutes a qualified bid for all purposes and at all times under this SISP (the “**Stalking Horse Bid**”), and which Stalking Horse Bid shall serve as the “stalking horse” bid for purposes of this SISP. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal (each as defined below). A copy of the Stalking Horse Bid is available to all Phase 1 Qualified Bidders (as defined below).
4. The SISP set forth herein describes the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Dominion Diamond Group and its Property, including a copy of the Stalking Horse Bid, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below), and the approval thereof by the Court. The Monitor shall oversee the SISP and in particular shall oversee the SISP Advisor in connection therewith. The Applicants are required to assist and support the efforts of the SISP Advisor and the Monitor as provided for herein. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have exclusive jurisdiction to hear and resolve such dispute.
5. Certain bid protections (i.e. break fee and expense reimbursement) have been approved in respect of the Stalking Horse Bid, subject to the conditions set forth therein, by the Court pursuant to the Second Amended and Restated Interim Order. No other bidder may request or receive any form of bid protection as part of any offer made pursuant to the SISP.

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

<u>Event</u>	<u>Date</u>
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SISP Advisor to distribute Teaser Letter to Potential Bidders	As soon as practical
SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR	As soon as practical
Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 14 of the SISP)	By July 10, 2020
SISP Advisor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Successful Bid	Within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate
Sale Approval hearing in respect of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	By July 27, 2020
Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 22 of the SISP)	By August 21, 2020
Auction Commencement Date (if needed)	August 24, 2020
Deadline for selection of final Successful Bid	August 28, 2020 or at such later date as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate
Deadline for completion of definitive documentation in respect of Successful Bid	September 1, 2020
Deadline for filing of Approval Motion in respect of Successful Bid	September 9, 2020
Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	September 14, 2020
Anticipated Deadline for closing of Successful Bid being the Target Closing Date	September 23, 2020 or such earlier date as is achievable

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Outside Date by which the Successful Bid must close	October 31, 2020
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Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable after the granting of the Second Amended and Restated Initial Order:
 - (a) the SISP Advisor shall cause a notice of the SISP and such other relevant information which the SISP Advisor, in consultation with the Applicants and the Monitor, considers appropriate to be published in the *Globe & Mail* and such other publications as the SISP Advisor may consider appropriate; and
 - (b) the Dominion Diamond Group shall issue a press release setting out the notice and such other relevant information regarding the Opportunity as it may consider appropriate, with Canada Newswire designating dissemination in Canada.
7. The SISP Advisor shall prepare and distribute a summary describing the Opportunity (a "**Teaser Letter**"), outlining the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP, for distribution to potential bidders as soon as practical.
8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the SISP Advisor to Potential Bidders that have executed the NDA (as defined below). The VDR will be available as soon as practical. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Dominion Diamond Group and the Opportunity. The Applicants may establish separate VDRs (including "clean rooms"), if the Applicants and the SISP Advisor reasonably determine that doing so would further the Dominion Diamond Group and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

9. In order to participate in the SISP, an interested party must deliver to the SISP Advisor at the address specified in **Appendix "A"** hereto (including by email), and prior to the distribution of any confidential information by the SISP Advisor to such interested party (including access to the VDR), an executed non-disclosure agreement in form and substance satisfactory to the Applicants (an "**NDA**"), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by the Successful Bid (as defined below). Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA with the Applicants, a "**Potential Bidder**") each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without

the express written consent of the Applicants. Prior to the Applicants' executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Applicants of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Applicants in the event that it elects to act as a Potential Bidder.

10. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 9, will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the SISP Advisor. For the avoidance of doubt, the Stalking Horse Bidder is a Phase 1 Qualified Bidder.
11. The SISP Advisor, with the assistance of the Applicants, will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") and provide an unredacted copy of the Staking Horse Bid as soon as practicable. The SISP Advisor, the Applicants, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.
12. The SISP Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) with access to the VDR. The SISP Advisor, the Applicants and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a template letter of intent (the "**Template LOI**") and a proposed Purchase and Sale Agreement, based on the Stalking Horse Bid ("**Template PSA**").
13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**"), to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on July 10, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (the "**Phase 1 Bid Deadline**"). To the extent possible, the Phase 1 Qualified Bid should follow the format as set out in the Template LOI.
14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" by the Applicants, the Monitor and the SISP Advisor, if the LOI complies at a minimum with the following:

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- (a) it has been duly executed by all required parties;
- (b) it is received by the Phase 1 Bid Deadline;
- (c) it provides written evidence, satisfactory to the Applicants, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;
- (d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;
- (f) an outline of any additional due diligence required to be conducted in order to submit a binding offer;
- (g) it clearly indicates:
 - (i) the Phase 1 Qualified Bidder is seeking to acquire (A) all or substantially all of the Property, (B) the Diavik Interest or (C) the Non-Diavik Assets, whether through an asset purchase, a share purchase or a combination thereof (either one being, a “**Sale Proposal**”) or some other portion of the Property (a “**Partial Sale Proposal**”); or
 - (ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business (an “**Investment Proposal**”); and
 - (iii) that the Sale Proposal or Investment Proposal, as the case may be, will at a minimum and on closing, provide cash proceeds which are equal to the aggregate total of: (A) the amount of cash payable under the Stalking Horse Bid if it does not provide for a credit bid or, if the Stalking Horse Bid does provide for a credit bid, the amount of cash payable thereunder together with the amount of obligations being credit bid thereunder, *plus* (B) the amount of the expense reimbursement and break fee (if any) payable to the Stalking Horse Bidder, *plus* (C) a minimum overbid amount of US\$1 million (the amounts set forth in this paragraph 14(g)(iii), the “**Minimum Purchase Price**”); provided, however, the Applicants may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the

Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet the Minimum Purchase Price (such bids, “**Aggregated Bids**”) (the amount of the Minimum Purchase Price shall be confirmed by the Sale Advisor with Potential Bidders);

- (h) it contains such other information as may be reasonably requested by the SISP Advisor, in consultation with the Applicants and the Monitor;
- (i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;
- (j) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the purchase price or price range in U.S. dollars and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - (ii) any contemplated purchase price adjustment;
 - (iii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;
 - (iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) information sufficient for the SISP Advisor, the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (k) in the case of an Investment Proposal, it identifies the following:
 - (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Dominion Diamond Group or its business in U.S. dollars;
 - (iii) the underlying assumptions regarding the *pro forma* capital structure;

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- (iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) information sufficient for the SISP Advisor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - (vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.
15. The Applicants with the consent of the Monitor, may waive compliance with any one or more of the requirements specified herein and deem any such non-compliant LOI to be a Phase 1 Qualified Bid; *provided* that the SISP Advisor shall consult with the Stalking Horse Bidder in advance and on a no-names basis regarding the general nature of any waiver being contemplated.

Assessment of Phase 1 Qualified Bids and Subsequent Process

16. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Successful Bid (as defined below).
17. Following the Phase 1 Bid Deadline, the Applicants shall determine, in accordance with the requirements of paragraph 14, the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a “**Phase 1 Successful Bid(s)**” and which Phase 1 Qualified Bidder(s) shall be deemed a “**Phase 2 Qualified Bidder(s)**”.
18. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. The Stalking Horse Bid constitutes a Phase 1 Successful Bid and the Stalking Horse Bidder is a Phase 2 Qualified Bidder for all purposes under the SISP, other than the Auction (as defined below). Notwithstanding any other provision hereof, in order to participate in the Auction, the Stalking Horse Bidder shall have waived, or confirmed satisfaction of, any financing condition contained in the Stalking Horse Bid.
19. The SISP Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Successful Bid within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor and the Monitor, deem appropriate.
20. In the event that no Phase 1 Successful Bids are received (other than the Stalking Horse Bid), the Applicants, with the assistance and support of the SISP Advisor and the Monitor, shall promptly proceed to seek Court approval of the Stalking Horse Bid; *provided, however*, that the Applicants may (i) extend the Phase 1 Bid Deadline with the consent of

the Monitor, the Stalking Horse Bidder, and the Agent Advisors, or (ii) seek Court approval of an amendment to, or termination of, the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to his/her/its Sale Proposal or Investment Proposal shall submit a binding offer (a “**Binding Offer**”) (a) in the case of a Sale Proposal, in the form of the Template PSA provided in the VDR, along with a marked version showing edits to the original form of Template PSA provided in the VDR, or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Applicants and the Monitor (each, such binding offer submitted in accordance with paragraph 25 below, a “**Phase 2 Qualified Bid**”) in each case to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix “A”** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on August 21, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (as maybe extended, the “**Phase 2 Bid Deadline**”).
22. A Binding Offer will only be considered as a “**Phase 2 Qualified Bid**” by the Applicants if the binding offer:
 - (a) has been received by the Phase 2 Bid Deadline;
 - (b) is a Binding Offer (i) to purchase (A) all, substantially all, or a portion of the Property; (B) Diavik Interest; or (C) the Non-Diavik Assets or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business, on terms and conditions reasonably acceptable to the Applicants;
 - (c) where the Diavik Interest is being purchased, all Core Liabilities set forth in paragraph (c) of the definition thereof under the Stalking Horse Bid and DDM's obligations under the CSA and any other agreement between any of the Applicants and DDMI must be assumed by the Phase 2 Qualified Bidder in connection with any such purchase with the exception that the Core Liabilities comprised of DDM's obligations under the Diavik JVA with respect to Cover Payments must be indefeasibly repaid in cash in full, upon closing;
 - (d) is not subject to any financing conditionality;
 - (e) is unconditional, other than upon the receipt of the Approval Order (as defined below) and satisfaction of any other conditions expressly set forth in the binding offer;
 - (f) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding

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

- (g) provides for the payments of an amount at least equal to the Minimum Purchase Price unless it is a part of a bid that qualifies as an Aggregated Bid;
 - (h) the Binding Offer must be accompanied by a letter which confirms that the Binding Offer: (i) may be accepted by the Applicants by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date;
 - (i) does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;
 - (j) is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the “**Deposit**”), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court and the terms described in paragraph 35 below;
 - (k) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before September 23, 2020, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the “**Target Closing Date**”) and in any event no later than October 31, 2020 (the “**Outside Date**”); and
 - (l) contains an agreement that the Phase 2 Qualified Bidder submitting such bid, if not chosen as the Successful Bidder, shall serve, without modification to such bid, as a Backup Bidder (as defined below), in the event the Successful Bidder fails to close; *provided, however*, that, the Stalking Horse Bidder shall not be required to serve as Backup Bidder, except to the extent the Stalking Horse Bidder or its affiliates elect to submit an overbid in the Auction.
23. The Applicants with the consent of the Monitor may waive strict compliance with any one or more of the requirements specified above (for greater certainty, other than paragraph 22(c) above) and deem any such non-compliant Binding Offer to be a Phase 2 Qualified Bid.

Selection of Successful Bid

24. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.
25. The Applicants with the consent of the Monitor, will (a) review and evaluate each Phase 2 Qualified Bid and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Phase 2 Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to the paragraphs below. Any Successful Bid shall be subject to approval by the Court.
26. In the event there is at least one Phase 2 Qualified Bid in addition to the Stalking Horse Bid (provided that the Stalking Horse Bidder has waived or confirmed any financing condition contained in the Stalking Horse Bid has been waived or satisfied), the Applicants shall identify the Successful Bid through an Auction (as defined below).
27. ***Auction***: In the event that an Auction (the “**Auction**”) is required in accordance with the terms of this SISP, it shall be conducted in accordance with the procedures set forth in this paragraph.
 - (a) The Auction shall commence at a time to be designated by the Applicants on August 24, 2020, at the Calgary offices of Blakes, Cassels, and Graydon LLP or such other place and time as determined by the Applicants and continue thereafter until completed, subject to such adjournments as the Applicants may consider appropriate; *provided* that if circumstances do not permit the Auction to be held in person, the Applicants shall work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be held via videoconference, teleconference, or such other reasonable means as the Applicants deem appropriate. The Applicants reserve the right to cancel or postpone the Auction.
 - (b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Phase 2 Qualified Bidder participating in the Auction.
 - (c) Except as otherwise permitted in the Applicants’ discretion, only the Applicants, the SISP Advisor, the Monitor, the Agent and the Phase 2 Qualified Bidders, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Phase 2 Qualified Bidder is eligible to participate in the Auction.
 - (d) Phase 2 Qualified Bidders shall appear at the Auction, or through a duly authorized representative.
 - (e) Except as otherwise set forth herein, the Applicants may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable

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

- (f) The Applicants will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction shall designate a single individual to be its spokesperson during the Auction.
- (g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Applicants or any other person, without the express written consent of the Applicants, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders.
- (h) Prior to the Auction, the Applicants shall identify the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid shall constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than US\$1 million cash in excess of the Opening Bid or in such amounts as to be determined by the Applicants, with the consent of the Monitor, prior to, and announced at, the Auction. For the purposes of facilitating bidding the Applicants may ascribe a monetary value to non-cash considerations, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) shall provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Applicants. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Applicants to facilitate bidding by the participants in the Aggregated Bid.
- (i) All Phase 2 Qualified Bidders shall have the right to, at any time, request that the Applicants announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Applicants' announcement of the then-current highest and best bid.
- (j) Each participating Phase 2 Qualified Bidder shall be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction shall continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder that the Applicants determine has submitted the highest and otherwise best Phase 2 Qualified Bid of the Auction. At such time and upon the conclusion of the bidding, the Auction shall be closed and the final remaining Phase 2 Qualified Bidder shall be the Successful Bidder.

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- (k) Upon selection of a Successful Bidder, the Applicants shall require the Successful Bidder to deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion (as defined below).
 - (l) The Applicants shall not consider any bids submitted after the conclusion of the Auction.
28. The Applicants shall have selected the final Successful Bid and the Backup Bid by no later than August 28, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than September 1, 2020, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Applicants with the consent of the Monitor and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. The Applicants shall not extend or otherwise vary the Outside Date except with the written consent of the Monitor and the Agent. In the case of a Successful Bid and Backup Bid that includes the purchase of the Diavik Interest, the Applicants shall also require the written consent of DDMI to any extension or variation of the Outside Date.
29. Notwithstanding anything in the SISP to the contrary, if an Auction is conducted, the Phase 2 Qualified Bidder with the next highest or otherwise best Phase 2 Qualified Bid at the Auction, as determined by the Applicants, will be designated as the backup bidder (the “**Backup Bidder**”); *provided* that the Stalking Horse Bidder shall not be a Backup Bidder, unless it elects to provide an overbid in the Auction. The Backup Bidder shall be required to keep its initial Phase 2 Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder’s final overbid) (the “**Backup Bid**”) open until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date.

Approval of Successful Bid

30. The Applicants shall apply to the Court (the “**Approval Motion**”) for an order approving the Successful Bid and the Backup Bid (as applicable) and vesting title to any purchased Property in the name of the Successful Bidder or the Backup Bidder (as applicable) (the “**Approval Order**”). The Approval Motion will be held on a date to be scheduled by the Applicants and confirmed by the Court upon application by the Applicants, who shall use their best efforts to schedule the Approval Motion on or before September 14, 2020, subject to Court availability. The Approval Motion may be adjourned or rescheduled by the Applicants without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the Service List prior to the Approval Motion. The Applicants shall consult with the Successful Bidder and the Backup Bidder regarding the application material to be filed by the Applicants for the Approval Motion, which material shall be acceptable to the Successful Bidder, acting reasonably.

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

Deposits

32. The Deposit(s):
- (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a trust account;
 - (b) received from the Successful Bidder shall:
 - (i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of the Approval Order, upon closing of the approved transaction;
 - (ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Applicants and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable directly to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;
 - (c) received from the Backup Bidder, unless it is subsequently selected as the Successful Bidder, shall be fully refunded, to the Back-Up Bidder on or before the earlier of (i) two (2) Business Days after the date of the closing to the Successful Bid; or (ii) October 31, 2020;
 - (d) received from the Phase 2 Qualified Bidder(s) that are not the Successful Bidder or the Back-Up Bidder shall be fully refunded, to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the selection of the Successful Bidder and in any event no later than September 30, 2020.
33. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder shall not be required to fund a Deposit.

“As is, Where is”

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

Free Of Any And All Claims And Interests

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

liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the “**Claims and Interests**”) pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder which, for the avoidance of doubt, to the extent the sale includes the Diavik Interest, such transaction documents must provide for the indefeasible payment in cash in full on closing of the aggregate of all outstanding and unpaid Cover Payments.

Credit Bidding

36. The Washington Interim Lender shall be entitled to credit bid any outstanding DIP advances made by it as part of the closing of the Stalking Horse Bid, provided that any DIP advances made by the First Lien Interim Lenders are paid in cash by the Washington Interim Lender at closing.
37. Except as provided in paragraph 36 above, the Washington Interim Lender shall not be entitled to credit bid any outstanding DIP advances in connection with any transaction contemplated by the SISP without the consent of the Agent (such consent not to be unreasonably withheld).
38. Any other party or parties holding a valid, enforceable, and properly perfected security interest in the Property, including the Agent on behalf of the First Lien Lenders under the Existing Credit Agreement, or any lender party thereto, and, the holders or indenture trustee of the Applicants’ 7.125% secured second lien notes, may, subject in all respects to such party’s compliance with the SISP and the terms thereof, credit bid the amount of debt secured by such lien as part of any transaction contemplated by the SISP; provided, however, that such transaction shall also provide for the indefeasible and irrevocable repayment in full in cash on the date of closing of any such transaction of any and all obligations secured by a security interest in the Property that is to be acquired under such transaction that is senior to the security interest held in such Property by the party submitting such credit bid unless the holder or indenture trustee or agent of any such senior security interest otherwise agrees (it being understood and agreed that, (a) with respect to the Property the Interim Lender holds a super-priority security interest, senior to all other security interests in the Property, except as expressly set forth in the DIP Term Sheet and with respect to the court-ordered charges created in favour of the Interim Lender under the Second Amended and Restated Initial Order, and (b) any obligations of the Applicants with respect to any Cover Payments made pursuant to, ~~or reclamation obligations associated with,~~ the Diavik Interest must be ~~either refinanced or collateralized in a manner similar to that contemplated by the Stalking Horse Bid or~~ indefeasibly and irrevocably repaid in full in cash on the date of closing of any such transaction to the extent any credit bid pertains to the Diavik Interest). Any credit bid by the Agent under the Existing Credit Agreement, or any lender party thereto shall provide for the indefensible and irrevocable repayment in full in cash on the date of closing of any such transaction of all Interim Financing Obligations (as defined in the DIP), including those Interim Financing Obligations

attributable to October Advances (as defined in the DIP). Nothing ~~contained herein~~ [in this paragraph 38](#) is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

Confidentiality

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

Further Orders

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

Additional Terms

41. In addition to any other requirement of this SISP:
- (a) The SISP Advisor and the Applicants, in consultation with the Monitor, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by the Applicants' creditors as a high potential bidder.
 - (b) The exercise of any right or discretion given to the Applicants or the SISP Advisor by the SISP shall, in the case of the Applicants, be exercised on their behalf solely by a special committee of DDM's directors comprised of one or more persons who have confirmed in writing to the Monitor that they do not have any conflict of interest in the subject matter or any material personal or business relationship of any kind with a SISP bidder or a person related to a SISP bidder (including, without limitation, the Stalking Horse Bidder). In addition, the exercise of any right or discretion on the part of the Applicants or the SISP Advisor in respect of any of the following shall require the express consent of the Monitor: the determination of Phase 1 Qualified Bids and Phase 2 Qualified Bids, the selection of Successful Bids, and any discretion afforded by paragraphs 27(e) and 27(h).
 - (c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation which is no less complete and timely than is granted by the Applicants or the SISP Advisor, or their representatives, to

the Stalking Horse Bidder or its representatives, pursuant to the SISP. This shall include, without limitation, reasonable access to Rio Tinto plc, The Government of the Northwest Territories and sureties on the basis contemplated by the section titled “Commercially Reasonable Efforts” in the Stalking Horse Bid and reasonable access to the Applicants’ books, records, financial information, management, advisors and business partners. The SISP Advisor and the Monitor shall review all information and materials provided by the Applicants or their representatives to the DIP lenders or their representatives pursuant to the DIP and, to the extent that the SISP Advisor and the Monitor are of the view that any such information or materials are materially relevant to a Potential Bidder or Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, then such information or materials shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders.

- (d) With respect to the Stalking Horse Bid, the Applicants and the Stalking Horse Bidder shall, by no later than August 7, 2020, enter into a definitive binding purchase and sale agreement on the terms contemplated by the Stalking Horse Bid, copies of which shall be promptly provided in unredacted form to all Phase 2 Qualified Bidders.
- (e) Nothing in this SISP shall create the presumption or inference that a Successful Bid, Backup Bid or any other bid should or must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP on application of any interested party.
- (f) Prior to the seeking of Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

Appendix “A”

TO THE SISP ADVISOR:

Evercore
55 East 52nd Street, 42nd floor
New York, NY 10055
Attention: John Startin
Phone: 212-453-5577
[E-Mail: John.Startin@evercore.com](mailto:John.Startin@evercore.com)

WITH A COPY TO:

Attention: Andrew Frame
Phone: 212-823-6443
[E-Mail: Andrew.Frame@evercore.com](mailto:Andrew.Frame@evercore.com)

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WITH A COPY TO:

Attention: Nicholas Salzman

Phone: 646-259-7783

[E-Mail: Nicholas.Salzman@evercore.com](mailto:Nicholas.Salzman@evercore.com)

TO THE MONITOR:

FTI Consulting Canada Inc.

520 5th Ave SW

Calgary AB T2P 3R7

Attention: Deryck Helkaa

Phone: 403-454-6031

[E-Mail: deryck.helkaa@fticonsulting.com](mailto:deryck.helkaa@fticonsulting.com)

WITH A COPY TO:

Bennett Jones LLP

4500 Bankers Hall East

855 - 2nd Street SW

Calgary AB T2P 4K7

Attention: Chris Simard

Phone: 403-298-4485

[Email: simardc@bennettjones.com](mailto:simardc@bennettjones.com)

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Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	4

APPENDIX “F”

Third Cash Flow Statement

