

CLERK OF THE COURT  
FILED  
JUN 03 2020  
JUDICIAL CENTRE  
OF CALGARY

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 SUPPLEMENT TO THE FOURTH 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 2, 2020

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CONTACT INFORMATION OF  
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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. The Stay of Proceedings has since been extended until and including June 4, 2020 by a subsequent order granted by this Honourable Court on May 29, 2020.
3. On May 21, 2020, the Applicants served an application (the “**Second ARIO Application**”) returnable May 29, 2020 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 (the “**Financial Advisor Charge**”);
  - 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 (the “**Interim Lenders’ Charge**”);
  - e. approving procedures for a sales and investment solicitation process (the “**SISP**”);
  - f. authorizing DDH and DDM (collectively, the “**Dominion Vendors**”) 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 Dominion Vendors 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 Dominion Vendors’ 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 (the “**Break-up Fee and Expense Charge**”);
  - 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 (the “**KERP Charge**”); and
  - j. extending the Stay of Proceedings until and including August 31, 2020 (the “**Stay Extension**”).
4. On May 29, 2020, the Court commenced hearing the Second ARIIO Application, but the hearing was not completed and the Court ordered the continuation of the hearing at 2:30 p.m. Mountain time on Wednesday, June 3, 2020 (the “**Continuation Hearing**”).

## PURPOSE

5. On May 26, 2020, the Monitor filed and served its Fourth Report, which addressed the Second ARIO Application (the “**Fourth Report**”). The purpose of this Supplement to the Fourth Report is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor’s comments with respect to:
  - a. the process followed prior to the hearing of the Second ARIO Application;
  - b. the hearing of the Second ARIO Application;
  - c. the process followed since the hearing of the Second ARIO Application;
  - d. the forms of Second ARIO being proposed by various parties;
  - e. the Monitor's responses to questions posed by the Court at the Second ARIO Application; and
  - f. the Monitor's recommendations regarding the disposition of the Second ARIO Application.

## TERMS OF REFERENCE

6. 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**”).
7. 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.

8. 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.
9. 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.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
11. All capitalized terms that are used but not defined herein are intended to bear their meanings as defined in the Fourth Report.

## **THE PROCESS FOLLOWED PRIOR TO THE HEARING OF THE SECOND ARIO APPLICATION**

12. The following occurred in the eight days prior to the hearing of the Second ARIO Application:
  - a. at approximately 10:50 p.m. Mountain time on Thursday May 21, 2020, eight days before the scheduled hearing, the Applicants served their application and affidavits with respect to the Second ARIO Application;
  - b. at approximately 10:00 a.m. Mountain time on Monday May 25, 2020, the Monitor sent an email to the Service List, and requested that parties serve and upload to CaseLines any materials to be relied on at the Second ARIO Application, no later than 12:00 p.m. Mountain time on Wednesday, May 27, 2020. A copy of the email is **Appendix "A"**;

- c. at approximately 1:30 p.m. Mountain time on Tuesday May 26, 2020, the Monitor served its Fourth Report and its application for a sealing order and a CaseLines service order;
- d. at approximately 12:13 p.m. Mountain time on Wednesday May 27, 2020, the Ad Hoc Committee served its Bench Brief (including its suggested revisions to the Second ARIO and SISP being sought by the Applicants);
- e. at approximately 4:35 p.m. Mountain time on Wednesday May 27, 2020, the Applicants served their Bench Brief;
- f. at approximately 1:00 p.m. Mountain time on Thursday May 28, 2020, DDMI served the Affidavit No. 2 of Mr. Croese and its Bench Brief;
- g. at approximately 4:25 p.m. Mountain time on Thursday May 28, 2020, the 2L Notes Trustee served its Bench Brief;
- h. at approximately 6:54 p.m. Mountain time on Thursday May 28, 2020, counsel for Mr. Quinlan advised the Service List that he would be requesting an adjournment of the Second ARIO Application; and
- i. at approximately 8:35 a.m. Mountain time on Friday May 29, 2020, the Applicants, the 1L Agent, the Ad Hoc Committee and the 2L Notes Trustee (the “**Agreement Parties**”) reached agreement on the form of Second ARIO and SISP to be granted. The Applicants posted those documents to CaseLines prior to the hearing, which commenced at 9:15 a.m. Mountain time. Those agreed documents, blacklined to the versions originally being sought by the Applicants, are attached as **Appendix “B”**.

## THE HEARING OF THE SECOND ARIO APPLICATION

13. The hearing of the Second ARIO Application commenced at 9:15 a.m. Mountain time on Friday May 29, 2020 and continued to approximately 2:00 p.m. that afternoon. Because of the number of parties making submissions, the hearing could not be completed that day, and all the parties who wished to make submissions did not have an opportunity to do so.
14. At the conclusion of the hearing, the Court:
  - a. granted an extension of the Stay Period to and including Thursday, June 4, 2020;
  - b. granted the applications of the Applicants, DDMI and the Monitor to seal certain materials on the Court file;
  - c. granted the Monitor's CaseLines service order; and
  - d. adjourned the Second ARIO application to the Continuation Hearing, at 2:30 p.m. Mountain time on Wednesday June 3, 2020.
15. There were significant logistical challenges that prevented the hearing of the Second ARIO Application from proceeding efficiently and effectively to a conclusion on May 29. The Monitor ascribes no blame to any party or parties, and acknowledges that real-time litigation presents such challenges not infrequently. In this case, the logistical challenges included:
  - a. the fact that there was no agreed schedule for the delivery of materials meant that the materials delivered earlier were not responsive to materials delivered later;
  - b. the relative lateness of the delivery of some materials;
  - c. the large volume and length of the materials;

- d. the fact that numerous parties had proposed different versions of the Second ARIO and the SISP being sought; and
- e. the fact that the Applicants, the Agent to the first lien lenders (the “**1L Agent**”), the Ad Hoc Group of Bondholders (the “**Ad Hoc Committee**”<sup>1</sup>), the Trustee to the second lien notes (the “**2L Notes Trustee**”) and the Stalking Horse Bidder had agreed on a form of Second ARIO and SISP just prior to the commencement of the hearing, which the Court and stakeholders had no opportunity to review prior to the hearing.

16. The Court and/or certain parties raised a number of questions during the hearing which the Monitor and other stakeholders did not have an opportunity to address, including:

- a. the aggregate quantum of the purchase price under the Stalking Horse Bid;
- b. revisions to the Second ARIO that other parties, besides the Agreement Parties and DDMI, wished to suggest; and
- c. the impact of the revisions to the Second ARIO and the SISP that were requested by DDMI in its Bench Brief.

17. The Second ARIO Application is an important application in these CCAA Proceedings. The Monitor believes it is crucial that the Court be given an opportunity to fully review the issues in an orderly, efficient and effective way. The Monitor has taken a number of steps since the May 29, 2020 hearing, to try to facilitate such a process in advance of the Continuation Hearing. Those steps are described in a later section of this Report.

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<sup>1</sup> The Ad Hoc Group of Bondholders is comprised of DDJ Capital Management, LLC, Barring LLC and Brigade Capital Management, LP.

## THE MONITOR'S RESPONSE TO QUESTIONS ARISING AT THE SECOND ARIO HEARING

18. Certain questions arose at the hearing on May 29, 2020, to which the Monitor had insufficient time to respond. The Monitor's responses are set out below.

### THE PURCHASE PRICE UNDER THE STALKING HORSE BID

19. At the Second ARIO Application, the Court and certain parties asked about the total purchase price being offered under the Stalking Horse Bid, which specific liabilities of the Applicants were being assumed., and whether that purchase price is clearly ascertainable.

20. Both before and after the Second ARIO Application, the Monitor had discussed this issue with the Applicants and Evercore. The total purchase price depends to some extent on the exact amount outstanding at the closing date of the liabilities to be assumed by the Stalking Horse Bidder. However, the Monitor has prepared an illustrative purchase price based on information from the Applicants and Evercore, all of which will be available to all Phase 1 Bidders in the VDR.

21. The total consideration for the assets acquired under the Stalking Horse Bid is comprised of both a cash payment and assumed liabilities. The illustrative purchase price for Dominion's assets is summarized in the table below:

<b>Illustrative Purchase Price Summary (\$US millions)</b>	<b>Ekati + Corporate</b>	<b>Diavik JV Interest</b>	<b>Total</b>
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
Operating Liabilities	to be determined	to be determined	to be determined
<b>Total Illustrative Purchase Price (excl. Operating Liabilities)</b>	<b>\$367 - \$372</b>	<b>\$154 - \$169</b>	<b>\$521 - \$541</b>
<b>Total Illustrative Purchase Price (\$CAD millions)</b>	<b>\$506 - \$513</b>	<b>\$213 - \$233</b>	<b>\$719 - \$747</b>

22. The key components of the consideration offered by the Stalking Horse Bid are as follows:

- a. cash payment of US\$126.1 million, plus up to US\$5 million in respect of any incremental amount outstanding under the Interim Facility for advances and accrued interest after September 30, 2020, minus the amount, if any, by which the amount owing under the Interim Facility is less than US\$55 million, which is currently anticipated to be sufficient to:
  - i. cash collateralize super priority charges approved pursuant to the Initial Order;
  - ii. satisfy obligations under the Interim Facility; and
  - iii. satisfy the first lien obligations of Dominion under its revolving credit facility;
- b. assumed obligations to collateralize or refinance letters of credit and guarantees totaling US\$323 million which includes surety bonds in respect of Ekati reclamation costs totalling approximately US\$205 million, other guarantees of current and anticipated letters of credit in respect of the Ekati Mine totalling US\$19 million and letters of credit in respect of Diavik Mine reclamation costs totalling US\$99 million which includes letters of credit totaling US\$25 million anticipated to be incurred in January 2021;
- c. assumed defined benefit pension liabilities of US\$17 million;
- d. estimated cover payments that may be owing in respect of the Diavik JV totalling US\$55 - \$70 million, depending on the timing of close;
- e. assumed operating liabilities include all obligations under operational contracts and joint venture agreements, to employees and unions and First Nations and aboriginal groups and the Government of the Northwest Territories, depending on which contracts are disclaimed or terminated prior to closing and will be determined amongst the parties in due course; and

- f. if the Rio Condition is not satisfied, the purchase price and assumed liabilities will be adjusted to exclude the liabilities in the Diavik JV Interest column of the table above.

## **DDMI'S STAPLED INTERIM FUNDING TERM SHEET**

23. In the Affidavit No. 2 of Thomas Croese, DDMI's Bench Brief and at the hearing of the Second ARIO Application, DDMI advised the Court of its "Stapled Interim Funding" Term Sheet (the "**SIF Term Sheet**"). At para. 31 and 32 of the Affidavit No. 2 of Mr. Croese, the deponent described the transmission of the SIF Term Sheet to the Monitor on May 18, 2020, and stated that no response was received to the SIF Term Sheet.

24. The information of the Monitor with respect to the SIF Term Sheet is as follows:

- a. as reported to the Court and stakeholders, Evercore as Financial Advisor to Dominion began conducting an interim financing solicitation process shortly after the granting of the Initial Order in these CCAA Proceedings (the "**Evercore DIP Process**"). The 1L Agent, the Ad Hoc Committee, the Washington Group and a large number of third parties participated in the Evercore DIP Process;
- b. on May 8, 2020, an application was heard by the Court at which DDMI requested amendments to the Amended and Restated Initial Order, among other things:
  - i. permitting DDMI, despite the Stay, to make Cover Payments with respect to the cash calls that Dominion would not be making during the CCAA Proceedings; and
  - ii. to hold at its Production Splitting Facility in Yellowknife (the "**PSF**") Dominion's share of diamonds from the Diavik Mine, equal to the amount of Cover Payments made by DDMI;

- c. in the Evercore DIP Process, Evercore had requested that parties submit all DIP proposals by the end of the day on Monday, May 11, 2020. By that deadline, Evercore received the seven DIP proposals described in the Fourth Report;
- d. DDMI did not submit an interim financing proposal in the Evercore DIP Process. Indeed, the subsequent SIF Term Sheet did not offer interim financing to facilitate Dominion's payment of its operational and restructuring costs. Rather, it offered financing from DDMI only for the purpose of allowing Dominion to pay DDMI the cash calls under the Diavik JVA;
- e. over the course of the week of May 11, Evercore held discussions with Dominion, including in consultation with the Monitor, regarding the DIP proposals received in the Evercore DIP Process. Thereafter, Dominion began negotiations to finalize a DIP proposal to bring to the Court for approval;
- f. at the end of that week, on Friday May 15, 2020, the Court issued its reasons regarding the May 8 application, awarding to DDMI the right to make Cover Payments despite the Stay, and to hold at the PSF Dominion's share of diamonds from the Diavik Mine that were otherwise scheduled to be delivered to Dominion on May 20;
- g. on Sunday, May 17, 2020, counsel for DDMI contacted counsel for the Monitor and advised the Monitor for the first time that DDMI wished to provide an interim financing loan to Dominion, for the sole purpose of loaning Dominion the funds necessary to make its cash call payments owing under the Diavik JVA;
- h. in that conversation, counsel to the Monitor advised counsel to DDMI that:
  - i. counsel to the Monitor did not understand the concept behind the proposed interim financing, because only two days before, the Court had awarded DDMI its requested remedies of allowing it to make Cover Payments and to hold the next shipment of diamonds otherwise scheduled to be delivered

to Dominion. The concept of DDMI loaning money to Dominion to allow Dominion to make cash call payments was essentially the complete opposite of the remedy requested by DDMI and awarded by the Court; and

ii. in any event, DDMI should contact Dominion as soon as possible to discuss this proposal, because to the Monitor's knowledge, discussions regarding the DIP financing proposals solicited by Evercore were moving quickly and nearing completion;

i. at approximately 9:34 p.m. Mountain time on Tuesday, May 18, 2020, counsel for DDMI sent an email to counsel for the Applicants attaching the SIF Term Sheet, cc'ing counsel to the Monitor. A copy of that email is attached as **Appendix "C"** hereto. In that email, counsel for DDMI stated "[t]he benefit to Dominion is that, rather than facing opposition from DDMI for any attempt by Dominion to seek a priming charge over Diavik, Dominion and its stakeholders will enjoy the consent of DDMI to the DIP financing";

j. the Monitor had no further communications with the Applicants or with DDMI regarding the SIF Term Sheet; and

k. at approximately 10:50 p.m. Mountain time on Thursday May 21, 2020, three days before the scheduled hearing, the Applicants served their application and affidavits with respect to the Second ARIO Application. The Interim Lenders' Charge being sought on Dominion's interest in the Diavik JV did not purport to prime the security of DDMI over that interest.

25. Thus, it appears that the Applicants did not accept DDMI's proposal to pursue the SIF Term Sheet. That is not surprising nor material from the Monitor's perspective, because:

a. the SIF Term Sheet seemed unnecessary and of little or no benefit to the Applicants, since:

- i. it did not provide funding for any of Dominion's expenses, other than the Diavik JV cash calls. The Court had already, and very recently, granted to DDMI the remedy DDMI had sought, to allow for the payment of such cash calls; and
    - ii. the benefit to Dominion offered by the SIF Term Sheet, as described by DDMI (avoiding DDMI's opposition to a DIP Term Sheet that sought to prime DDMI's security interest in Dominion's Diavik JV interest) was unnecessary because the DIP Term Sheet being negotiated by Dominion with the DIP Lenders did not seek any such priming; and
  - b. the SIF Term Sheet was delivered outside the Evercore solicitation process, well after the deadline in that process, and in the very final stages of the Applicants completing the negotiations of the Washington LOI and associated transactions, including the DIP Term Sheet.
26. The Monitor did not include the SIF Term Sheet in its summary of DIP loan proposals in the Fourth Report, because the SIF Term Sheet was proposed entirely outside the Evercore DIP Process (the summary of DIP loan proposals all related to the Applicants' ongoing operations at the Ekati Mine). Further the SIF term sheet did not change the fact that DDMI would continue to hold the Applicants' diamonds.

## **THE RELATIONSHIP OF DDMI AND THE APPLICANTS**

27. DDMI is the 60% joint venture partner and the Manager of the Diavik JV, and as such is an important stakeholder of the Applicants, with a real and material interest in the outcome of these CCAA Proceedings. However, DDMI's relationship with the Applicants is multi-faceted, and is not simple. Among other things:
- a. DDMI is a wholly-owned subsidiary of Rio Tinto plc, part of an international metals and mining corporate group with large global operations. The Rio Tinto group has operated a diamond mining and marketing business for over 40 years;

- b. in its role as the Manager and majority owner of the Diavik JV, DDMI is and has been party to various ongoing disputes with Dominion, as disclosed in the evidence of the two parties;
- c. DDMI is also a secured creditor of Dominion, given its contractual right to make Cover Payments, for which it obtains a security interest. On May 15, the Court granted DDMI's request to allow it to make such Cover Payments, irrespective of the CCAA Stay;
- d. DDMI is also a competitor of Dominion. The parties compete both for the purchase of high value diamonds from the Diavik JV, and they compete for sales of their respective diamonds on the global diamond market; and
- e. DDMI is a presumptive bidder for Dominion's interest in the Diavik JV. This is in part simply a function of DDMI being the 60% owner of the JV. If neither the Stalking Horse Bidder nor any other bidder makes a binding offer to purchase Dominion's interest in the Diavik JV, DDMI will be the natural bidder. As noted by DDMI in its March 28, 2020 Bench Brief, the Diavik JVA contains a number of “restrictions” that apply to any transfer by Dominion of its interest in the JV, and “provides DDMI with certain pre-emptive rights” in relation to any such transfer. These restrictions and rights include the following elements referred to by DDMI in its Bench Brief:
  - i. DDMI must receive notice of any such transfer, and the transferee must agree to be bound by the JVA;
  - ii. no transfer shall relieve the selling participant of any existing liability associated with the JV; and
  - iii. if Dominion wishes to transfer its interest in the JV, DDMI has pre-emptive rights to acquire that interest, by way of a right of first refusal; and

- f. there is an additional right afforded to DDMI in the Diavik JVA in situations like the present case, where DDMI has made a Cover Payment on behalf of Dominion. If Dominion fails to discharge any Cover Payment indebtedness within 30 days' notice to Dominion, DDMI is entitled to purchase all of Dominion's interest in the Diavik JVA at a purchase price equal to a material discount of the fair market value thereof. The Monitor has not mentioned the discount percentage in this Supplement, because the JVA is sealed on the Court file, but the discount percentage is set out in **Confidential Appendix "D"**.
28. In considering the revisions to the Second ARIO and the SISP being requested by DDMI, the Monitor has borne in mind the multi-faceted relationship between DDMI and Dominion but also the fact that DDMI is a creditor and significant stakeholder in these proceedings.

#### **THE PROCESS FOLLOWED AFTER THE HEARING OF THE SECOND ARIO APPLICATION**

29. At approximately 2:45 p.m. Mountain time on Saturday May 30, 2020, the Monitor sent an email to the Service List, requesting that any parties who had suggested revisions to the Second ARIO deliver such proposed revisions to the Monitor and the Service List no later than 2:00 p.m. Mountain time on Monday, June 1, 2020. A copy of that email is attached as **Appendix "E"**.
30. At approximately 6:00 p.m. Mountain time on Saturday May 30, 2020, the Monitor sent a second email to the Service List:
- a. clarifying its earlier email that afternoon; and
  - b. providing a word copy of the form of Second ARIO that had been agreed to by the Agreement Parties, to facilitate parties making revisions.

A copy of that email is attached as **Appendix "F"**.

31. On Sunday May 31, 2020, the Monitor convened a “without prejudice” teleconference with counsel for the Applicants and counsel for DDMI, to attempt to identify whether those parties could reach agreement on the appropriate form of Second ARIO and SISP, in the event that the Court granted the application. The Applicants and DDMI were unable to reach agreement.
32. Since the hearing on May 29, 2020, the Monitor has also had discussions with the Stalking Horse Bidder, 1L Agent, the Ad Hoc Committee, the 2L Notes Trustee and DDMI.
33. Prior to the Monitor's requested deadline of 2:00 p.m. Mountain time on Monday, June 1, 2020:
  - a. at approximately 8:30 a.m. Mountain time on Monday June 1, 2020, the Stalking Horse Bidder sent an email to the Service List with suggested revisions to the Second ARIO. A copy of that email is attached as **Appendix “G”**.
34. No other proposed revisions were received prior to the Monitor's requested deadline.
35. At approximately 5:20 p.m. Mountain time on Monday June 1, 2020, the Ad Hoc Committee sent an email to the Service List, reserving its right to speak to DDMI's proposed revisions to the Second ARIO and SISP, indicating it had concerns with DDMI's proposed revision and voicing its disagreement with the revisions to the Second ARIO proposed earlier in the day by the Stalking Horse Bidder. A copy of that email is attached as **Appendix “H”**. At approximately 5:23 p.m. Mountain time on Monday June 1, 2020, the 2L Notes Trustee sent an email agreeing with and joining in the position of the Ad Hoc Committee. A copy of that email is attached as **Appendix “I”**.
36. On Tuesday June 2, 2020, the Monitor sent an email to the Service List, proposing a hearing protocol for the Continuation Hearing. A copy of that email is attached as **Appendix “J”**.

## **THE FORMS OF SECOND ARIO AND SISP BEING PROPOSED BY VARIOUS PARTIES**

37. In **Appendix “K”**, the Monitor has summarized the revisions that have been proposed to the Second ARIO, both before and after the initial hearing of the Second ARIO Application on May 29, 2020. In **Appendix “L”**, the Monitor has done the same thing with respect to the SISP.
38. Since May 29, 2020, the Monitor has discussed various issues regarding the form of Second ARIO and the SISP with the Applicants, the 1L Agent, the 2L Notes Trustee, the Ad Hoc Committee and the Stalking Horse Bidder and DDMI. The Monitor also had a discussion with Evercore to determine the impact on the SISP of the revisions being sought by various stakeholders to the Second ARIO and the SISP.
39. The Monitor recognizes that this Honourable Court has not decided whether it will grant the relief requested by the Applicants at the Second ARIO Application. However, in the event that the Court is inclined to do so, the Monitor felt that it was necessary to facilitate in this report an efficient way for the Court and the parties to compare and understand the various versions and revisions being proposed by the parties.
40. In **Appendices “K”** and **“L”**, the Monitor has provided its commentary and recommendation on each of the suggested revisions to the Second ARIO and the SISP. **Appendix “M”** is the form of Second ARIO and SISP that is being recommended by the Monitor, after having considered the different forms proposed by the various parties. The Monitor notes that this form of Second ARIO and SISP are not in the form presented by any single stakeholder or group of stakeholders (for ease of reference, the different forms proposed by the different stakeholders are all reproduced in one place, in **Appendix “N”**). Rather, in **Appendix “M”**, the Monitor has included all revisions which it considered to be reasonable, reasonably accommodating of the parties' different interests, but not, in the Monitor's view, materially prejudicial the SISP and the CCAA Proceedings. For each of the proposed Second ARIO and SISP the Monitor has provided a clean copy and a blackline (the Second ARIO is blacklined to show all changes from the ARIO granted May 1, 2020

and the SISP is blacklined to show all changes from the version attached to the Company's application materials on May 22, 2020.

## CONCLUSION AND RECOMMENDATIONS

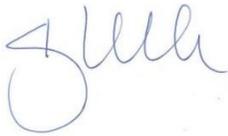
41. The Monitor respectfully recommends that this Honourable Court:

- a. grant the Applicants' application by issuing the Second ARIO and the SISP in the form attached as **Appendix "M"**; and
- b. extend the Stay of Proceedings to and including August 31, 2020.

\*\*\*\*\*

All of which is respectfully submitted this 2<sup>nd</sup> 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”

Monitor’s email to the Service List dated May 25, 2020

## Shierman, Lindsay

---

**From:** Chris Simard <SimardC@bennettjones.com>  
**Sent:** Monday, May 25, 2020 10:01 AM  
**To:** peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.cilly@blakes.com; Claire.hildebrand@blakes.com; Fperlman@mwe.com; Helkaa, Deryck; Powell, Tom; Shierman, Lindsay; Olver, Dustin; Munro, Craig; Kleebaum, Robert; Chris Simard; Michael Selnes; mbuttery@cassels.com; mwasserman@osler.com; epaplawski@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; tdearinis@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@osfibsif.gc.ca; Swift, Brandi; chrisjennings66@me.com; ataylor@stikeman.com; navis@stikeman.com; krobenson@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  
**Subject:** CCAA Proceedings of Dominion Diamond Mines ULC et al.

In respect of the Court application to be heard in this matter at 9:15 am Mountain time this Friday, May 29, the Monitor asks that any parties that intend to file materials endeavor to serve such materials by email, and upload them in CaseLines, no later than 12:00 p.m. Mountain time on Wednesday, May 27. We expect that Justice Eidsvik has a busy docket this week and at the last hearing, she specifically commented on having limited time to read the materials that had been submitted.

Thank you.



**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](mailto:simardc@bennettjones.com)



# APPENDIX “B”

Second ARIO and SISP agreed to by the Agreement Parties

**FINAL**

**Ad Hoc Committee of Note Holders**

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

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

**Additional Terms**

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

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

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

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

- (3) The following changes are made to the dates stipulated in the SISP:
  - (i) the Phase 1 Bid Deadline in paragraph 13 is changed from June 26, 2020 to July 10, 2020;
  - (ii) the Phase 2 Bid Deadline referred to in paragraph 21 is changed from August 7, 2020 to August 21, 2020;
  - (iii) the date referred to in paragraph 22(j) is changed from September 9, 2020 to September 23, 2020;
  - (iv) the Auction commencement date referred to in paragraph 27(a) is changed from August 10, 2020 to August 24, 2020;
  - (v) the dates for selection and execution of the Successful Bid and Back-up Bid referred to in paragraph 28 are changed, respectively, from August 14, 2020 to August 28, 2020 and from August 18, 2020 to September 1, 2020; and
  - (vi) the Approval Motion hearing date referred to in paragraph 30 is changed from August 31, 2020 to September 14, 2020.
- (4) The Stalking Horse Term Sheet shall be amended to make corresponding changes to the dates set out therein in accordance with (3) above.
- (5) Paragraph 22(f) of the DIP Term Sheet is revised to add the following opening words: "Except as may be otherwise ordered by the Court,".
- (6) The following be added as a new paragraph 24(e) to the proposed Second Amended and Restated Initial Order:

“(e) fulfill the role contemplated for the Monitor in the SISP (including, without limitation, in respect of the granting or withholding of the Monitor’s consent to the exercise of certain rights or discretions, the disclosure of certain information and materials to bidders under the SISP, the filing of certain reports to the Court, and the oversight of all SISP activities) and respond to all reasonable enquiries of the Applicants creditors in relation thereto”.

# APPENDIX “C”

DDMI email re: SIF Term Sheet dated May 19, 2020

## Shierman, Lindsay

---

**From:** Collins, Sean F. <scollins@MCCARTHY.CA>  
**Sent:** Monday, May 18, 2020 9:34 PM  
**To:** Peter Rubin (peter.rubin@blakes.com)  
**Cc:** Chris Simard; Small, Shea T.  
**Subject:** Dominion Diamond - Rio Tinto Stapled Interim Financing Term Sheet  
**Attachments:** DOCS-#20391316-v3A-Diavik\_SIF.pdf

Peter,

As discussed, attached is a term sheet outlining the bases upon which Rio Tinto is prepared to enter into discussions with Dominion to provide stapled interim funding (“**SIF**”) that will permit Dominion to access credit to fund its share of the cash call obligations at Diavik. Justice Eidsvik’s May 15 judgment made it clear that Her Ladyship views the ongoing failure of Dominion to pay its share of cash call obligations at Diavik as a “DIP problem”. That is to say, the Court has recognized that DDMI is being forced to, in essence, provide DIP financing to Dominion with the implication that DDMI is not receiving the benefits that would otherwise be available to it *qua* DIP provider. The SIF is designed to integrate with any DIP financing which Dominion may put forward. It is also designed to avoid further controversy around Dominion’s failure to make post-filing payments, the priority of the Cover Payments and to settle outstanding matters as between DDMI and Dominion. The benefit of the SIF to Dominion is that, rather than facing opposition from DDMI for any attempt by Dominion to seek a priming charge over Diavik, Dominion and its stakeholders will enjoy the consent of DDMI to the DIP financing. Obviously, none of this will necessary to the extent any DIP financing put forward by Dominion provides for the payment of Dominion’s share of the outstanding cash calls as well as any future cash calls at Diavik.

We are copying Chris Simard with this email and the attachment. While our discussions with both of you yesterday on this point were not met with much favour, Rio Tinto would urge Dominion and the Monitor to give serious consideration to moving forward on this basis. Rio Tinto and its advisers will make themselves available to discuss further.

Regards,



**Sean Collins**  
Partner | Associé  
Bankruptcy and Restructuring | Faillite et restructuration  
T: 403-260-3531  
C: 403-607-8534  
F: 403-260-3501  
E: [scollins@mccarthy.ca](mailto:scollins@mccarthy.ca)

**McCarthy Tétrault LLP**  
Suite 4000  
421 - 7th Avenue SW  
Calgary AB T2P 4K9

[Click here](#) to visit our dedicated **COVID-19 Hub**, delivering daily updates, industry insights and legal perspectives to help business leaders navigate the global impact of COVID-19.



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**Key Terms for Stapled Interim Funding (SIF) for Dominion in Support of Dominion DIP**

*Funding*

- As cash calls on the Diavik JV are made, Rio Tinto Canada or an affiliate (RT Fundco) will provide funding for Dominion's portion of the cash calls
- RT Fundco will also provide funding to:
  - repay DDMI for principal and interest on Cover Payments DDMI made for Dominion's portion of the April 22 (C\$16.0M), May 8 (C\$17.6M) **[and May 22 (C\$12.0M)]** cash calls; and
  - pay interest and expenses associated with SIF

*Interest and Availability*

- Interest on SIF to be charged from applicable dates of funding in accordance with greater of:
  - existing terms of JVA (Prime + 5%); and
  - Dominion DIP terms
- SIF to be available until earliest of (Maturity Date):
  - the effective date of any plan of arrangement sanctioned by the CCAA Court or the emergence of Dominion from insolvency proceedings;
  - closing of sale of Dominion or Dominion's participating interest in the Diavik JV;
  - at the election of RT Fundco, on the occurrence of any event of default under the SIF; and
  - four months following the SIF effective date, provided that RT Fundco may at its election and upon notice to Dominion extend such date by one month at any time and from time to time

*Security*

- RT Fundco will take a first ranking court ordered charge against:
  - Dominion's share of the Diavik diamonds produced since Dominion's CCAA filing;
  - Dominion's participating interest in the Diavik JV and share of the Diavik assets; and
  - all proceeds of and accessions to the foregoing

*Splitting*

- Diavik diamonds produced since Dominion's CCAA filing to the Maturity Date (Dominion's share of such diamonds being referred to as Subject Diamonds) will continue to be split in accordance with the pre-existing splitting protocol
- Subject Diamonds to continue to be held at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories or the Rio Tinto group's cleaning and sorting facility in Antwerp

*Sales*

- DDMI permitted to sell Subject Diamonds through one or more of its affiliates using the same channels and substantially on the same basis that DDMI sells its own diamonds
- Proceeds (after deductions for royalties and any other applicable charges) from sale of Subject Diamonds to be used to reduce balance of SIF with any excess to be returned to Dominion
- If DDMI sells Subject Diamonds, DDMI to be paid:
  - sales agency fee equal to 2.5% of Dominion's allocation of any sale proceeds (before any deductions); and

- any related expenses, including additional insurance costs, reasonably related thereto
- Following the Maturity Date, any remaining Subject Diamonds to be returned to Dominion (at its cost) upon repayment of SIF in full. If such repayment not made within 30 days of the Maturity Date, DDMI permitted to sell any such remaining Subject Diamonds through one or more of its affiliates using the same channels and substantially on the same basis that DDMI sells its own diamonds with the proceeds to be dealt with as indicated above

*Legal Matters*

- Each of Dominion and DDMI to release the other for any outstanding claims under or in connection with the Diavik JVA
- DDMI to forbear from pursuing diamonds held by Dominion affiliates outside of CCAA debtors

*Documentation*

- Usual and customary representations and warranties, covenants, conditions, indemnities, prepayment terms, funding protections, events of default, remedies and other terms satisfactory to Rio Tinto
- Satisfactory Dominion DIP and intercreditor arrangements, including with respect to allocation of SISP proceeds on sale of Dominion
- Information sharing on diamond sales subject to appropriate anti-trust protections
- No change in Diavik JVA and related agreements. SIF shall have no impact on rights of DDMI as a Participant and the Manager under the Diavik JVA

# APPENDIX “D”

Confidential portion of the Diavik JVA

# APPENDIX “E”

Monitor’s email to the Service List dated May 30, 2020

## Shierman, Lindsay

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**From:** Chris Simard <SimardC@bennettjones.com>  
**Sent:** Saturday, May 30, 2020 2:43 PM  
**To:** Doran, Katie; peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.cilly@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; Paplawski, Emily; 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; MacLeod, Walker W.; Collins, Sean F.; Taylor, Adam; tdeamarinis@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; krobenson@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; Mills, Demara; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com  
**Subject:** In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Everyone,

At the hearing on Friday, May 29, a number of parties were not able to make submissions because we ran out of time. Additionally, some parties indicated that they might have comments on the form of Order being sought. In anticipation of the continuation of the hearing at 2:30 p.m. Mountain time on Wednesday, June 3, the Monitor kindly asks that if parties have any proposed revisions to the form of Order being sought, that they deliver such proposed revisions to the Monitor, copying the entire service list, by 2:00 p.m. Mountain time on Monday, June 1.

Thereafter, the Monitor will work with the parties to see if it is possible to reach agreement on the form of Order, or to narrow the contested issues to the extent possible.

Thanks



**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](mailto:simardc@bennettjones.com)



# APPENDIX “F”

Monitor’s email to the Service List dated May 31, 2020

## Shierman, Lindsay

---

**From:** Chris Simard <SimardC@bennettjones.com>  
**Sent:** Saturday, May 30, 2020 6:00 PM  
**To:** Doran, Katie; peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.cilly@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; Paplawski, Emily; 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; MacLeod, Walker W.; Collins, Sean F.; Taylor, Adam; tdeamarinis@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; 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; krobenson@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; Mills, Demara; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com  
**Subject:** RE: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.  
**Attachments:** Current Version.docx

Counsel,

Further to my email earlier this afternoon, attached is a word version of the Order in the form currently being sought by the Applicants. If you wish to provide suggested revisions by 2:00 pm Mountain on Monday, please provide a revised version of this document, with a blackline.

This is the version Mr. Rubin spoke about during the application on Friday, the form of which has been agreed to by the Applicants, the 1L Agent, the Trustee of the 2L Notes, the 2L Ad Hoc Committee and the Stalking Horse Bidder.

Obviously, we also already have the revisions requested by DDMI, which were attached to Mr. Collins' brief (so we don't need those sent to us again).

My email this afternoon was intended to solicit any revisions from parties who have not yet had a chance to comment on, or have not yet agreed to, the form of order.

Thank you.



**Chris Simard**  
Bennett Jones LLP



**From:** Chris Simard

**Sent:** Saturday, May 30, 2020 2:43 PM

**To:** Doran, Katie <KDORAN@mccarthy.ca>; 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; Michael Selnes <SelnesM@bennettjones.com>; mbuttery@cassels.com; mwasserman@osler.com; Paplawski, Emily <epaplawski@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; MacLeod, Walker W. <wmacleod@mccarthy.ca>; Collins, Sean F. <scollins@MCCARTHY.CA>; Taylor, Adam <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@millertomson.com; twarner@millertomson.com; snorris@millertomson.com; gunnar.benediktsson@nortonrosefulbright.com; ARaven@ravenlaw.com; AAstiritis@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; Ian\_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; krobenson@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; Mills, Demara <dmills@blg.com>; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com

**Subject:** In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Everyone,

At the hearing on Friday, May 29, a number of parties were not able to make submissions because we ran out of time. Additionally, some parties indicated that they might have comments on the form of Order being sought. In anticipation of the continuation of the hearing at 2:30 p.m. Mountain time on Wednesday, June 3, the Monitor kindly asks that if parties have any proposed revisions to the form of Order being sought, that they deliver such proposed revisions to the Monitor, copying the entire service list, by 2:00 p.m. Mountain time on Monday, June 1.

Thereafter, the Monitor will work with the parties to see if it is possible to reach agreement on the form of Order, or to narrow the contested issues to the extent possible.

Thanks



**Chris Simard**  
Bennett Jones LLP

# APPENDIX “G”

Stalking Horse Bidder email dated June 1, 2020

## Shierman, Lindsay

---

**From:** O'Neill, Brendan <boneill@goodmans.ca>  
**Sent:** Monday, June 1, 2020 8:29 AM  
**To:** Chris Simard; Doran, Katie; peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.criilly@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; Paplawski, Emily; jlevitin@cahill.com; Wiffen, Bradley; Partridge, Michael; Citron, Jeff; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W.; Collins, Sean F.; Taylor, Adam; 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; 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; krobenson@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; Mills, Demara; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com; O'Neill, Brendan  
**Subject:** RE: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.  
**Attachments:** Ad Hoc Committee of Note Holders - Appendix A - DDM Comments.pdf; Dominion DIP Term Sheet (Fully Executed).pdf

Dear Service List,

As you may recall, in advance of last Friday's hearing, counsel to the Applicants circulated to the Service List a revised form of Appendix A (the "Revised Appendix A") – revising the form of Appendix A that was attached to the Bench Brief of Torys LLP (counsel to the Ad Hoc Second Lien Noteholder Group). This form of Revised Appendix A represented the agreement that had been reached among the Ad Hoc Second Lien Noteholder Group (including by that time the Trustee for the Second Lien Notes), the Applicants, the proposed DIP Lender and SHB, and the First Lien Lenders in advance of the hearing. The Revised Appendix A made a series of agreed-upon changes to the SISF and related documents.

Based on the positions taken by counsel to the Ad Hoc Second Lien Noteholder Group and counsel to the Trustee for the Second Lien Notes at hearing held last Friday (which were not consistent with the agreement reached regarding Revised Appendix A), please be advised that Revised Appendix A is no longer acceptable to the proposed DIP lenders, unless modified as shown in the enclosed (with the language for Rider A set out below). Counsel to the Applicants and counsel to the Monitor have been directly advised of the need for these changes to be made in order for Revised Appendix A to be acceptable to the DIP lenders on any basis (as will any other proposed changes to Revised Appendix A need to be acceptable to the proposed DIP lenders in their sole and absolute discretion).

### Rider A

Section 22(f) of the DIP Term Sheet (a copy of which is also enclosed for convenience) will be replaced with the following language:

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

Brendan O'Neill

☎ Tel: 416.849.6017  
☎ Fax: 416.979.1234  
✉ E-mail: [boneill@goodmans.ca](mailto:boneill@goodmans.ca)  
🌐 Web: [http://www.goodmans.ca/People/Brendan\\_O\\_Neill](http://www.goodmans.ca/People/Brendan_O_Neill)

### Goodmans LLP

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario  
M5H 2S7 Canada

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---

**From:** Chris Simard <SimardC@bennettjones.com>

**Sent:** Saturday, May 30, 2020 4:43 PM

**To:** Doran, Katie <KDORAN@mccarthy.ca>; 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; Michael Selnes <SelnesM@bennettjones.com>; mbuttery@cassels.com; mwasserman@osler.com; Paplawski, Emily <epaplawski@osler.com>; jlevitin@cahill.com; O'Neill, Brendan <boneill@goodmans.ca>; Wiffen, Bradley <bwiffen@goodmans.ca>; Partridge, Michael <mpartridge@goodmans.ca>; Citron, Jeff <jcitron@goodmans.ca>; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W. <wmacleod@mccarthy.ca>; Collins, Sean F. <scollins@MCCARTHY.CA>; Taylor, Adam <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; 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; Mills, Demara <dmills@blg.com>; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com

**Subject:** In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Everyone,

At the hearing on Friday, May 29, a number of parties were not able to make submissions because we ran out of time. Additionally, some parties indicated that they might have comments on the form of Order being sought. In anticipation of the continuation of the hearing at 2:30 p.m. Mountain time on Wednesday, June 3, the Monitor kindly asks that if parties have any proposed revisions to the form of Order being sought, that they deliver such proposed revisions to the Monitor, copying the entire service list, by 2:00 p.m. Mountain time on Monday, June 1.

Thereafter, the Monitor will work with the parties to see if it is possible to reach agreement on the form of Order, or to narrow the contested issues to the extent possible.

Thanks



**Chris Simard**  
Bennett Jones LLP

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T. 403 298 4485 | F. 403 265 7219  
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# APPENDIX “H”

Ad Hoc Committee email dated June 1, 2020

## Shierman, Lindsay

---

**From:** Kashuba, Kyle <kkashuba@torys.com>  
**Sent:** Monday, June 1, 2020 3:18 PM  
**To:** O'Neill, Brendan; Chris Simard; Doran, Katie; peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.cilly@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; Paplawski, Emily; jlevitin@cahill.com; Wiffen, Bradley; Partridge, Michael; Citron, Jeff; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W.; Collins, Sean F.; Taylor, Adam; DeMarinis, Tony; 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; Mills, Demara; shill@blg.com; Nantes, Jeline; karen.fellowes@dlapiper.com  
**Subject:** RE: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

To: Service List

The ad hoc noteholders' committee was not given an opportunity Friday to speak to the changes sought by DDMI to the proposed SISP and second amended and restated initial order, about which we have concerns. We also do not agree with the new changes sought today by the proposed DIP lender/stalking horse bidder, or with its counsel's characterization of Friday's events.

The committee reserves all its rights to oppose any changes to the form of SISP circulated by the Company on Friday morning and, if changes are made, it may seek further revisions of its own. The committee also reserves its rights to continue to express its serious concerns with the inadequacy of the proposed stalking horse bid and to take any position that it deems appropriate with respect thereto including, without limitation, the rebuttal of any arguments in support of the sufficiency of the proposed stalking horse bid's purchase price.

Kyle

Kyle Kashuba

---

**From:** O'Neill, Brendan <boneill@goodmans.ca>  
**Sent:** Monday, June 1, 2020 8:29 AM  
**To:** Chris Simard <SimardC@bennettjones.com>; Doran, Katie <KDORAN@mccarthy.ca>; peter.rubin@blakes.com; linc.rogers@blakes.com; peter.bychawski@blakes.com; morgan.cilly@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; Michael Selnes <SelnesM@bennettjones.com>; mbuttery@cassels.com; mwasserman@osler.com; Paplawski, Emily <epaplawski@osler.com>; jlevitin@cahill.com; Wiffen, Bradley <bwiffen@goodmans.ca>; Partridge, Michael <mpartridge@goodmans.ca>; Citron, Jeff <jcitron@goodmans.ca>; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W. <wmacleod@mccarthy.ca>; Collins, Sean F. <scollins@MCCARTHY.CA>; Taylor, Adam <ATAYLOR@mccarthy.ca>; DeMarinis, Tony <tdemarinis@torys.com>; Kashuba, Kyle <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; AAstiritis@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; Ian\_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; 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; Mills, Demara <dmills@blg.com>; shill@blg.com; Nantes, Jeline <jnantes@torys.com>; karen.fellowes@dlapiper.com; O'Neill,Brendan <boneill@goodmans.ca>

**Subject:** RE: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Dear Service List,

As you may recall, in advance of last Friday's hearing, counsel to the Applicants circulated to the Service List a revised form of Appendix A (the "Revised Appendix A") – revising the form of Appendix A that was attached to the Bench Brief of Torys LLP (counsel to the Ad Hoc Second Lien Noteholder Group). This form of Revised Appendix A represented the agreement that had been reached among the Ad Hoc Second Lien Noteholder Group (including by that time the Trustee for the Second Lien Notes), the Applicants, the proposed DIP Lender and SHB, and the First Lien Lenders in advance of the hearing. The Revised Appendix A made a series of agreed-upon changes to the SISP and related documents.

Based on the positions taken by counsel to the Ad Hoc Second Lien Noteholder Group and counsel to the Trustee for the Second Lien Notes at hearing held last Friday (which were not consistent with the agreement reached regarding Revised Appendix A), please be advised that Revised Appendix A is no longer acceptable to the proposed DIP lenders, unless modified as shown in the enclosed (with the language for Rider A set out below). Counsel to the Applicants and counsel to the Monitor have been directly advised of the need for these changes to be made in order for Revised Appendix A to be acceptable to the DIP lenders on any basis (as will any other proposed changes to Revised Appendix A need to be acceptable to the proposed DIP lenders in their sole and absolute discretion).

#### **Rider A**

Section 22(f) of the DIP Term Sheet (a copy of which is also enclosed for convenience) will be replaced with the following language:

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

pursuit of claims (including diligence or discovery) against any Interim Facility Lender or any of its affiliates in any capacity.

Brendan O'Neill

☎ Tel: 416.849.6017

☎ Fax: 416.979.1234

✉ E-mail: [boneill@goodmans.ca](mailto:boneill@goodmans.ca)

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## Goodmans LLP

Bay Adelaide Centre

333 Bay Street, Suite 3400

Toronto, Ontario

M5H 2S7 Canada

\*\*\*\*\* Attention \*\*\*\*\*

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---

**From:** Chris Simard <[SimardC@bennettjones.com](mailto:SimardC@bennettjones.com)>

**Sent:** Saturday, May 30, 2020 4:43 PM

**To:** Doran, Katie <[KDORAN@mccarthy.ca](mailto:KDORAN@mccarthy.ca)>; [peter.rubin@blakes.com](mailto:peter.rubin@blakes.com); [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com); [peter.bychawski@blakes.com](mailto:peter.bychawski@blakes.com); [morgan.crilly@blakes.com](mailto:morgan.crilly@blakes.com); [Claire.hildebrand@blakes.com](mailto:Claire.hildebrand@blakes.com); [Fperlman@mwe.com](mailto:Fperlman@mwe.com); [deryck.helkaa@fticonsulting.com](mailto:deryck.helkaa@fticonsulting.com); [tom.powell@fticonsulting.com](mailto:tom.powell@fticonsulting.com); [lindsay.shierman@fticonsulting.com](mailto:lindsay.shierman@fticonsulting.com); [dustin.olver@fticonsulting.com](mailto:dustin.olver@fticonsulting.com); [craig.munro@fticonsulting.com](mailto:craig.munro@fticonsulting.com); [robert.kleebaum@fticonsulting.com](mailto:robert.kleebaum@fticonsulting.com); Michael Selnes <[SelnesM@bennettjones.com](mailto:SelnesM@bennettjones.com)>; [muttery@cassels.com](mailto:muttery@cassels.com); 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**Subject:** In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Everyone,

At the hearing on Friday, May 29, a number of parties were not able to make submissions because we ran out of time. Additionally, some parties indicated that they might have comments on the form of Order being sought. In anticipation of the continuation of the hearing at 2:30 p.m. Mountain time on Wednesday, June 3, the Monitor kindly asks that if parties have any proposed revisions to the form of Order being sought, that they deliver such proposed revisions to the Monitor, copying the entire service list, by 2:00 p.m. Mountain time on Monday, June 1.

Thereafter, the Monitor will work with the parties to see if it is possible to reach agreement on the form of Order, or to narrow the contested issues to the extent possible.

Thanks



**Chris Simard**  
Bennett Jones LLP

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# APPENDIX “I”

2L Note Trustee dated June 1, 2020

## Shierman, Lindsay

---

**From:** Alberts, Sam J. <sam.alberts@dentons.com>  
**Sent:** Monday, June 1, 2020 5:23 PM  
**To:** Kashuba, Kyle; O'Neill, Brendan; Chris Simard; Doran, Katie; 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; Paplawski, Emily; jlevitin@cahill.com; Wiffen, Bradley; Partridge, Michael; Citron, Jeff; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W.; Collins, Sean F.; Taylor, Adam; DeMarinis, Tony; quinlm3@telus.net; JPawlyk@bmlp.ca; Ross.Johnson@ca.ey.com; Neil.Narfason@ca.ey.com; KBarr@blg.com; JVallis@blg.com; Schultz, Jordan; Sandrelli, John; Dominguez, Miriam; alexandre.larouche@justice.gc.ca; kanderson@millerthomson.com; twarner@millerthomson.com; snorris@millerthomson.com; gunnar.benediktsson@nortonrosefulbright.com; ARaven@ravenlaw.com; AAstiris@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; Salmas, John; jmaclellan@blg.com; swatson@parlee.com; cang@parlee.com; Regush, John; 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; Letwin, Kurtis; Hitesman, Dean; Freake, Mark; MPaterson@osler.com; MSakamoto@blg.com; zrodgers@ravenlaw.com; sarcher@goldblattpartners.com; EPratt@osler.com; nmaaswinkel@blg.com; Mills, Demara; shill@blg.com; Nantes, Jeline; karen.fellowes@dlapiper.com  
**Subject:** Re: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.  
**Attachments:** image001.png; image002.png

To the Service List:

The Indenture Trustee agrees with and joins in the Ad Hoc Group's below statements and reservations on behalf of itself and the Second Secured Bondholders that are owed approximately CAD\$800 million.

Regards,

Sam

[\[http://logo.dentons.com/dentons\\_logo.png\]](http://logo.dentons.com/dentons_logo.png)

Sam J. Alberts  
Partner

Our COVID-19 Client Resources Hub<<https://www.dentons.com/en/issues-and-opportunities/covid-19-coronavirus-hub>> is available to the public, part of Dentons' global commitment to help our clients and our communities navigate this pandemic's legal and business challenges.

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From: "Kashuba, Kyle" <kkashuba@torys.com>  
Date: Monday, June 1, 2020 at 5:19 PM  
To: "O'Neill, Brendan" <boneill@goodmans.ca>, Chris Simard <SimardC@bennettjones.com>, "Doran, Katie" <KDORAN@mccarthy.ca>, "peter.rubin@blakes.com" <peter.rubin@blakes.com>, "linc.rogers@blakes.com" <linc.rogers@blakes.com>, "peter.bychawski@blakes.com" <peter.bychawski@blakes.com>, "morgan.crilly@blakes.com" <morgan.crilly@blakes.com>, "Claire.hildebrand@blakes.com" <Claire.hildebrand@blakes.com>, "Fperlman@mwe.com" <Fperlman@mwe.com>, "deryck.helkaa@fticonsulting.com" <deryck.helkaa@fticonsulting.com>, "tom.powell@fticonsulting.com" <tom.powell@fticonsulting.com>, "lindsay.shierman@fticonsulting.com" <lindsay.shierman@fticonsulting.com>, "dustin.olver@fticonsulting.com" <dustin.olver@fticonsulting.com>, "craig.munro@fticonsulting.com" <craig.munro@fticonsulting.com>, "robert.kleebaum@fticonsulting.com" <robert.kleebaum@fticonsulting.com>, Michael Selnes <SelnesM@bennettjones.com>, "mbuttery@cassels.com" <mbuttery@cassels.com>, "mwasserman@osler.com" <mwasserman@osler.com>, "Paplawski, Emily" <epaplawski@osler.com>, "jlevitin@cahill.com" <jlevitin@cahill.com>, "Wiffen, Bradley" <bwiffen@goodmans.ca>, "Partridge, Michael" <mpartridge@goodmans.ca>, "Citron, Jeff" <jcitron@goodmans.ca>, "Robert.Fitzgerald@skadden.com" <Robert.Fitzgerald@skadden.com>, Ron Meisler <Ron.Meisler@skadden.com>, "Vicki.Tickle@mcmillan.ca" <Vicki.Tickle@mcmillan.ca>, "MacLeod, Walker W." <wmacleod@mccarthy.ca>, "Collins, Sean F." <scollins@MCCARTHY.CA>, "Taylor, Adam" <ATAYLOR@mccarthy.ca>, "DeMarinis, Tony" <tdemarinis@torys.com>, "quinlm3@telus.net" <quinlm3@telus.net>, "JPawlyk@bmlp.ca" <JPawlyk@bmlp.ca>, "Ross.Johnson@ca.ey.com" <Ross.Johnson@ca.ey.com>, "Neil.Narfason@ca.ey.com" <Neil.Narfason@ca.ey.com>, "KBarr@blg.com" <KBarr@blg.com>, "JVallis@blg.com" <JVallis@blg.com>, "Schultz, Jordan" <jordan.schultz@dentons.com>, "Sandrelli, John" <john.sandrelli@dentons.com>, "Dominguez, Miriam" <miriam.dominguez@dentons.com>, "alexandre.larouche@justice.gc.ca" <alexandre.larouche@justice.gc.ca>, "kanderson@millერთhompson.com" <kanderson@millერთhompson.com>, "twarner@millერთhompson.com" <twarner@millერთhompson.com>, "snorris@millერთhompson.com" <snorris@millერთhompson.com>

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Subject: RE: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

[External Sender]

To: Service List

The ad hoc noteholders' committee was not given an opportunity Friday to speak to the changes sought by DDMI to the proposed SISP and second amended and restated initial order, about which we have concerns. We also do not agree with the new changes sought today by the proposed DIP lender/stalking horse bidder, or with its counsel's characterization of Friday's events.

The committee reserves all its rights to oppose any changes to the form of SISP circulated by the Company on Friday morning and, if changes are made, it may seek further revisions of its own. The committee also reserves its rights to continue to express its serious concerns with the inadequacy of the proposed stalking horse bid and to take any position that it deems appropriate with respect thereto including, without limitation, the rebuttal of any arguments in support of the sufficiency of the proposed stalking horse bid's purchase price.

Kyle

Kyle Kashuba

From: O'Neill, Brendan <boneill@goodmans.ca>

Sent: Monday, June 1, 2020 8:29 AM

To: Chris Simard <SimardC@bennettjones.com>; Doran, Katie <KDORAN@mccarthy.ca>; 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; Michael Selnes <SelnesM@bennettjones.com>; mbuttery@cassels.com; mwasserman@osler.com; Paplawski, Emily <epaplawski@osler.com>; jlevitin@cahill.com; Wiffen, Bradley <bwiffen@goodmans.ca>; Partridge, Michael <mpartridge@goodmans.ca>; Citron, Jeff <jcitron@goodmans.ca>; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W. <wmacleod@mccarthy.ca>; Collins, Sean F. <scollins@MCCARTHY.CA>; Taylor, Adam <ATAYLOR@mccarthy.ca>;

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Subject: RE: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Dear Service List,

As you may recall, in advance of last Friday's hearing, counsel to the Applicants circulated to the Service List a revised form of Appendix A (the "Revised Appendix A") – revising the form of Appendix A that was attached to the Bench Brief of Torys LLP (counsel to the Ad Hoc Second Lien Noteholder Group). This form of Revised Appendix A represented the agreement that had been reached among the Ad Hoc Second Lien Noteholder Group (including by that time the Trustee for the Second Lien Notes), the Applicants, the proposed DIP Lender and SHB, and the First Lien Lenders in advance of the hearing. The Revised Appendix A made a series of agreed-upon changes to the SISF and related documents.

Based on the positions taken by counsel to the Ad Hoc Second Lien Noteholder Group and counsel to the Trustee for the Second Lien Notes at hearing held last Friday (which were not consistent with the agreement reached regarding Revised Appendix A), please be advised that Revised Appendix A is no longer acceptable to the proposed DIP lenders, unless modified as shown in the enclosed (with the language for Rider A set out below). Counsel to the Applicants and counsel to the Monitor have been directly advised of the need for these changes to be made in order for Revised Appendix A to be acceptable to the DIP lenders on any basis (as will any other proposed changes to Revised Appendix A need to be acceptable to the proposed DIP lenders in their sole and absolute discretion).

Rider A

Section 22(f) of the DIP Term Sheet (a copy of which is also enclosed for convenience) will be replaced with the following language:

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

Brendan O'Neill

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From: Chris Simard <SimardC@bennettjones.com<mailto:SimardC@bennettjones.com>>

Sent: Saturday, May 30, 2020 4:43 PM

To: Doran, Katie <KDORAN@mccarthy.ca<mailto:KDORAN@mccarthy.ca>>;  
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morgan.crilly@blakes.com<mailto:morgan.crilly@blakes.com>;  
Claire.hildebrand@blakes.com<mailto:Claire.hildebrand@blakes.com>;  
Fperlman@mwe.com<mailto:Fperlman@mwe.com>;  
deryck.helkaa@fticonsulting.com<mailto:deryck.helkaa@fticonsulting.com>;  
tom.powell@fticonsulting.com<mailto:tom.powell@fticonsulting.com>;  
lindsay.shierman@fticonsulting.com<mailto:lindsay.shierman@fticonsulting.com>;  
dustin.olver@fticonsulting.com<mailto:dustin.olver@fticonsulting.com>;  
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john.regush@dentons.com<mailto:john.regush@dentons.com>; tara.berish@osfi-bsif.gc.ca<mailto:tara.berish@osfi-  
bsif.gc.ca>; Brandi.Swift@fticonsulting.com<mailto:Brandi.Swift@fticonsulting.com>;  
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<dmills@blg.com<mailto:dmills@blg.com>>; shill@blg.com<mailto:shill@blg.com>;  
jnantes@torys.com<mailto:jnantes@torys.com>; karen.fellowes@dlapiper.com<mailto:karen.fellowes@dlapiper.com>  
Subject: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Everyone,

At the hearing on Friday, May 29, a number of parties were not able to make submissions because we ran out of time. Additionally, some parties indicated that they might have comments on the form of Order being sought. In anticipation of the continuation of the hearing at 2:30 p.m. Mountain time on Wednesday, June 3, the Monitor kindly asks that if parties have any proposed revisions to the form of Order being sought, that they deliver such proposed revisions to the Monitor, copying the entire service list, by 2:00 p.m. Mountain time on Monday, June 1.

Thereafter, the Monitor will work with the parties to see if it is possible to reach agreement on the form of Order, or to narrow the contested issues to the extent possible.

Thanks

[cid:image001.png@01D637F8.98B4C850]

Chris Simard

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# APPENDIX “J”

Monitor’s email to the Service List dated June 2, 2020

## Shierman, Lindsay

---

**From:** Chris Simard <SimardC@bennettjones.com>  
**Sent:** Tuesday, June 2, 2020 3:43 PM  
**To:** O'Neill, Brendan; Doran, Katie; 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; Paplawski, Emily; jlevitin@cahill.com; Wiffen, Bradley; Partridge, Michael; Citron, Jeff; Robert.Fitzgerald@skadden.com; Ron.Meisler@skadden.com; Vicki.Tickle@mcmillan.ca; MacLeod, Walker W.; Collins, Sean F.; Taylor, Adam; tdeamarinis@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; 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; krobenson@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; Mills, Demara; shill@blg.com; jnantes@torys.com; karen.fellowes@dlapiper.com  
**Subject:** [EXTERNAL] In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.

Service List,

We are writing with respect to the hearing being heard by Eidsvik J. at 2:30 Mountain time on Wednesday, June 3. As you know, that hearing is a continuation of the application originally heard on Friday, May 29, 2020. At that hearing, not all parties who wished to make submissions were able to do so, as we ran out of time. The Monitor would like to try to avoid such a result at the hearing tomorrow. Accordingly, the Monitor proposes the following protocol for the hearing tomorrow. We recognize that we are not in a position to impose time limits on any party, but have suggested the following time limits, given that we will only have approximately two hours for the hearing:

- Introduction by Monitor (5 minutes)
- DDMI to complete its submissions, as they were not finished on Friday (15 minutes)
- Any other parties who wish to make submissions in response to the debtors' application or DDMI's submissions (each party to endeavor to limit submissions to 10 minutes or less)
- Reply by Applicants (15 minutes)
- Submissions by Monitor (15 minutes)

Thank you



**Chris Simard**  
Bennett Jones LLP

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# APPENDIX “K”

Summary of revisions to the Second ARIO (before and after the May 29, 2020  
Application)

**Dominion Diamond Mines**  
**Second ARIO**

ARIO - Section and paragraph	Form of Second ARIO sought by Applicants in Application Materials Served on May 21	Form of Second ARIO Agreed to by Agreement Parties on May 29, 2020	Form of Second ARIO Requested by DDMI in its May 28, 2020 Bench Brief	Form of Second ARIO Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
<b>Possession of Property and Operations</b>					
Para 9	The Applicants are authorized to pay interest accruing under the Existing Credit Facility in accordance with the DIP Budget and Interim Financing Term Sheet. (Fees are capped at US\$750,000 incurred to date and maximum of US\$250,000 per month)	No change/comments	No change/comments	No change/comments	No change required from Company proposed Second ARIO
<b>No Exercise of Rights or Remedies</b>					
Para 14 (f) [NEW]	See DDMI proposed addition	Unknown	Allow DDMI to make Cover Payments with the terms of Diavik JVA or recover indebtedness owing by the Applicants to DDMI in respect of the Diavik JVA Cover Payments.	Unknown	The opening words of this subparagraph, regarding Cover Payments, was previously ordered by the Court on May 15 and agreed to by the Applicants. The Monitor recommends this change. The Monitor does not recommend accepting the portion of this subparagraph regarding the recovery of indebtedness, for the reasons set out below with respect to paragraph 16.
Para 15	Allowing Interim Lenders to provide any notice or to take, or decline to take, any action permitted in the Interim Financing Term Sheet	No change/comments	no change/comment	No change/comments	No change required from Company proposed Second ARIO

**Dominion Diamond Mines**  
**Second ARIO**

ARIO - Section and paragraph	Form of Second ARIO sought by Applicants in Application Materials Served on May 21	Form of Second ARIO Agreed to by Agreement Parties on May 29, 2020	Form of Second ARIO Requested by DDMI in its May 28, 2020 Bench Brief	Form of Second ARIO Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
<b>No Interference with Rights</b>					
Para 16	See DDMI proposed addition		DDMI provided authority to hold the entirety of the Applicants share of diamonds at facilities in Rio Tinto's Yellowknife, Northwest Territories or Antwerp, Belgium.	unknown	On May 29 at the Second ARIO Application hearing, the Applicants advised that they were in agreement with DDMI holding Dominion's share of diamonds for periods beyond the May 20 scheduled shipment. Therefore, the Monitor agrees that this relief is appropriate. However, the right to hold diamonds should be limited to: (a) holding amounts of Dominion's diamonds only equal to the total amount of Cover Payments made by DDM (not the "entirety" of Dominion's diamonds); and (b) the diamonds should only be held at the PSF (not transferred to foreign jurisdictions such as Belgium). These monetary and jurisdictional limitations were actually requested by DDMI at the May 8 hearing and are appropriate limits to protect the interests of Dominion and its other stakeholders. The Monitor does not see any justification to award the much broader version of this relief being requested in DDMI's May 28 Bench Brief.
Para 16 (a)	See DDMI proposed addition		DDMI to segregate the Applicants' share of diamond production.	unknown	Agreed
Para 16 (b)	See DDMI proposed addition		DDMI to provide adequate safeguarding and insurance.	unknown	Agreed
Para 16 (c)	See DDMI proposed addition		DDMI to provide Applicants and Monitor with reporting and records on the held diamonds.	unknown	Agreed
Para 16 (d)	See DDMI proposed addition		DDMI shall permit the Applicants' and the Monitor physically attend at the Yellowknife PSF or the Antwerp facilities and inspect the held diamonds	unknown	Agreed, but for the reasons described above, the Monitor recommends that no Dominion diamonds should be allowed to leave the PSF in Yellowknife.
Para 16 (e)	See DDMI proposed addition		DDMI shall be entitled to issue a demand for all indebtedness related to the Cover Payment Indebtedness on the earlier of:	unknown	The Monitor does not recommend memorializing a right for DDMI to issue a demand in the Second ARIO. Among other reasons, this would grant to DDMI a Court-ordered remedy, with possible unintended consequences (including, for example, arguably giving Court authority to DDMI's contractual right to purchase Dominion's interest in the Diavik JV at a discounted price). Instead, the Monitor recommends that on the happening of any of the events listed in subparagraphs (i), (ii), (iii) or (iv), that DDMI be permitted to make an application to the Court to pursue any rights or remedies. The Monitor notes that the proposed Interim Lenders similarly cannot exercise any rights or remedies upon a default under the DIP Term Sheet, without first applying to the Court. In the Monitor's view, there is no reason to grant to DDMI greater enforcement rights than those to be held by the Interim Lenders.
Para 16 (e) (i)	See DDMI proposed addition		(i) CCAA proceedings terminated	unknown	As noted above, the Monitor recommends that this trigger be maintained, but only to entitle DDMI to then apply to the Court.
Para 16 (e) (ii)	See DDMI proposed addition		(ii) Interim Lenders take any action to enforce Interim Lenders' charge	unknown	As noted above, the Monitor recommends that this trigger be maintained, but only to entitle DDMI to then apply to the Court.
Para 16 (e) (iii)	See DDMI proposed addition		(iii) July 22, 2020, but only in the event there are no Phase 2 Qualified Bids	unknown	As noted above, the Monitor recommends that this trigger be maintained, but has instead a modified trigger that is not tied to a specific date.

**Dominion Diamond Mines**  
**Second ARIO**

ARIO - Section and paragraph	Form of Second ARIO sought by Applicants in Application Materials Served on May 21	Form of Second ARIO Agreed to by Agreement Parties on May 29, 2020	Form of Second ARIO Requested by DDMI in its May 28, 2020 Bench Brief	Form of Second ARIO Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
Para 16 (e) (iv)	See DDMI proposed addition		(iv) August 8, 2020, but only in the event there are no Phase 2 Qualified Bids	unknown	As noted above, the Monitor recommends that this trigger be maintained, but has instead a modified trigger that is not tied to a specific date.
Para 16 (e) (v)	See DDMI proposed addition		(v) August 27, 2020, but only in the event there is no Approval Motion in respect of the Diavik Interest	unknown	The Monitor does not recommend that this trigger be maintained, as it is tied to a specific date that might change in the event that the SISP is modified.
Para 16 (e) (vi)	See DDMI proposed addition		(vi) November 1, 2020	unknown	As noted above, the Monitor recommends that this trigger be maintained, but only to entitle DDMI to then apply to the Court.
Para 16 (e)	See DDMI proposed addition		Unless the Applicants satisfies the demand by making a cash payment of the Cover Payment Indebtedness within 30 days of the Demand, DDMI shall be entitled to dispose of the Applicants diamonds in a commercially reasonable manner and shall account to the Applicants and the Monitor in respect to the proceeds received	unknown	For the reasons set out above, the Monitor does not agree that DDMI should be entitled to exercise direct and unilateral remedies against the property of the Applicants, without first obtaining an Order of the Court. The Stay prevents all creditors from doing this, and no other creditors enjoy such any such right (not even the proposed Interim Lenders).
<b>Appointment of Monitor</b>					
Para 24	Directing Monitor to assist Applicants in reporting to the Interim Lender including cash flow reporting.	Increasing Monitor's duties as set out in the SISP Procedures (granting/with holding of Monitor's consent, disclosure of certain information and materials to bidders in the SISP, filing of reports to Court, and the oversight of all SISP activities)	DDMI to receive same financial information as the Interim Lenders	No change/comments	The Agreement Parties request expanded duties of the Monitor, and the Monitor is willing to accept those duties. DDMI has confirmed that it will not be a bidder on Dominion's Ekati asset. However, as described in the Supplement to the Fourth Report, DDMI is both the majority owner of, and a presumptive bidder on, the Diavik Asset. Therefore the Monitor recommends that DDMI should receive the same information as the Interim Lenders, but with respect only to the Diavik Asset, and only such information as in the view of the Monitor will not prejudice the SISP.
Para 26	See DDMI proposed addition		The Monitor to provide DDMI with information that has been reasonably requested in writing	Unknown	Agreed

**Dominion Diamond Mines**  
**Second ARIO**

ARIO - Section and paragraph	Form of Second ARIO sought by Applicants in Application Materials Served on May 21	Form of Second ARIO Agreed to by Agreement Parties on May 29, 2020	Form of Second ARIO Requested by DDMI in its May 28, 2020 Bench Brief	Form of Second ARIO Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
<b>Interim Financing and Interim Lender's Charge</b>					
Para 31 to 37	Para 31 to 37 setting out the authorization for the Applicants' to borrow under the Interim Facility under the terms set out in the Interim Facility Term Sheet. Granting the Interim Lenders the Interim Lenders' Charge.	Para 22 (f) of the Interim Lender Term Sheet to be revised to add the following opening words: "Except as may be otherwise ordered by the Court".	No change/comments	Para 22 (f) of the Interim Lender Term Sheet shall read: "Pay, incur any obligation to pay, or establish any retainer with respect to the fees, expenses or disbursements of a legal, financial or other advisor of any party, other than (i) the Monitor and its legal counsel, (ii) the respective legal, financial and other advisors of the Credit Parties, the Interim Lenders and the Existing Credit Facility Agent, in each case engaged as of the date hereof, and (iii) such other parties as the CCAA Court may expressly order unless such fees, expenses or disbursements, as applicable, are reviewed and confirmed in advance by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent in its reasonable discretion; provided however, in all cases, no fees, expenses, or disbursements shall be paid or reimbursed and no retainer shall be established to fund any challenges or objections to the Interim Facility, the Stalking Horse Transaction (including the Sale Hearing), or the SISP or to fund any litigation or pursuit of claims (including diligence or discovery) against any Interim Facility Lender or any of its affiliates in any capacity.	Paragraph 22 of the Interim Lender Term Sheet sets out the negative covenants of the Borrower under the DIP Loan. The effect of the change proposed by the Stalking Horse Bidder and 1L Agent on June 1 prohibits the payment by the Borrowers of any fees to parties such as the Ad Hoc Committee or the 2L Notes Committee, that could be used to fund any challenges to the Stalking Horse Bid, the Interim Facility, the SISP, or to pursue litigation against any Interim Lender. The Interim Lenders have advised the parties that this change "must be made in order for [the Second ARIO and SISP] to be acceptable to the DIP Lenders on any basis." The Monitor discussed this proposed revision with the Stalking Horse Bidder/Interim Lender and the Applicants. While the Monitor acknowledges that provisions such as this are sometimes contained in Court-approved DIP agreements, the Monitor finds this provision to be very restrictive and proscriptive. The Stalking Horse Bidder/Interim Lender has confirmed that it is insisting on this provision as a mandatory part of the Interim Financing, and the Applicants are willing to accept this term. The Stalking Horse Bidder/Interim Lender pointed out that the provision does not preclude the Court from approving the Applicants' payment of fees to fund the active and constructive participation of other stakeholders in the SISP and CCAA Proceedings, but only from approving the payment of fees to fund litigation and opposition to the SISP. While the Monitor does not find this added provision to be necessary to the effective functioning of the SISP or the CCAA Proceedings, there is also no evidence suggesting that the provision will prejudice the effective functioning of the SISP or CCAA Proceedings. As such, if this Honourable Court is inclined to approve the Interim Financing Term Sheet, the Monitor does not view this provision to be unduly prejudicial.
<b>SISP Procedures, Stalking Horse Term Sheet, and Break-Up Fee and Expense Charge</b>					
Para 38 (SISP Procedures)	Approving the SISP Procedures and authorizing the Applicants to carry out the SISP Procedures	No change, see changes in SISP Procedures for revisions	No change/comments	No change/comments	See SISP Procedures in Appendix "L"
Para 42 (Stalking Horse Term Sheet)	Authorizing the Applicants to negotiate and finalize a definitive stalking agreement (the Stalking Horse Bid) in accordance with the terms of the Stalking Horse Term Sheet.	Dates in the Stalking Horse Term Sheet to be revised as set out in the SISP Procedures	No change/comments	No change/comments	See SISP Procedures in Appendix "L"
Para 43 (Break-up Fee and Expense Reimbursement)	Applicants' obligation to pay the Break-Up Fee and Expense Reimbursement in accordance with the Stalking Horse Term Sheet.	No change/comments	No change/comments	No change/comments	See SISP Procedures in Appendix "L"
Para 44 (charge for Break-up Fee and Expense Reimbursement)	Approving a charge for the Break-up Fee and Expense Reimbursement	No change/comments	No change/comments	No change/comments	See SISP Procedures in Appendix "L"

**Dominion Diamond Mines**  
**Second ARIO**

ARIO - Section and paragraph	Form of Second ARIO sought by Applicants in Application Materials Served on May 21	Form of Second ARIO Agreed to by Agreement Parties on May 29, 2020	Form of Second ARIO Requested by DDMI in its May 28, 2020 Bench Brief	Form of Second ARIO Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
Para 45	See DDMI proposed addition		Nothing in the Order to affect the rights of DDMI under the Diavik JVA and for greater certainty:	unknown	The Monitor recommends more customary wording for this paragraph, which it believes will substantively protect the rights of DDMI, without creating any potential and unknown unintended consequences. The wording suggested by DDMI could be interpreted to giving the Diavik JVA precedence over the orders of the Court. The Monitor therefore recommends that this paragraph simply state that the granting of the Second ARIO and the SISP are "without prejudice" to any and all rights of DDMI under the Diavik JVA.
	See DDMI proposed addition		(a) all of the rights and remedies of DDMI under the Diavik JVA	unknown	The Monitor recommends the more simple and customary formulation set out above.
	See DDMI proposed addition		(b) the SISP Procedures shall not prejudice the rights of DDMI under the Diavik JVA	unknown	The Monitor recommends the more simple and customary formulation set out above.
	See DDMI proposed addition		(iii) the SISP Procedures shall not diminish the obligations of the Applicants under the Diavik JVA	unknown	The Monitor recommends the more simple and customary formulation set out above.
	See DDMI proposed addition		Any successful Bid (including the Stalking Horse Bid) "and each step taken toward the satisfaction or waiver of conditions associated with any Successful Bid" must comply with the provisions of the Diavik JVA.	unknown	The Monitor recommends the more simple and customary formulation set out above. The Monitor discussed this proposed revision with Evercore, who is of the view that this provision is vague, unclear and could have a material chilling effect on the SISP.
	See DDMI proposed addition		The Applicants, the SISP Advisor and the Monitor shall provided such information as reasonably requested by DDMI to confirm SISP Procedures are being conducted as required.	unknown	The Monitor recommends the more simple and customary formulation set out above.
<b>KERP and KERP Charge</b>					
Para 46 to 51	Authorizing and Approving the KERP and KERP charge in the amount of \$580,000	No change/comments	No change/comments	No change/comments	No change from Applicants' Second ARIO

**Dominion Diamond Mines**  
**Second ARIO**

ARIO - Section and paragraph	Form of Second ARIO sought by Applicants in Application Materials Served on May 21	Form of Second ARIO Agreed to by Agreement Parties on May 29, 2020	Form of Second ARIO Requested by DDMI in its May 28, 2020 Bench Brief	Form of Second ARIO Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
<b>Financial Advisor Agreement and Financial Advisor's Charge</b>					
Para 52 and 53	Approval of the retention of the Financial Advisor and Financial Advisor Charge	No change/comments	No change/comments	No change/comments	No change from Applicants' Second ARIO
<b>Validity and Priority of Charges</b>					
Para 57	Setting out the order of the various charges to include the KERP Charge, the Break-up Fee and Expense Charge and the Interim Lenders Charge, all subordinate to the Administrative Charge and the Directors' Charge.	No change/comments	The KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders Charge and the Financial Advisor Charge shall not attach to the Applicants' interest in the Diavik JVA or the Dominion Projects (diamonds).	unknown	The provision requested by the Applicants would subordinate all Court-ordered charges on Dominion's interest in the Diavik JV to the security interest of DDMI, other than the Administration Charge and the D&O Charge. The change requested by DDMI would go significantly further, and have the effect that no Court-ordered charges other than the Administration Charge and the D&O Charge would attach at all to Dominion's interest in the Diavik JV. In the Monitor's view, there is no reason to grant such extraordinary relief to DDMI. Accordingly, the Monitor recommends the provision proposed by the Applicants.
Para 58			The Court may not vary or amend paragraph 57 of this Order (Validity and Priority of Charges) without the consent of DDMI.	unknown	For the reasons set out above, the Monitor does not recommend that the Court order the form of para. 57 that has been requested by DDMI. For similar reasons, the Monitor is of the view that there is no reason to grant such extraordinary relief to DDMI. Accordingly, the Monitor recommends the provision proposed by the Applicants.

# APPENDIX “L”

Summary of revisions to the SISP (before and after the May 29, 2020 Application)

**Dominion Diamond Mines**  
**SISP Procedures**

SISP Procedures (Section and Paragraph)	SISP Procedures as agreed to by Agreement Parties on May 29, 2020	SISP Procedures Requested by DDMI in its May 28, 2020 Bench Brief	Form of SISP Procedures Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
<b>Para 5 SISP Timelines</b>				
Phase 1 Bid Deadline	Extend from June 26, 2020 to July 10, 2020	no change	no change	10-Jul-20
Phase 2 Bid Deadline	Extend from August 7, 2020 to August 21, 2020	no change	no change	21-Aug-20
Auction commencement	Extend from August 10, 2020 to August 24, 2020	no change	no change	24-Aug-20
Selection of Successful Bid	Extend from August 14, 2020 to August 28, 2020	no change	no change	28-Aug-20
Successful Bid definitive document	Extend from August 18, 2020 to September 1, 2020	no change	no change	1-Sep-20
Approval Motion	Extend from August 31, 2020 to September 14, 2020	no change	no change	14-Sep-20
Target Closing Date	Extend from September 9, 2020 to September 23, 2020	no change	no change	23-Sep-20
Outside Date	Remain at October 31, 2020	no change	no change	31-Oct-20
<b>PHASE 1: NON-BINDING LOIS</b>				
Para 9	no change	Applicants to advise DDMI if they have entered into any NDA in respect of the Diavik Interest and to provide to DDMI the names of bidders with whom they have entered into such NDAs	no change	The Monitor has discussed DDMI's proposed provision with Evercore. Evercore is strongly of the view that any such provision in the SISP will have a material chilling effect on the SISP, and that strict confidentiality needs to be observed with respect to bidders' names to avoid any chilling of the SISP. No other parties (including the 1L Agent) are entitled to receive this information. Accordingly, the Monitor recommends that this proposed change not be adopted.
Para 9	no change	Any NDA entered into between the Applicants and a bidder in respect of the Diavik Interest shall inure to the benefit of DDMI and copies shall be provided to DDMI	no change	The Monitor has discussed DDMI's proposed provision with Evercore. Evercore is strongly of the view that any such provision in the SISP will have a material chilling effect on the SISP. It is also inherent in such a proposal that DDMI would have to know the names of the bidders, if those bidders' NDAs were to inure to the benefit of DDMI. The Monitor cannot support such extraordinary relief and recommends that this proposed change not be adopted.
Para 11	no change	DDMI to receive copy of the confidential information memorandum (CIM)	no change	DDMI has advised that it is not a bidder for the Ekati Asset, so the Monitor recommends providing this information to DDMI with respect to the Diavik Asset only.
Para 12	no change	DDMI to receive access to the VDR	no change	DDMI has advised that it is not a bidder for the Ekati Asset, so the Monitor recommends providing this information to DDMI with respect to the Diavik Asset only.

**Dominion Diamond Mines**  
**SISP Procedures**

SISP Procedures (Section and Paragraph)	SISP Procedures as agreed to by Agreement Parties on May 29, 2020	SISP Procedures Requested by DDMI in its May 28, 2020 Bench Brief	Form of SISP Procedures Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
Para 14 (g) (iv)	no change	Phase 1 Qualified Bid must clearly indicate how the transactions contemplated by the letter of intent complete with the applicable provisions of the Diavik JVA	no change	The Monitor has discussed DDMI's proposed provision with Evercore. Evercore is strongly of the view that any such provision in the SISP will have a material chilling effect on the SISP, and that such a provision is extremely unrealistic, given the level of resources and due diligence that bidders will devote to the SISP in Phase 1 of the SISP. It is only once bidders become qualified as Phase 2 Bidders that they will gain materially greater access to the information of the Applicants, including speaking to management, counterparties, and other stakeholders. This provision would also unduly and inappropriately restrict access to Phase 2 of the SISP. Therefore, this type of provision is appropriate and realistic only at Phase 2 of the SISP, and the Monitor recommends approval of this provision only at Phase 2.
Para 14 (j) (iv)	no change	During Phase 1, if the Applicants' Diavik interest is part of a Sale Proposal it must confirm that it assumes all the Applicants' obligations under the Diavik JVA and CSA and any unpaid Cover Payments must be repaid in cash, in full, upon closing.	no change	For the reasons set out above, the Monitor recommends approval of this provision only at Phase 2.
Para 15	no change	Applicants cannot waive Para 14 (j) (iv) and the SISP Advisor shall consult with DDMI with respect to the requirements set out in Para 14 (j) (iv)	no change	For the reasons set out above, the Monitor is of the view that the prohibition on waiving the para. 14(j)(iv) provision is inappropriate. However, the Monitor is supportive of the requirement that the SISP Advisor consult with DDMI, as appropriate and to the extent not prejudicial to the SISP.
Para 18	no change	Stalking Horse bidder needs to comply with the applicable provisions of the JVA to proceed to become a Phase 2 Qualified Bidder.	no change	The Monitor has discussed DDMI's proposed provision with Evercore. Evercore is of the view that this provision would unduly and inappropriately restrict access of the Stalking Horse Bidder to Phase 2 of the SISP. Therefore, the Monitor does not recommend approval of this provision.
<b>PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS</b>			no change	
Para 22 (c)		A Binding Offer will only be considered a Phase 2 Qualified Bid, if the Applicants' Diavik interest is part of a Sale Proposal it must confirm that it assumes all the Applicants' obligations under the Diavik JVA and CSA and any unpaid Cover Payments must be repaid in cash, in full, upon closing.	no change	For the reasons set out above, and based on the Monitor's discussions with Evercore, the Monitor is of the view that this provision is appropriate at the Phase 2 Bid Deadline and therefore the Monitor recommends acceptance of this provision.

**Dominion Diamond Mines**  
**SISP Procedures**

SISP Procedures (Section and Paragraph)	SISP Procedures as agreed to by Agreement Parties on May 29, 2020	SISP Procedures Requested by DDMI in its May 28, 2020 Bench Brief	Form of SISP Procedures Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
Para 22 (m)		To be a Phase 2 Qualified Bid, the bid must comply with the applicable provisions of the Diavik JVA.	no change	The Monitor views this provision as too prescriptive and inappropriate at this time. DDMI has significant protections as a counterparty under the Diavik JVA and under the CCAA, and this provision is unnecessary. Accordingly, the Monitor recommends not accepting this provision.
Para 23		The Applicants cannot any of the Phase 2 Bid requirements related to the Diavik APA	no change	The prohibition on the waiver is not appropriate with respect to 22 (c) but is appropriate for 22 (m) for the reasons stated above.
Para 28		In the case of a Successful Bid and Backup Bid that includes the purchase of the Applicants' Diavik Interest, the Applicants shall also require the written consent of DDMI to any extension or variation of the Outside Date.	no change	Agreed
<b>Free of Any and All Claims and Interests</b>				
Para 35		A Successful Bidder must provide for the indefeasible payment in cash in full on closing of the aggregate of all outstanding and unpaid Cover Payments and any other amounts owing by the Applicants to DDMI under and pursuant to the JVA unless DDMI agrees to other arrangements with the Successful Bidder.	no change	The Monitor views this provision as too prescriptive and inappropriate. Requiring cash repayment in full of the Cover Payments is appropriate, but not of "any other amounts owing by [Dominion] to DDMI". DDMI has significant protections as a counterparty under the Diavik JVA and under the CCAA, and this provision is unnecessary. Accordingly, the Monitor recommends not accepting this provision.
<b>Credit Bidding</b>				
Para 38	Sets out conditions for credit bidding scenario	No change	Clarifying that any credit bid by the 2L Notes Trustee or the holders of Notes, in addition to credit bids by the 1L Agent, shall provide for the irrevocable repayment in cash in full of all Interim Financing Obligations.	Agreed
<b>Confidentiality</b>				
Para 39		DDMI to receive any bid, LOI, Phase 1 Qualified Bid, Sale Proposal, Investment Proposal or Phase 2 Qualified Bid in relation to the Diavik Interest.	no change	The Monitor has discussed DDMI's proposed provision with Evercore. Evercore is strongly of the view that any such provision in the SISP will have a material chilling effect on the SISP, and that strict confidentiality needs to be observed with respect to bidders' names to avoid any chilling of the SISP. No other parties (including the 1L Agent) are entitled to receive this information. Accordingly, the Monitor recommends that this proposed change not be adopted.
<b>Para 41 (a) - commercially reasonable efforts</b>	Applicants and SISP Advisor to use commercially reasonable efforts to facilitate a competitive business process	No change	no change	Agreed

**Dominion Diamond Mines**  
**SISP Procedures**

SISP Procedures (Section and Paragraph)	SISP Procedures as agreed to by Agreement Parties on May 29, 2020	SISP Procedures Requested by DDMI in its May 28, 2020 Bench Brief	Form of SISP Procedures Proposed by Stalking Horse Bidder and 1L Agent on June 1, 2020	Monitor's Comments and Recommendations
<b>Para 41 (b) - requirement of independent special committee and required Monitor consent</b>	SISP Procedures are to be exercised solely by a special committee of DDM's directors comprised by one or more persons who have confirmed to the Monitor that they do not have any conflicts. Monitor to consent on: Phase 1 Qualified Bids, Phase 2 Qualified Bid and at any Auction.	No change	no change	Agreed
<b>Para 41 (c) - Bidder access to information</b>	All Phase 1 and Phase 2 Qualified Bidders have access to the same information as the Stalking Horse Bidder including access to Rio Tinto plc, the GNWT and the Applicants' books and records, management, advisors and partners. Financial Advisor and Monitor to review all such information that was provided to the Interim Lender and if materially relevant to a potential bidder, such information to be added to the data room.	No change	no change	Agreed
<b>Para 41 (d) - Definitive Stalking Horse Agreement</b>	To enter into a binding agreement with the Stalking Horse Bidder by August 7, 2020, copies to be provided on an unredacted basis to all Phase 2 Qualified Bidders	No change	no change	Agreed
<b>Para 41 (e) - No bid must be approved by Court</b>	No bid must be approved by this Court	No change	editing/clarifying changes	Agreed
<b>Para 41 (f) - Monitor report prior to seeking Court approval of any bid</b>	Monitor to report on the SISP process, including any and all bids received (under seal)	No change	no change	Agreed

# APPENDIX “M”

Form of Second ARIO and SISP being recommended by the Monitor

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 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /  
Claire Hildebrand / Morgan Crilly  
Telephone No.: 604.631.3315 / 604.631.4218 /  
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Fax No.: 604.631.3309

File: 00180245/000013

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 3, 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 Affidavit of Brendan Bell, sworn May 21, 2020, filed, the Affidavit of Patrick Merrin, sworn May 11, 2020 (the "**Merrin Affidavit**"), filed, the Affidavit of John Startin, sworn May 21, 2020 (the "**Startin Affidavit**"), 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, 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 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, 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 Productin, 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 55 and 57 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 cooperate 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 SISF) 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 DDML 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 and 57 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 Interim Financing Term Sheet dated as of May 21, 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 and 57 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, AND BREAK-UP FEE AND EXPENSE CHARGE**

38. Capitalized terms utilized in paragraphs 38 to 45 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 and finalize 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, substantially in accordance with the terms of the stalking horse term sheet attached hereto as **Schedule “C”** (the **“Stalking Horse Term Sheet”**). 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 Bidder 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 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 and 57 hereof.

45. This Order is granted without prejudice to the rights and remedies of 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, 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 and 57 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**

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 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.

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 and 57 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES**

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*.
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.

57. Each of the Charges shall constitute a charge on the Property (other than, solely in 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).
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.
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

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

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

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**

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.
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.
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.
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.

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.
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.

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Justice of the Court of Queen's Bench of Alberta

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 – 2<sup>nd</sup> 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](mailto:peter.rubin@blakes.com) /  
[peter.bychawski@blakes.com](mailto:peter.bychawski@blakes.com) /  
[claire.hildebrand@blakes.com](mailto:claire.hildebrand@blakes.com) /  
[morgan.crilly@blakes.com](mailto:morgan.crilly@blakes.com)

Fax No.: 604.631.3309

File: 00180245/000013

**DATE ON WHICH ORDER WAS PRONOUNCED:** ~~May 1~~ **June 3**, 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 Affidavit of ~~Kristal Kaye~~Brendan Bell, sworn ~~April~~May 21, 2020, filed, ~~and~~ the Affidavit of ~~Service of Jade Field~~Patrick Merrin, sworn ~~April 30~~May 11, 2020; ~~AND UPON~~ ~~reading the consent of FTI Consulting Canada, Inc., to act as monitor (the "Monitor") (the "Merrin Affidavit"), filed, the Affidavit of John Startin, sworn May 21, 2020 (the "Startin Affidavit"), 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, 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 Pre-Filing Report of the Monitor dated April 21, 2020;~~ ~~AND UPON~~ ~~reading the~~ [Fourth Report of FTI Consulting Canada Inc. \(the "Monitor" dated April 29, 2020; AND UPON reading the Affidavit of Thomas Croese sworn on April 30, 2020"\)](#), [and the Supplement to the Fourth Report, both 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. ~~Until~~Subject to paragraph 16 of this Order, until and including ~~June 1~~August 31, 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; ~~or~~
  - (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 Splittign Productin, 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 ~~3355~~ and ~~3557~~ 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) ~~(e)~~ 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) ~~(e)~~ advise the Applicants in their development of the Plan and any amendments to the Plan;
- (g) ~~(e)~~ 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) ~~(f)~~ 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) ~~(g)~~ 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) ~~(h)~~ hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
  - (k) ~~(i)~~ 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 ~~33~~55 and ~~35~~57 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 Interim Financing Term Sheet dated as of May 21, 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 and 57 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, AND BREAK-UP FEE AND EXPENSE CHARGE

38. Capitalized terms utilized in paragraphs 38 to 45 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 and finalize 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, substantially in accordance with the terms of the stalking horse term sheet attached hereto as Schedule “C” (the “Stalking Horse Term Sheet”). 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 Bidder 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 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 and 57 hereof.
45. This Order is granted without prejudice to the rights and remedies of 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, 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 and 57 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

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 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.
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 and 57 hereof.

#### VALIDITY AND PRIORITY OF CHARGES

55. ~~31.~~ The priorities of the Directors' Charge ~~and~~, 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); ~~and~~

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*.

56. ~~32.~~ The filing, registration or perfection of the ~~Directors' Charge and the Administration Charge (collectively, 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 ~~such~~ failure to file, register, record, possess, or perfect.

57. ~~33.~~ Each of the ~~Directors' Charge and the Administration Charge~~ 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).

58. ~~34.~~ 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 ~~Directors' Charge or the Administration Charge, Charges~~ unless the Applicants also obtain the prior written consent of the Monitor and the ~~beneficiaries of the Directors' Charge and the Administration Charge~~ chargees entitled to the benefit of the Charges (collectively, the "Chargees"), or further order of this Court.

59. ~~35.~~ The ~~Directors' Charge and the Administration Charge~~ 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 entitled to the benefit of the Charges (collectively, 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 ~~pursuant to such applications~~ 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 ~~new~~ 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

60. ~~36.~~ Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the ~~Administration Charge and the Directors' Charge~~ **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

61. ~~37.~~ 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.

62. ~~38.~~ The Monitor shall establish a case website in respect of the within proceedings at [cfcanda.fticonsulting.com/Dominion](http://cfcanda.fticonsulting.com/Dominion) (the "**Website**").

63. ~~39.~~ 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.

64. ~~40.~~ 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.

65. ~~41.~~ 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.

66. ~~42.~~ 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**

67. ~~43.~~ 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.

68. ~~44.~~ 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.

69. ~~45.~~ 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.

70. ~~46.~~ 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.

71. ~~47.~~ 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.

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

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Justice of the Court of Queen's Bench of Alberta

Document comparison by Workshare 10.0 on Tuesday, June 2, 2020 1:52:55 PM

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## **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 Agreement<sup>1</sup>;

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<sup>1</sup> 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>
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<b>SISP Advisor to distribute Teaser Letter to Potential Bidders</b>	<b>As soon as practical</b>
<b>SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR</b>	<b>As soon as practical</b>
<b>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)</b>	<b>By July 10, 2020</b>
<b>SISP Advisor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Successful Bid</b>	<b>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</b>
<b>Sale Approval hearing in respect of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received</b>	<b>By July 27, 2020</b>
<b>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)</b>	<b>By August 21, 2020</b>
<b>Auction Commencement Date (if needed)</b>	<b>August 24, 2020</b>
<b>Deadline for selection of final Successful Bid</b>	<b>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</b>
<b>Deadline for completion of definitive documentation in respect of Successful Bid</b>	<b>September 1, 2020</b>
<b>Deadline for filing of Approval Motion in respect of Successful Bid</b>	<b>September 9, 2020</b>
<b>Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received</b>	<b>September 14, 2020</b>
<b>Anticipated Deadline for closing of Successful Bid being the Target Closing Date</b>	<b>September 23, 2020 or such earlier date as is achievable</b>

<b>Outside Date by which the Successful Bid must close</b>	<b>October 31, 2020</b>
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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:

- (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 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

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.

- (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 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

#### **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 5<sup>th</sup> 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

## 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 ~~May 29~~ **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 Agreement<sup>1</sup>;

<sup>1</sup> 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) ~~(d)~~ “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) ~~(e)~~ “Diavik Interest” means the Applicants’ right, title and interest in and to the Diavik Diamond Mine” means the Diavik diamond mine located in Lac de Gras, Northwest Territories and operated by;
- (i) “Diavik Interest” means DDM’s joint venture partner, Diavik Diamond Mines (2012) Inc.; 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) ~~(f)~~ “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) ~~(g)~~ “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) ~~(h)~~ “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 <del>June</del> <u>July 26</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 <del>13</del> <u>27</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 <del>7</del> <u>21</u> , 2020
Auction Commencement Date (if needed)	August <del>10</del> <u>24</u> , 2020
Deadline for selection of final Successful Bid	August <del>14</del> <u>28</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	<del>August 18</del> <u>September 1</u> , 2020
Deadline for filing of Approval Motion in respect of Successful Bid	<del>August 26</del> <u>September 9</u> , 2020
Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	<del>August 31</del> <u>September 14</u> , 2020
Anticipated Deadline for closing of Successful	September <del>9</del> <u>23</u> , 2020 or such

<b>Bid being the Target Closing Date</b>	<b>earlier date as is achievable</b>
<b>Outside Date by which the Successful Bid must close</b>	<b>October 31, 2020</b>

***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 ~~June 26~~ June 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:
- (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 ~~7~~**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) ~~(e)~~ is not subject to any financing conditionality;

- (e) ~~(d)~~ 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) ~~(e)~~ includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property of the Dominion Diamond Group in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;
- (g) ~~(f)~~ 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) ~~(g)~~ 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) ~~(h)~~ 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) ~~(i)~~ 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) ~~(j)~~ contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before September 9~~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) ~~(k)~~ 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 10~~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.
  - (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 ~~14~~<sup>28</sup>, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than ~~August 18~~<sup>September 1</sup>, 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 SISF 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 ~~August 31~~ **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 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 eCover pPayments 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 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

**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 5<sup>th</sup> 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

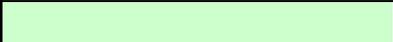
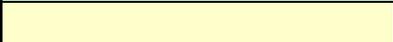
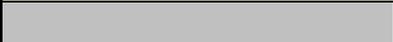
Attention: Chris Simard

Phone: 403-298-4485

Email: simardc@bennettjones.com

Document comparison by Workshare 10.0 on Tuesday, June 2, 2020 2:15:00 PM

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Moved to	1
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Format changed	0
Total changes	132



# APPENDIX “N”

Form of the Second ARIO and SISP including the proposed comments from the  
different stakeholders

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**  
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File: 00180245/000013

**DATE ON WHICH ORDER WAS PRONOUNCED:** May 29, 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 Affidavit of Brendan Bell, sworn May 21, 2020, filed, the Affidavit of Patrick Merrin, sworn May 11, 2020; (the **“Merrin Affidavit”**), filed, the Affidavit of John Startin, sworn May 21, 2020 (the **“Startin Affidavit”**), filed, and the Affidavit of Service of [H. J. Croese](#), filed; [AND UPON having read the Affidavit of Thomas Croese, sworn May 11, 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”**), 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. ~~Until~~Subject to paragraph 16 of this Order, until and including August 31, 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; ~~or~~
  - (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 or recovering indebtedness, liabilities and obligations owing by Dominion Diamond to DDMI in respect of Diavik JVA Cover Payments in accordance with paragraph 16 of this Order;

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 the entirety of the Dominion Diamond share of production from the Diavik Mine (the “**Dominion Products**”) at either the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the “**Yellowknife Facility**”) or the Rio Tinto Cleaning and Sorting Facility in Antwerp, Belgium (the “**Antwerp Facility**”), 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 Dominion Diamond and the Monitor to attend at the Yellowknife Facility and the Antwerp Facility and audit or inspect the Dominion Products, on terms agreed to by each of Dominion Diamond, DDMI and the Monitor or as otherwise ordered by this Honourable Court; and
- (e) DDMI shall be entitled to issue a demand (the “Demand”) for all indebtedness, liabilities and obligations owing by Dominion Diamond to DDMI in respect of Diavik JVA Cover Payments (the “Cover Payment Indebtedness”) on the earlier of:

  - (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) July 22, 2020, but only in the event that there is no Phase 1 Qualified Bid for the Diavik Interest (as such terms are defined in the SISP Procedures);
  - (iv) August 8, 2020, but only in the event that there is no Phase 2 Qualified Bid for the Diavik Interest (as such terms are defined in the SISP Procedures);
  - (v) August 27, 2020, but only in the event there is no Approval Motion filed in respect of a transaction involving the Diavik Interest; and
  - (vi) November 1, 2020;

and, unless Dominion Diamond satisfies the Demand by making an indefeasible cash payment of the then Cover Payment Indebtedness within thirty (30) days of delivery of the Demand, DDMI shall be entitled to dispose of the Dominion Products in a commercially reasonable manner in order to satisfy the Cover

Payment Indebtedness. DDMI is expressly empowered and authorized to take all necessary and desirable action to effect the disposition of the of the Dominion Products provided, however, that DDMI shall account to each of Dominion Diamond and the Monitor in respect of proceeds received from the disposition of the Dominion Products.

## **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 [5455](#) and [5657](#) 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, the Interim Lenders or DDMI, in their dissemination to the Interim Lenders, DDMI 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) advise the Applicants in their development of the Plan and any amendments to the Plan;
  - (f) 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;
  - (g) 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;
  - (h) 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;
  - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
  - (j) 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 [5455](#) and [5657](#) 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 Interim Financing Term Sheet dated as of May 21, 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, filed, 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 [5455](#) and [5657](#) 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, 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 "A"** 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, the Monitor, and the Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) 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).
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 and finalize 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,

substantially in accordance with the terms of the stalking horse term sheet attached as Exhibit “B” to the Startin Affidavit (the “**Stalking Horse Term Sheet**”). 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 Bidder 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 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 [5455](#) and [5657](#) hereof.
- [45.](#) Nothing in this Order shall affect the rights of DDMI under the Diavik JVA and, for greater certainty: (a) all of the rights and remedies of DDMI under the Diavik JVA be and are hereby fully reserved; (b) the SISP Procedures and the matters contemplated therein shall not prejudice the rights of DDMI under the Diavik JVA; and (iii) the SISP Procedures and the matters contemplated therein shall not in any way shall diminish the obligations of Dominion Diamond under the Diavik JVA. Without limiting the generality of the foregoing, any Successful Bid and each step taken toward the satisfaction or waiver of conditions associated with any Successful Bid (including, for greater certainty, the Stalking Horse Bid) must comply with the provisions of the Diavik JVA. The Applicants, the SISP Advisor and the Monitor shall provide such information as reasonably requested by DDMI, from time to time, to confirm the SISP Procedures are being conducted in a manner that is consistent with this paragraph 45.

46. ~~45.~~ 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. ~~46.~~ The Key Employee Retention Plan (the “**KERP**”) as described in the Merrin Affidavit, is hereby approved.

48. ~~47.~~ 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. ~~48.~~ 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. ~~49.~~ 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. ~~50.~~ 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 ~~5455~~ and ~~5657~~ hereof.

52. ~~51.~~ 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**

53. ~~52.~~ The agreement dated as of April 8, 2020 between Dominion Mines and Evercore Group L.L.C. (the “**Financial Advisor**”) (as amended on April 22, 2020, the “**Financial Advisor Agreement**”), as set out in Exhibit “E” to the Startin 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.

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

- (a) the Financial Advisor shall have the benefit and protections afforded by the Administration Charge, *nunc pro nunc*, as security for the Monthly Fee and the Financial Advisor's disbursements incurred both before and after the Order granted by this Court in these proceedings on April 22, 2020; and
- (b) the Financial Advisor shall have the benefit of a charge (the "**Financial Advisor Charge**") on the Property, as security for the Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee (in each case on the terms set out in the Financial Advisor Agreement as approved by this Order). The Financial Advisor Charge shall have the priority set out in paragraphs [5455](#) and [5657](#) hereof.

### VALIDITY AND PRIORITY OF CHARGES

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

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

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

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

Fourth – Break-Up Fee and Expense Charge; and

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

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

[57.](#) ~~56.~~ Each of the Charges shall constitute a charge on the Property (other than, solely in the ~~the~~ case of the [KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders' Charge and the Financial Advisor 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 Joint Venture Agreement in respect of the assets owned by the Diavik Joint Venture and the Borrower~~ not attach to, charge or encumber Dominion Diamond’s interest in the Diavik Joint Venture, JVA (and the respective rights of the parties thereunder), Dominion Diamond’s Participating Interest, Net Profit Royalty and interest in the Assets (as such terms are defined in the Diavik JVA) or the Dominion Products;
- (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).

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

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

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA, or any bankruptcy or receivership order made in respect of the Applicants;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, licence, permit or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
  - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Interim Financing Term Sheet and the other Definitive Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
  - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Term Sheet, or the execution, delivery or performance of the Definitive Documents; and
  - (iii) the payments made by the Applicants pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences,

fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

## ALLOCATION

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

## SERVICE AND NOTICE

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

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

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

64. ~~63.~~ 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.

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

66. ~~65.~~ Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order provided, however, that the Court may only vary or amend paragraph 57 of this Order with the consent of DDMI.

#### **GENERAL**

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

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

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

70. ~~69.~~ This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the

Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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Justice of the Court of Queen's Bench of Alberta

Document comparison by Workshare Compare on Monday, May 25, 2020  
8:30:44 PM

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Deletions	82
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	211

## **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 May ~~12~~29, 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), DDMI (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 DDMI 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 I 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).

### **Defined Terms**

1. In addition:
  - (a) "**Agent**" means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement<sup>1</sup>;
  - (b) "**Agent Advisors**" shall mean Osier, 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**");

<sup>1</sup> References herein to the Agent mean the Agent, on behalf of the First Lien Lenders.

- 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) ~~(e) "**Diavik Interest**" means the Applicants' right, title and interest in and to the Diavik Diamond Mine located in Lac de Gras, Northwest Territories and operated by DDM's joint venture partner, 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) "Diavik JVA" means the joint venture agreement between DDM and DDMI dated March 23, 1995, as amended, pursuant to which DDM currently holds a forty (40%) percent Participating Interest and DDMI currently holds a sixty (60%) percent Participating Interest in the Diavik Diamond Mine;
- (k) "Dominion Products" has the meaning ascribed to it in the Second Amended and Restated Initial Order;
- (l) ~~(f) "**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.
- (m) ~~(g) "**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);
- (n) ~~(h) "**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 ~~H~~, 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):

<b>EVENT</b>	<b>DATE</b>
<b>SISP Advisor to distribute Teaser Letter to Potential Bidders</b>	<b>As soon as practical</b>
<b>SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR</b>	<b>As soon as practical</b>
<b>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)</b>	<b>By June 26, 2020</b>
<b>SISP Advisor to notify each Phase 1 Qualified Bidder in writing as to whether <a href="#">is its</a> bid constituted a Phase 1 Successful Bid</b>	<b>Within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, Advisor, the Agent Advisors and the Monitor, deem appropriate</b>
<b>Sale Approval hearing in respect of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received</b>	<b>By July 13, 2020</b>
<b>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)</b>	<b>By August 7, 2020</b>
<b>Auction Commencement Date (if needed)</b>	<b>August 10, 2020</b>
<b>Deadline for selection of final Successful Bid</b>	<b>August 14, 2020 or at such later date as the Applicants, in consultation with the SISP</b>

	<b>Advisor, the Agent Advisors and the Monitor, deem appropriate</b>
<b>Deadline for completion of definitive documentation in respect of Successful Bid</b>	<b>August 18, 2020</b>
<b>Deadline for filing of Approval Motion in respect of Successful Bid</b>	<b>August 26, 2020</b>
<b>Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received</b>	<b>August 31, 2020</b>
<b>Anticipated Deadline for closing of Successful Bid being the Target Closing Date</b>	<b>September 9, 2020 or such earlier date as is achievable</b>
<b>Outside Date by which the Successful Bid must close</b>	<b>October 31, 2020</b>

*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 I 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). DDM shall advise DDMI if it has entered into any NDA in respect of the Diavik Interest and the names of the parties with which it has entered into any such NDAs. Any NDA in respect of the Diavik Interest shall also inure to the benefit of DDMI and copies thereof shall be provided to DDMI. 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 DDMI a confidential information memorandum providing additional information considered relevant to the Opportunity (a "CIM") and provide an unredacted copy of the Stalking 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 I Qualified Bidder (including the Stalking Horse Bidder) and DDMI 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 I Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOPLOI**") (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 June 26, 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 I 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 Phase 1 Qualified ~~Phase 1~~ Bidder and representatives thereof who are authorized to appear and act on behalf of the Phase 1 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~~ 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); and
    - (iv) unless it relates to the Non-Diavik Assets only, how the transactions contemplated by the LOI comply with the applicable provisions of the Diavik JVA;
  - (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, provided that where the Diavik Interest is proposed to be sold, all Core Liabilities set forth in paragraph (c) of the definition thereof under the Stalking Horse Bid and Dominion Diamond's obligations under the CSA and any other agreement between any of Applicants and DDMI must be assumed by the Phase 1 Qualified Bidder in connection with any such sale with the exception that the Core Liabilities comprised of DDM's obligations under the Diavik JVA with respect to unpaid Cover Payments must be indefeasibly repaid in cash, in full, upon closing;
    - (v) information sufficient for the SISP Advisor, the Monitor and the Applicants to determine that the Phase I Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
    - (vi) any other terms or conditions of the Sale Proposal that the Phase I 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 I 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 I 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 (other than the requirement set out at paragraph 14(j)(iv)) 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. The SISP Advisor shall consult with DDMI with respect to the requirements set out at paragraph 14(j)(iv).

*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 (for greater certainty, subject to the requirement that the Stalking Horse Bid comply with the applicable provisions of the JVA), 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 I Qualified Bidder in writing as to whether its Phase I 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 7, 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, or 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 Dominion Diamond's obligations under the CSA and any other agreement between any of 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 unpaid Cover Payments must be indefeasibly repaid in cash, in full, upon closing;
- (d) ~~(e)~~ is not subject to any financing conditionality;
- (e) ~~(d)~~ 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) ~~(e)~~ includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property of the Dominion Diamond Group in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;
- (g) ~~(f)~~ 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) ~~(g)~~ 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) ~~(h)~~ 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) ~~(i)~~ 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) ~~(j)~~ contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before September 9, 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) ~~(k)~~ 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; and

- (m) complies with the applicable provisions of the Diavik JVA.
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 paragraphs 22(c) and 22(m)) 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 10, 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 14, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than August 18, 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 August 31, 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. ~~For~~ For greater certainty, other than the provisions of the Diavik JVA, 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 and any other amounts owing by DDM to DDMI under and pursuant to the Diavik JVA unless DDMI in its sole and unfettered discretion agrees to other arrangements with the Successful Bidder.

**Credit Bidding**

36. The Washington Interim Lender shall be entitled to credit bid any outstanding DIP advances made by it as part of the closing of the Stalking Horse Bid, provided that any DIP advances made by the First Lien Interim Lenders are paid in cash by the Washington Interim Lender at closing.
37. Except as provided in paragraph 36 above, the Washington Interim Lender shall not be entitled to credit 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 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, 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 that is senior to the security interest held by the party submitting such credit bid (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~~ Cover

Payments made pursuant to, or reclamation obligations associated with, the Diavik Interest must be 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).

### **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 I 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 person (other than DDMI in respect of any bid, LOI, Phase 1 Qualified Bid, Sale Proposal, Investment Proposal or Phase 2 Qualified Bid in relation to the Diavik Interest), including 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.

**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.Starting@evercore.com](mailto:John.Starting@evercore.com)

WITH A COPY TO:-

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

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 5<sup>th</sup> Ave SW  
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WITH A COPY TO:

Bennett Jones LLP  
4500 Bankers Hall East  
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<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	28
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	90