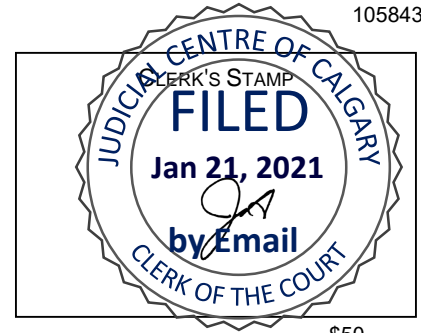


**ENTERED**

105843



COURT FILE NUMBER 2001-05630

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

JUDICIAL CENTRE CALGARY

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

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

DOCUMENT

**APPLICATION**  
**(Enhancement of Monitor's Powers)**

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  
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Fax No.: 604.631.3309

\$50  
JS  
Jan. 27, 2021  
Justice Eidsvik

**NOTICE TO RESPONDENTS:**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: January 27, 2021

Time: 10:00 am MST

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

Before: The Honourable Justice Eidsvik

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

**REMEDY CLAIMED OR SOUGHT:**

1. The applicants, Dominion Diamond Mines ULC, Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., and Dominion Diamond Marketing Corporation (together, the “**Applicants**”) seek an order substantially in the form attached as **Schedule “A”** hereto:
  - (a) upon closing of the Transaction (as defined below), expanding the powers of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of the Applicants (the “**Monitor**”) in these proceedings; and
  - (b) granting such further and other relief as counsel may request and this Court deems just.

**GROUND FOR MAKING THIS APPLICATION:**

2. On April 22, 2020, upon the application of the Applicants, this Court granted an initial order (the “**Initial Order**”) with respect to the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
3. On June 19, 2020, this Court granted the Second Amended and Restated Initial Order that, among other things, (a) approved a sale investment solicitation process (the “**SISP**”); and (b) approved a stalking horse bid (the “**Stalking Horse Bid**”).
4. On October 9, 2020, after the Stalking Horse Bid was announced to be the successful bid under the SISP, the Applicants announced that their court application

for approval of the transaction contemplated by the Stalking Horse Bid (scheduled for October 14, 2020) would not be proceeding.

5. In early December 2020, the Applicants' first lien lenders (who have advanced to Dominion US\$150 million under a revolving facility in the form of draws totalling approximately US\$70 million in cash with a further approximate CDN\$110,000,000 having been utilized for the purpose of obtaining letters of credit) and certain members of an ad hoc group of holders of Dominion's second lien notes, entered into a "**Mutual Support Agreement**" dated December 6, 2020 regarding a sale transaction (the "**Transaction**") to be implemented, subject to this Court's approval, within the context of these CCAA proceedings on the terms set out in an Asset Purchase Agreement dated December 6, 2020 (the "**Purchase Agreement**") by and among certain of the Applicants, as the vendor parties (the "**Dominion Vendors**"), and the Contracting Purchasers (as defined in the Purchase Agreement).
6. Consistent with the Applicants' restructuring objective, the Purchase Agreement contemplates a going concern outcome for the Applicants' business, providing that the purchaser will assume, subject to the terms of and as more particularly set out in, the Purchase Agreement, substantially all of the go-forward operating liabilities of the Dominion Vendors related to the Ekati mine, including substantially all obligations (a) of the Dominion Vendors under Dominion's go-forward operational contracts and joint venture agreements; (b) to employees and unions (including obligations under Dominion's collective bargaining agreements and pension plan); (c) to Indigenous groups; and (d) to the Government of the Northwest Territories.
7. On December 11, 2020, upon the application of the Applicants, this Court granted the "**Approval and Vesting Order**" which, among other things, approved the Transaction.
8. The Transaction is expected to close on or about January 29, 2021.
9. Upon closing of the Transaction, and in accordance with the Purchase Agreement and Approval and Vesting Order, (a) the Applicants will have sold substantially all of their operating business and will have assigned all of the Dominion Vendors' rights and interests in relation to the receipt of realization and recoveries from or in respect of the Diavik Joint Venture Interest (as defined in the Purchase Agreement); (b)

substantially all of the Applicants' employees will have received offers of employment from the purchaser; and (c) any remaining employees who have not been offered employment by the purchaser are expected to be terminated by the Applicants or otherwise move on to pursue other opportunities.

10. The Purchase Agreement contemplates that certain additional steps may be necessary or desirable post-closing to complete the Transaction and convey the acquired assets to the purchaser, including, among others:
  - (a) Previously Omitted Contracts (s. 3.6(b)(i)): Attending to the assignment of previously omitted contracts;
  - (b) Assets Held by Retained Subsidiaries (s. 3.7): Attending to the transfer or assignment of assets or properties used or useful in connection with the Dominion Vendors' business or that would otherwise constitute acquired assets that were not conveyed on closing;
  - (c) Further Assurances (s. 4.4): Executing or delivering such documents and instruments of conveyance and transfer as may be reasonably requested to consummate and effect the Transaction;
  - (d) Consents and Approvals (s. 7.2(c)): Obtaining and attending to any authorizations that are not transferable or replacements that are not obtainable;
  - (e) Change of Name (s. 7.4): Attending to the obligations of the Dominion Vendors related to the discontinuance of the "Dominion Diamonds" name, other trade names, and related matters;
  - (f) Bidder Parties' Access to Sellers' Records & Preservation of Records (s. 7.5 and 7.7): Providing access to any remaining books and records, offices, and other facilities to the purchaser, and related matters; and
  - (g) Allocation of Purchase Price (s. 13.14(e)): Undertaking, no later than 60 days after closing of the Transaction, the purchase price allocation.

11. The Approval and Vesting Order also generally authorizes and directs the Dominion Vendors to complete the Transaction subject to the terms of the Purchase Agreement, to perform their obligations under the Purchase Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents (including any further amendments to the Purchase Agreement) as may be necessary or desirable for the completion of the Transaction or for the conveyance of the acquired assets to the purchaser.
12. The Mutual Support Agreement, Schedule "B" to the Purchase Agreement, also contemplates that an independent official will be retained, and funded, to monitor and pursue the Dominion Vendors' rights and interests in relation to the receipt of realization and recoveries from or in respect of the Diavik Joint Venture Interest (as defined in the Purchase Agreement) which form part of the acquired assets under the Purchase Agreement.
13. The November 4, 2020 Approval of Monetization Process Order granted by this Court in relation to certain diamonds produced from the Diavik mine also provides, among other things, and as more particularly set out in that Order, that Dominion Diamond Mines ULC and the Monitor:
  - (a) shall receive reporting as detailed in the Approval of Monetization Process Order;
  - (b) may seek advice or directions from the Court in respect of the Monetization Process (as defined in the Approval of Monetization Process Order); and
  - (c) shall provide the Applicants' first lien lenders' administrative agent with required information, documents, and notices.
14. Given the Purchase Agreement effects a sale of substantially all the Applicants' operating business, after closing of the Transaction the directors of the Applicants are unlikely to remain in their positions. In addition, after closing of the Transaction the Applicants will not have sufficient employees, management, or other resources to (a) carry out post-closing obligations and functions including the above noted matters; or (b) carry out and attend to the winding down of the Applicants' estate and related matters.

15. The Applicants, in consultation with the Monitor, are of the view that, upon the closing of the Transaction, these CCAA proceedings will be at a transition point at which it will be efficient and cost-effective for the Monitor to assume enhanced powers as set out in Schedule "A" hereto.
16. In the circumstances, in order for (a) the estate of the Applicants to be wound down; (b) the obligations of the Dominion Vendors to be met under the Purchase Agreement and Approval and Vesting Order; (c) the Monitor to carry out the duties contemplated in the Mutual Support Agreement; and (d) the Monitor and Dominion Diamond Mines ULC to carry out their contemplated role as set out in the Approval of Monetization Process Order, enhanced powers are needed to be given to the Monitor as set out in Schedule "A" hereto.

**MATERIAL TO BE RELIED ON:**

17. The Applicants intend to rely upon the following materials:
  - (a) The pleadings and materials filed in the within proceedings, including:
    - (i) The Affidavit of Brendan Bell sworn December 7, 2020;
    - (ii) The Eleventh Report of the Monitor dated December 9, 2020;
    - (iii) The Approval and Vesting Order dated November 11, 2021; and
    - (iv) The Approval of Monetization Process Order dated November 4, 2020.
  - (b) Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

**APPLICABLE RULES**

18. *The Alberta Rules of Court, Alta Reg 124/2010.*

**APPLICABLE ACTS AND REGULATIONS:**

19. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended and this Honourable Court's equitable and statutory jurisdiction thereunder; and
20. Such further and other authority as counsel may advise and this Honourable Court may permit.

**ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:**

21. None.

**How the application is proposed to be heard or considered:**

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

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.

**SCHEDULE "A"**  
**(Form of Order)**



CLERK'S STAMP

COURT FILE NUMBER 2001-05630

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

JUDICIAL CENTRE CALGARY

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

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

DOCUMENT **ORDER  
(EXPANSION OF MONITOR'S POWERS)**

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  
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[morgan.crilly@blakes.com](mailto:morgan.crilly@blakes.com)  
Fax No.: 604.631.3309

**DATE ON WHICH ORDER WAS PRONOUNCED:** January 27, 2021

**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 Holdings, LLC, Dominion Diamond Delaware Company LLC, Dominion Diamond Marketing Corporation, Dominion Diamond Canada ULC, Dominion Finco Inc. and Washington Diamond Investments, LLC (the “**Applicants**”) for an Order, among other things, (i) expanding the powers of FTI Consulting Canada Inc., in its capacity as monitor of the Applicants (the “**Monitor**”); and (ii) granting certain related relief, **AND UPON** having read the Application, the Affidavit of Brendan Bell sworn , December 7, 2020 (the “**Bell Affidavit**”), the Eleventh Report of the Monitor dated December 9, 2020, the Thirteenth Report of the Monitor dated January ●, 2021, and the materials filed in support; **AND UPON** hearing counsel for the Applicants, counsel for the Monitor and those other counsel present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

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

**DEFINED TERMS**

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Second Amended and Restated Initial Order granted June 19, 2020 in these proceedings (as may be amended, restated or supplemented from time to time, the “**SARIO**”) or the Asset Purchase Agreement dated as of December 6, 2020, by and among certain Applicants, DDJ Capital Management, LLC and Brigade Capital Management, LP (as may be amended, restated or supplemented from time to time, the “**APA**”), as applicable.

**TIMING OF EFFECTIVENESS OF ORDER**

3. Notwithstanding anything contained herein, this Order shall only take effect upon the delivery of the Monitor’s Certificate as set out in paragraph 4 of the Approval and Vesting Order of this Court dated December 11, 2020.

## MONITOR'S EXPANDED POWERS

4. In addition to its prescribed rights pursuant to the CCAA and the powers and duties set out in the SARIO or any other Order granted in these proceedings, and without altering in any way the limitations and obligations of the Applicants as a result of these proceedings, the Monitor is hereby authorized and empowered, but not required, in each case subject to the terms of the APA and the obligations thereunder, to:
- (a) cause the Applicants to take any action permitted pursuant to the SARIO or any other Order granted in these CCAA proceedings;
  - (b) preserve, protect and maintain control of the Property of the Applicants, or any parts thereof;
  - (c) receive, collect and take possession of all monies and accounts now owed or hereafter owing to the Applicants, including proceeds payable pursuant to a sale of Property;
  - (d) execute any agreement, document, instrument or writing in the name of and on behalf of the Applicants as may be necessary or desirable in order to carry out the provisions of this Order, the SARIO or any other Order granted in these proceedings or to facilitate the orderly completion of these proceedings and the administration of the Applicants' estates;
  - (e) take any and all actions and steps in the name of and on behalf of the Applicants to facilitate the administration of the Applicants' Business, Property, operations, affairs and estate as may be necessary, appropriate, or desirable, in the sole opinion of the Monitor;
  - (f) market any or all of the Property, with the consent of Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under the Pre-Filing Credit Agreement (in such capacity, the "**1L Agent**") until the Diavik LCs (as defined below) have been fully cash collateralized in accordance with paragraph 10(h) of this Order;
  - (g) conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of any remaining Property of the Applicants or any part or parts thereof,

whether or not outside of the normal course of business, subject to approval of this Court as may be required pursuant to the SARIO, and to sign or execute on behalf of the Applicants any conveyance or other closing documents in relation thereto;

- (h) have access to all books and records that are the Property of the Applicants in the Applicants' possession or control;
- (i) assign, or cause to be assigned, the Applicants into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (j) execute, assign, issue and endorse documents of whatever nature in respect of any of the Applicants' Property, whether in the Monitor's name or in the name of and on behalf of the Applicants or in the place and stead of any directors or officers of the Applicants, for any purpose pursuant to this Order;
- (k) conduct, supervise and direct the continuation or commencement of any process or effort to recover Property or other assets belonging or owing to the Applicants, with the consent of the 1L Agent until the Diavik LCs have been fully cash collateralized in accordance with paragraph 10(h) of this Order;
- (l) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicants (including any governmental authority) in the name of and on behalf of the Applicants;
- (m) claim or cause the Applicants to claim any and all insurance refunds or tax refunds, including refunds of goods and services taxes and harmonized sales taxes, to which the Applicants are entitled;
- (n) engage, retain, or terminate the services of, or cause the Applicants to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;
- (o) facilitate or assist the Applicants with the accounting, tax and financial reporting functions of the Applicants, including the preparation of cash flow forecasts, employee-related remittances, T4 statements and records of employment, in each

case based solely upon the information provided by the Applicants on the basis that the Monitor shall incur no liability or obligation to any person with respect to such reporting, remittances, statements and records;

- (p) cause the Applicants to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with the Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;
- (q) exercise any shareholder, partnership, joint venture or other rights of the Applicants;
- (r) take and any and all reasonable steps to direct or cause the Applicants to administer the Property and the Business or to perform such other duties as the Monitor considers necessary or desirable to deal with the Property or the Business, including the wind-down, liquidation, disposal of assets, or other activities;
- (s) disclaim, in accordance with the CCAA, any contracts of the Applicants;
- (t) apply to this Court for advice and directions of the Monitor's powers hereunder; and
- (u) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Monitor takes any such actions or steps, it shall be exclusively, authorized and empowered to do so, to the exclusion of all other Persons, including the Applicants and their past or present directors and officers and shareholders, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws and shall not have any authority or power to elect or to cause the election or removal of directors of the Applicants or to take any action to restrict or to transfer to the Monitor any of their powers, duties or obligations, except in accordance with section 11.5(1) of the CCAA.

5. The Applicants and their consultants, agents, representatives and advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order or the SARIO and shall provide such assistance as the Monitor may reasonably request

from time to time to enable the Monitor to carry out its duties and powers pursuant to the CCAA, this Order, the SARIO, and any other Order granted in these proceedings.

6. The Monitor is authorized and empowered to operate and control, on behalf of the Applicants, all of the Applicants' existing accounts at any financial institution (each an "**Account**" and collectively the "**Accounts**", which for the avoidance of doubt shall include the Diavik Realization Account and the Wind-Down Account) in such manner as the Monitor deems necessary or appropriate (subject to the terms of the APA and the Orders in this proceeding), including, without limitation, to:

- (a) exercise control over the funds credited to or deposited in the Accounts;
- (b) effect any disbursement from the Accounts permitted by the SARIO or any other Order granted in these proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited to or deposited therein, including to transfer the funds credited to or deposited in such Accounts to such other account or accounts as the Monitor may direct; and
- (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account,

and the financial institutions maintaining such Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and such financial institutions shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability in respect thereof to any person.

7. The Monitor is hereby authorized, but not required, to open one or more new accounts in its own name (the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds of the Applicants as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, provided that the monies standing to the

credit the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, other Orders in this proceeding, the APA, or by further Order of this Court, and further the Monitor is hereby authorized to make use of the funds in the Monitor's Accounts from time to time to make disbursements and pay amounts for and on behalf of the Applicants or in connection with the Monitor's exercise of its powers and duties in these proceedings, as the Monitor may in its sole opinion deem necessary or appropriate from time to time.

8. The Monitor may, from time to time, apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder.
9. The Monitor is hereby authorized to take any and all actions and steps as the Monitor may deem appropriate related to the transactions completed pursuant to the APA.
10. The Monitor is hereby authorized to execute a transition services agreement on behalf of the Applicants concurrent with or after the Closing, and to take any and all actions and steps in the name of and on behalf of the Applicants that are necessary to satisfy the obligations thereunder, including, among other things:
  - (a) conducting, supervising and directing the realization and recovery of the Applicants' Property or other assets or interests, including through: (i) the monitoring of such Property, assets and interests; and (ii) monitoring and enforcing applicable rights under the Approval of Monetization Process Order granted November 4, 2020 in these proceedings (as may be amended, restated or supplemented from time to time), the Monetization Process scheduled thereto and all other applicable Orders granted in these proceedings;
  - (b) conducting, supervising and directing the sale of any diamonds received by the Applicants;
  - (c) administering and making payments from the Diavik Realization Account and the Wind-Down Account; and
  - (d) subject to payment of, or resolution with, private or government royalty holders, making disbursements of all monetized Diavik Realization Assets to the 1L Agent to cash collateralize the letters of credit issued with respect to the Diavik Diamond Mine (as such letters of credit may be amended with the consent of the Purchaser

as part of the transaction contemplated by the APA) (the “**Diavik LCs**”), until such Diavik LCs have been fully cash collateralized, and in accordance with the applicable Orders granted in these proceedings,

in each case, in accordance with the applicable terms of the APA.

#### **MONITOR’S ADDITIONAL PROTECTIONS**

11. Upon providing five (5) business days’ written notice to the 1L Agent and Purchasers, the Monitor is authorized to resign unilaterally from its role as Monitor, as described in this Order and in any other Order granted in these CCAA proceedings, effective upon the filing of a certificate substantially in the form attached hereto as Schedule "A", if the Monitor is not funded to carry out its role.
12. In addition to the rights and protections afforded the Monitor in the SARIO, under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA, any other Order of this Court in these proceedings, or any applicable legislation.
13. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity (whether in effect in Canada or any other jurisdiction) respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Protection Act*, R.S.N.W.T. 1988, c. E-7, and the *Environmental Rights Act*, R.S.N.W.T. 1988, c. 83 (Supp) and regulations thereunder.
14. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purpose of this Order, the term "**Adverse**



**Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of the SARIO.

15. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred, or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.
16. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable beyond the net realized cash value received and available to the Monitor from the Property under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor.
17. Nothing contained in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require the Monitor to take Possession, of any part of the Property which may be a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation.
18. The Monitor shall not be liable for any employee-related liabilities of the Applicants, including any successor employer liabilities as provided for in Section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.
19. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Applicants of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related

employer of the employees of the Applicants within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Applicants. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

20. The Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the SARIO and any other Order of this Court and all such indemnities, charges, protections and priorities (as may be amended herein) shall apply and extend to the Monitor in the fulfilment of its duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the SARIO and the other Orders of in this proceeding.
21. The Monitor is not and shall not be deemed to be a director, officer, or employee of the Applicants.
22. Nothing in this Order or any other Order granted in these proceedings shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicants within the meaning of any relevant legislation, including subsection 159(2) of the *Income Tax Act* (Canada), as amended (the “**ITA**”), and any distributions to creditors of the Applicants by the Monitor will be deemed to have been made by the Applicants themselves. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the ITA.

## **GENERAL**

23. Except as may be necessary to give effect to this Order, the SARIO and any other Order granted in these proceedings shall remain in full force and effect. In the event of any conflict or inconsistency between this Order, the SARIO, or any other Order in these proceedings, the terms of this Order shall govern.

24. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants with respect to such matters.
25. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator or similar person of the Applicants, the Business, or the Property.
26. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.
27. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

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Justice of the Court of Queen's Bench of Alberta