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Justice Eidsvik
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Oct 15, 2021

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED** **AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC and DOMINION FINCO INC.**
PARTY FILING THIS DOCUMENT	**ARCTIC CANADIAN DIAMOND COMPANY LTD.**
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Torys LLP** 79 Wellington St W., 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2 Attention: Scott Bomhof Telephone: + 1 416.865.7370 Email: sbomhof@torys.com File No. 2001-05630

AFFIDAVIT OF KRISTAL KAYE

Sworn on October 13, 2021

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I, Kristal Kaye, of the City of Calgary, in the Province of Alberta, **SWEAR AND SAY THAT**:

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

2. From May 7, 2018 to February 3, 2021, I was the Chief Financial Officer of Dominion Diamond Mines ULC ("**DDM**"), until I resigned on the closing date of the ACDC Transaction (as defined below), and I was one of the primary affiants for materials filed in these CCAA proceedings on behalf of the Applicants. I was involved in the negotiation of the ACDC APA (as defined below) on behalf of the Applicants. On or about February 3, 2021, I was hired as the Chief Financial Officer of Arctic Canadian Diamond Company Ltd. ("**ACDC**") and have held that role since such date.

3. ACDC is a Calgary, Alberta-based company and the purchaser of substantially all of the assets of the Applicants other than the Diavik Joint Venture Interest pursuant to the ACDC APA (as defined therein). As a result of that transaction, ACDC is a diamond producer with ownership interests in diamond projects in the Northwest Territories that is engaged in the business of mining and selling rough diamonds to the global market.

4. I have reviewed the Application Materials filed by FTI Consulting Canada, Inc., the Court-appointed monitor of the Applicants (the "**Monitor**"), returnable on October 15, 2021, including the Sixteenth Report of the Monitor dated October 6, 2021 (the "**Sixteenth Report**"). Any capitalized term used in this Affidavit that are not otherwise defined shall have the meaning attributed thereto in the Sixteenth Report. All monetary amounts contained in this Affidavit are expressed in Canadian dollars unless otherwise indicated.

5. The Monitor is seeking an Order (the "**Proposed Order**") approving:

   a. the asset purchase agreement between Diavik Diamond Mines (2012) Inc. ("**DDMI**") and DDM (the "**AVO Agreement**") providing for DDMI's purchase, free and clear of all claims and encumbrances, of the Applicants' interest in the Diavik JVA (defined below), share of the products and inventory produced from the Diavik Diamond Mine

and cash collateral held by the Applicants' senior secured first lien lender syndicate (the "**First Lien Lenders**") as security for the letters of credit (the "**LCs**") issued by the First Lien Lenders (the "**AVO Transaction**"); and

b. the term sheet proposed by Washington Diamond Investments Holdings II, LLC ("**Washington**") to the Monitor (the "**RVO Term Sheet**"), whereby Washington will make a payment in exchange for the "cleansing" of liabilities of certain entities within the Applicants' corporate group through a reverse vesting order in order to maximize the Tax Attributes (as defined in the RVO Term Sheet) for the benefit of Washington and its affiliates (the "**RVO Transaction**").

6. The Monitor has not conducted a recent sales and marketing process for the assets that they seek to now sell. The Monitor seeks to rely, in the case of the ACDC Assets, only on the Court-approved SISP (defined below) that concluded over one year ago under dramatically different diamond market conditions. ACDC had expected that such valuations and processes would be pursued in the case of the ACDC Assets with the US$1 million of funds that ACDC provided for precisely that purpose as part of the ACDC Transaction (defined below).

Summary of Relief Sought by ACDC

7. I believe that there may be value remaining in the Diavik Realization Assets (described below), beyond the net amounts which might become owing to the First Lien Lenders for contingent claims under their LCs (defined below). Unfortunately, the AVO Transaction and the RVO Transaction were served on ACDC only six business days before the hearing and ACDC has not had sufficient time to consider the relief sought by the Monitor.

8. This application was served on short notice with no urgency; it should be adjourned. In the alternative, and if this Court decides to hear the application, it should be dismissed.

9. The requested adjournment of the Monitor's application for approval of the AVO Transaction and the application's dismissal are fair and reasonable and will allow ACDC, who will be disproportionately prejudiced should the relief sought by the Monitor be

granted, with an opportunity to consider the merits of the relief sought by the Monitor and ACDC's rights.

10. The RVO Transaction is a related party transaction: Washington and its affiliates are the sole equity owners, either directly or indirectly, of the entities that are subject to the cleansing of liabilities contemplated under the RVO Term Sheet. The RVO Transaction stands to benefit this related party.

ACDC's Correspondence with the Monitor

11. The Monitor served its application record at 4:40 pm (MST) on October 6, 2021. The Sixteenth Report contained a copy of the AVO Agreement, which was negotiated without any knowledge or input from ACDC.

12. On October 8, 2021, our counsel sent a letter to this Court to advise Your Ladyship of ACDC's significant concerns with the relief being sought by the Monitor upon its preliminary review of the served materials, and to advise of ACDC's intention to seek an adjournment of the hearing. A copy of that letter is attached as Exhibit A.

13. On October 11, 2021, our counsel sent a letter to the Monitor setting out ACDC's initial questions with respect to the Sixteenth Report, proposed transactions, and the Monitor's related activities leading to the proposed transactions. A copy of that letter is attached as Exhibit B.

The AVO Transaction

i. Summary of key assets in the ACDC APA and the AVO Agreement

14. The following table provides a side-by-side comparison of assets and claims that were purchased by ACDC under the ACDC APA (defined below) and: (i) assets that the Monitor intends to sell to DDMI pursuant to the AVO Agreement; or (ii) claims the Monitor is required to release as a condition of the AVO Agreement:

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Asset Category	Assets acquired by ACDC under the ACDC APA and pursuant to the 2020 Vesting Order	Assets proposed to be acquired by DDMI under the AVO Agreement
Interests in the Diavik Joint Venture	"all of Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik Joint Venture Interest (including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized or realizable by or on behalf of Sellers)" (section 3.1(b))	"[DDM's] legal and beneficial interest in: (a) all Products (as such term is defined in the Diavik Joint Venture Agreement); and (b) other inventory of any kind or nature (including stockpiles and goods), if any, that have been produced from the Diavik Diamond Mine. For the avoidance of doubt, Dominion Production includes Dominion's legal and beneficial interest in any Products that were made available for auction during the Subject Period and not sold as of Closing." (section 1.1)
Cash Collateral	"…all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits." (section 3.1(g))	"all cash and cash equivalents held by the [Agent] as security for any LC issued by and First Lien Lender where the Purchaser is the beneficiary…" (section 1.1)

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Claims	"all rights, options, Claims or causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law" (section 3.1(n)) "'Claims' means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise." (section 1.1)	[The following is a condition precedent to the closing of the AVO Agreement:] "The obligations of [DDMI] to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by [DDMI]) of the following conditions precedent on or before the Closing Date. ... 7.5 Closing Deliveries. Each of the deliveries required to be made to [DDMI] pursuant to Section 9.2 shall have been so delivered." (section 7.5) "9.2 Deliveries by [DDM]. At or prior to the Closing, [DDM] shall deliver the following to [DDMI]: ... (e) an executed and fileable discontinuance of the Civil Claim [DDM] filed against [DDMI] in the Supreme Court of British Columbia, Vancouver Registry, No. S206419, which shall be releasable on Closing" (section 9.2 and 9.2(e))

ii. The SISP process resulted in the ACDC Transaction

15. On June 19, 2020, this Court granted a second Amended and Restated Initial Order that, among other things, authorized procedures for a sales and investment solicitation process in respect of some or all of the Applicant's assets (the "**SISP**") and approved a stalking horse agreement entered into between Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), DDM and an affiliate of Washington in respect of same. The June 19, 2020 order is attached as Exhibit C.

16. Between June 19, 2020 and September 15, 2020, the Applicants, in conjunction with a SISP advisor and with the Monitor's input, marketed the Applicants' business and assets in accordance with the SISP.

17. A proposed transaction with Washington could not proceed as a result of the failure to satisfy material conditions precedent to the transaction and, subsequently, DDM,

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Dominion Holdings, Dominion Diamond Canada ULC, Dominion Diamond Marketing Corporation, Dominion Diamond Delaware Company and Dominion Finco Inc. (collectively, the "**Sellers**") reached an agreement with DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Bidders**") for the purchase and sale of substantially all of the Sellers' assets other than the Diavik Joint Venture Interests (the "**ACDC Transaction**"), pursuant to an asset purchase agreement dated December 6, 2020 (the "**ACDC APA**"). A copy of the ACDC APA is attached as Exhibit D.

18. The Bidders designated ACDC as the purchaser under the ACDC Transaction and ACDC executed a joinder agreement dated January 31, 2021 (the "**Joinder Agreement**"), pursuant to which ACDC was assigned all of the rights and entitlements of the Bidders under the ACDC APA. A copy of the Joinder Agreement is attached as Exhibit E.

19. On December 11, 2020, this Court granted a sale approval and vesting order (the "**2020 Vesting Order**") approving the ACDC Transaction and vesting the purchased assets in ACDC. The ACDC Transaction closed on February 3, 2021. A copy of the 2020 Vesting Order (without schedules) is attached as Exhibit F.

iii. ACDC acquired the Dominion Production and the Cash Collateral under the ACDC APA

20. Under the AVO Agreement, DDM purports to sell to DDMI "all of DDM's right, title and interest in and to" the following assets (among others):

   a. DDM's Participating Interest (as defined in the Diavik Joint Venture Agreement dated March 23, 1995 between Kennecott, Canada Inc. and Aber Resources Limited, the predecessors in interest to DDMI and DDM, respectively (the "**Diavik JVA**")) in the Diavik JVA;

   b. the unincorporated joint venture arrangement established pursuant to the Diavik JVA;

   c. the Diavik Diamond Mine located approximately 300 kilometers from Yellowknife;

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d. the Dominion Production, defined in the AVO Agreement as "[DDM's] legal and beneficial interest in: (a) all Products (as such term is defined in the Diavik Joint Venture Agreement); and (b) other inventory of any kind or nature (including stockpiles and goods), if any, that have been produced from the Diavik Diamond Mine. For the avoidance of doubt, Dominion Production includes Dominion's legal and beneficial interest in any Products that were made available for auction during the Subject Period and not sold as of Closing"; and

e. the Cash Collateral, defined in the AVO Agreement as "all cash and cash equivalents held by the [Agent] as security for any LC issued by and First Lien Lender where the Purchaser is the beneficiary…"

21. Under the ACDC APA, ACDC purchased all of the Sellers' right, title and interest in the Acquired Assets, subject only to Permitted Encumbrances (discussed below). The Acquired Assets expressly include:

a. *Acquired Subsidiaries*. Pursuant to section 3.1(a) of the ACDC APA, the Acquired Assets include "all of the issued and outstanding equity interests held by any Seller in Dominion Diamond (India) Private Limited, Dominion Diamond Marketing N.V., Dominion Diamond (Cyprus) Limited and, if and to the extent elected by the Bidders before Closing, in another Seller."

b. *Diavik Realization Assets*. Pursuant to section 3.1(b) of the ACDC APA, the Acquired Assets include "all of Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik Joint Venture Interest (including, without limitation, <u>all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral</u> given for the benefit of the First Lien Lenders or other persons, and other assets realized or realizable by or on behalf of Sellers)" [emphasis added].

c. *Cash and Cash Equivalents*. Pursuant to section 3.1(g) of the ACDC APA, the Acquired Assets include all of the Sellers' Cash and Cash Equivalents, including "all cash collateral and deposits posted by or for the benefit of Sellers as security for any

letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise…" Pursuant to section 1.1 of the ACDC APA, Cash and Cash Equivalents is defined as:

> "Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

d. *Receivables, including post-Effective Date receivables related to the Diavik Joint Venture Interest.* Pursuant to section 3.1(h) of the ACDC APA, the Acquired Assets include "all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller provided, however, that all receivables in respect of the Diavik Joint Venture Interest collected by the Sellers following the Effective Date shall constitute Diavik Realization Assets" [emphasis added].

e. *Claims.* Pursuant to section 3.1(n), the Acquired Assets include "all rights, options, Claims or causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law" [emphasis added].

Claims is defined in section 1.1 of the ACDC APA as:

> "Claims" means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings,

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> arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

f. *Goodwill, Intangible Assets, Etc.* Pursuant to section 3.1(u) of the ACDC APA, the Acquired Assets include "goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets";

22. ACDC purchased the Acquired Assets free and clear of all claims and encumbrances, except only for "Permitted Encumbrances." The term Permitted Encumbrances is found at section 1.1 of the ACDC APA. There is only one reference to encumbrances of the First Lien Lenders in that defined, found at its subsection (10):

> "Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: … (10) in respect of only the Diavik Realization Assets, Encumbrances that are held by or for the benefit of the First Lien Lenders pursuant to the Pre-filing Credit Agreement
>
> …

23. As part of the purchase price for the Acquired Assets, ACDC paid an aggregate value of approximately US$450 million, comprised of the following:

a. *Assumption of Pre-filing Indebtedness.* ACDC assumed US$70 million of outstanding indebtedness under the Pre-filing Credit Agreement (as defined in the ACDC APA), on and subject to the terms and conditions set out in the MSA (as defined below).

b. *Assumption of Bond Indemnities.* ACDC assumed indemnity and related obligations in respect of certain bonds in the face amount of C$279 million issued by certain sureties.

c. *Closing Cure Amount.* ACDC paid US$10.5 million in cash to satisfy cure amounts owing in respect of certain of the Sellers' contracts that were assigned to ACDC.

d. *Assumed Liabilities.* ACDC assumed certain pre-closing liabilities in the approximate amount of US$150 million that included, among other things, all of the Sellers' liabilities owing with respect to the First Lien Lenders' LCs. ACDC's assumption of the LCs was effected by the Assignment and Assumption Agreement and subject to the

terms of the MSA (defined below). ACDC effectively assumed DDM's US$70 million obligation by entering into a new loan agreement with the First Lien Lenders for that amount in consideration of the release of that amount of DDM's funded debt, but ACDC also granted the First Lien Lenders additional consideration of US$18.5 million in ACDC debt, as specifically provided for under a new ACDC loan agreement.

24. As the Monitor noted at para 29 of its Eleventh Report dated December 9, 2020 (the "**Eleventh Report**"), filed in support of the Applicants' motion for the 2020 Vesting Order, the terms of the ACDC APA, and the purchase price that ACDC paid for the Acquired Assets, "represent the highest and best offer in respect of the Acquired Assets and are fair and reasonable in the circumstances." The Eleventh Report (without exhibits) is attached as Exhibit G.

25. On December 11, 2020, this Court granted the 2020 Vesting Order, which approved the ACDC APA "in its entirety" (at paragraph 3). The 2020 Vesting Order vested all of the Sellers' right, title and interest in and to the Acquired Assets absolutely in the name of ACDC free and clear from all claims and encumbrances (excluding the Permitted Encumbrances) (at paragraph 4). The Court further held at paragraph 13 that:

> The Purchasers shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for their own use and benefit without any interference of or by any Person claiming by, through or against the Sellers. [emphasis added]

26. In sum, ACDC acquired the ACDC Assets under the ACDC APA, and those assets were vested in ACDC for its own use and benefit, free and clear of all encumbrances, other than Permitted Encumbrances, by this Court.

iv. The Parties Intended for ACDC to Acquire the ACDC Assets

27. ACDC's ownership interest in the Cash Collateral and the Dominion Production, as opposed to a right to residual proceeds, was reflected in an email dated December 6, 2020 from counsel to the Monitor to counsel for DDMI which stated that each of the Monitor, First Lien Lenders, the Bidders and DDMI understood that the APA conveyed to ACDC all diamond production turned over to the Applicants by DDMI, which excluded diamonds

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retained by DDMI for its "cover payments." This email was filed in these proceedings by DDMI in its Affidavit #6 of Thomas Croese sworn December 6, 2020, and a copy of that affidavit and enclosed email are attached as Exhibit H.

28. ACDC purchased all of the Sellers' Claims, which is defined in section 1.1 of the ACDC APA to include "all causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing". DDM, one of the Sellers, is the Plaintiff under the civil claim that DDM filed against DDMI in the Supreme Court of British Columbia, Vancouver Registry, No. S206419 (the "**BC Civil Claim**"). There are no "exclusions" to the defined term "Claims" in the APA and no express exclusion for the BC Civil Claim. Other than the BC Civil Claim, I am not aware of any litigation in which DDM was the plaintiff at the time that the ACDC APA was executed. A copy of the Notice of Civil Claim in respect of the BC Claim is attached as Exhibit I.

29. ACDC and the First Lien Lenders entered into a first lien credit agreement dated February 3, 2021 (the "**First Lien Credit Agreement**"). Pursuant to section 3.06 of the First Lien Credit Agreement, ACDC was required to disclose any material litigation affecting ACDC or its business to the First Lien Lenders. The BC Civil Claim is listed in ACDC's litigation schedule as material litigation of ACDC. The First Lien Lenders have never objected to the BC Civil Claim being treated as material litigation; indeed, they executed the First Lien Credit Agreement with that disclosure. Attached as Exhibit J is an excerpt of the First Lien Credit Agreement requiring ACDC to disclose material litigation to the First Lien Lenders, along with an excerpt from the corresponding disclosure schedule that disclosed the BC Civil Claim as material litigation of ACDC (the balance of the Disclosure Schedule has been redacted as they are not relevant to this application).

30. ACDC does not consent to a release of this claim by the Monitor (nor was it consulted in respect of such a release).

31. In addition, I understand that the AVO Agreement requires that the Applicants grant full and final settlement of <u>all outstanding claims among the Seller, the Monitor, the Purchaser, the Agent and the First Lien Lenders</u>, including releases of all claims the

Seller may have to royalties under the Diavik Joint Venture Agreement. The Monitor has not disclosed which claims are to be released under the AVO Agreement (except for the BC Civil Claim and a specified royalty claim) and, as such, ACDC is not in a position to put forward additional evidence over its ownership of claims to be released.

v. The AVO Transaction is prejudicial to ACDC

32. ACDC paid good and valuable consideration for the Diavik Realization Assets and the Claims after an extensive and transparent process that closely involved the First Lien Lenders and the Monitor and was approved by this Court. The Monitor indicates at paragraph 18 of its Sixteenth Report that the AVO Agreement proposes to transfer the Cash Collateral and Dominion Production to DDMI. ACDC does not consent to the sale or transfer of these assets under the AVO Transaction. I acknowledge that ACDC's ownership of the Cash Collateral and the Dominion Production are subject to the secured claims of the First Lien Lenders until the LCs are fully cash collateralized. According to the Sixteenth Report, the indebtedness owing to the First Lien Lenders under the LCs as at September 30, 2021 is $105 million and the total cash collateral held by either the First Lien Lenders or the Monitor for these obligations is $51.39 million. Accordingly, the First Lien Lenders' theoretical contingent exposure for the LCs is approximately $53.61 million. ACDC was not consulted about the support agreement dated September 16, 2021 (the "**Support Agreement**") or the intent to use ACDC's assets to satisfy any obligations under the AVO Agreement. ACDC is not a party to either agreement.

33. There are significant issues with respect to the actual amount of money owing to DDMI for cash calls and Cover Payments (as such term is defined in the Diavik JVA). The release of these claims is being used to partially fund the purchase price under the AVO Agreement and the ongoing costs associated with disputing these claims is one of the grounds upon which the Monitor has indicated that it supports the AVO Agreement.

34. The Agent to the First Lien Lenders filed a brief with this Court on October 28, 2020, in response to DDMI's application for a monetization order that was granted by this Court on November 4, 2020 (the "**Monetization Order**"), where it described DDMI's conduct with respect to those cash calls. It describes at paragraph 48(a) "unilateral and excessive

control which DDMI exercises over cash calls" as being a central feature of the BC Civil Claim and cites concerns about the potential that DDMI would "manipulate[] cash calls to ensure that all Dominion's share of production from the Diavik Mine is retained for its own benefit." A copy of that brief (without schedules) is attached as Exhibit K.

35. I have been concerned with the way in which DDMI has operated the Diavik joint venture for some time. DDMI, as manager of the Diavik mine, has repeatedly breached its obligations to ACDC (and DDM prior to the ACDC Transaction). It has repeatedly failed to meet cost budgets, production plans and diamond recovery budgets, and has run the Diavik operations in a manner that has been detrimental to ACDC. I provided further context of DDMI's mismanagement in my previous affidavits, sworn in these proceedings on dated May 6, 2020 and October 28, 2020. Those affidavits are attached as Exhibits L and M, respectively.

36. Since the approval of the Monetization Order, despite a high demand for rough diamonds and a bullish market recovery, DDMI has not sold a significant amount of the diamonds they are holding for purposes of collateralization of amounts outstanding under the cash calls. I believe those sales were timed to ensure as few diamonds as possible were sold before July 1, 2021—the date upon which DDMI could exercise its contractual right to demand additional security from ACDC (without providing evidence establishing the quantum of their entitlement reviewed by an independent third party). This ensured that no cash or diamonds held as collateral would be returned to ACDC. A report provided in the data room set up by the Monitor does not provide details to reconcile each production cycle against its DICAN valuation, thereby making it impossible to show whether DDMI was over collateralized at any point in time. The diamond collateral is still being valued at original DICAN values that, based on ACDC's market experience over the past year, could be undervaluing the diamond collateral anywhere from 20% to 50% (depending on when the valuation was actually performed).

37. The transfer of ACDC's assets to DDMI without consultation or compensation is prejudicial to ACDC. ACDC would also be prejudiced by the release of claims.

The RVO Transaction

38. Since the date of closing of the ACDC Transaction, I am not aware of any activity on the part of the Monitor to value or solicit offers to acquire the Tax Attributes. Our counsel was advised of the RVO Term Sheet on or around September 27, 2021. ACDC immediately took steps to seek information from the Monitor about the Tax Attributes to determine the value and prospective value of these assets, entitlement to them or their proceedings and ACDC's potential interest in acquiring the Tax Attributes if it does not have an existing interest in them. On September 28, 2021, our counsel attended a call with the Monitor to discuss the RVO Transaction.

39. In the letter attached as Exhibit B, ACDC has asked the Monitor to confirm that the RVO Agreement does not purport to transfer any interest in the tax attributes of the Acquired Subsidiaries (as defined in the ACDC APA) as the shares in those companies were assigned to ACDC under the ACDC APA. As of the time of this affidavit, the Monitor has not replied to this question.

40. ACDC believes that it would be in the best interests of the Applicants and their creditors if the Monitor pursues a marketing processes for the Tax Attributes.

Serious and Unresolved Issues with the Process

i. The Monitor and the First Lien Lenders have obligations to ACDC with respect to the monetization process

41. ACDC does not believe that a fair and transparent process was run leading up to the AVO Transaction. The fully executed Support Agreement is an agreement between the First Lien Lenders and DDMI. The Monitor is not a party to this Agreement. The unexecuted AVO Agreement is an agreement between DDMI and the Monitor, on behalf of DDM. ACDC is not a party to either of these agreements. ACDC had an expectation that it would be consulted about any sale of the Acquired Assets (as such term is used in the AVO Agreement) including the Cash Collateral and the Dominion Production that are owned by ACDC.

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42. The Monitor and each of the First Lien Lenders have entered into contractual obligations with ACDC (and/or the Bidders) regarding the realization of the Acquired Assets (as such term is used in the AVO Agreement).

43. I have been advised by Eric Hoff of DDJ that when the ACDC Transaction closed, DDJ and Brigade agreed to provide future funding for the Dominion estate to fund a realization process for the Applicant's residual assets following the closing of the ACDC APA and supported funding the Diavik Realization Account with US$1 million from Cash and Cash Equivalents that would otherwise have been acquired by the Purchaser. An additional amount of US$250,000 was held back from the Cash and Cash Equivalents to fund the Wind-Down Account.

44. The Agent and the Bidders entered into a mutual support agreement dated December 4, 2020 (the "**MSA**"). A copy of the MSA is attached as Schedule B to the ACDC APA, itself attached as Exhibit D. Under section 6 of the MSA, the Agent and the Bidders agreed to jointly develop a process for the realization and recovery of Diavik Assets (as such term is defined in the MSA):

> Unless otherwise agreed by the Parties, the Transaction shall be implemented pursuant to an asset purchase agreement (the "**APA**") to be executed by DDJ Capital Management, LLC, Brigade Capital Management, LP, and the Company under which a newly created entity or entities ("**NewCo**") shall acquire substantially all of the assets of the Company other than the Company's Diavik mine joint venture agreement interests but including (subject to the 1L Lenders' continuing lien until cash collateralization or cancellation of all Diavik letters of credit issued by the 1L Lenders and the payment of all related fees) all receivables, diamond production, claims, sales proceeds and other rights and assets realized or recovered in respect of such Diavik mine joint venture agreement interests (collectively, the "**Diavik Assets**"). The Parties shall agree to a mechanism for the pursuit of the realization and recovery of the Diavik Assets, which among other things shall provide for a duly authorized independent official to have control and carriage thereof and for the costs thereof to be funded initially by the Company's payment at closing of the Transaction of

> US$1,000,000 from the Transaction proceeds at NewCo's direction to such official and thereafter to be funded at the cost of the 1L Lenders if they so elect in their sole discretion. The APA shall have terms and conditions satisfactory to the Parties and consistent with this Support Agreement including, without limitation, with respect to: (i) the Company's prompt payment and reimbursement, upon and from time to time following court approval of the APA in the Proceedings, of all the 2L AHG's reasonable and documented (with only brief summary descriptions of service) costs and expenses incurred from and after the commencement of the Proceedings; and (ii) the Company's prompt payment of a break fee in the event that the Company APA is terminated or the Transaction is not completed for any reason other than the non-compliance by DDJ Capital Management, LLC or Brigade Capital Management, LP with their obligations under the APA and an alternative transaction is consummated within nine (9) months of the date of the APA for the sale or restructuring of the Company or any material portion of its assets pursuant to which the First Lien Debt is repaid in full in cash. The Parties shall work cooperatively in furtherance of obtaining court approval for the APA on December 11, 2020 or as soon thereafter as is practicable. [emphasis added]

45. Pursuant to section 5(a) of the MSA, the Agent and the First Lien Lenders:

> … covenants and agrees (i) to cooperate and negotiate in good faith, and consistent with this Support Agreement, the definitive documents implementing, achieving and relating to the Transaction and any Court orders relating thereto, and (ii) to the extent it is a party thereto, to execute, deliver and perform its obligations under such documents.

46. The First Lien Lenders did not consult with ACDC before entering into the Support Agreement. I have spoken to Eric Hoff of DDJ and Andrew Petitjean of Brigade, who are the Bidders, and have been advised that the First Lien Lenders did not consult with them before entering into the Support Agreement.

47. On January 27, 2021, this Court granted an order expanding the Monitor's powers (the "**EMP Order**"). Paragraphs 4(f) and 4(k) authorized the Monitor to take further steps to

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market and sell the remaining assets of Dominion following the closing of the ACDC Transaction, but such rights are specifically "subject to the terms of the [ACDC] APA". Paragraph 10 of the EMP Order authorized the Monitor to enter into a transition services agreement 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, conducting, supervising and directing the realization and recovery of the Applicants' Property or other assets or interests. The authority provided to the Monitor pursuant to paragraph 10 of the EMP Order is expressly subject to such steps being "in accordance with the applicable terms of the [ACDC] APA". A copy of the EMP Order is attached hereto as Exhibit N.

48. In furtherance of the EMP Order, ACDC, the Agent and the Monitor (on behalf of the Applicants) entered into a transition services agreement dated February 3, 2021 (the "**TSA**"). A copy of the TSA is attached as Exhibit O.

49. Pursuant to section 1.01 of the TSA, ACDC agreed to take various steps to assist in the monetization of the Applicants' Subject Diamonds (as such term is defined in the TSA) for the benefit of the Applicants and their creditors. ACDC has complied (and is continuing to comply) with all of its obligations under the TSA.

50. In section 1.02 of the TSA, Dominion (through the Monitor) agreed to undertake activities related to the full realization and recovery of the Diavik Realization Assets (the "**Realization Activities**"). Section 1.02(b) of the TSA requires Dominion (through the Monitor) to provide information and reports to the Agent and the Purchaser, subject to commercially reasonable confidentially agreements, with respect to the Realization Activities. In section 1.02(c), Dominion (through the Monitor) specifically agreed to respond in good faith to any reasonable request from the Purchaser with respect to the transition of the Acquired Assets (which included the Cash Collateral and Dominion Production, as such terms are used in the AVO Agreement):

> Dominion agrees to respond in good faith to any reasonable request from the Purchaser for access to any additional services that are necessary for the transition of the Acquired Assets and the Assumed Liabilities that are not

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> contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably.

51. In sum, under the MSA and the APA, the Purchaser agreed to fund the Diavik Realization Account and the Wind-Down Account from Cash and Cash Equivalents that would otherwise have been acquired under the APA in order to fund the Monitor's realization efforts with respect to the remaining assets of the Applicants, including the Diavik JVA. ACDC's right under the ACDC APA in the ongoing realization efforts were preserved in the EMP Order, and ACDC entered into the TSA and performed its obligations thereunder in good faith. ACDC had an expectation: (i) under the MSA and the TSA, that it would be consulted before any agreement was settled regarding the Applicants' residual assets; and (ii) under the 2020 Vesting Order and EMP Order, that it would be a party to any agreement conveying the ACDC Assets or releasing Claims owned by ACDC.

ii. The First Lien Lenders failed to meet their obligations

52. Although the Support Agreement was entered into on September 16, 2021, I am not aware of any efforts being made to make ACDC aware of the negotiations underlying the AVO Transaction or to inform ACDC, in a timely manner, that it had been executed. ACDC has only in very recent days learned of the proposed transactions and has been given no opportunity to become involved and protect its ownership interests.

53. As set out at paragraph 45 of the Sixteenth Report, the Monitor and its counsel held a call with our counsel on September 28, 2021 to discuss ACDC's initial concerns upon first learning about the AVO Transaction (and the RVO Transaction), but this call happened only after the AVO Transaction and RVO Transaction agreements were settled and provided no opportunity for input. The Monitor did not consult with ACDC at any time before September 28, 2021.

54. I am advised by Mr. DeMarinis of Torys LLP and legal counsel to **[ACDC]** that, upon learning of the proposed transactions, he quickly advised counsel to the First Lien Lenders and counsel to the Monitor that: (i) ACDC had significant concerns with the

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impact of the Support Agreement on assets and claims that were vested in ACDC by this Court; (ii) ACDC was concerned with the lack of a valuation or marketing process for the Tax Attributes and may be interested in purchasing such assets if there was a fair and transparent marketing process; (iii) additional information was required from the Monitor in order to permit ACDC to analyze and respond to the impending application; and (iv) the October 15th application date was not reasonable in the circumstances.

55. As noted in paragraphs 45 to 49 of the Sixteenth Report, some preliminary information was provided to ACDC, but most of the information we have requested to assess each of the AVO Transaction and RVO Transaction remains outstanding as of the date of this Affidavit.

56. The Monitor informed our counsel that DDMI had concerns about the sensitive nature of the requested information and that it would not provide that information without DDJ, Brigade and ACDC's counsel first executing non-disclosure agreements ("**NDAs**") to DDMI's satisfaction.

57. On September 30, 2021, the Monitor set up a confidential data room and provided access to select members of ACDC, its legal counsel and certain other representatives. The Monitor populated that data room with only one document: a statement that set out the net outstanding cover payment balance that DDMI claims to be owing between it and ACDC as at August 31, 2021. The balance of ACDC's request for information remains outstanding as of the date of this affidavit.

58. ACDC, for the reasons set out above, reasonably expected that it would be consulted on any transaction involving assets which were conveyed to ACDC, including the Diavik Realization Assets. I believe that consultation, at a minimum, should have taken place prior to: (i) the negotiation and execution of the Support Agreement by the First Lien Lenders; and (ii) the negotiation of the AVO Agreement.

Interim Financing

59. ACDC has made arrangements with its principal owners to make up to an additional $500,000 of interim financing available to the Monitor. A draft term sheet setting out the

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terms of such interim financing is attached hereto as Exhibit P. The purpose of such interim financing is to give the Monitor additional funding: (i) while the Monitor explores options for the sale of the Diavik Realization Assets in the event that the AVO Transaction is not approved, consistent with the original agreements for the realization of those assets; and (ii) to pursue a Marketing Opportunity (as such term is defined in the RVO Term Sheet). I have been advised by DDJ and Brigade that they are prepared to advance interim financing arrangements on terms substantially similar to the attached Term Sheet promptly.

Request for an Adjournment

60. The relief sought by the Monitor in its application is highly contentious, prejudicial to ACDC and sweeping in its size and scope. ACDC is unable to properly assess and present the many substantive issues raised by the AVO Transaction and the RVO Transaction when those materials were served on us only six business days before the hearing and in advance of the Thanksgiving long weekend. Despite those transactions clearly involving ACDC's assets, the Monitor made no attempt to canvass mutually acceptable dates with ACDC for the hearing. ACDC requires more time to review these transactions and their implications, and the assets that form their subject matter should be properly canvassed in the market.

61. These difficulties are compounded by the process by which the Monitor and the First Lien Lenders chose to negotiate and settle the AVO Transaction and the RVO Transaction. At no point during that process was ACDC's input sought, despite the Monitor's and the First Lien Lenders' above-mentioned obligations to do so. ACDC continues to make good faith efforts to obtain further information in order to allow it to assess the proposed transactions, but those requests are still outstanding.

62. As a result, I believe that because this application was served on short notice with no urgency, it should be adjourned. In the alternative, I believe that if this Court decides to hear the application, it should be dismissed.

63. As noted above, DDJ and Brigade are willing to provide the Monitor with up to an additional $500,000 of funding for these activities, subject to them and the Monitor

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executing satisfactory interim lending agreements and this Court granting an interim lending order approving and authorizing same.

Relief Requested

64. I respectfully ask that this Court either: (i) adjourn the October 15th hearing for the relief requested by the Monitor in its application; or (ii) if the hearing proceeds, dismiss the Monitor's application.

65. I make this Affidavit for no improper purpose.

66. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear in this Affidavit. I, however, was linked by way of video technology to the Notary Public/Commissioner notarizing/commissioning this Affidavit.

SWORN BEFORE ME at Calgary, Alberta, this 13th day of October, 2021.	)
______________________________	)
Notary Public or Commissioner for Oaths in and for the Province of Alberta	) **KRISTAL KAYE**

This is Exhibit "A"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

KK

TORYS LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
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Scott Bomhof
sbomhof@torys.com
P. 416.865.7370

October 8, 2021

EMAIL: CommercialCoordinator.QBCalgary@albertacourts.ca
Maria.Mancia@albertacourts.ca

Court of Queen's Bench of Alberta
Calgary Courts Centre
24th Floor, 601 - 5th Street SW
Calgary, AB T2P 5P7

Attention: The Honourable Madam Justice K.M. Eidsvik

Dear Madam Justice Eidsvik:

**Re: In the Matter of a Plan of Arrangement of Dominion Diamond Mines ULC, et al.
Alberta Court of Queen's Bench Action No. 2001-05630**

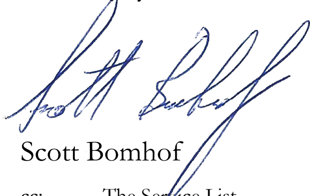
My office acts as counsel for Arctic Canadian Diamond Mines Ltd. ("**ACDC**"), the Purchaser of Dominion assets under a Purchase Agreement dated as of December 6, 2020, which was approved by Your Ladyship in these proceedings on December 11, 2020 and closed in February of this year.

Further to the application being brought by the Monitor and scheduled to be heard by Your Ladyship on Friday, October 15, 2021 at 10:00 a.m. via WebEx videoconference, ACDC will be seeking an adjournment of this hearing. The unfiled Application and the Sixteenth Report of the Monitor were only served on our office and on the Service List by email at 4:40 p.m. (MST) on Wednesday, October 6, 2021, and our client has had no involvement in the negotiation and other actions leading to the proposed transactions described in those materials.

The proposed transactions described in the Monitor's materials fundamentally affect property owned by ACDC under a transaction that was approved by this Court, without consideration to, or approval from, ACDC. Given the seriousness of the relief being sought, the complexity of the subject matter and the Monitor's delay in bringing this application and providing ACDC with its materials—all in advance of a holiday weekend—ACDC will be seeking an adjournment of the matter to properly allow all parties to prepare. This correspondence will also serve to advise that ACDC has provided our office with instructions to oppose the relief that is currently being sought by the Monitor.

We trust that the foregoing is in order, but should you have any questions or concerns, relating to the above or otherwise, please do not hesitate to contact the undersigned to discuss the same.

Yours truly,



Scott Bomhof

cc: The Service List
Torys LLP, Attention: Kyle Kashuba, Tony DeMarinis and Jeremy Opolsky (via email)
Court of Queen's Bench of Alberta, Attention: Brent DuFault, Commercial List Court Coordinator - Calgary (via email)

33539432

This is Exhibit "B"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

TORYS LLP

79 Wellington St. W., 30th Floor
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Scott Bomhof
sbomhof@torys.com
P. 416.865.7370

October 11, 2021

VIA EMAIL
simardc@bennettjones.com
meyerk@bennettjones.com

FTI Consulting Canada Inc.
1610, 520 5th Avenue S.W.
Calgary, AB T2P 3R7

Attention: Deryck Helkaa / Tom Powell

Dear Sirs:

Re: Dominion Diamond Mines ULC et al. – Monitor's Application for Approval and Vesting Order and Reverse Vesting Order, returnable October 15, 2021

Reference is made to the Sixteenth 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, Dominion Finco Inc. and Dominion Diamond Marketing Corporation dated October 16, 2021 (the "**Sixteenth Report**").

Unless indicated otherwise, all capitalized terms used herein have the meaning attributed thereto in the Sixteenth Report.

As you know, we are counsel to Arctic Canadian Diamond Company Ltd. ("**ACDC**"). Pursuant to a Joinder Agreement dated January 31, 2021, ACDC is the purchaser under the purchase agreement dated December 6, 2020 between Dominion Holdings, DDM, DDCU, Dominion Marketing, DDC and Finco (collectively, the "**Sellers**") and DDJ Capital Management, LLC and Brigade Capital Management, LP for the purchase and sale of certain of the Sellers' assets (the "**ACDC APA**").

ACDC has previously notified you of its serious concerns about the AVO Transaction and RVO Transaction. We are writing at this time to seek clarification from the Monitor regarding the questions set out below.

1. SHORT NOTICE

a. We note that the Application for approval of the AVO Transaction and the RVO Transaction was brought on short notice despite our client's request for adequate time to assess the proposed transactions, become informed of the circumstances surrounding their negotiation and prepare its response so that the Court can properly consider these matters and our serious

concerns relating to them. Please advise the reasons for the urgent nature of the application and, more specifically, whether there is any inherent urgency other than what appear to be deadlines artificially imposed by the proposed transactions' beneficiaries.

2. THE AVO TRANSACTION

a. Please advise what role the Monitor had in negotiating and evaluating the AVO Transaction before and after the Support Agreement was signed and whether the Monitor provided any input on the Transaction before the Support Agreement was signed. Please advise of any amendments to the Support Agreement arising from the Monitor's comments thereon.

b. Please advise when the Monitor was: (i) first made aware that the Agent and DDMI were discussing an acquisition of the Acquired Assets by DDMI; and (ii) made aware that Agent and DDMI had reached an agreement with respect to same.

c. Please provide details of all negotiations and discussions that the Monitor had with DDMI independent of the discussions initiated by the First Lien Lenders and in furtherance of its efforts to maximize realization and recovery on the Diavik Realization Assets.

d. Please provide copies of valuations prepared by the Monitor or independent experts with respect to the Diavik Diamond Mine and the Diavik Joint Venture Interest therein.

e. Please provide a detailed summary of all steps taken by the Monitor to market the Diavik interest since the closing of our client's purchase in February, 2021 and pursuant to their $1 million funding for such realization activities. Please include information regarding prospectively interested buyers whom the Monitor has contacted or who may have expressed interest to the Monitor.

f. At paragraph 32 of the Sixteenth Report, the Monitor mentions a dispute with DDMI regarding the Section 4 Diamonds. Please provide details of this dispute and all reports and correspondence with respect thereto, and the analyses and assessments of the Monitor and its counsel regarding the relative merits of the dispute.

g. At paragraph 33 of the Report, the Monitor advises that DDMI has made $229.0 million of cash calls since the date of the EMP Order. Please provide copies of all correspondence from/with/between the Monitor, the Agent and DDMI (including their respective counsel) with respect to all cash calls since the date of the EMP Order. Please also provide any correspondence with or reports provided by the technical experts referenced in paragraph 38 of the Report. Please advise on what steps the Monitor has taken to satisfy itself that the full quantum of the cash calls is a valid and enforceable claim against the Applicants.

h. Please provide all analyses prepared by the Monitor regarding the First Lien Lenders' liability exposure under their LCs net of all current Cash Collateral held by either the First Lien Lenders or the Monitor with respect to such obligations.

i. Please provide detailed information regarding the First Lien Lenders' LCs in respect of the Diavik Diamond Mine that would be cancelled in the proposed transactions. Please include copies of the LCs and the information DDMI has provided with respect to its intention to replace the LCs in furtherance of the proposed transactions.

j. Please provide a detailed accounting of the use of the $1 million fund provided by our client for the Monitor's realization and recovery of the Diavik Realization Assets.

3. THE RVO TRANSACTION

a. Please advise of all marketing efforts made related to the Tax Attributes, including information regarding prospectively interested parties contacted by the Monitor or who may have contacted the Monitor.

b. Please provide information regarding the Monitor's negotiation of the RVO Term Sheet and RVO Transaction and any resulting amendments to the RVO Term Sheet or the RVO Transaction resulting from the Monitor's input.

c. Please advise of any valuations undertaken by the Monitor related to the Tax Attributes.

d. Please provide copies of analyses and assessments conducted by the Monitor or independent tax experts regarding Dominion's tax attributes on an RVO "cleansed" basis.

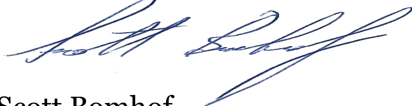
e. Please provide all up-to-date tax filings.

f. Please confirm that the RVO Transaction excludes all tax attributes of the Acquired Subsidiaries (as such term is defined in the ACDC APA).

g. At paragraph 68(d) of the Sixteenth Report, the Monitor indicates that the Diavik JVA and any interest in a joint venture established pursuant to the Diavik Joint Venture is not a Retained Asset and will be transferred to the Creditor Trust. Assuming that the AVO Transaction does not close before the RVO Transaction Closes, please advise how the RVO Transaction will impact ACDC's interest in the Diavik Realization Assets.

h. At paragraph 69(h) of the Sixteenth Report, the Monitor notes that additional funds may be required to run a marketing process for the Tax Attributes. Please advise on the quantum of funding that the Monitor believes is required to run such a process.

Yours truly,



Scott Bomhof

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33538321

This is Exhibit "C"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

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Notary Public or Commissioner for Oaths in
and for the Province of Alberta

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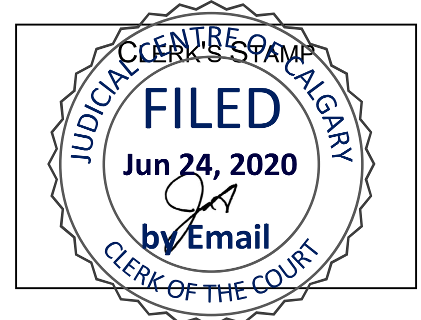


COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED** **AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.**
DOCUMENT	**SECOND AMENDED AND RESTATED INITIAL ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BLAKE, CASSELS & GRAYDON LLP** Barristers and Solicitors 3500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309 File: 00180245/000013

DATE ON WHICH ORDER WAS PRONOUNCED:	June 19, 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' Amended Notice of Application, filed, the Affidavits of Brendan Bell, sworn May 21, 2020 and June 12, 2020, filed, the Affidavit of Patrick Merrin, sworn May 11, 2020 (the "**Merrin Affidavit**"), filed, the Affidavits of John Startin, sworn May 21, 2020 (the "**Startin May Affidavit**") and June 12, 2020, filed, the Affidavits of Thomas Croese, sworn May 7, 2020, May 28, 2020 and June 16, 2020, respectively, filed, the Affidavit of Eric Hoff, sworn June 17, 2020, filed, the Affidavit of Matthew Quinlan, sworn June 16, 2020, filed; **AND UPON** service having been effected in accordance with the Caselines Service Order of this Court dated May 29, 2020 and 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 the Government of the Northwest Territories, counsel for the Washington Group of Companies, counsel for Credit Suisse AG, counsel for the Public Service Alliance of Canada, counsel for Procon Mining & Tunnelling Ltd., counsel for Dyno Nobel Canada Inc. and Dene Dyno Nobel, counsel for the Ad Hoc Group of Bondholders, counsel for Wilmington Trust, National Association, counsel for Matthew Quinlan, 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**"), the Supplement to the Fourth Report of the Monitor, and the Fifth Report of the Monitor, each filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

    (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

    (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

    (c) prevent the filing of any registration to preserve or perfect a security interest;

    (d) prevent the registration of a claim for lien;

    (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment; or

    (f) prevent DDMI from making Diavik JVA Cover Payments in accordance with the terms of the Diavik JVA.

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

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided however, that DDMI, in its capacity as manager under the Diavik JVA, be and is hereby authorized to hold an amount of Dominion Diamond's share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI (the "**Dominion Products**") at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "**PSF**") and the value of the Dominion Products shall be determined based on royalty valuations performed from time to time at the PSF by the Government of the Northwest Territories. DDMI shall hold the Dominion Products in trust, and subject to the following conditions:

(a) DDMI shall segregate the Dominion Products from DDMI's share of production from the Diavik Mine pursuant to and in accordance with the Agreement to establish a Protocol for Diamond Splitting Production, dated January 7, 2003, as amended, modified, supplemented or restated from time to time;

(b) DDMI shall provide adequate safeguarding of, and insurance coverage for, the Dominion Products;

(c) DDMI shall provide each of Dominion Diamond and the Monitor with reporting and records on the Dominion Products as may be requested by Dominion Diamond or the Monitor;

(d) DDMI shall permit reasonable access to Dominion Diamond and the Monitor to attend at the PSF and audit or inspect the Dominion Products;

(e) on the happening of any of the following dates, events or ocurrences, or with leave of the Court, DDMI shall be entited 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 54 and 56 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

(a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

(b) the Applicants’ directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants’ receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders or DDMI (but with respect to DDMI, only with respect to the Diavik Mine and only to the extent that the Monitor determines will not prejudice the SISP) and their counsel on a periodic basis of financial and other

information as agreed to between the Applicants and the Interim Lenders or DDMI which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders or DDMI;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders or DDMI, which information shall be reviewed with the Monitor and delivered to the Interim Lenders or DDMI and their counsel on a periodic basis or as otherwise agreed to by the Interim Lenders or DDMI;

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

(f) advise the Applicants in their development of the Plan and any amendments to the Plan;

(g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(j) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and each of the Interim Lenders and DDMI with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby

authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $3,500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 54 and 56 hereof.

INTERIM FINANCING AND INTERIM LENDER'S CHARGE

31. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Facility**") pursuant to the Amended and Restated Interim Financing Term Sheet dated as of June 15, 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 54 and 56 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders may (i) immediately cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lenders' Charge and make demand, accelerate payment, and give other notices; (ii) upon five (5) days' notice to the Applicants and the Monitor, apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and (iii) with leave of the Court, exercise any other rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents, and Interim Lenders' Charge; and

(c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. The Interim Lenders shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any Interim Financing Obligations.

37. This Order is subject to provisional execution and, if any of the provisions of this Order in connection with the Definitive Documents or the Interim Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (each, a "**Variation**") whether by subsequent order of this Court or any other court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the Interim Lenders under this Order (as made prior to the Variation) or the Definitive Documents, with respect to any advances made prior to the Interim Lenders being given written notice of the Variation and the Interim Lenders shall be entitled to rely on this Order as issued (including, without limitation, the Interim Lenders' Charge) for all advances so made.

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

38. Capitalized terms utilized in paragraphs 38 to 46 of this Order that are not otherwise defined in this Order shall have the meanings ascribed to them in the Procedures for the Sale and Investment Solicitation Process (the "**SISP Procedures**") in the form attached as **Schedule "B"** hereto.

39. The SISP Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.

40. The Applicants, the Monitor and their respective advisors (including the SISP Advisor) are hereby authorized and directed to carry out the SISP Procedures and to take such steps and execute such documentation as may be necessary or incidental to the SISP Procedures.

41. Each of the Applicants, the SISP Advisor and the Monitor and their respective affiliates,

partners, directors, employees, advisors (including the SISP Advisor), agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP Procedures or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). The Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) and its directors, employees, advisors and agents (solely in connection with the Stalking Horse Bid and the SISP Procedures) shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Stalking Horse Bid, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). Nothing in this paragraph 41 shall have the effect of releasing any rights, remedies or claims of DDMI under the Diavik JVA.

42. Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and Dominion Diamond Mines ULC, as vendors (collectively, the "**Dominion Vendors**"), are hereby authorized to execute and enter into a definitive stalking horse agreement of purchase and sale among the Dominion Vendors, as sellers, and the Stalking Horse Bidder, as purchaser, which shall be substantially on the terms set out in the stalking horse agreement of purchase and sale attached hereto as **Schedule "C"** (the "**Stalking Horse Bid**"), subject to such amendments, additions and/or deletions as may be negotiated between the Dominion Vendors and the Stalking Horse Bidder and approved by the Monitor. The Stalking Horse Bid submitted by the Stalking Horse Bidder 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 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 Bid is hereby approved.

44. The Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Break-Up Fee and Expense Charge**") on the Property as security for the payment of the Break-Up Fee and Expense Reimbursement by the Dominion Vendors pursuant to and in accordance with the Stalking Horse Bid. The Break-Up Fee and Expense Charge shall have the priority set out in paragraphs 54 and 56 hereof.

45. This Order is granted without prejudice to the rights and remedies of Dominion Diamond and DDMI under the Diavik JVA.

46. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act,* the Applicants, the SISP Advisor and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP Procedures, but only to the extent desirable or required to carry out the SISP Procedures. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Applicants and the Property, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

KERP AND THE KERP CHARGE

47. The Key Employee Retention Plan (the "**KERP**") as described in the Merrin Affidavit, is hereby approved.

48. The Applicants are hereby authorized and directed to enter into the KERP with those employees (the "**Key Employees**") listed in Confidential Exhibit "A" to the Merrin Affidavit (the "**Confidential Merrin Affidavit Exhibit**").

49. The Applicants are hereby authorized and directed to pay a lump sum payment (the "**Incentive Bonus**") to each of the Key Employees in the amount set out in the Confidential Merrin Affidavit Exhibit, to be paid as follows:

    (a) the first one-third of the Incentive Bonus shall be paid to each Key Employee on the earlier of June 6, 2020 and their last day of employment (if the Key Employee is terminated without cause); and

    (b) the remaining two-thirds of the Incentive Bonus shall be paid to each Key Employee on the earlier of November 6, 2020, their last day of employment (if the Key Employee is terminated without cause) and the closing of any restructuring transaction.

50. Payments to Key Employees under the KERP will only be made if, at the date the relevant payment of the Incentive Bonus is due, as described in paragraph 49, the Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.

51. The Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property as security for the amounts payable to the Key Employees pursuant to the KERP, which charge shall not exceed an aggregate amount of $580,000. The KERP Charge shall have the priority set out in paragraphs 54 and 56 hereof.

FINANCIAL ADVISOR AGREEMENT AND FINANCIAL ADVISOR'S CHARGE

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 May Affidavit, pursuant to which the Applicants have engaged the Financial Advisor to provide the services referenced therein is hereby approved, *nunc pro tunc*, including, without limitation, the payment of the Monthly Fee, Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee contemplated thereby, and the Applicants are authorized to continue the engagement of the Financial Advisor on the terms set out in the Financial Advisor Agreement.

53. 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 54 and 56 hereof.

VALIDITY AND PRIORITY OF CHARGES

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*.

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 prior to or subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record, possess, or perfect.

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

(a) the KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders' Charge and the Financial Advisor Charge shall rank subordinate to any Encumbrances under Article 9 of the Diavik JVA;

(b) the Encumbrances of the Existing Credit Facility Agent (as defined in the Interim Financing Term Sheet) in respect of the Diavik Collateral (as defined in the Interim Financing Term Sheet) shall rank senior to the Interim Lenders' Charge in respect of the Diavik Collateral;

(c) the Encumbrances of the Existing Credit Facility Agent in respect of the Interim Financing Priority Collateral (as defined in the Interim Financing Term Sheet) shall be senior to the Interim Lenders' Charge in respect of the Interim Financing Priority Collateral securing any October Advances (as defined in the Interim Financing Term Sheet) and related interest; and

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

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

58. The Charges, the Interim Financing Term Sheet and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees

and/or the Interim Lenders thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA, or any bankruptcy or receivership order made in respect of the Applicants;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, licence, permit or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

    (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Interim Financing Term Sheet and the other Definitive Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

    (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Term Sheet, or the execution, delivery or performance of the Definitive Documents; and

    (iii) the payments made by the Applicants pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

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

SERVICE AND NOTICE

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

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

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.

63. Any party to these proceedings may serve any document in these proceedings, (a) in the case of parties who at the time of service are on the Service List, by uploading such documents to the online filesite established by the Monitor for managing the pleadings and other relevant documents in this Action and hosted on the canada.caselines.com website (the "**CaseLines Filesite**") and all documents uploaded to the CaseLines Filesite shall be deemed as having been properly served on all parties named on the Service List as of the date and time that such documents were uploaded to the CaseLines Filesite; or, (b) in the case of parties who at the time of service are not on the Service List, by emailing

a PDF or other electronic copy of such documents to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Website.

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

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

GENERAL

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

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

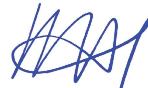
68. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

69. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give

effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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



Justice of the Court of Queen's Bench of Alberta

Schedule “A”

Amended and Restated Interim Financing Term Sheet

AMENDED AND RESTATED
INTERIM FINANCING TERM SHEET

Dominion Diamond Mines ULC

Dated as of June 15, 2020

WHEREAS the Borrower has requested that the Interim Lenders provide financing to the Borrower during the pendency of the Borrower's proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") commenced before the Court of Queen's Bench of Alberta (the "**Court**") pursuant to an initial order granted on April 22, 2020 (the "**Initial Order**") and in accordance with the terms and conditions set out herein;

AND WHEREAS, parties hereto entered into an interim financing term sheet dated as of May 21, 2020 (the "**Original Term Sheet**") pursuant to which the Interim Lenders agreed to provide financing in order to fund certain obligations of the Credit Parties in order for the Credit Parties to pursue and implement a Permitted Restructuring Transaction pursuant to and in accordance with the SISP;

AND WHEREAS, the parties hereto wish to amend and restate the Original Term Sheet;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Dominion Diamond Mines ULC, an unlimited liability company formed under the laws of British Columbia (the "**Borrower**").

2. **INTERIM LENDERS** Those lenders identified on Schedule "**F**" hereto (the "**Interim Lenders**"). Schedule "**F**" may be amended from time to time with the consent of Washington Diamond in its sole and absolute discretion; it being understood and agreed that each Existing Credit Facility Lender as of the date of this Term Sheet is acceptable to Washington Diamond in its sole and absolute discretion; *provided*, *however*, that, at no time, shall the Commitment (as defined herein) held by the Existing Credit Facility Lenders (or any party other than Washington Diamond) exceed 34% of total Commitments. The amount of total funding Commitments (the "**Commitments**") of each Interim Lender, and such Interim Lender's proportion of the total Commitments are identified on Schedule F hereto. All obligations of the Interim Lenders hereunder and in connection with the Interim Facility are several, and not joint or joint and several.

   If any Interim Lender is a Defaulting Lender, or if any Interim Lender is a Non-Consenting Lender, then Washington Diamond may, at its sole expense and effort, upon notice to such Interim Lender, require such Interim Lender to assign and delegate, without recourse, all its interests, rights and obligations under this Term Sheet to Washington Diamond (if Washington Diamond accepts such assignment) or another Interim Lender acceptable to Washington Diamond in its sole and absolute discretion (if such Interim Lender accepts such assignment), provided that such Defaulting Lender or Non-Consenting Lender shall have received, in connection with such assignment, payment of an amount equal to the outstanding Interim Financing Obligations payable to it hereunder from the

assignee (to the extent of outstanding principal and accrued interest) or the Borrower (in the case of all other outstanding Interim Financing Obligations owing to such Defaulting Lender or Non-Consenting Lender). Upon any such assignment, Schedule "**F**" shall be deemed to be amended as required to reflect such assignment.

3. **GUARANTORS:** Each party that guarantees (collectively, the "**Guarantors**", and together with the Borrower, the "**Credit Parties**") the obligations of the Credit Parties under this Term Sheet (the "**Interim Financing Obligations**"), which parties are set forth on Schedule D hereof.

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

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

5. **INTERIM FACILITY; DRAWDOWNS:** A senior secured, superpriority, debtor-in-possession, interim, non-revolving credit facility (the "**Interim Facility**") up to a maximum principal amount of US$60 million (as such amount may be reduced from time to time pursuant to the terms hereof, the "**Facility Amount**"), subject to the terms and conditions contained herein.

The Interim Facility shall be made available to the Borrower by way of up to six (6) advances (each an, "**Advance**") which, in the aggregate, shall not exceed the Facility Amount. The timing for each Advance shall be determined based on the funding needs of the Borrower as set forth in the DIP Budget and as such draw amounts are agreed to by the Required Interim Lenders and the Credit Parties. Each Advance (other than the final Advance) shall be in a principal amount of not less than US$2,000,000.

Each Advance shall be deposited by the applicable Interim Lenders into the Operating Account within two (2) Business Days of the date on which the Borrower delivers to the Interim Lenders an Advance request certificate in the form of Schedule "**B**" (an "**Advance Request Certificate**"), provided that, in the determination of the Interim Lenders, the Advance Conditions are satisfied as of the date on which such Advance Request Certificate is delivered and remain satisfied on the date of such Advance. Each Interim Lender's obligations are several and not joint or joint and several.

With respect to Advances to be used to make Permitted Payments on account of obligations that accrue prior to September 30, 2020 (the "**Phase 1 and Phase 2 Advances**"), each Interim Lender shall fund solely its pro rata share of each Phase 1 and Phase 2 Advance based on such Interim Lender's share of the total Commitments in respect of Phase 1 and Phase 2 Advances set out in Part I of Schedule "**F**". With respect to Advances to be used to make Permitted Payments on account of obligations that accrue on or after October 1, 2020 through the Outside Date ("**October Advances**"), Washington Diamond, in its capacity as Interim Lender, shall fund any such Advances.

The Advance Request Certificate shall certify that (i) all representations and

warranties of the Credit Parties contained in this Term Sheet remain true and correct in all material respects both before and after giving effect to the use of such proceeds and (ii) no Default or Event of Default then exists and is continuing or would result therefrom.

Each Advance Request Certificate shall be deemed to be acceptable and shall be honoured by the Interim Lenders unless the Required Interim Lenders have objected thereto in writing, providing reasons for the objection, by no later than 1:00 p.m. Eastern Time on the second Business Day following the delivery of such Advance Request Certificate. A copy of each Advance Request Certificate shall be concurrently provided to Interim Lenders and the Monitor.

6. **PURPOSE AND PERMITTED PAYMENTS:**

The Credit Parties shall use proceeds of the Interim Facility solely for the following purposes and in the following order, in each case in accordance with the DIP Budget and for the purpose of advancing and implementing a Permitted Restructuring Transaction pursuant to and in accordance with the SISP:

(a) to pay the reasonable and documented legal and financial advisory fees and expenses of (i) the Credit Parties, subject to the DIP Budget (ii) the Monitor (i.e. the Monitor's fees and those of its legal counsel), subject to the DIP Budget, (iii) the Interim Lenders, subject to the DIP Budget and (iv) the Existing Credit Facility Lenders, subject to the DIP Budget, in each case pursuant to the terms hereof, it being acknowledged by the Credit Parties and the Interim Lenders that those fees and expenses incurred to the date hereof and those provided for in the DIP Budget as of the date hereof are reasonable;

(b) to pay the interest, fees and other amounts owing to the Interim Lenders under this Term Sheet;

(c) to pay any interest accruing under the Existing Credit Facility in the ordinary course; and

(d) to fund, in accordance with the DIP Budget, the Credit Parties' operating expenditures during the Restructuring Proceedings in pursuit of a Permitted Restructuring Transaction pursuant to and in accordance with the SISP, including the working capital and other general corporate funding requirements of the Credit Parties during such period (the amounts set forth in these subsections (a) through (d), collectively, the "**Permitted Payments**").

For greater certainty, the Credit Parties may not use the proceeds of the Interim Facility to pay any obligations of the Credit Parties arising or relating to the period prior to the Filing Date without the prior written consent of (x) the Required Interim Lenders in their sole and absolute discretion and (y) the Existing Credit Facility Agent (such consent not to be unreasonably withheld) unless the payment of such pre-Filing Date obligations are specifically identified in the approved DIP Budget and

authorized pursuant to the Amended Initial Order or any subsequent Court Order.

7. **ADVANCE CONDITIONS**

The Interim Lenders' agreement to make the Facility Amount available to the Borrower and to advance any Advance to the Borrower is subject to the satisfaction, as determined by the Required Interim Lenders, of each of the following conditions precedent (collectively, the "**Advance Conditions**"), each of which is for the benefit of the Interim Lenders and may be waived by the Required Interim Lenders in their sole and absolute discretion:

(a) The Initial Order shall have remained in effect until the issuance of the Amended Initial Order;

(b) The Credit Parties shall have executed and delivered this Term Sheet, the Guarantee and such other Credit Documents as the Required Interim Lenders may reasonably request.

(c) The Credit Parties' cash management system shall continue in the manner approved by the Initial Order, unless otherwise consented to by (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent in each case in their reasonable discretion.

(d) The Court shall have issued an amended and restated version of the Initial Order or a further amended and restated version of the Initial Order (as it may be amended, the "**Amended Initial Order**") in form and substance acceptable to the Required Interim Lenders, in their reasonable discretion; *provided*, *however*, the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (acting reasonably) must be satisfied with any provision of the Amended Initial Order (or any subsequent Court Order) relating to the Interim Facility, the SISP or the Stalking Horse Transaction. The Amended Initial Order shall, without limitation, (i) approve this Term Sheet (subject only to such modifications as may be acceptable to the Supermajority Interim Lenders and the Existing Credit Facility Agent in their sole and absolute discretion), (ii) authorize the Borrower to borrow up to the Facility Amount under the Interim Facility, (iii) grant the Interim Lenders a priority charge (the "**Interim Lenders' Charge**") on the CCAA Applicants' Collateral as security for all Interim Financing Obligations, which Interim Lenders' Charge shall have priority over all Liens on the CCAA Applicants' Collateral other than as set forth in Section 11 hereof, and (iv) approve the SISP on terms acceptable to the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (acting reasonably).

(e) The Credit Parties shall be acting in accordance with the SISP.

(f) The Amended Initial Order and the Recognition Order, if applicable, shall not have been stayed, vacated or otherwise amended, restated or modified in respect of any amendment,

relating to the Interim Facility, the SISP, the Stalking Horse Transaction or any other matter that affects the Interim Lenders, without the written consent of the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld).

(g) There shall be no Liens ranking (a) in priority to the Interim Lenders' Charge over the CCAA Applicants' Collateral other than the Permitted Priority Liens or (b) *pari passu* with the Interim Lenders' Charge over the CCAA Applicants' Collateral other than the SISP Advisor Charge.

(h) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance.

(i) The Borrower shall have delivered an Advance Request Certificate in respect of such Advance.

(j) The applicable Credit Parties shall have executed an Asset Purchase Agreement with an entity managed by an affiliate of Washington Diamond with respect to the Stalking Horse Transaction, *provided* that this condition shall not apply to the initial Advance if such initial Advance is an amount less than or equal to US$10,000,000.

8. **COSTS AND EXPENSES**

The Borrower shall reimburse the Interim Lenders and the Existing Credit Facility Agent for all reasonable fees and expenses incurred (including reasonable and documented legal, financial advisory and professional fees and expenses on a full indemnity basis) (the "**Interim Lender Expenses**") by the Interim Lenders or any of their affiliates and the Existing Credit Facility Agent in connection with the negotiation, development, and implementation of Interim Facility (including the administration of the Interim Facility). The Interim Lender Expenses shall form part of the Interim Financing Obligations secured by the Interim Lenders' Charge.

All accrued and unpaid Interim Lender Expenses as at the date of any Advance shall be paid in full through deduction from such Advance. All accrued and unpaid Interim Lender Expenses incurred prior to the first Advance (including those incurred prior to the Filing Date) shall be paid in full through deduction from the first Advance.

9. **INTERIM FACILITY SECURITY:**

All Interim Financing Obligations shall be secured by the Interim Lenders' Charge. The Required Interim Lenders may, in their reasonable discretion (i) require the execution, filing or recording of any mortgages, security agreements, pledge agreements, control agreements, financing statements or other documents or instruments, or (ii) take possession or control of any Collateral of the Credit Parties, to the extent it is necessary to do so, to obtain and/or perfect its senior secured, superpriority Lien on such Collateral.

10. **INTER-COMPANY**

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

ADVANCES: absolute discretion.

11. **PERMITTED LIENS AND PRIORITY:** All of the Credit Parties' Collateral and the property of the Credit Parties' subsidiaries will be free and clear of all Liens except for Permitted Liens. Except as set forth below, the Interim Lenders' Liens and the Interim Lenders' Charge shall have priority over all Liens on the CCAA Applicants' Collateral.

    (a) The Permitted Priority Liens shall be senior to any Liens of the Interim Lenders or the Existing Credit Facility Agent in any of the Collateral.

    (b) The Liens of the Existing Credit Facility Agent in the Interim Facility Priority Collateral to secure the Funded First Lien Facility Obligations shall be senior to the Liens of the Interim Lenders in the Interim Facility Priority Collateral to secure any October Advances (and related interest).

    (c) The Liens of the Interim Lenders in the Interim Facility Priority Collateral to secure any October Advances (and related interest), shall be senior to any Liens of the Existing Credit Facility Agent to secure the First Lien Facility LC Obligations.

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

13. **REPAYMENT:** The Interim Facility and the Interim Financing Obligations shall be due and repayable in full on the earlier of: (i) the occurrence of any Event of Default which is continuing and has not been cured; (ii) the completion of a Restructuring Transaction; (iii) the conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); (iv) the closing of a Successful Bid (as defined in the SISP); (v) the sale of all or substantially all of the CCAA Applicants' collateral; and (vi) the Outside Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrower and with the prior written consent of each Interim Lender for such period and on such terms and conditions as each Interim Lender may agree in its sole and absolute discretion.

    Without the consent of each Interim Lender in its sole and absolute discretion, no Court Order sanctioning a Plan shall discharge or otherwise affect in any way the Interim Financing Obligations, other than after the permanent and indefeasible payment in cash to the Interim Lenders of all Interim Financing Obligations on or before the date such Plan is implemented.

14. **DIP BUDGET AND VARIANCE REPORTING:** Attached hereto as Schedule "**C**" is a copy of the agreed summary DIP Budget (excluding the supporting documentation provided to the Interim Lenders in connection therewith) as in effect on the date hereof (the "**Initial DIP Budget**"), which the Interim Lenders acknowledge and agree is in form and substance satisfactory to the Interim Lenders and the Existing

Credit Facility Agent. Such DIP Budget shall be the DIP Budget referenced in this Term Sheet unless and until such time as a revised DIP Budget has been approved by the Required Interim Lenders and the Existing Credit Facility Agent in accordance with this Section 14.

(A) At the written request of the Required Interim Lenders (including by email), (B) at the election of the Borrower, or (C) upon a material change, or a material change reasonably anticipated by the Borrower, to any item set forth in the DIP Budget, the Borrower shall update and propose a revised 13-week DIP Budget to the Interim Lenders and the Existing Credit Facility Agent (the "**Updated DIP Budget**"). The Required Interim Lenders may make such request up to once every two weeks, and if such request is made, the Borrower shall submit the Updated Budget no later than five (5) Business Days following receipt of the request. Such Updated DIP Budget shall have been reviewed and approved by the Monitor, prior to submission to the Interim Lenders. If (a) the Required Interim Lenders, in their sole and absolute discretion, or (b) the Existing Credit Facility Agent, in its reasonable discretion, determine that the Updated DIP Budget is not acceptable, they shall, within three (3) Business Days of receipt thereof, provide written notice to the Borrower and the Monitor stating that the Updated DIP Budget is not acceptable and setting out the reasons why such Updated DIP Budget is not acceptable, and until the Borrower has delivered a revised Updated DIP Budget acceptable to (a) the Required Interim Lenders in their sole and absolute discretion, and (b) the Existing Credit Facility Agent, in its reasonable discretion, the prior DIP Budget shall remain in effect.

At any time, the Updated DIP Budget is accepted by the Required Interim Lenders and the Existing Credit Facility Agent, such Updated Budget shall be the DIP Budget for the purpose of this Term Sheet.

On or before 3:00 p.m. Eastern Time on the Friday of every second week, (provided that such day is a Business Day and, if not, on the next Business Day) the Borrower shall deliver to the Monitor, the Interim Lenders, the Existing Credit Facility Agent, and their legal and financial advisors a variance calculation (the "**Variance Report**") setting forth actual receipts and disbursements for the preceding two weeks (each a "**Testing Period**") as against the then-current DIP Budget, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report to be promptly discussed with the Interim Lenders, the Existing Credit Facility Agent, and their legal and financial advisors, if so requested. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Testing Period.

15. **EVIDENCE OF INDEBTEDNESS:**

The Interim Lenders' accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Interim Lenders pursuant to the Interim Facility. Each Interim Lender may, from time to time, require the Borrower to execute and deliver promissory notes evidencing the Borrower's liability hereunder to each

such Interim Lender.

16. **PREPAYMENTS:** Provided the Monitor (i) is satisfied that the Credit Parties have sufficient cash reserves to satisfy (a) amounts secured by any Permitted Priority Liens (other than those Permitted Priority Liens identified in subsections (vi) and (vii) of the definition of "Permitted Priority Liens") senior to the Interim Lenders' Charge, and (b) obligations set forth in the DIP Budget that the Credit Parties have incurred from and after the Filing Date for which payment has not been made (collectively, the "**Priority Payables Reserve**") and (ii) provides its consent, the Borrower may prepay any amounts outstanding under the Interim Facility at any time prior to the Maturity Date. Any amount repaid may not be reborrowed and shall be paid to the Interim Lenders on a pro rata basis. In the event that less than all of the Interim Facility Obligations are repaid using the proceeds of any debt obligations that are secured in whole or in part by Liens in the Collateral, such Liens shall be junior in all respects to the Liens in the Collateral held by the Interim Lenders to secure any remaining Interim Facility Obligations (including those related to any October Advances).

17. **INTEREST RATE:** Interest shall be payable on the aggregate outstanding amount of the Facility Amount that has been advanced to the Borrower from the date of the funding thereof at a rate equal to 5.25% *per annum*, compounded monthly and payable monthly in arrears in cash on the last Business Day of each month, with the first such payment being made on June 30, 2020. Upon the occurrence and during the continuation of an Event of Default, all overdue amounts shall bear interest at the applicable interest rate plus 2% *per annum* payable on demand in arrears in cash. All interest shall be computed on the basis of a 360-day year of twelve 30-day months, provided that, whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis for such determination.

No structuring or transaction fee shall be payable to the Interim Lenders as part of the Interim Facility.

The parties shall comply with the following provisions to ensure that the receipt by the Interim Lenders of any payments under this Term Sheet does not result in a breach of section 347 of the *Criminal Code* (Canada):

(a) If any provision of this Term Sheet would obligate the Credit Parties to make any payment to the Interim Lenders of an amount that constitutes "interest", as such term is defined in the *Criminal Code* (Canada) and referred to in this section as "**Criminal Code Interest**", during any one-year period after the date of the funding of the Facility Amount in an amount or calculated at a rate which would result in the receipt by the Interim Lenders of Criminal Code Interest at a criminal rate (as defined in the *Criminal Code*

(Canada) and referred to in this section as a "**Criminal Rate**"), then, notwithstanding such provision, that amount or rate during such one-year period shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the Interim Lenders during such one-year period of Criminal Code Interest at a Criminal Rate, and the adjustment shall be effected, to the extent necessary, as follows:

(i) *first*, by reducing the amount or rate of interest required to be paid to the Interim Lenders during such one-year period; and

(ii) *thereafter*, by reducing any other amounts (other than costs and expenses) (if any) required to be paid to the Interim Lenders during such one-year period which would constitute Criminal Code Interest.

(b) Any amount or rate of Criminal Code Interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any portion of the Interim Facility remains outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code Interest shall be *pro-rated* over the period commencing on the date of the advance of the Facility Amount and ending on the relevant Maturity Date (as may be extended by the Interim Lenders from time to time under this Term Sheet) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Interim Lenders shall be conclusive for the purposes of such calculation and determination.

18. **CURRENCY:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America and all payments made by the Credit Parties under this Term Sheet shall be in United States dollars. If any payment is received by the Interim Lenders hereunder in a currency other than United States dollars, or, if for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties hereby agree, to the fullest extent permitted by Applicable Law, that the rate of exchange used shall be the rate at which the Interim Lenders are able to purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which such payment is made or final judgment is given.

19. **MANDATORY REPAYMENTS:** Unless otherwise consented to in writing by (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), the Interim Facility shall, subject to retention of the Priority Payables Reserve, be promptly repaid and the Facility Amount shall be permanently reduced upon a sale, realization or disposition of or with respect to any assets or property of the Credit Parties or any of their subsidiaries (including obsolete, excess or worn-out Collateral) (a) out of

the ordinary course of business, including any sale or disposition of working capital assets, equipment, machinery and other operating or fixed assets and realizations of accounts receivable or (b) inventory, including diamond inventory (whether in or out of the ordinary course of business), in each case in an amount equal to the net cash proceeds of such sale, realization or disposition (for greater certainty, net of transaction fees (including, without limitation, shipping expenses and commissions payable in connection with such sale, realization or disposition) and applicable taxes in respect thereof). Any amount repaid may not be reborrowed and shall be paid to the Interim Lenders on a pro rata basis.

20. **REPS AND WARRANTIES:**

Each of the Credit Parties on a joint and several basis, represents and warrants to the Interim Lenders, upon which the Interim Lenders are relying in entering into this Term Sheet and the other Credit Documents, that:

(a) The transactions contemplated by this Term Sheet and the other Credit Documents, upon the granting of the Amended Initial Order:

(i) are within the powers of such Credit Party;

(ii) have been duly executed and delivered by or on behalf of such Credit Party;

(iii) constitute legal, valid and binding obligations of the Credit Parties, enforceable against the Credit Parties in accordance with their terms;

(iv) do not require any material authorization from, the consent or approval of, registration or filing with, or any other action by, any governmental authority or any third party; and

(v) will not violate the charter documents, articles by-laws or other constating documents of such Credit Party or any Applicable Law relating to such Credit Party;

(b) The business operations of the Credit Parties have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the business has been or is carried out;

(c) The Credit Parties own their assets and undertaking free and clear of all Liens other than Permitted Liens;

(d) Each Credit Party has been duly formed and is validly existing under the law of its jurisdiction of incorporation;

(e) All Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms and no Credit Party has any knowledge of any material default that has occurred and is continuing thereunder (other than those defaults arising as a result of the commencement of the Restructuring Proceedings) or are not otherwise stayed by the Amended Initial Order and no proceedings have been commenced or threatened to

revoke or amend any Material Contracts;

(f) The Credit Parties are not aware of any introduction, amendment, repeal or replacement of any law or regulation, not related to the COVID 19 pandemic, being made or proposed which could reasonably be expected to have a material adverse effect on the Credit Parties or their respective businesses;

(g) There are no agreements of any kind between any Credit Party and any other third party or any holder of debt or equity securities of any Credit Party with respect to any Restructuring Transaction (i) as at the date hereof except for (A) this Term Sheet, (B) the agreement in respect of the Stalking Horse Transaction as of the date hereof, (C) any non-disclosure agreement entered into in connection with or in furtherance of a potential Restructuring Transaction, and (ii) as at any subsequent date, except for (A) any agreement effecting a Replacement Stalking Horse Bid, and (B) any agreement effecting a Successful Bid (other than the Stalking Horse Transaction) each as defined in the SISP and disclosed to the Interim Lenders;

(h) No Default or Event of Default has occurred and is continuing;

(i) No Credit Party is required to be registered as an "investment company" under the Investment Company Act of 1940 of the United States;

(j) No part of the proceeds of the Interim Facility will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U and Regulation X of the Board of Governors of the Federal Reserve System of the United States; and

(k) The Credit Parties have disclosed to the Interim Lenders the following with respect to the diamond inventory held by the Credit Parties and/or their subsidiaries (a) the amount and value of such inventory; (b) the location of such inventory; and (c) the amount of insurance coverage for all such inventory, in each case presented in a manner and with detail consistent with the Credit Parties' ordinary course internal accounting practices. The Credit Parties shall maintain at all times the insurance coverage disclosed to the Interim Lenders.

21. **AFFIRMATIVE COVENANTS:** Each Credit Party agrees to do, or cause to be done, with respect to itself and each of its subsidiaries, the following:

(a) (i) Allow representatives or advisors of the Required Interim Lenders and the Existing Credit Facility Agent reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Credit Parties, and (ii) cause management, the financial advisor and/or legal counsel of each Credit Party to

cooperate with reasonable requests for information by the Required Interim Lenders and the Existing Credit Facility Agent and their legal and financial advisors, in each case subject to solicitor-client privilege, all Court Orders and applicable privacy laws, in connection with matters reasonably related to the Interim Facility, the Restructuring Proceedings or compliance of the Credit Parties with their obligations pursuant to this Term Sheet;

(b) Deliver to the Required Interim Lenders and the Existing Credit Facility Agent the reporting and other information from time to time reasonably requested by it and as set out in this Term Sheet including, without limitation, the Variance Reports at the times set out herein;

(c) Use the proceeds of the Interim Facility only in accordance with the restrictions set out in this Term Sheet and pursuant to the DIP Budget and the CCAA Orders;

(d) Comply with the provisions of (i) the Amended Initial Order, the SISP and all other orders of the Court entered in connection with the CCAA Proceedings (each a "**CCAA Order**") and (ii) to the extent applicable, the Recognition Order and all other orders of the Bankruptcy Court entered in connection with the Chapter 15 Proceedings (each a "**Bankruptcy Court Order**");

(e) Preserve, renew and keep in full force its corporate existence;

(f) Conduct its business in accordance with and otherwise comply with the DIP Budget, subject to the Permitted Variance;

(g) Promptly notify the Interim Lenders and the Existing Credit Facility Agent of the occurrence of any Default or Event of Default or any event or circumstance that may materially affect the DIP Budget, including any material change in its contractual arrangements or relationships with third parties;

(h) Comply, in all material respects, with Applicable Law, except to the extent not required to do so pursuant to any Court Order;

(i) Provide the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel draft copies of all motions, applications, proposed Court Orders and other materials or documents that any of Credit Parties intend to file in the Restructuring Proceedings at least three (3) Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible and in any event not less than one (1) day prior to the date on which such motion, application, proposed order or other materials or documents are served on the service list in respect of the applicable Restructuring Proceeding; *provided* that motion materials and similar pleadings that affect the Interim Lenders, the Stalking Horse Transaction or the SISP shall

be reasonably satisfactory to the Required Interim Lenders and the Existing Credit Facility Agent;

(j) Take all actions necessary or available to defend the Court Orders that affect the Interim Lenders, the Stalking Horse Transaction, the Collateral or the SISP from any appeal, reversal, modifications, amendment, stay or vacating, unless expressly agreed to in writing in advance by the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion;

(k) Promptly provide notice to the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, and of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over the Credit Parties in respect of such Material Contract (other than in each case, routine or administrative materials or correspondence);

(l) Provide the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel with draft copies of all material letters, submissions, notices, or other materials or correspondence that any of the Credit Parties intend to file with or submit to any regulatory authority having jurisdiction over the Credit Parties relating to any Material Contract (other than in each case, routine or administrative materials or correspondence), at least three (3) Business Days prior to such submission or filing or, where it is not practically possible to do so within such time, as soon as possible;

(m) Execute and deliver, or cause each Credit Party (as applicable) to execute and deliver, loan and collateral security documentation (including any guarantees in respect of the Interim Financing Obligations) including, without limitation, such security agreements, financing statements, discharges, opinions or other documents and information, in form and substance satisfactory to the (x) Required Interim Lenders and their counsel and (y) Existing Credit Facility Agent and its counsel;

(n) Complete all necessary Lien and other searches (other than in the Mining Recorder's Office, Department of Industry, Tourism and Investment of the Government of the Northwest Territories for such time as the same cannot be completed during the COVID-19 pandemic) against the Credit Parties, together with all registrations, filings and recordings wherever the Required Interim Lenders deem appropriate, to satisfy (x) Required Interim Lenders and their counsel and (y) Existing Credit Facility Agent and its counsel that there are no Liens affecting the Credit Parties' Collateral except Permitted Liens;

(o) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Credit Parties with financially sound and reputable insurers in coverage and scope acceptable to the Required Interim Lenders and cause Washington Diamond to be listed as the loss payee or additional insured (as applicable) on such insurance policies;

(p) Pay all Interim Lender Expenses and expenses of the Existing Credit Facility Agent in accordance with the DIP Budget;

(q) Promptly upon becoming aware thereof, provide details of the following to the Required Interim Lenders and the Existing Credit Facility Agent:

(i) any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against any Credit Party, by or before any court, tribunal, Governmental Authority or regulatory body, which are not stayed by the Amended Initial Order and would be reasonably likely to result, individually or in the aggregate, in a judgment in excess of CDN$500,000, and

(ii) any existing (or threatened in writing) default or dispute with respect to any of the Material Contracts which are not stayed by the Amended Initial Order;

(r) Strictly comply with the terms of the SISP;

(s) Deliver the Budgets and Variance Reports required under Section 14;

(t) In the event that any creditor of any Credit Party or its affiliates or any other party commences or pursues litigation or claims against any Credit Party or any affiliate of any Credit Party in the United States or against property of the Credit Party or its affiliates located in the United States, which the Credit Parties reasonably determine, in consultation with the Required Interim Lenders and the Existing Credit Facility Agent, is not likely to be stayed in the CCAA Proceedings, the applicable Credit Party, in consultation with the Required Interim Lenders and the Existing Credit Facility Agent, shall initiate, or shall cause its affiliate to initiate, proceedings under Chapter 15 of the Bankruptcy Code (the "**Chapter 15 Proceedings**") in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). The Credit Parties shall pursue a final order (the "**Recognition Order**") recognizing the CCAA Proceedings as foreign main proceedings pursuant to the Bankruptcy Code, approving, authorizing and granting the full availability of the Facility Amount and the priority of the Interim Lenders' Charge on the terms of this Term Sheet, and containing such other relief as the Credit Parties, in consultation with the

Required Interim Lenders and the Existing Credit Facility Agent, determine is necessary, which Recognition Order shall be in form and substance satisfactory to the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion;

(u) Take all actions necessary or available to defend the subsidiaries of the Credit Parties and their property from any and all material pending and threatened litigation or claims; and

22. **NEGATIVE COVENANTS:**

The Credit Parties covenant and agree not to do, or cause not to be done, with respect to itself and each of its subsidiaries, the following, other than with the prior written consent of the Required Interim Lenders and the Existing Credit Facility Agent to the extent express consent of the Existing Credit Facility Agent is required below:

(a) Transfer, lease or otherwise dispose of all or any part of their property, assets or undertaking outside of the ordinary course of business, except for the disposition of obsolete or worn out equipment or assets consistent with past practice, or assets of nominal value and in accordance with the Amended Initial Order and this Term Sheet;

(b) Make any payment, including, without limitation, any payment of principal, interest or fees, in respect of pre-filing indebtedness, or in respect of any other pre-filing liabilities, including payments with respect to pre-filing trade or unsecured liabilities of the Credit Parties, other than in accordance with the Amended Initial Order or any subsequent Court Order and the DIP Budget provided that the Credit Parties shall pay the Interim Lender Expenses pursuant to the terms of this Term Sheet.

(c) (i) Create or permit to exist any indebtedness other than (A) the indebtedness existing as of the date of this Term Sheet, (B) the Interim Financing Obligations, (C) post-filing trade payables or other unsecured obligations incurred in the ordinary course of business on or following the Filing Date in accordance with the DIP Budget and the Amended Initial Order, and (D) any obligations (including cash call or reclamation obligations) under any Joint Venture to which any Credit Party is party (ii) make or give any financial assurances, in the form of bonds, letter of credit, financial guarantees or otherwise to any Person or Governmental Authority other than with the prior written consent of (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(d) Make (i) any distribution, dividend, return of capital or other distribution in respect of equity securities (in cash, securities or other property or otherwise); or (ii) a retirement, redemption, purchase or repayment or other acquisition of equity securities or indebtedness (including any payment of principal, interest, fees or any other payments thereon) other than with the prior written

consent of (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(e) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than in accordance with the DIP Budget other than with the prior written consent of the (x) Required Interim Lenders in their sole and absolute discretion and (y) Existing Credit Facility Agent in its reasonable discretion;

(f) Except as may be otherwise ordered by the Court, 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 Court may expressly order unless such fees, expenses or disbursements, as applicable, are reviewed and confirmed in advance by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent in its reasonable discretion; provided however, in all cases, no fees, expenses, or disbursements shall be paid or reimbursed and no retainer shall be established to fund any challenges or objections to the Interim Facility, the Stalking Horse Transaction (including the sale approval hearing), or the SISP or to fund any litigation or pursuit of claims (including diligence or discovery) against any Interim Facility Lender or any of its affiliates in any capacity;

(g) Create or permit to exist any Liens on any of its properties or assets other than the Permitted Liens;

(h) Challenge or fail to support the Liens and claims of the Interim Lenders;

(i) Create or establish any employee retention plan or similar benefit plan for any employees of any of the Credit Parties, except as reflected in the approved DIP Budget;

(j) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Budget, subject to the Permitted Variance;

(k) Terminate any Material Contract or amend any Material Contract in any material manner except with the prior consent of the Required Interim Lenders acting reasonably;

(l) Seek to obtain, or consent to or fail to oppose a motion brought by any other Person for, approval by the Court or the Bankruptcy Court of any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the

(x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(m) Amalgamate, consolidate with or merge into or sell all or substantially all of their assets to another entity, or change their corporate or capital structure (including their organizational documents) or enter into any agreement committing to such actions except pursuant to (i) a Permitted Restructuring Transaction, or (ii) a Restructuring Transaction other than a Permitted Restructuring Transaction with the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(n) Make an announcement in respect of, enter into any agreement or letter of intent with respect to, or attempt to consummate, or support an attempt to consummate by another party, any transaction or agreement outside the ordinary course of business except for a Permitted Restructuring Transaction;

(o) Enter into, extend, renew, waive or otherwise modify in any respect the terms of any existing operational arrangement without the prior approval of the Monitor, provided that, where this Term Sheet otherwise contains express provisions or restrictions with respect to particular operational arrangements or categories of operational arrangements, such express provisions or restrictions shall apply;

(p) Seek, obtain, support, make or permit to be made any Court Order or any change, amendment or modification to any Court Order in respect of any amendment relating to the Interim Facility, the SISP or any other matter that affects the Interim Lenders, except with the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion or as contemplated by the SISP;

(q) Enter into any settlement agreement or agree to any settlement arrangements with any Governmental Authority or regulatory authority in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against any one of them without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), or make any payments or repayments to customers outside the ordinary course of business, other than those set out in the DIP Budget;

(r) Without the approval of the Court or the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion, cease to carry on their business or any material activities as currently being conducted or modify or alter in any material manner the nature and

type of their operations or business;

(s) Seek, or consent to the appointment of, a receiver or licensed insolvency trustee or any similar official in any jurisdiction; or

(t) Use, whether directly or indirectly, and whether immediately, incidentally or ultimately, any proceeds of the Interim Facility for any purpose that results in a violation of the provisions of Regulation U of the Board of Governors of the Federal Reserve System of the United States.

23. **EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events shall constitute an event of default (each an "**Event of Default**") under this Term Sheet:

(a) Failure of the Borrower to pay principal, interest or other amounts when due pursuant to this Term Sheet or any other Credit Documents;

(b) Failure of any Credit Party to perform or comply with any term, condition, covenant or obligation pursuant to this Term Sheet or any other Credit Document and such failure remains unremedied for more than three (3) Business Days, *provided that*, where another provision in this Section 23 provides for a shorter or no cure period in respect of a particular Event of Default, such other provision shall apply;

(c) Any representation or warranty by a Credit Party made or deemed to be made in this Term Sheet or any other Credit Document is or proves to be incorrect or misleading in any material respect as of the date made or deemed to be made;

(d) Issuance of any Court Order (i) dismissing the Restructuring Proceedings or lifting the stay of proceedings therein to permit the enforcement of any security against any Credit Party or their Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receivership order against or in respect of any Credit Party, in each case which order is not stayed pending appeal thereof, and other than in respect of a non-material asset not required for the operations of any Credit Party's business and which is subject to a Permitted Priority Lien; (ii) granting any other Lien in respect of the CCAA Applicants' Collateral that is in priority to or *pari passu* with the Interim Lenders' Charge other than as permitted pursuant to this Term Sheet, (iii) modifying this Term Sheet or any other Credit Document without the prior written consent of the Interim Lenders and the Existing Credit Facility Agent in their sole and absolute discretion; (iv) commencing any proceedings in respect of the Credit Parties pursuant to Chapter 7 or Chapter 11 of the Bankruptcy Code; (v) approving a Restructuring Transaction, other than a Permitted Restructuring Transaction, that has not been previously consented to in writing by the Interim

Lenders and the Existing Credit Facility Agent, (vi) staying, reversing, vacating or otherwise modifying any Court Order relating to the Interim Facility, the SISP or any other matter that affects the Interim Lenders without the prior written consent of the (x) Supermajority Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion (except as contemplated by the SISP itself) or (vii) limiting or conditioning the right of the Interim Lenders to credit bid pursuant to Section 32 hereof;

(e) Unless consented to in writing by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, the expiry without further extension of the stay of proceedings provided for in the Amended Initial Order;

(f) (i) a Variance Report or Updated DIP Budget is not delivered when due under this Term Sheet or (ii) in respect of any Testing Period, there shall exist a variance in excess of the Permitted Variance for the period for which the Variance Report is prepared;

(g) Unless consented thereto in writing by (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), the filing by any of the Credit Parties of any motion or proceeding that (i) is not consistent with any provision of this Term Sheet, the Credit Documents, the Amended Initial Order, the Recognition Order (if applicable), or the SISP, as applicable, (ii) could otherwise be expected to have a material adverse effect on the interests of the Interim Lenders, (iii) seeks to continue the CCAA Proceedings under the jurisdiction of a court other than the Court, (iv) seeks to dismiss or convert the Chapter 15 Proceedings (if any), or (v) seeks to initiate any restructuring or insolvency proceedings other than the Restructuring Proceedings in any court or jurisdiction;

(h) Any proceeding, motion or application shall be commenced or filed by any Credit Party, or if commenced by another party, supported, remain unopposed or otherwise consented to by any Credit Party, seeking approval of any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent;

(i) The making by any Credit Party of a payment of any kind that is not permitted by this Term Sheet or the Credit Documents or is not in accordance with the DIP Budget, subject to the Permitted Variance;

(j) Except as stayed by order of the Court or the Bankruptcy Court or consented to by the Required Interim Lenders, a default under, revocation or cancellation of, any Material Contract;

(k) The denial or repudiation by any Credit Party of the legality, validity, binding nature or enforceability of this Term Sheet or any other Credit Documents;

(l) Except as stayed by order of the Court, the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of CDN$500,000 in the aggregate, against any Collateral, any Credit Party or any Credit Party's subsidiaries or such subsidiaries' property that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy;

(m) The Credit Parties or their affiliates (including any joint ventures in which the Credit Parties or their affiliates hold an interest) resuming mining operations without the consent of Washington Diamond in its sole and absolute discretion; *provided* that no Event of Default shall be deemed to have occurred based on a continuation of operations at the Diavik mine;

(n) The Credit Parties or their affiliates resume sales of diamond inventory to third parties; *provided*, *however*, that no Event of Default will be deemed to have occurred by virtue of a sale of diamond inventory from one Credit Party or an affiliate of a Credit Party to any other Credit Party or an affiliate of a Credit Party; *provided*, *further*, *however*, that no Event of Default shall be deemed to have occurred in the event that the Credit Parties or their affiliates undertake any sales of diamond inventory with the prior written consent of Washington Diamond, such consent not to be unreasonably withheld;

(o) Any Milestone set forth on **Schedule E** hereof shall not be satisfied; or

(p) The use of any proceeds of the Interim Facility to fund any obligations (including cash call or reclamation obligations) under any Joint Venture to which any Credit Party is party, without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion.

24. **REMEDIES:** Upon the occurrence of an Event of Default, and subject to the Court Orders, Washington Diamond may, and at the direction of the Required Interim Lenders shall, on behalf of itself and each of the Interim Lenders, in its sole and absolute discretion, elect to terminate the commitments hereunder and declare the Interim Financing Obligations to be immediately due and payable and refuse to permit further Advances. In addition, upon the occurrence of an Event of Default, Washington Diamond may, on behalf of itself and each of the Interim Lenders, in its sole and absolute discretion, subject to the Court Orders including any notice provision

contained therein:

(a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the CCAA Applicants or their Collateral, or for the appointment of a trustee in bankruptcy of the Borrower or any of the other Credit Parties;

(b) set-off or combine any amounts then owing by any Interim Lender to any Credit Party against the obligations of any of the Credit Parties to any Interim Lender hereunder;

(c) exercise the powers and rights of a secured party under the Personal Property Security Act (Alberta), or any federal, provincial, territorial or state legislation of similar effect; and

(d) exercise all such other rights and remedies under this Term Sheet, the Court Orders and Applicable Law.

In the event that, following the exercise of remedies set forth in this Section 24 and provided that Washington Diamond has taken possession of and holds, through an exercise of rights and remedies, any Collateral constituting diamonds, then for a period of 60 days (the "**Initial Holding Period**"), Washington Diamond shall hold such diamonds for the benefit of itself, the other Interim Lenders, the Existing Credit Facility Lenders and the Existing Credit Facility Agent. At all times during and after the Initial Holding Period, subject to the terms of this Section 24, (i) Washington Diamond shall have the right, but not the obligation, to purchase (x) from the remaining Interim Lenders, upon at least five (5) days prior written notice from Washington Diamond to the remaining Interim Lenders (which purchase may be made in the sole and absolute discretion of Washington Diamond), all Interim Financing Obligations held by such remaining Interim Lenders, and (y) from the Existing Credit Facility Lenders, upon at least five (5) days written notice from Washington Diamond to the Existing Credit Facility Agent (which purchase may be made in the sole and absolute discretion of Washington Diamond), all Obligations (as defined in the Existing Credit Agreement) and all Liens securing such Obligations held by such Existing Credit Facility Lenders (the right described in this subparagraph (ii), the "**Washington Diamond Call Right**"), and (ii) the Existing Credit Facility Lenders that are participating in the Interim Facility as Interim Lenders (the "**Participating Credit Facility Interim Lenders**") shall, upon at least five (5) days prior written notice from such Participating Credit Facility Interim Lenders to Washington Diamond (which purchase may be made in the sole and absolute discretion of the Participating Credit Facility Interim Lenders), have the right, but not the obligation, to purchase from Washington Diamond all (but not less than all) Interim Financing Obligations held by Washington Diamond (the right described in this subparagraph (ii), the "**Participating Credit Facility Interim Lender Call Right**"). The Participating Credit Facility Interim Lenders shall be prohibited from issuing a notice triggering the Participating Credit Facility Interim Lender Call Right if, at the time of issuing such notice, Washington Diamond has issued a notice triggering the Washington Diamond Call

Right. Washington Diamond shall be prohibited from issuing a notice triggering the Washington Diamond Call Right if, at the time of such notice, the Participating Credit Facility Interim Lenders have issued a notice triggering the Participating Credit Facility Interim Lender Call Right.

In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, the Participating Credit Facility Interim Lenders shall be required to, upon at least five (5) days written notice from Washington Diamond to the Existing Credit Facility Agent (which request may be made in the sole and absolute discretion of Washington Diamond), purchase from Washington Diamond all (but not less than all) Interim Financing Obligations held by Washington Diamond at par *plus* any interest, fees, and expenses incurring during and after the Initial Holding Period (the obligation of the Participating Credit Facility Interim Lenders set forth in this paragraph, the "**Participating Credit Facility Interim Lender Put Obligation**"). Washington Diamond or the Participating Credit Facility Interim Lenders (as applicable) shall close any transactions related to the Washington Diamond Call Right, the Participating Credit Facility Interim Lender Call Right, or the Participating Credit Facility Interim Lender Put Obligation as promptly as possible, but in no event later than 10 days following the issuance of the notice triggering such right or obligation.

If the Participating Credit Facility Interim Lender Call Right or the Participating Credit Facility Interim Lender Put Obligation is exercised, the proceeds resulting from recovery from the sale of the Collateral constituting diamonds shall be distributed: (i) first, to all costs and expenses incurred by or on behalf of the Existing Credit Facility Agent; (ii) second, to the Participating Credit Facility Lenders in respect of their pro-rata contributions to the Interim Facility; (iii) third, to the Participating Credit Facility Lenders in respect of their pro rata contributions to the Existing Credit Facility, and (iv) fourth, to the remaining Existing Credit Facility Lenders who are not Participating Credit Facility Interim Lenders in respect of their pro rata contributions to the Existing Credit Facility. If there are no Participating Credit Facility Interim Lenders, the Participating Credit Facility Interim Lender Put Obligation shall be that of the Existing Credit Facility Agent unless the Existing Credit Facility Agent has issued a Diamonds Sale Request in accordance with the terms hereof.

In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, provided that Washington Diamond has not issued a notice triggering the Participating Credit Facility Interim Lender Put Obligation and the Existing Credit Facility Agent has not issued a Diamonds Sale Request, Washington Diamond shall be permitted to liquidate the diamond inventory, with the proceeds being distributed in priority as among the Interim Facility Lender and the Existing Credit Facility Lenders in accordance with the Lien priority provisions hereof. Subject to the immediately preceding sentence, five (5) days prior to any sale of the diamond inventory set forth in this paragraph, Washington Diamond shall issue a written notice to the Existing Credit Facility Agent of Washington Diamonds' intention to sell such

diamond inventory, during which notice period, the Participating Credit Facility Interim Lenders will be permitted to exercise the Participating Credit Facility Interim Lender Call Right. In the event that the Participating Credit Facility Interim Lender Call Right, to the extent applicable, is not exercised during this five (5) day notice period, such Participating Credit Facility Interim Lender Call Right shall be deemed to have been irrevocably waived.

Notwithstanding the foregoing, during the Initial Holding Period of 60 days, the Existing Credit Facility Agent may issue to Washington Diamond a written notice, requesting Washington Diamond to sell all the diamonds that are Collateral of the Interim Lenders ("**Diamonds Sale Request**").

Upon the issuance of a Diamonds Sale Request:

- The Participating Credit Facility Interim Lender Call Right, any right of purchase of the Interim Facility Obligations and the Participating Credit Facility Interim Lender Put Obligations shall be void and no longer exercisable;

- Any subordination with respect to the October Advance shall be terminated and the October Advance, if advanced in part or in whole, shall rank equal in priority to all other Interim Facility Obligations; and

- Washington Diamond shall have 10 days to respond to such request, pursuant to which it will either accept or reject the Diamonds Sale Request.

<u>Rejection of Diamonds Sale Request:</u>

- Washington Diamond shall have no liability to the Existing Credit Facility Agent or Existing Credit Facility Lenders in connection with a rejection of the Diamonds Sale Request, including, without limitation, the timing of any future disposition of diamonds, but such rejection shall not relieve Washington Diamond of any obligation under Applicable Law with respect to the manner of disposition of Collateral.

<u>Acceptance of Diamonds Sale Request</u>

- Any disposition of diamonds shall be permitted to be sold in one or more transactions, in Washington Diamond's sole and absolute discretion, including without limitation, with respect to the timing, process, and manner of such disposition; and

- Washington Diamond shall have no liability of any kind to the Existing Credit Facility Agent or the Existing Credit Facility Lenders with respect to the disposition of any diamonds, including without limitation the timing, process, and manner of disposition, and the Existing Credit Facility Agent and the Existing Credit

Facility Lenders covenant not to sue or otherwise take any action with respect to such disposition, except for any claims that Washington Diamond's conduct with respect to the process and manner of such disposition(s) constitutes gross negligence or willful misconduct.

The Parties acknowledge and agree that any sale of diamonds by auction, and any direct to customer sale in a manner generally consistent with past practice, shall be deemed by all parties to be commercially reasonable.

25. **RIGHT OF REPURCHASE**

In the event that the purchase agreement governing the Stalking Horse Transaction is terminated, the Existing Credit Facility Lenders shall have the right, but not the obligation, to purchase from the Interim Lenders, upon at least five (5) days prior written notice from the Existing Credit Facility Lenders to Washington Diamond (which request may be made in the sole and absolute discretion of the Existing Credit Facility Lenders) either:

(a) all outstanding Interim Facility Obligations (including, for the avoidance of doubt, any accrued and unpaid interest, expenses and fees as of the date of such purchase); or

(b) a portion of the Advances made by the Interim Lenders, together with a ratable portion of accrued and unpaid interest, expenses and fees associated with such Advances (such purchase, a "**Partial Purchase**").

In the Event of a Partial Purchase, any remaining Interim Facility Obligations shall be senior in priority in all respects relative to any financing used to facilitate such Partial Purchase.

26. **INDEMNITY AND RELEASE:**

The Credit Parties agree, on a joint and several basis, to indemnify and hold harmless each of the Interim Lenders and their respective directors, officers, employees, agents, attorneys, counsel and advisors (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person (collectively, "**Claims**") as a result of or arising out of or in any way related to the Interim Facility or this Term Sheet and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim; *provided*, *however*, the Borrower and other Credit Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence, wilful misconduct or bad faith of the applicable Indemnified Person as finally determined by a court of competent jurisdiction, or (y) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Borrower or the other Credit Parties. None of the Interim Lenders, the

Indemnified Persons, nor the Credit Parties shall be responsible or liable to any other person for consequential or punitive damages.

Notwithstanding anything to the contrary herein, the indemnities granted under this Term Sheet shall survive any termination of the Interim Facility.

27. **TAXES:**

All payments by the Borrower and any other Credit Parties under this Term Sheet to the Interim Lenders, including any payments required to be made from and after the exercise of any remedies available to the Interim Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any Governmental Authority country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes are required by Applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to any Interim Lender under this Term Sheet, the amount so payable to such Interim Lender shall be increased by an amount necessary to yield to such Interim Lender on a net basis after payment of all Withholding Taxes, the amount payable under this Term Sheet at the rate or in the amount specified herein and the Borrower shall provide evidence satisfactory to such Interim Lender that the Taxes have been so withheld and remitted.

If the Credit Parties pay an additional amount to an Interim Lender to account for any deduction or withholding, such Interim Lender shall, at the sole cost and expense of the Credit Parties, reasonably cooperate with the applicable Credit Parties to obtain a refund of the amounts so withheld and paid to the Interim Lender. Any refund of an additional amount so received by such Interim Lender, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund which such Interim Lender determines in its sole discretion will leave it, after such payment, in no better or worse position than it would have been if no additional amounts had been paid to it), net of all out of pocket expenses of such Interim Lender, shall be paid over by such Interim Lender to the applicable Credit Parties promptly. If reasonably requested by the Credit Parties, such Interim Lender shall apply to the relevant Governmental Authority to obtain a waiver from such withholding requirement, and such Interim Lender shall reasonably cooperate, at the sole cost and expense of the Credit Parties, with the applicable Credit Parties and assist such Credit Parties to minimize the amount of deductions or withholdings required. The Credit Parties, upon the request of such Interim Lender, shall repay any portion of the amount repaid by such Interim Lender pursuant to this Section 27 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Interim Lender is required to repay such portion of the refund to such Governmental Authority. This Section 27 shall not be construed to require any of the Interim Lenders to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person. The Interim Lenders shall not by virtue of anything in this

Term Sheet or any other Credit Document be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund on behalf of the Credit Parties.

28. **FURTHER ASSURANCES:** The Credit Parties shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Required Interim Lenders may reasonably request for the purpose of giving effect to this Term Sheet.

29. **ENTIRE AGREEMENT; CONFLICT:** This Term Sheet, including the schedules hereto and any other Credit Documents delivered in connection with this Term Sheet, constitute the entire agreement between the parties relating to the subject matter hereof.

30. **AMENDMENTS, WAIVERS, ETC.:** No waiver or delay on the part of the Interim Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing (including by e-mail) by the Required Interim Lenders, the Supermajority Interim Lenders, Washington Diamond, the Existing Credit Facility Agent, or each Interim Lender (as applicable) and delivered in accordance with the terms of this Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given.

31. **ASSIGNMENT:** Subject to the consent of Washington Diamond (not to unreasonably withheld), any Interim Lender may assign this Term Sheet and its rights and obligations hereunder, in whole or in part, to any affiliate of an Interim Lender in its discretion (subject in all cases to (i) providing the Monitor and the other Interim Lenders with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of such Interim Lender hereunder, and (ii) the assignee providing notice to the Credit Parties to confirm such assignment). Neither this Term Sheet nor any right or obligation hereunder may be assigned by any Credit Party.

32. **CREDIT BIDDING**: In any sale of any Credit Party's Collateral, Washington Diamond, on behalf of itself and each of the other Interim Lenders shall be permitted, in its sole and absolute discretion, to credit bid up to the full amount of the then outstanding Interim Financing Obligations; *provided* that, prior to making any such credit bid, Washington Diamond shall obtain the prior consent of the Existing Credit Facility Agent, such consent not to be unreasonably withheld; *provided further* that such consent shall not be required for any credit bid submitted by any affiliate of Washington Diamond in connection with the Stalking Horse Transaction or any substantially similar transaction, subject to the repayment in full in cash of any Advances (plus accrued interest, expenses, and fees) held by Interim Lenders other than Washington Diamond and its affiliates.

33. **SEVERABILITY:** Any provision in this Term Sheet which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

34.	**NO THIRD PARTY BENEFICIARY:**	No person, other than the Credit Parties, the Interim Lenders and the Indemnified Persons, is entitled to rely upon this Term Sheet and the parties expressly agree that this Term Sheet does not confer rights upon any other party.
35.	**COUNTERPARTS AND SIGNATURES:**	This Term Sheet may be executed in any number of counterparts and by electronic transmission including "pdf email", each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.
36.	**NOTICES:**	Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent email to the such Person at its address set out on its signature page hereof, with a copy to counsel. Any such notice, request or other communication hereunder shall be concurrently sent to the Monitor and its counsel. Any such notice shall be deemed to be given and received when received, unless received after 5:00 p.m. Eastern Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.
37.	**ENGLISH LANGUAGE:**	The parties hereto confirm that this Term Sheet and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*
38.	**GOVERNING LAW AND JURISDICTION:**	This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. Without prejudice to the ability of the Interim Lender to enforce this Term Sheet in any other proper jurisdiction, the Credit Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.
39.	**JOINT & SEVERAL:**	The obligations of the Credit Parties hereunder are joint and several.
40.	**CONSENTS AND APPROVALS**	No Interim Lender shall have any liability to any other Interim Lender or any other person by virtue of making, providing, or taking or not making, providing, or taking any consent, acceptance, waiver, modification, agreement, determination, election, permission, or action hereunder, or by taking or not taking any other action permitted or contemplated hereby (including, without limitation, any consent, acceptance, waiver, modification, agreement, determination, election, permission, or action taken or not taken in connection with the enforcement by the Interim Lenders of any remedies against the Collateral or the Credit Parties hereunder).
41.	**SUPPORT OF TRANSACTION**	By executing this Term Sheet, each Interim Lender, each Existing Credit Facility Lender, and the Existing Credit Facility Agent agree that it will:

(a) Cooperate with each other Interim Lender, Existing Credit Facility Lender and the Existing Credit Facility Agent with respect to the SISP, the Stalking Horse Transaction or the implementation thereof, and to use commercially reasonable efforts to pursue and support implementation of the same;

(b) Not vote for, consent to, support or participate in the formulation of any other restructuring, exchange, or settlement of any of the indebtedness of or claims against the Applicants, any transaction other than the Stalking Horse Transaction (except as provided for in the SISP) involving the Applicants, any of their assets or stock, or any plan of arrangement, reorganization or liquidation under any bankruptcy, insolvency or similar laws;

(c) Not directly or indirectly seek, solicit, support, formulate entertain, encourage or engage in any inquiries, or discussions, or enter into any agreements relating to, any transaction other than the Stalking Horse Transaction (except as provided for in the SISP) and/or any restructuring, plan of arrangement or reorganization, receivership, proposal or offer of dissolution, winding up, liquidation, reorganization, merger, transaction, sale, assignment for the benefit of creditors, or restructuring in any manner of any of the Applicants (or any of their assets, liabilities or equity interests;

(d) Not object to the Interim Facility, the SISP, the Stalking Horse Transaction or the implementation thereof or initiate any legal proceedings, that are inconsistent with, or that would delay, prevent, frustrate or impede the approval or consummation of, the Interim Facility, the SISP, the Stalking Horse Transaction or any transactions related thereto, or take any other action that is barred by this Term Sheet; and

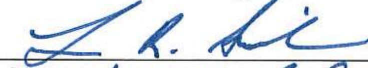
(e) Not solicit, encourage, or direct any Person to undertake any action set forth in subparagraphs (b) through (d) above.

42. **AMENDMENT AND RESTATEMENT**	The terms and provisions of the Original Term Sheet shall be and are hereby amended, superseded and restated in their entirety by the terms and provisions of this Term Sheet.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.

Washington Diamond Lending, LLC

Address:
Attention:
Email:

Per: 
Name: Lawrence R. Simkins
Title: President
I have authority to bind the LLC.

Dominion Diamond Mines ULC

Address:
Attention:
Email:

Per: ______________________
Name:
Title:
I have authority to bind the corporation.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.

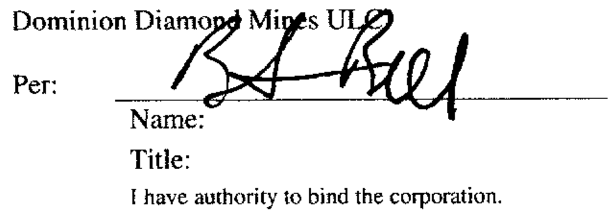
Washington Diamond Lending, LLC

Address:
Attention:
Email:

Per: ______________________________

Name:
Title:
I have authority to bind the LLC.

Dominion Diamond Mines ULC



Address:
Attention:
Email:

Per: ______________________________

Name:
Title:
I have authority to bind the corporation.

Credit Suisse AG, Cayman Islands Branch, as Existing Credit Facility Agent and Lender

Address:
Eleven Madison Avenue
New York, NY 10010-3629
Attention: Didier Siffer
Email: didier.siffer@credit-suisse.com

Per:

Name: Didier Siffer
Title: Managing Director

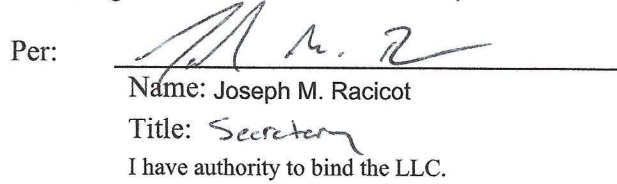
-and-

Name: Megan Kane
Title: Managing Director

We have authority to bind the entity.

Address:
Attention:
Email:

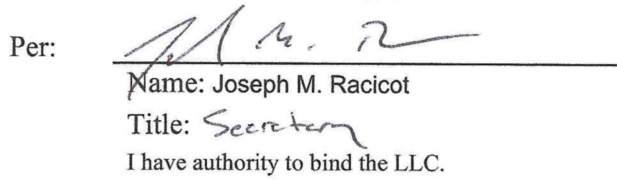
Washington Diamond Investments, LLC



Per: ______________________
Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Address:
Attention:
Email:

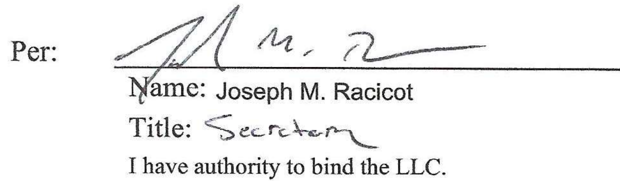
Dominion Diamond Holdings, LLC



Per: ______________________
Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Address:
Attention:
Email:

Dominion Finco Inc.



Per: ______________________
Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Address:
Attention:
Email:

Dominion Diamond Delaware Company LLC

Per: ______________________
Name: Kristal Kaye
Title:
I have authority to bind the LLC.

Address:
Attention:
Email:

Dominion Diamond Canada ULC

Per: ______________________
Name: Kristal Kaye
Title:
I have authority to bind the LLC.

Washington Diamond Investments, LLC

Address:
Attention:
Email:

Per: ______________________________
Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Diamond Holdings, LLC

Address:
Attention:
Email:

Per: ______________________________
Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

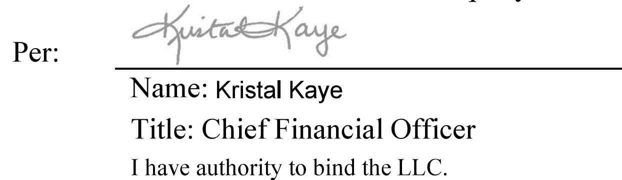
Dominion Finco Inc.

Address:
Attention:
Email:

Per: ______________________________
Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Diamond Delaware Company LLC

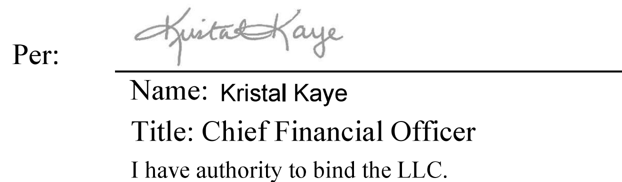
Address:
Attention:
Email:



Per: ______________________________
Name: Kristal Kaye
Title: Chief Financial Officer
I have authority to bind the LLC.

Dominion Diamond Canada ULC

Address:
Attention:
Email:



Per: ______________________________
Name: Kristal Kaye
Title: Chief Financial Officer
I have authority to bind the LLC.

SCHEDULE "A"
DEFINED TERMS

"**Advance**" means an amount of the Interim Facility advanced to the Borrower pursuant to the terms hereof from time to time.

"**Administration Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Initial Order in an aggregate amount not to exceed CDN$3,500,00 to secure the fees and expenses of (i) the legal and financial advisors of the Credit Parties, (ii) the Monitor and its counsel, in connection with the CCAA Proceedings; and (iii) the monthly fees owing to the SISP Advisor under its engagement letter with the Applicants, but no other fees or expenses provided for therein.

"**Advance Conditions**" has the meaning given thereto in Section 7.

"**Advance Request Certificate**" has the meaning given thereto in Section 5.

"**Amended Initial Order**" has the meaning given thereto in Section 7(d).

"**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Authority having the force of law.

"**Bankruptcy Code**" means title 11 of the *United States Code*.

"**Bankruptcy Court**" has the meaning given thereto in Section 21(t).

"**Bankruptcy Court Order**" has the meaning given thereto in Section 21(d).

"**Borrower**" has the meanings given thereto in Section 1.

"**Business Day**" means any day other than a Saturday, Sunday or any other day on which banks in Calgary, Alberta are not open for business.

"**CCAA**" has the meaning given thereto in the Recitals.

"**CCAA Proceedings**" has the meaning given thereto in the Recitals.

"**Claims**" has the meaning given thereto in Section 26.

"**Collateral**" means, in respect of a Person, all current or future assets, businesses, undertakings and properties of such Person, real and personal, tangible or intangible, including all proceeds thereof, other than Excluded Assets.

"**Court**" has the meaning given thereto in the Recitals.

"**Court Order**" means any CCAA Order or Bankruptcy Court Order and "**Court Orders**" means, collectively, all such orders.

"**Credit Documents**" means this Term Sheet, the Guarantee delivered by the Guarantors, and any other document delivered in connection with or relating to this Term Sheet from time to time.

"**Credit Parties**" means the Borrower and the Guarantors, collectively.

"**Criminal Code Interest**" has meaning given thereto in Section 17(a).

"**Criminal Rate**" has meaning given thereto in Section 17(a).

"**Default**" means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

"**Defaulting Lender**" means any Interim Lender other than Washington Diamond that (a) has failed to fund any portion of the Advances required to be funded by it hereunder within two Business Days of the date required to be funded by it hereunder unless such failure has been cured, (b) has been determined by a court of competent jurisdiction or regulator to be insolvent or is unable to meet its obligations or admits in writing it is unable to pay its debts as they generally become due, (c) is the subject of a bankruptcy or insolvency proceeding, (d) is subject to or is seeking the appointment of an administrator, regulator, conservator, liquidator, receiver, trustee, custodian or other similar official over any material portion of its assets or business, or (e) fails to confirm in writing that it will comply with its obligations hereunder after written request from the Borrower, or an Interim Lender who provides notice in writing, or makes a public statement to the effect, that it does not intend to comply with its funding obligations hereunder.

"**Diavik Collateral**" means (a) the assets owned by the Diavik Joint Venture, (b) the Borrower's interest in the Diavik Joint Venture, and (c) the diamond inventory produced at the Diavik mine and not held by the Credit Parties or their direct or indirect affiliates as of the commencement of these CCAA Cases, and in each case, including all proceeds thereof.

"**Diavik JV Priority Liens**" means any Liens arising under Section 9.4 of the Diavik Joint Venture Agreement.

"**DIP Budget**" means the weekly financial projections prepared by the Credit Parties covering the period commencing on the week ended April 24, 2020, and ending on the week ending October 30, 2020, on a weekly basis, which shall be in form and substance acceptable to the Required Interim Lenders in their sole and absolute discretion and the Existing Credit Facility Agent in its reasonable discretion, which financial projections may be amended from time to time in accordance with Section 14. For greater certainty, for purposes of this Term Sheet, the DIP Budget shall include all supporting documentation provided in respect thereof to the Required Interim Lenders and the Existing Credit Facility Agent .

"**Directors' Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Initial Order in favour of the directors and officers of the CCAA Applicants, in an amount not to exceed CDN$4,000,000.

"**Event of Default**" has the meaning given thereto in Section 23.

"**Excluded Assets**" means voting equity interests in Dominion Diamond (India) Private Limited in excess of 65% of the aggregate voting equity interests of Dominion Diamond (India) Private Limited.

"**Existing Credit Agreement**" means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, and each of the other parties and lenders party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"**Existing Credit Facility**" means the facility governed by the Existing Credit Agreement.

"**Existing Credit Facility Agent**" means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement.

"**Existing Credit Facility Lenders**" means those lenders under the Existing Credit Agreement.

"**Facility Amount**" has the meaning given thereto in Section 5.

"**Filing Date**" means the date of commencement of the CCAA Proceedings.

"**First Lien Facility LC Obligations**" means those Obligations (as defined in the Existing Credit Agreement) related to or arising from LC Exposure (as defined in the Existing Credit Agreement).

"**Funded First Lien Facility Obligations**" means those Obligations (as defined in the Existing Credit Agreement) related to or arising from Loans (as defined in the Existing Credit Agreement).

"**Governmental Authority**" means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

"**Guarantee**" means a guarantee of the Interim Financing Obligations made by each of the Guarantors in favour of the Interim Lenders, in form and substance satisfactory to the Required Interim Lenders.

"**Guarantors**" has the meaning given thereto in Section 3.

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

"**Initial DIP Budget**" has the meaning given thereto in Section 14.

"**Initial Order**" has the meaning given thereto in the Recitals.

"**Interim Facility**" has the meaning given thereto in Section 5.

"**Interim Facility Priority Collateral**" means all Collateral other than the Diavik Collateral.

"**Interim Financing Obligations**" means, collectively, all obligations owing by the Credit Parties pursuant to this Term Sheet and the other Credit Documents, including, without limitation, all principal, interest, fees, costs, expenses, disbursements and Interim Lender Expenses.

"**Interim Lenders**" has the meaning given thereto in Section 2.

"**Interim Lenders' Charge**" has the meaning given thereto in Section 7**.**

"**Interim Lender Expenses**" has the meaning given thereto in Section 8.

"**KERP Charge**" means the means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Amended Initial Order to secure the obligations of the CCAA Applicants to certain key employees pursuant to the terms of a key employee retention plan in an amount not to exceed CDN$600,000, in the aggregate.

"**Liens**" means (a) all liens, hypothecs, charges, mortgages, deeds of trusts, trusts, deemed trusts (statutory or otherwise), constructive trusts, encumbrances, security interests, and statutory preferences of every kind and nature whatsoever, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Material Contract**" means any contract, licence or agreement: (i) to which any Credit Party is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of any Credit Party; and (iii) which a Credit Party cannot within a commercially reasonable timeframe replace by an alternative and comparable contract with comparable commercial terms.

"**Maturity Date**" has the meaning given thereto in Section 13.

"**Monitor**" has the meaning given thereto in Section 12.

"**Non-Consenting Lender**" means any Interim Lender other than Washington Diamond that has not provided its consent, acceptance, waiver or agreement (including in connection with any proposed amendment or modification to this Term Sheet) where requested to do so by the Borrower or Washington Diamond if such consent, acceptance, waiver or agreement (i) requires the consent of the Supermajority Interim Lenders, and (ii) Interim Lenders whose Commitments at the relevant time aggregate at least 65% of the total Commitments have consented to such consent, acceptance, waiver or agreement.

"**Operating Account**" means a bank account of the Borrower designated by the Borrower to receive Advances.

"**Original Currency**" has the meaning given thereto in Section 18.

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

"**Other Currency**" has the meaning given thereto in Section 18.

"**Outside Date**" means October 31, 2020.

"**Permitted Liens**" means (i) the Interim Lenders' Charge; (ii) any charges created under the Amended Initial Order or other Court Order subsequent in priority to the Interim Lenders' Charge and approved in writing by the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion; (iii) validly perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; (v) the Permitted Priority Liens; and (vi) the SISP Advisor Charge.

"**Permitted Priority Liens**" means (i) the Administration Charge; (ii) the Directors Charge; (iii) the KERP Charge; (iv) any amounts payable by a Credit Party for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in each case solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts has not been subordinated to the Interim Lenders' Charge granted by the Court; (v) any charges created under the Amended Initial Order related to the break fee with respect to the Stalking Horse Transaction; (vi) subject to any order of the CCAA Court and solely to the extent set forth in the Rio Subordination Agreement, the Diavik JV Priority Liens; *provided* that the Diavik JV Priority Liens shall constitute Permitted Priority

Liens solely with respect to the Diavik Collateral and solely to the extent that they constitute Liens over the Diavik Collateral or portions thereof; and (vii) solely with respect to the Diavik Collateral, the Liens of the Existing Credit Facility Agent to secure the Obligations under the Existing Credit Facility Agreement; *provided further* that, for the avoidance of doubt, Permitted Priority Liens shall not include any Liens securing any Credit Party's obligations under (a) the Existing Credit Agreement, (b) the indenture governing the 7.125% Senior Secured Second Lien Secured Notes due 2022 issued by certain of the Credit Parties, as amended, restated, supplemented or otherwise modified from time to time, and (c) any joint venture agreements, as amended, restated, supplemented or otherwise modified from time to time, to which any of the Credit Parties are party.

"**Permitted Restructuring Transaction**" means:

(i) the Stalking Horse Transaction;

(ii) a transaction that (a) provides for the repayment in full in cash of all Interim Financing Obligations outstanding at the time of closing of such Restructuring Transaction and (b) otherwise constitutes a "Successful Bid" as defined in and in accordance with the SISP; or

(iii) a transaction for the Non-Diavik Assets (as defined in the SISP) that (a) provides for repayment in full in cash of all Interim Financing Obligations; (b) otherwise constitutes a "Successful Bid" as defined in and in accordance with the SISP; and (c) maintains all liens and other rights held by the Agent on behalf of the First Lien Lenders securing all obligations under the Existing Credit Facility, to the Diavik Interest including, but not limited to, all diamond production from the Diavik Interest (but excluding in all respects those diamonds (and/or proceeds thereof) delivered to any of the CCAA Applicants or their direct or indirect controlled affiliates prior to the commencement of the CCAA), including the proceeds thereof.

"**Permitted Variance**" means an adverse variance of not more than 20% relative to the aggregate "Total Operating Disbursements" line item in the applicable DIP Budget; *provided*, *however*, that if any adverse variance is reversing a prior positive variance, such adverse timing variance shall not be counted towards the 20% variance threshold.

"**Person**" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"**Plan**" means any plan of compromise, arrangement, reorganization or similar arrangement filed pursuant to the CCAA, the Bankruptcy Code, or any other statute in any jurisdiction, in respect of any of the Credit Parties.

"**Recognition Order**" has the meaning given thereto in Section 21(t).

"**Required Interim Lenders**" means those Interim Lenders holding a majority of the Commitments and any outstanding Advances held by all Interim Lenders; *provided* that Required Interim Lenders must in all cases include Washington Diamond.

"**Restructuring Proceedings**" means, collectively, the CCAA Proceedings and the Chapter 15 Proceedings.

"**Restructuring Transaction**" means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, Plan or other material transaction of, or in respect of, all or any of the Credit Parties or their respective assets and liabilities and includes, without limitation, the Stalking Horse Transaction.

"**Rio Subordination Agreement**" means that certain subordination agreement between, among others, Diavik Diamond Mines (2012) Inc. and the Existing Credit Facility Agent dated November 1, 2017.

"**SISP**" means a Sales and Investment Solicitation Process authorized pursuant to the Amended Initial Order (or other Order of the Court, as the case may be), as amended, but only to the extent such amendment is consented to by the Stalking Horse Bidder.

"**SISP Advisor**" means Evercore Group LLC.

"**SISP Advisor Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Amended Initial Order to secure the Borrowers' obligations to the SISP Advisor under the engagement letter between the SISP Advisor and the Borrower.

"**Stalking Horse Transaction**" means the transaction in respect of certain assets and property of the Credit Parties contemplated by the Letter of Intent signed by Washington Diamond Investments Holdings II, LLC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and the Borrower and dated May 21, 2020.

"**Supermajority Interim Lenders**" means those Interim Lenders holding at least 68% of the Commitments and outstanding Advances held by all Interim Lenders; *provided* that Supermajority Interim Lenders must in all cases include Washington Diamond.

"**Term Sheet**" means this amended and restated term sheet, as may be amended, modified, supplemented or restated from time to time in accordance with the provisions hereof.

"**Taxes**" has the meaning given thereto in Section 27.

"**Testing Period**" has the meaning given thereto in Section 14.

"**Updated DIP Budget**" has the meaning given thereto in Section 14.

"**Variance Report**" has the meaning given thereto in Section 14.

"**Washington Diamond**" means Washington Diamond Lending, LLC, a Delaware limited liability company.

"**Withholding Taxes**" has the meaning given thereto in Section 27.

SCHEDULE "B"
FORM OF ADVANCE CONFIRMATION CERTIFICATE

TO: The Interim Lenders

FROM: Dominion Diamond Mines ULC

DATE: ●, 2020

1. This certificate is delivered to you, as Interim Lenders, in connection with a request for an Advance pursuant to the Amended and Restated Interim Financing Term Sheet made as of June 15, 2020 between the Borrower and the Interim Lenders, as amended, supplemented, restated or replaced from time to time (the "**Term Sheet**"). All defined terms used, but not otherwise defined in this certificate shall have the respective meanings set forth in the Term Sheet, unless the context requires otherwise.

2. The Borrower hereby requests an Advance as follows in respect of the week commencing on ●, 2020:

Aggregate amount of Advance: US$●

3. All of the representations and warranties of the Credit Parties set forth in the Term Sheet are true and accurate in all material respects as at the date hereof, as though made on and as of the date hereof.

4. All of the covenants of the Credit Parties contained in the Term Sheet and all other terms and conditions contained in the Term Sheet to be complied with by the Credit Parties, not properly waived in writing by the Interim Lenders, have been fully complied with.

7. No Default or Event of Default has occurred nor will any such event occur as a result of the Advance hereby requested.

DOMINION DIAMOND MINES ULC

Per: ______________________________

Name:
Title:

I have authority to bind the corporation.

SCHEDULE “C”
DIP BUDGET

Dominion Diamond Mines
Consolidated Second Cash Flow Statement
For the 28-week period ending October 30, 2020

		Initial Stay Period																												
($ thousands)		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26	Week 27	Week 28	Weeks 1 - 28
Week Ending	Notes	24-Apr	1-May	8-May	15-May	22-May	29-May	5-Jun	12-Jun	19-Jun	26-Jun	3-Jul	10-Jul	17-Jul	24-Jul	31-Jul	7-Aug	14-Aug	21-Aug	28-Aug	4-Sep	11-Sep	18-Sep	25-Sep	2-Oct	9-Oct	16-Oct	23-Oct	30-Oct	Total
Operating Receipts																														
Sales	[1]	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Operating Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Disbursements																														
Payroll and Benefits	[2]	-	400	1,569	-	1,314	605	1,060	10	91	1,733	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,914	**20,507**
Consultants and Contractors	[3]	25	85	117	437	28	263	342	382	527	518	493	81	51	18	246	524	135	47	170	494	134	41	230	478	87	41	125	125	**6,244**
Rent	[4]	-	98	113	-	0	-	98	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	**701**
Equipment Leases		-	-	572	-	-	841	-	371	-	-	631	-	-	-	-	925	-	-	-	925	-	-	-	925	-	-	-	-	**5,191**
Underground Mining Costs	[5]	-	-	-	-	-	-	-	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	**2,646**
Travel	[6]	-	-	-	12	-	8	17	50	106	-	156	15	15	15	15	172	15	43	15	172	15	15	54	153	15	15	27	27	**1,152**
Insurance	[7]	-	-	-	-	2,418	-	-	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	407	-	-	**4,467**
IT & Software		-	-	73	413	15	62	19	70	149	396	498	-	-	-	-	368	44	-	-	382	4	-	-	382	69	-	35	35	**3,014**
IBA Payments	[8]	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	**1,899**
Power	[9]	-	-	-	-	-	-	-	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	**756**
Site Maintenance & Environment	[10]	-	-	-	-	88	33	42	54	253	298	530	253	237	275	219	474	89	40	44	419	53	53	35	419	35	53	17	17	**4,031**
CCAA Professional Fees	[11]	-	-	370	214	-	-	-	490	2,000	11,019	531	590	1,756	250	815	250	1,756	250	815	250	1,401	605	531	676	250	2,287	250	7,118	**34,473**
Critical Vendors Accounts Payable	[12]	-	-	-	1,524	58	-	163	1,085	1,085	1,085	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**5,000**
Net Taxes	[13]	-	(2,122)	-	1,757	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**(365)**
Other	[14]	-	-	-	-	-	-	-	433	551	2,040	395	176	416	163	1,276	334	40	192	15	226	15	1,686	178	299	15	2,241	139	3,576	**14,406**
Total Operating Disbursements		25	(1,539)	2,814	4,358	3,922	1,811	1,741	2,945	5,422	17,089	4,757	2,668	2,882	2,201	2,571	6,076	2,487	2,036	1,059	4,999	2,488	2,400	2,547	3,998	2,395	5,044	2,085	12,838	**104,120**
Startup Disbursements																														
Winter road construction		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,001	-	**1,001**
Diesel purchases / freight		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**-**
Ramp-up costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,900	-	-	**4,900**
Total Startup Disbursements		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,900	1,001	-	**5,901**
Net Change in Cash from Operations		(25)	1,539	(2,814)	(4,358)	(3,922)	(1,811)	(1,741)	(2,945)	(5,422)	(17,089)	(4,757)	(2,668)	(2,882)	(2,201)	(2,571)	(6,076)	(2,487)	(2,036)	(1,059)	(4,999)	(2,488)	(2,400)	(2,547)	(3,998)	(2,395)	(9,944)	(3,086)	(12,838)	**(110,022)**
Financing																														
Intercompany Receipts / (Disbursements)	[15]	-	-	-	-	-	(6)	(115)	(1)	(127)	1,689	(110)	(49)	-	(0)	888	(3,802)	(15)	(0)	(0)	(635)	-	1,666	(0)	(830)	-	2,222	(0)	(0)	**773**
Interest & Bank Charges	[16]	-	(276)	(70)	(195)	-	(191)	-	(153)	(46)	-	(1,248)	(153)	-	-	-	(237)	(153)	-	-	(237)	(153)	-	-	(1,248)	(153)	-	-	(686)	**(5,197)**
DIP Facility Interest		-	-	-	-	-	-	-	-	-	(16)	-	-	-	-	(124)	-	-	-	(186)	-	-	-	(249)	-	-	-	-	(348)	**(923)**
Governmernt Support Program		-	-	-	-	-	1,849	-	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**3,379**
DIP Facility Draw		-	-	-	-	-	-	-	-	-	14,200	14,200	-	-	-	-	14,200	-	-	-	14,200	-	-	-	14,200	-	14,200	-	-	**85,200**
Net Change in Cash from Financing		-	(276)	(70)	(195)	-	1,652	(115)	(153)	677	15,873	12,842	(202)	680	(0)	764	10,161	(168)	(0)	(187)	13,328	(153)	1,666	(249)	12,123	(153)	16,422	(0)	(1,034)	**83,233**
Net Change in Cash		(25)	1,264	(2,884)	(4,552)	(3,922)	(159)	(1,857)	(3,098)	(4,745)	(1,216)	8,085	(2,870)	(2,202)	(2,201)	(1,807)	4,085	(2,655)	(2,037)	(1,246)	8,329	(2,640)	(734)	(2,795)	8,125	(2,547)	6,477	(3,086)	(13,872)	**(26,789)**
Opening Cash		26,823	26,798	28,061	25,177	20,625	16,703	16,543	14,687	11,588	6,843	5,627	13,712	10,842	8,640	6,439	4,631	8,717	6,062	4,025	2,779	11,108	8,467	7,734	4,938	13,063	10,515	16,993	13,906	**26,823**
Ending Cash		**$ 26,798**	**$ 28,061**	**$ 25,177**	**$ 20,625**	**$ 16,703**	**$ 16,543**	**$ 14,687**	**$ 11,588**	**$ 6,843**	**$ 5,627**	**$ 13,712**	**$ 10,842**	**$ 8,640**	**$ 6,439**	**$ 4,631**	**$ 8,717**	**$ 6,062**	**$ 4,025**	**$ 2,779**	**$ 11,108**	**$ 8,467**	**$ 7,734**	**$ 4,938**	**$ 13,063**	**$ 10,515**	**$ 16,993**	**$ 13,906**	**$ 34**	**$ 34**

Kristal Kaye, Chief Financial Officer
Dominion Diamond Mines

Notes:
Management has prepared this Cash Flow Statement solely for the purposes of determining the liquidity requirements of the Company during the CCAA Proceedings.
The Cash Flow Statement is based on the probable and hypothetical assumptions detailed below. Actual results will likely vary from performance projected and such variations may be material.

[1] Receipts are assumed to be nil during the Forecast Period as COVID-19 related business disruptions have resulted in the Applicants being unable to sell diamonds in the normal course.
[2] Payroll and benefits relate to management and employees at Dominion's corporate office as well as two rotating shifts of employees that perform care and maintenance activities at the Ekati mine site.
[3] Consultants and contractors relate primarily to contract camp and catering staff and consultants.
[4] Rent includes lease costs, utilities and property taxes for the Applicants' offices in Calgary and Yellowknife.
[5] Underground mining costs relate to dewatering costs and standby fees for the contractor that operates the underground mine.
[6] Travel relates to airlines that transport employees and contractors to the Ekati mine site.
[7] Insurance relates to a premium financing arrangement for the Applicants' insurance policies including Directors & Officers insurance.
[8] Impact and benefit agreements are assumed to remain current during the forecast period.
[9] Power includes contractors that operate the power plant at the Ekati mine.
[10] Site maintenance and environmental costs are based on Dominion's care and maintenance plan and are assumed to be consistent with current run rates.
[11] CCAA Professional fees includes the Applicants' Canadian legal counsel, United States legal counsel and financial advisor, the Monitor and the Monitor's legal counsel, Canadian and United States legal counsel to the DIP Lender, Canadian and United States legal counsel and financial advisor to the Revolving Facility Lenders.
[12] The Initial Order authorizes the Applicants to pay certain pre-filing amounts owing to critical suppliers of up to $5.0 million, with prior approval of the Monitor.
[13] Net Taxes includes pre-filing fuel tax payments for March and April and refund for certain pre-filing GST payments.
[14] Other operating costs include miscellaneous disbursements and a contingency including payments attendant to and required for closing subject to court approval.
[15] Intercompany accounts relate to cash calls to the joint venture partner in respect of the Ekati Core Zone and cash requirements of DDMC, DDMNV (Belgium) and DDIPL (India) beyond existing cash balances.
[16] Interest and bank fees are comprised of interest and letter of credit fees in respect of the Applicants' Revolving Facility.

Memo - DIP financing assumptions

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
Wind-down estate	C$000			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,420

Memo - DIP financing assumptions

Interest	5.25%
Fees	0.00%
Facility Size - US$000	60,000
Exchange rate	1.42
Facility Size - C$000	85,200
Target min liquidity before dr	2,500
Number of Draws	6
First Draw	14,200
Draw size	14,200

DIP Balance	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
Open					-	-	-	-	-	-	14,200	28,400	28,400	28,400	28,400	28,400	42,600	42,600	42,600	42,600	56,800	56,800	56,800	56,800	71,000	71,000	85,200	85,200	
Draw						-	-	-	-	14,200	14,200	-	-	-	-	14,200	-	-	-	14,200	-	-	-	14,200	-	14,200	-	-	
Closing	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 14,200	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 42,600	$ 42,600	$ 42,600	$ 42,600	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 71,000	$ 71,000	$ 85,200	$ 85,200	$ 85,200	
Undrawn Amount	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 71,000	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 42,600	$ 42,600	$ 42,600	$ 42,600	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 14,200	$ 14,200	$ -	$ -	$ -	
Interest						$ -				$ 16					$ 124				$ 186				$ 249					$ 348	**923**

	Week 1 24-Apr	Week 2 1-May	Week 3 8-May	Week 4 15-May	Week 5 22-May	Week 6 29-May	Week 7 5-Jun			Week 8 12-Jun	Week 9 19-Jun	Week 10 26-Jun	Week 11 3-Jul	Week 12 10-Jul	Week 13 17-Jul	Week 14 24-Jul	Week 15 31-Jul	Week 16 7-Aug	Week 17 14-Aug	Week 18 21-Aug	Week 19 28-Aug	Week 20 4-Sep	Week 21 11-Sep	Week 22 18-Sep	Week 23 25-Sep	Week 24 2-Oct	Week 25 9-Oct	Week 26 16-Oct	Week 27 23-Oct	Week 28 30-Oct	
[2] Employee Payroll, Benefits & Source Deductions																															
Payroll - Ekati	-	400	1,569	-	1,314	605	1,060	5,049	(101)	10	91	1,540	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,527	24,874
Payroll - SGA								-	-																						
Retention Bonus	-	-	-	-	-	-	-	-	-	-	-	193	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	387	580
	-	400	1,569	-	1,314	605	1,060	5,049	(101)	10	91	1,733	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,914	25,454
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[3] Consultants or Contractors																															
Camp and Catering	-	-	-	42				608	(565)	-	-	-	309	-	-	-	-	309	-	-	-	299	-	-	-	299					
Freight	-	-	-	143	28	263	342	197	579	36	36	36	36	18	18	-	-	18	18	-	18	18	18	18	18	-					
Tires	-	-	-	-				122	(122)	122	-	122	-	-	-	-	-	122	-	-	-	122	-	-	-	122					
Exploration Standing Charges	-	-	-	-				12	(12)	-	-	-	4	-	-	-	-	4	-	-	-	4	-	-	4	-					
Point Lake PFS								-	-		65	-	22	22			47	3	3	-	6	3	3	-	9	-					
R&R Work								-	-		-						20														
MUG Resource								-	-		15			8				8													
Lease Reduction Plan								-	-		-	15		5				5													
Alternative Mining - Lynx								-	-			70		18	-	12			20												
Alternative Mining - Sable								-	-			50	20						10				30								
552 Polishing	-	-	-	-				-	-	71	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-					
Washington G&A	-	-	-	-				-	-	-	-	89	-	-	-	-	89	-	-	-	-	-	-	-	-	-					
Exco Consultants (Incl. Brendan Bell)	-	70	-	-				115	(46)	23	23	-	23	-	23	-	23	-	23	-	23	-	-	23	-	-					
Audit	-	-	-	45				200	(154)	110	-	-	-	-	-	-	-	-	-	-	-	-	-	-	73	-					
Tax, Legal and other professional consultants	-	-	45					65	(20)	20	10	10	20	10	10	6	-	48	-	41	-	43	-	-	-	41					
HR Consultants	-	-	-	-				6	(6)	-	6	-	6	-	-	-	-	-	-	6	-	-	-	-	-	16					
Other	25	15	72	206				318	-	-	372	126	54	0	-	0	68	7	62	-	123	5	83	-	126	0					
	25	85	117	437	28	263	342	1,643	(346)	382	527	518	493	81	51	18	246	524	135	47	170	494	134	41	230	478	87	41	125	125	7,541
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[4] Rent																															
Calgary and Yellowknife	-	98	117	-	0	-	98	428	(115)	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	1,018
	-	98	117	-	0	-	98	428	(115)	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	1,018
	-	-	3	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Equipment Leases																															
Mining Equipment Leases	-	-	572	-	-	841	-	964	450	-	-		572	-	-	-	-	572	-	-	-	572	-	-	-	572	-	-	-	-	5,114
Yellowknife Fuel Tanks	-	-	-	-				526	(526)	371	-	-	59	-	-	-	-	353	-	-	-	353	-	-	-	353	-	-	-	-	1,490
	-	-	572	-	-	841	-	1,490	(77)	371	-	-	631	-	-	-	-	925	-	-	-	925	-	-	-	925	-	-	-	-	6,604
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[5] Underground Mining Costs																															
Underground Mining Costs	-	-	-	-				882	(882)	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	2,646
	-	-	-	-	-	-	-	882	(882)	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	2,646
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[6] Travel																															
To and From Site	-	-	-	12	-	8	17	313	(275)	50	106	-	156	-	-	-	-	156	-	-	-	156	-	-	-	153	-	-	-	-	854
Executive travel once routes open up	-	-	-	-	-	-	-	-	-	-	-	-	-	15	15	15	15	15	15	15	15	15	15	15	15	-	15	15	15	15	248
Community	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	27	-	-	-	-	38	-	-	-	11	11	88
	-	-	-	12	-	8	17	313	(275)	50	106	-	156	15	15	15	15	172	15	43	15	172	15	15	54	153	15	15	27	27	1,189
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[7] Insurance																															
CAFO Insurance Premium Finance (Property)	-	-	-	-	395	-	-	802	(407)	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	407	-	-	2,839
Corporate	-	-	-	-	2,023	-	-	2,135	(112)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,046
	-	-	-	-	2,418	-	-	2,937	(519)	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	407	-	-	6,885
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
IT & Software																															
Ekati Site Infrastructure	-	-	-	-	15	62	19	315	(219)	70	149	-	315	-	-	-	-	184	-	-	-	199	-	-	-	199	-	-	-	-	1,308
Washington IT Services	-	-	-	327				445	(118)	-	-	118	118	-	-	-	-	118	-	-	-	118	-	-	-	118	-	-	-	-	1,246
Software Licenses	-	-	73	-				212	(139)	-	-	139	-	-	-	-	-	-	44	-	-	-	4	-	-	-	69	-	35	35	472
IT Service Providers	-	-	-	86				225	(139)	-	-	139	65	-	-	-	-	65	-	-	-	65	-	-	-	65	-	-	-	-	570
IT AP	-	-	-	-				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
	-	-	73	413	15	62	19	1,196	(615)	70	149	396	498	-	-	-	-	368	44	-	-	382	4	-	-	382	69	-	35	35	3,596
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[8] IBA Payments																															
Heritage Funds and Traditional Knowledge	-	-	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	1,899
	-	-	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	1,899
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[9] Power																															
Contract labour for on site powerhouse	-	-	-	-	-	-	-	252	(252)	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	756
	-	-	-	-	-	-	-	252	(252)	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	756
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[10] Site Maintenance & Environment																															
Site Vehicle Maintenance	-	-	-	-	88	33	42	63	101	21	21	21	21	21	21	34	34	34	34	13	13	13	13	13	13	13	13	13	17	17	742
Site Maintenance	-	-	-	-				101	(101)	34	34	34	34	34	34	55	55	55	55	21	21	21	21	21	21	21	21	21	-	-	613
Environmental Licenses and Land Leases	-	-	-	-				157	(157)	-	-	45	-	-	57	60	-	-	-	5	-	-	-	18	-	-	-	18	-	-	204
Environmental Management	-	-	-	-				440	(440)		199	199	397	199	126	126	126	385	-	-	-	385	-	-	-	385	-	-	-	-	2,526
Point Lake Permitting								-	-				18				4				10										32
Lac de Gras JV								-	-				60																		60
Glowworm Lake Project								-	-														18								18
Environmental AP	-	-	-	-				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
	-	-	-	-	88	33	42	760	(596)	54	253	298	530	253	237	275	219	474	89	40	44	419	53	53	35	419	35	53	17	17	4,194
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[11] CCAA Professional Fees																															
Evercore	-	-	-	-	-	-	-	3,121	(3,121)	-	628	2,774	281	-	-	-	281	-	-	-	281	-	-	-	281	-	-	281	-	5,688	10,493
Blake, Cassels & Graydon LLP	-	-	370	214	-	-	-	1,271	(687)	340	690	386	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	500	250	500	7,583
McDermott Will & Emery LLP	-	-	-	-	-	-	-	351	(351)	-	-	702	-	140	351	-	-	-	351	-	-	-	351	-	-	-	-	351	-	175	2,421
FTI Consulting Canada Inc	-	-	-	-	-	-	-	400	(400)	-	533	267	-	150	400	-	-	-	400	-	-	-	400	-	-	-	-	400	-	200	2,750
Bennett Jones LLP	-	-	-	-	-	-	-	250	(250)	-	-	500	-	50	250	-	-	-	250	-	-	-	250	-	-	-	-	250	-	125	1,675
TWC Legal Advisors	-	-	-	-	-	-	-	4,260	(4,260)	-	-	4,615	-	-	-	-	284	-	-	-	284	-	-	-	-	426	-	-	-	355	5,964
1L Legal and Financial Advisors	-	-	-	-	-	-	-	1,420	(1,420)	-	-	1,775	-	-	355	-	-	-	355	-	-	-	-	355	-	-	-	355	-	-	3,195
Non-Company Side Advisors TBU	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0

Other	-	-	-	-	-	-	-	150	(150)	150	150	-	-	-	150	-	-	-	150	-	-	-	150	-	-	-	-	150	-	75	975
	-	-	370	214	-	-	-	11,223	(10,639)	490	2,000	11,019	531	590	1,756	250	815	250	1,756	250	815	250	1,401	605	531	676	250	2,287	250	7,118	35,057
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Critical Vendors																															
DET'ON CHO SUMMIT AVIATION LP				440				440	-																						880
KITNUNA BBE EXPEDITING LTD.				675				675	-																						1,351
TLI CHO DOMCO INC				409				409	-																						
Other					58	-	163	1,159	(937)	1,085	1,085	1,085																			
	-	-	-	1,524	58	-	163	2,683	(937)	1,085	1,085	1,085	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,231
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Net Taxes																															
GST		(2,122)		612				(1,146)	(365)																						(3,021)
Fuel and Carbon Taxes				1,146				1,146	-																						2,291
								-	-																						
								-	-																						
	-	(2,122)	-	1,757	-	-	-	(0)	(365)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(730)
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[13] Other																															
Various Other		-	-	-	-	-	-	56	(56)	35	38	38	38	19	19	10	9	13	9	38	9	10	9	11	123	36	9	11	58	58	595
Contingency	-	-	-	-	-	-	-	675	(675)	398	513	178	358	158	397	153	378	321	31	154	6	216	6	8	55	263	6	8	81	3,518	7,209
Other Contingency	-	-	-	-	-	-	-	825	(825)	-	-	1,825	-	-	-	-	889	-	-	-	-	-	-	1,667	-	-	-	2,222	-	-	6,602
	-	-	-	-	-	-	-	1,556	(1,556)	433	551	2,040	395	176	416	163	1,276	334	40	192	15	226	15	1,686	178	299	15	2,241	139	3,576	14,406
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Government Programs																															
Estimated Support Received	-	-	-	-	-	1,849	-	1,800	49	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,228
	-	-	-	-	-	1,849	-	1,800	49	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,228
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Intercompany Receipts / (Disbursements)																															
DDMC			0	0	0	(6)	(115)	(111)	(10)	(1)	(127)	(136)	(110)	(49)	0	(0)	(0)	(110)	(15)	(0)	(0)	(110)	0	(0)	(0)	(105)	0	(0)	(0)	(0)	(1,009)
Core Zone JV partner cash calls	0	0	0	0				825	(825)	0	0	1,825	0	0	0	0	889	0	0	0	0	0	0	1,667	0	0	0	2,222	0	0	6,602
DDMNV (Belgium)	0	0	0	0				0	0	0	0	0	0	0	0	0	0	(3,692)	0	0	0	(241)	0	0	0	(284)	0	0	0	0	(4,217)
DDIPL (India)	0	0	0	0				0	0	0	0	0	0	0	0	0	0	0	0	0	0	(284)	0	0	0	(440)	0	0	0	0	(724)
	-	-	-	-	-	(6)	(115)	713	(835)	(1)	(127)	1,689	(110)	(49)	-	(0)	888	(3,802)	(15)	(0)	(0)	(635)	-	1,666	(0)	(830)	-	2,222	(0)	(0)	652
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Interest & Bank Charges																															
Interest		(226)		(138)	-	(191)	-	(600)	46	(149)	-	-	(237)	(149)	-	-	-	(237)	(149)	-	-	(237)	(149)	-	-	(237)	(149)	-	-	(349)	(3,152)
Bank Charges		(50)		(50)	-	-	-	(100)	-	(4)	(46)	-	-	(4)	-	-	-	-	(4)	-	-	-	(4)	-	-	-	(4)	-	-	-	(264)
LC Fees			(70)	(7)	-	-	-	(77)	-	-	-	-	(1,010)	-	-	-	-	-	-	-	-	-	-	-	-	(1,010)	-	-	-	(337)	(2,513)
	-	(276)	(70)	(195)	-	(191)	-	(778)	46	(153)	(46)	-	(1,248)	(153)	-	-	-	(237)	(153)	-	-	(237)	(153)	-	-	(1,248)	(153)	-	-	(686)	(5,928)
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

SCHEDULE “D”
GUARANTORS

Washington Diamond Investments, LLC

Dominion Diamond Holdings, LLC

Dominion Finco Inc.

Dominion Diamond Delaware Company LLC

Dominion Diamond Canada ULC

SCHEDULE "E"
MILESTONES

1. The Court shall have held a hearing to consider the Amended Initial Order, which shall seek approval of the DIP and the SISP (including the Stalking Horse Transaction and the bid protections in respect thereof) no later than June 19, 2020.

2. The Amended Initial Order, which shall have approved the DIP and the SISP (including the Stalking Horse Transaction and the bid protections in respect thereof) shall have been entered no later than June 19, 2020.

3. The Credit Parties shall have complied with the various deadlines established under the SISP, which are incorporated herein by reference.

4. A Permitted Restructuring Transaction shall have closed no later than October 31, 2020.

Notwithstanding the above, a specific Milestone may be (a) extended or waived with the express prior written consent of the Credit Parties and the Required Interim Lenders (except for the Milestone set forth in Item 4 above, which shall also require the consent of the Existing Credit Facility Agent, not to be unreasonably withheld) or (b) extended to the extent necessary to accommodate the Court's calendar.

SCHEDULE "F"
COMMITMENTS

PART I.

COMMITMENTS IN RESPECT OF PHASE 1 AND PHASE 2 ADVANCES

	Interim Lender	Commitments	Share of Total Commitments in Respect of Phase 1 and Phase 2 Advances
1.	Washington Diamond Lending, LLC	$55,000,000	100%

PART II.

COMMITMENTS IN RESPECT OF OCTOBER ADVANCES

	Interim Lender	Commitments	Share of Total Commitments
1.	Washington Diamond Lending, LLC	$5,000,000	100%

Schedule “B”

Procedures for the Sale and Investment Solicitation Process

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 19, 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[1];

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

(b) "**Agent Advisors**" shall mean Osler, Hoskin & Harcourt LLP, Cahill Gordon & Reindel LLP and RPA Advisors, or any one of them;

(c) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in Calgary, Alberta;

(d) "**Cover Payments**" has the same meaning as in the Diavik JVA;

(e) "**CSA**" means the Closure Security Agreement dated December 13 2019 between DDMI and DDM;

(f) "**DIP**" means the Interim Facility provided to Dominion Diamond Mines ULC and certain of its affiliates by Washington Diamond Lending, LLC (the "**Washington Interim Lender**") and the Agent and/or one or more First Lien Lenders (in their capacity as lenders under the DIP, the "**First Lien Interim Lenders**") as approved by the Second Amended and Restated Initial Order;

(g) "**DDMI**" means Diavik Diamond Mines (2012) Inc.;

(h) "**Diavik Diamond Mine**" means the Diavik diamond mine located in Lac de Gras, Northwest Territories;

(i) "**Diavik Interest**" means DDM's Participating Interest (as such term is defined in the Diavik JVA) under and pursuant to the Diavik JVA, including the Dominion Products;

(j) "**Dominion Products**" has the meaning ascribed to it in the Second Amended and Restated Initial Order;

(k) "**Existing Credit Agreement**" means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, the Agent, and each of the other parties and lenders party thereto (the "**First Lien Lenders**"), as amended, restated, supplemented or otherwise modified from time to time.

(l) "**Non-Diavik Assets**" means the Applicants' right, title and interest in all Property other than the Diavik Interest (including, for the avoidance of doubt the Applicants' right, title, and interest in the Ekati Diamond Mine located in Lac de Gras, Northwest Territories, which is operated by DDM);

(m) "**SISP Advisor**" means Evercore Group LLC, as retained by the Applicants to conduct the SISP.

Sale and Investment Solicitation Process Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for, (i) a sale or partial sales of (A) all, substantially all, or certain of the assets, property and undertakings (collectively, the "**Property**") of the Applicants and certain of their subsidiaries (together with the Applicants, the "**Dominion Diamond Group**"); (B) the Diavik Interest; or (C) the Non-Diavik Assets or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Dominion Diamond Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property of the Dominion Diamond Group, or a combination thereof (the "**Opportunity**").

3. The Applicants have received a bid from Washington Diamond Investment Holdings II, LLC (the "**Stalking Horse Bidder**") which constitutes a qualified bid for all purposes and at all times under this SISP (the " **Stalking Horse Bid**"), and which Stalking Horse Bid shall serve as the "stalking horse" bid for purposes of this SISP. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal (each as defined below). A copy of the Stalking Horse Bid is available to all Phase 1 Qualified Bidders (as defined below).

4. The SISP set forth herein describes the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Dominion Diamond Group and its Property, including a copy of the Stalking Horse Bid, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below), and the approval thereof by the Court. The Monitor shall oversee the SISP and in particular shall oversee the SISP Advisor in connection therewith. The Applicants are required to assist and support the efforts of the SISP Advisor and the Monitor as provided for herein. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have exclusive jurisdiction to hear and resolve such dispute.

5. Certain bid protections (i.e. break fee and expense reimbursement) have been approved in respect of the Stalking Horse Bid, subject to the conditions set forth therein, by the Court pursuant to the Second Amended and Restated Interim Order. No other bidder may request or receive any form of bid protection as part of any offer made pursuant to the SISP.

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

Event	**Date**
SISP Advisor to distribute Teaser Letter to Potential Bidders	**As soon as practical**
SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR	**As soon as practical**
Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 14 of the SISP)	**By July 20, 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 August 6, 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 31, 2020**
Auction Commencement Date (if needed)	**September 3, 2020**
Deadline for selection of final Successful Bid	**September 7, 2020 or at such later date as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate**
Deadline for completion of definitive documentation in respect of Successful Bid	**September 11, 2020**
Deadline for filing of Approval Motion in respect of Successful Bid	**September 21, 2020**
Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	**September 28, 2020**

Anticipated Deadline for closing of Successful Bid being the Target Closing Date	October 7, 2020 or such earlier date as is achievable
Outside Date by which the Successful Bid must close	**October 31, 2020**

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable after the granting of the Second Amended and Restated Initial Order:

   (a) the SISP Advisor shall cause a notice of the SISP and such other relevant information which the SISP Advisor, in consultation with the Applicants and the Monitor, considers appropriate to be published in the *Globe & Mail* and such other publications as the SISP Advisor may consider appropriate; and

   (b) the Dominion Diamond Group shall issue a press release setting out the notice and such other relevant information regarding the Opportunity as it may consider appropriate, with Canada Newswire designating dissemination in Canada.

7. The SISP Advisor shall prepare and distribute a summary describing the Opportunity (a "**Teaser Letter**"), outlining the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP, for distribution to potential bidders as soon as practical.

8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the SISP Advisor to Potential Bidders that have executed the NDA (as defined below). The VDR will be available as soon as practical. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Dominion Diamond Group and the Opportunity. The Applicants may establish separate VDRs (including "clean rooms"), if the Applicants and the SISP Advisor reasonably determine that doing so would further the Dominion Diamond Group and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

9. In order to participate in the SISP, an interested party must deliver to the SISP Advisor at the address specified in **Appendix "A"** hereto (including by email), and prior to the distribution of any confidential information by the SISP Advisor to such interested party (including access to the VDR), an executed non-disclosure agreement in form and substance satisfactory to the Applicants (an "**NDA**"), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by the Successful Bid (as defined below). Pursuant to the terms of the NDA to be signed by a

potential bidder (each potential bidder who has executed an NDA with the Applicants, a "**Potential Bidder**") each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the express written consent of the Applicants. Prior to the Applicants' executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Applicants of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Applicants in the event that it elects to act as a Potential Bidder.

10. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 9, will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the SISP Advisor. For the avoidance of doubt, the Stalking Horse Bidder is a Phase 1 Qualified Bidder.

11. The SISP Advisor, with the assistance of the Applicants, will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") and provide an unredacted copy of the Staking Horse Bid as soon as practicable. The SISP Advisor, the Applicants, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.

12. The SISP Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) with access to the VDR. The SISP Advisor, the Applicants and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a template letter of intent (the "**Template LOI**") and a proposed Purchase and Sale Agreement, based on the Stalking Horse Bid ("**Template PSA**").

13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**"), to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on July 20, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (the "**Phase 1 Bid Deadline**"). To the extent possible, the Phase 1 Qualified Bid should follow the format as set out in the Template LOI.

14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" by the Applicants, the Monitor and the SISP Advisor, if the LOI complies at a minimum with the following:

(a) it has been duly executed by all required parties;

(b) it is received by the Phase 1 Bid Deadline;

(c) it provides written evidence, satisfactory to the Applicants, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;

(d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;

(e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;

(f) an outline of any additional due diligence required to be conducted in order to submit a binding offer;

(g) it clearly indicates:

(i) the Phase 1 Qualified Bidder is seeking to acquire (A) all or substantially all of the Property, (B) the Diavik Interest or (C) the Non-Diavik Assets, whether through an asset purchase, a share purchase or a combination thereof (either one being, a "**Sale Proposal**") or some other portion of the Property (a "**Partial Sale Proposal**"); or

(ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business (an "**Investment Proposal**"); and

(iii) that the Sale Proposal or Investment Proposal, as the case may be, will at a minimum and on closing, provide cash proceeds which are equal to the aggregate total of: (A) the amount of cash payable under the Stalking Horse Bid if it does not provide for a credit bid or, if the Stalking Horse Bid does provide for a credit bid, the amount of cash payable thereunder together with the amount of obligations being credit bid thereunder, *plus* (B) the amount of the expense reimbursement and break fee (if any) payable to the Stalking Horse Bidder, *plus* (C) a minimum overbid amount of US$1

million (the amounts set forth in this paragraph 14(g)(iii), the "**Minimum Purchase Price**"); provided, however, the Applicants may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet the Minimum Purchase Price (such bids, "**Aggregated Bids**") (the amount of the Minimum Purchase Price shall be confirmed by the Sale Advisor with Potential Bidders);

(h) it contains such other information as may be reasonably requested by the SISP Advisor, in consultation with the Applicants and the Monitor;

(i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;

(j) in the case of a Sale Proposal, it identifies or contains the following:

(i) the purchase price or price range in U.S. dollars and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;

(ii) any contemplated purchase price adjustment;

(iii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;

(iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

(v) information sufficient for the SISP Advisor, the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;

(vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(k) in the case of an Investment Proposal, it identifies the following:

(i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Dominion Diamond Group or its business in U.S. dollars;

(iii) the underlying assumptions regarding the *pro forma* capital structure;

(iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

(v) information sufficient for the SISP Advisor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;

(vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

15. The Applicants with the consent of the Monitor, may waive compliance with any one or more of the requirements specified herein and deem any such non-compliant LOI to be a Phase 1 Qualified Bid; *provided* that the SISP Advisor shall consult with the Stalking Horse Bidder in advance and on a no-names basis regarding the general nature of any waiver being contemplated.

Assessment of Phase 1 Qualified Bids and Subsequent Process

16. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Successful Bid (as defined below).

17. Following the Phase 1 Bid Deadline, the Applicants shall determine, in accordance with the requirements of paragraph 14, the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a "**Phase 1 Successful Bid(s)**" and which Phase 1 Qualified Bidder(s) shall be deemed a "**Phase 2 Qualified Bidder(s)**".

18. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. The Stalking Horse Bid constitutes a Phase 1 Successful Bid and the Stalking Horse Bidder is a Phase 2 Qualified Bidder for all purposes under the SISP, other than the Auction (as defined below). Notwithstanding any other provision hereof, in order to participate in the Auction, the Stalking Horse Bidder shall have waived, or confirmed satisfaction of, any financing condition contained in the Stalking Horse Bid.

19. The SISP Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Successful Bid within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor and the Monitor, deem appropriate.

20. In the event that no Phase 1 Successful Bids are received (other than the Stalking Horse Bid), the Applicants, with the assistance and support of the SISP Advisor and the Monitor,

shall promptly proceed to seek Court approval of the Stalking Horse Bid; *provided*, *however*, that the Applicants may (i) extend the Phase 1 Bid Deadline with the consent of the Monitor, the Stalking Horse Bidder, and the Agent Advisors, or (ii) seek Court approval of an amendment to, or termination of, the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to his/her/its Sale Proposal or Investment Proposal shall submit a binding offer (a "**Binding Offer**") (a) in the case of a Sale Proposal, in the form of the Template PSA provided in the VDR, along with a marked version showing edits to the original form of Template PSA provided in the VDR, or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Applicants and the Monitor (each, such binding offer submitted in accordance with paragraph 25 below, a "**Phase 2 Qualified Bid**") in each case to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on August 31, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (as maybe extended, the "**Phase 2 Bid Deadline**").

22. A Binding Offer will only be considered as a "**Phase 2 Qualified Bid**" by the Applicants if the binding offer:

    (a) has been received by the Phase 2 Bid Deadline;

    (b) is a Binding Offer (i) to purchase (A) all, substantially all, or a portion of the Property; (B) Diavik Interest; or (C) the Non-Diavik Assets or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business, on terms and conditions reasonably acceptable to the Applicants;

    (c) identifies all executory contracts of the Applicants that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied;

    (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 the 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 October 7, 2020, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than October 31, 2020 (the "**Outside Date**"); and

(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 September 3, 2020, at the Calgary offices of Blakes, Cassels, and Graydon LLP or such other place and time as determined by the Applicants and continue thereafter until completed, subject to such adjournments as the Applicants may consider appropriate; *provided* that if circumstances do not permit the Auction to be held in person, the Applicants shall work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be held via videoconference, teleconference, or such other reasonable means as the Applicants deem appropriate. The Applicants reserve the right to cancel or postpone the Auction.

    (b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Phase 2 Qualified Bidder participating in the Auction.

    (c) Except as otherwise permitted in the Applicants' discretion, only the Applicants, the SISP Advisor, the Monitor, the Agent and the Phase 2 Qualified Bidders, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Phase 2 Qualified Bidder is eligible to participate in the Auction.

    (d) Phase 2 Qualified Bidders shall appear at the Auction, or through a duly authorized representative.

    (e) Except as otherwise set forth herein, the Applicants may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable

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

(f) The Applicants will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction shall designate a single individual to be its spokesperson during the Auction.

(g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Applicants or any other person, without the express written consent of the Applicants, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders.

(h) Prior to the Auction, the Applicants shall identify the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid shall constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than US$1 million cash in excess of the Opening Bid or in such amounts as to be determined by the Applicants, with the consent of the Monitor, prior to, and announced at, the Auction. For the purposes of facilitating bidding the Applicants may ascribe a monetary value to non-cash considerations, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) shall provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Applicants. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Applicants to facilitate bidding by the participants in the Aggregated Bid.

(i) All Phase 2 Qualified Bidders shall have the right to, at any time, request that the Applicants announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Applicants' announcement of the then-current highest and best bid.

(j) Each participating Phase 2 Qualified Bidder shall be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction shall continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder that the Applicants determine has submitted the highest and otherwise best Phase 2 Qualified Bid of the Auction. At such time and upon the conclusion of the bidding, the Auction shall be closed and the final remaining Phase 2 Qualified Bidder shall be the Successful Bidder.

(k) Upon selection of a Successful Bidder, the Applicants shall require the Successful Bidder to deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion (as defined below).

(l) The Applicants shall not consider any bids submitted after the conclusion of the Auction.

28. The Applicants shall have selected the final Successful Bid and the Backup Bid by no later than September 7, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than September 11, 2020, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Applicants with the consent of the Monitor and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. The Applicants shall not extend or otherwise vary the Outside Date except with the written consent of the Monitor and the Agent. In the case of a Successful Bid and Backup Bid that includes the purchase of the Diavik Interest, the Applicants shall also require the written consent of DDMI to any extension or variation of the Outside Date.

29. Notwithstanding anything in the SISP to the contrary, if an Auction is conducted, the Phase 2 Qualified Bidder with the next highest or otherwise best Phase 2 Qualified Bid at the Auction, as determined by the Applicants, will be designated as the backup bidder (the "**Backup Bidder**"); *provided* that the Stalking Horse Bidder shall not be a Backup Bidder, unless it elects to provide an overbid in the Auction. The Backup Bidder shall be required to keep its initial Phase 2 Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the "**Backup Bid**") open until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date.

Approval of Successful Bid

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

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

Deposits

32. The Deposit(s):

    (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a trust account;

    (b) received from the Successful Bidder shall:

        (i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of the Approval Order, upon closing of the approved transaction;

        (ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Applicants and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable directly to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;

    (c) received from the Backup Bidder, unless it is subsequently selected as the Successful Bidder, shall be fully refunded, to the Back-Up Bidder on or before the earlier of (i) two (2) Business Days after the date of the closing to the Successful Bid; or (ii) October 31, 2020;

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

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

“As is, Where is”

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

Free Of Any And All Claims And Interests

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

liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder.

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 bit 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 or any holder or holders or indenture trustee of the Applicants' 7.15% secuered second lien notes shall provide for the indefensible and irrevocable repayment in full in cash on the date of closing of any such transaction of all Interim Financing Obligations (as defined in the DIP), including those Interim Financing Obligations attributable to October Advances (as defined in the DIP). Nothing contained

in this paragraph 38 is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

Confidentiality

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

Further Orders

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

Additional Terms

41. In addition to any other requirement of this SISP:

(a) The SISP Advisor and the Applicants, in consultation with the Monitor, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by the Applicants' creditors as a high potential bidder.

(b) The exercise of any right or discretion given to the Applicants or the SISP Advisor by the SISP shall, in the case of the Applicants, be exercised on their behalf solely by a special committee of DDM's directors comprised of one or more persons who have confirmed in writing to the Monitor that they do not have any conflict of interest in the subject matter or any material personal or business relationship of any kind with a SISP bidder or a person related to a SISP bidder (including, without limitation, the Stalking Horse Bidder). In addition, the exercise of any right or discretion on the part of the Applicants or the SISP Advisor in respect of any of the following shall require the express consent of the Monitor: the determination of Phase 1 Qualified Bids and Phase 2 Qualified Bids, the selection of Successful Bids, and any discretion afforded by paragraphs 27(e) and 27(h).

(c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation which is no less complete and timely than is granted by the Applicants or the SISP Advisor, or their representatives, to the Stalking Horse Bidder or its representatives, pursuant to the SISP. This shall

include, without limitation, reasonable access to Rio Tinto plc, The Government of the Northwest Territories and sureties on the basis contemplated by the section titled "Commercially Reasonable Efforts" in the Stalking Horse Bid and reasonable access to the Applicants' books, records, financial information, management, advisors and business partners. The SISP Advisor and the Monitor shall review all information and materials provided by the Applicants or their representatives to the DIP lenders or their representatives pursuant to the DIP and, to the extent that the SISP Advisor and the Monitor are of the view that any such information or materials are materially relevant to a Potential Bidder or Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, then such information or materials shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders. Nothing in this paragraph creates binding obligations of third parties, including but not limited to DDMI, the Government of the Northwest Territories, or sureties.

(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 require that a Successful Bid, Backup Bid or any other bid must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP on application of any interested party.

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

Appendix "A"

TO THE SISP ADVISOR:

Evercore
55 East 52nd Street, 42nd floor
New York, NY 10055

Attention: John Startin

Phone: 212-453-5577
E-Mail: John.Startin@evercore.com

WITH A COPY TO:

Attention: Andrew Frame

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

WITH A COPY TO:

Attention: Nicholas Salzman

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

TO THE MONITOR:

FTI Consulting Canada Inc.
520 5th Ave SW
Calgary AB T2P 3R7

Attention: Deryck Helkaa

Phone: 403-454-6031
E-Mail: deryck.helkaa@fticonsulting.com

WITH A COPY TO:

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

Attention: Chris Simard

Phone: 403-298-4485
Email: simardc@bennettjones.com

Schedule "C"

Stalking Horse Agreement of Purchase and Sale

CONFIDENTIAL

DRAFT – JUNE 12, 2020

ASSET PURCHASE AGREEMENT

BY AND AMONG

CANADIAN DIAMOND HOLDINGS, L.P.,

CA CANADIAN DIAMOND MINES ULC,

DOMINION DIAMOND HOLDINGS, LLC,

DOMINION DIAMOND MINES ULC

AND

WASHINGTON DIAMOND INVESTMENTS, LLC

Dated as of June [●], 2020

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of June **[•]**, 2020 (the "Effective Date"), by and among Canadian Diamond Holdings, L.P., a Delaware limited partnership ("Purchaser Holdco"), CA Canadian Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Purchaser Holdco ("Canadian Purchaser" and, together with Purchaser Holdco, "Purchasers"), Dominion Diamond Holdings, LLC, a Delaware limited liability company ("Dominion Holdings"), Dominion Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Dominion Holdings ("DDM", and together with Dominion Holdings, the "Sellers"), and Washington Diamond Investments, LLC, a Delaware limited liability company ("Parent").

WHEREAS, DDM is a diamond producer with ownership interests in diamond projects in the Northwest Territories and Sellers are engaged, directly and indirectly through the Acquired Subsidiaries, in the business of mining and selling rough diamonds to the global market (the "Business");

WHEREAS, on April 22, 2020 (the "Filing Date"), Sellers, Parent, Dominion Finco Inc., 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 "CCAA Court") that, among other things, commenced the CCAA proceedings (the "CCAA Proceedings") and granted an initial stay of proceedings in respect of the Applicants (the "Stay"). On May 1, 2020, the Applicants obtained an amended and restated version of the Initial Order from the CCAA Court (as further amended and restated from time to time, the "Amended and Restated Initial Order") that, among other things, extended the Stay.

WHEREAS, on May 21, 2020, Sellers, Parent and Washington Diamond Investments Holdings II, LLC entered into a non-binding letter of intent (the "LOI") that contemplated, among other things, that such parties would commence negotiations of this Agreement on terms and conditions consistent with those set forth in a stalking horse term sheet appended as Exhibit A to the LOI (the "Stalking Horse Term Sheet");

WHEREAS, the Stalking Horse Term Sheet contemplated that subject to, among other things, following the execution of this Agreement, the Purchasers would act as a "stalking horse bidder" in connection with the sale investor and solicitation process (the "SISP") for the Business and Property (as defined in the Amended and Restated Initial Order), meaning that, in the absence of the Sellers' acceptance of a superior bid made in accordance with the SISP, the Purchasers have agreed to purchase the Sellers' right, title and interest in and to the Acquired Assets (as defined below) and assume the Assumed Liabilities (as defined below) on the terms and subject to the conditions set forth in this Agreement, in accordance with the SISP and subject to obtaining the Sale Order (as defined below) (the "Acquisition");

WHEREAS, the Applicants have sought to obtain approval of the SISP Order from the CCAA Court which will (a) authorize and direct the Sellers, subject to approval of the Monitor (as defined below) to execute this Agreement, which will stand as the Stalking Horse Bid (for the

purposes of the SISP) and (b) approve the Interim Facility and authorize the Applicants to enter into the Interim Facility Credit Agreement;

WHEREAS, concurrently with the execution of this Agreement, and as a condition to the willingness of Sellers to enter into this Agreement, Purchasers have delivered to Sellers a limited guaranty (the "Limited Guaranty") of Washington Liquid Investments, LLC, a Montana limited liability company (the "Guarantor"), dated as of the date hereof, pursuant to which the Guarantor has guaranteed certain obligations of Purchasers; and

WHEREAS, the Parties desire to consummate the Acquisition as promptly as practicable following the satisfaction of the conditions precedent set out herein, including the issuance by the CCAA Court of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 Specific Definitions. Capitalized terms used herein shall have the meanings set forth below:

"Aboriginal Agreements" shall have the meaning ascribed thereto in Section 4.16(a).

"Aboriginal Claims" means any and all claims (whether or not proven) by any Person, pursuant to section 35 of the *Constitution Act, 1982 Schedule B to the Canada Act, 1982 (U.K.)* or otherwise, to or in respect of: (1) rights, title or interests of any Aboriginal Group by virtue of its status as an Aboriginal Group; (2) treaty rights; (3) Métis rights, title or interests; or (4) rights under land claims and agreements; or (5) specific or comprehensive claims being considered by the Government of Canada; and includes any alleged or proven failure of the Crown to have satisfied, prior to the date hereof, any of its duties to any claimant of any of the foregoing.

"Aboriginal Group" means any band (as defined in the *Indian Act* (Canada)), First Nation, Métis community, Inuit group, tribal council, band council or other aboriginal organization in Canada.

"Acquired Assets" shall have the meaning ascribed thereto in Section 2.1.

"Acquired Subsidiaries" shall have the meaning ascribed thereto in Section 2.1(a).

"Acquisition" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Action" means any litigation (in Law or in equity), arbitration, mediation, action, lawsuit, proceeding, written complaint, written charge, written claim, written demand, hearing, investigation or like matter (whether public or private) commenced, brought, conducted, or heard

before or otherwise involving any Governmental Body, whether administrative, judicial or arbitral in nature.

"Advance Ruling Certificate" means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the Competition Act with respect to the transactions contemplated by this Agreement.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, neither of the Purchasers is an Affiliate of Sellers for purposes of this Agreement or otherwise.

"Agreement" means this Asset Purchase Agreement, including all Schedules hereto and the Seller Disclosure Letter, as it may be further amended from time to time in accordance with its terms.

"Allocation" shall have the meaning ascribed thereto in Section 12.13(e).

"Alternate Transaction" shall have the meaning ascribed thereto in Section 11.4(a).

"Amended and Restated Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Ancillary Documents" means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated by this Agreement.

"Antitrust Approvals" means the Competition Act Approval, if required, and each of the other Mandatory Antitrust Approvals (if any).

"Antitrust Laws" means the Competition Act and any competition, merger control and antitrust Law of any other applicable supranational, national, federal, state, provincial or local Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the transactions contemplated by this Agreement.

"Applicants" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Arbitrating Accountant" means an internationally recognized certified public accounting firm jointly selected by Purchasers and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchasers.

"Assigned Contracts" shall have the meaning ascribed thereto in Section 2.1(l).

"Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(b).

"Assignment and Assumption of Leases" shall have the meaning ascribed thereto in Section 10.2(f).

"Assignment Order" means an Order of the CCAA Court made in the CCAA Proceedings, in form and substance acceptable to Parties, acting reasonably, assigning to the applicable Purchasers the rights and obligations of Sellers under an Assigned Contract for which a consent, approval or waiver necessary for the assignment of such Assigned Contract has not been obtained.

"Assumed Liabilities" shall have the meaning ascribed thereto in Section 2.3.

"Assumed Plans" shall have the meaning ascribed thereto in Section 7.2(a).

"Auction" shall have the meaning ascribed to such term by the SISP.

"Authorization" means with respect to any Person, any order, permit, approval, consent, waiver, license, registration, qualification, certification or similar authorization of any Governmental Body having jurisdiction over the Person, and shall include all environmental permits, licenses and other Authorizations, and all surface leases and water or riparian rights.

"Break-Up Fee" shall have the meaning ascribed thereto in Section 11.4(a)(iv).

"Break-Up Fee Charge" means a priority charge in favour of Purchasers over the Property (as defined in the Amended and Restated Initial Order) of the Applicants granted by the CCAA Court pursuant to the SISP Order to secure the payment by Sellers of the Break-Up Fee and the Expense Reimbursement Amount pursuant to this Agreement, which charge shall rank in priority to all Encumbrances in respect of the Property other than the Administration Charge, the Directors Charge, and the KERP Charge (each as defined in the Amended and Restated Initial Order).

"Business" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a statutory holiday in New York City, New York, U.S.A. or Calgary, Alberta, Canada.

"Canadian Assets" means all Acquired Assets other than the Purchaser Holdco Acquired Interests.

"Canadian Purchaser" shall have the meaning ascribed thereto in the Preamble.

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

"Cash Component" shall have the meaning ascribed thereto in Section 3.1(b).

"CCAA" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Court" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Proceedings" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Claims" means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

"Closing" shall have the meaning ascribed thereto in Section 10.1.

"Closing Date" means the date on which the Closing shall occur.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collective Agreement" means any collective agreement, letter of understanding, letter of intent or any other similar Contract with or commitment to any trade union, employee association, labour organization or similar entity.

"Commissioner" means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

"Competition Act" means the *Competition Act* (Canada), as amended.

"Competition Act Approval" means: (i) the issuance of an Advance Ruling Certificate and such Advance Ruling Certificate has not been rescinded prior to Closing; or (ii) the Purchasers and the Sellers have given the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act has expired or has been terminated in accordance with the Competition Act; or (iii) the obligation to give the requisite notice has been waived pursuant to paragraph 113(c) of the Competition Act, and, in the case of (ii) or (iii), the Purchasers have been advised in writing by the Commissioner that, in effect, such person is of the view that sufficient grounds at that time do not exist to initiate proceedings before the Competition Tribunal under section 92 of the Competition Act with respect to the transactions contemplated by this Agreement and therefore the Commissioner, at that time, does not intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement ("no-action letter"), and the form of and any terms and conditions attached to any such advice are acceptable to the Purchasers, acting reasonably, and such advice has not been rescinded prior to Closing.

"Competition Tribunal" means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

"Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"Confidentiality Agreement" shall have the meaning ascribed thereto in Section 6.3.

"Contaminants" means any noise, heat, vibration or Hazardous Materials that can be discharged into or be present in the Environment.

"Contract" means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment, whether express or implied.

"Cure Amount" means (i) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchasers in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Sellers' monetary defaults existing as at the Closing Date under such Assigned Contract (or such other amounts as may be agreed by the Purchasers and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Sellers to the Purchasers (which amount shall be set out on the form of contractual consent agreed to by the Purchasers and the counterparty to such Assigned Contract).

"Cure Funding Amount" means US$20,000,000, less any amount that the Applicants are authorized to pay (and have not paid as of the date of this Agreement) under the DIP Budget and an Order of the CCAA Court in respect of the Cure Amount, which for greater certainty shall include US$2,200,000 available to the Applicants to pay critical suppliers in accordance with paragraph 5(c) of the Amended and Restated Initial Order.

"Data Room" means the material contained in the virtual data room established by Sellers in connection with the SISP as of 5:00 p.m. on June [__], 2020.

"DDM" shall have the meaning ascribed thereto in the Preamble hereof.

"DDMI" means Diavik Diamond Mines (2012), Inc., a company incorporated under the laws of Canada, as the manager of the Diavik Joint Venture.

"Designated Purchaser" shall have the meaning ascribed thereto in Section 12.10.

"Diavik Diamond Mine" means the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Diavik Diamond Mine."

"Diavik Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the Diavik Diamond Mine.

"Diavik Joint Venture Agreement" means the joint venture agreement dated March 23, 1995 between DDM and DDMI originally entered into between Aber Resources Limited and

Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and DDMI.

"Diavik Joint Venture Interest" means the undivided 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik Joint Venture held by DDM pursuant to the Diavik Joint Venture Agreement.

"Diavik Leases" means the surface and mining leases constituting the Diavik Diamond Mine and subject to the Diavik Joint Venture Agreement.

"DIP Budget" shall have the meaning ascribed to it in the Interim Facility Credit Agreement.

"Documents" means all of Sellers' books, records and other information in any form relating to the Business or the Acquired Assets, including accounting books and records, sales and purchase records, lists of suppliers and customers, lists of potential customers, credit and pricing information, personnel and payroll records of Employees, Tax records, business reports, plans and projections, production reports and records, inventory reports and records, business, engineering and consulting reports, marketing and advertising materials, research and development reports and records, maps, all plans, surveys, specifications, and as-built drawings relating to the Mine Properties, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Ekati Diamond Mine, the Diavik Diamond Mine and any other real property interests included in the Acquired Assets, including all such electrical, mechanical and structural drawings related thereto, environmental reports, soil and substratum studies, inspection records, financial records, and all other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Acquired Assets or the Employees, and other similar materials, in each case, whether in electronic, paper or other form, but excluding Sellers' corporate charter, minute and stock record books, and corporate seal.

"Dominion Holdings" shall have the meaning ascribed thereto in the Preamble hereof.

"Effective Date" shall have the meaning ascribed thereto in the Preamble hereof.

"Ekati Buffer Zone" means the property and assets (including products derived from such property) comprising the Ekati Buffer Zone as described in the technical report entitled "Ekati Diamond Mine, Northwest Territories, Canada, NI-43-101 Technical Report" dated July 31, 2016.

"Ekati Buffer Zone Leases" means the surface and mining leases constituting the Ekati Buffer Zone.

"Ekati Core Zone" means the property and assets (including products derived from such property) that are the subject of the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Ekati Core Zone Joint Venture Agreement in relation to the Ekati Core Zone.

"Ekati Core Zone Joint Venture Agreement" means the joint venture agreement titled 'Northwest Territories Diamonds Joint Venture Agreement – Core Zone Property' dated April 17, 1997 originally entered into among BHP Diamonds Inc., Dia Met Minerals Ltd., Charles E. Fipke and Dr. Stewart L. Blusson, as amended from time to time, with the current parties thereto being DDM and 1012986 B.C. Ltd.

"Ekati Core Zone Joint Venture Interest" means an undivided 88.889% beneficial interest in the Ekati Core Zone Joint Venture, held by DDM pursuant to the Ekati Core Zone Joint Venture Agreement

"Ekati Core Zone Leases" means the surface and mining leases constituting the Ekati Core Zone and subject to the Ekati Core Zone Joint Venture Agreement.

"Ekati Diamond Mine" means the diamond mine located approximately 310 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Ekati Diamond Mine."

"Employee" means an individual who, as of the applicable date, is employed by Sellers or their Subsidiaries in connection with the Business.

"Employee Plan" means all employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, vacation pay, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, agreement or arrangement, including post-retirement health and life insurance benefit plans, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Sellers or any of their Subsidiaries for the benefit of the Employees or former Employees and their dependents or beneficiaries by which the Sellers or any of their Subsidiaries are bound or with respect to which the Sellers or any of their Subsidiaries participate or have any actual or potential Liability (excluding, for greater certainty, any statutory benefits plan).

"Encumbrance" means any lien, encumbrance, Claim, right, demand, charge, mortgage, deed, deed of trust, statutory, constructive or deemed trust, lease, option, pledge, security interest or similar interest, title defect, assignment, hypothecation, easement, right of way, restrictive covenant, encroachment, right of first refusal, preemptive right, proxy, voting trust or agreement, transfer restriction under any shareholder agreement or similar agreement, judgment, conditional sale or other title retention agreement or other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever.

"Environment" means the components of the earth, and includes: (a) land, water, and air, including all layers of the atmosphere, (b) all organic and inorganic matter and living organisms, and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

"Environmental Agreement" means the Environmental Agreement, dated as of January 6, 1997 as amended on April 14, 2003, on April 10, 2013 and on November 21, 2018 between Her

Majesty The Queen in Right of Canada and the Government of the Northwest Territories and Dominion Diamond Ekati ULC.

"Environmental Law" means the Environmental Agreement and any Regulation which is related to or which regulates or otherwise imposes obligations, liability or standards of conduct concerning the Environment, health and safety, mineral resources, discharges, Contaminants, reclamation and restoration, Releases or threatened Releases of Contaminants, including Hazardous Materials, into the Environment or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Materials.

"Environmental Liabilities and Obligations" means all Liabilities arising from or relating to the Environment, mineral resources, health or safety, Contaminants, reclamation and restoration or arising under any, or arising from any Environmental Law, including Liabilities related to: (a) the manufacture, processing, handling, generation, treatment, distribution, recycling, transportation, storage, use, cleanup, arrangement for disposal or disposal of, or exposure to, Hazardous Materials and/or Contaminants; (b) the Release of Hazardous Materials and/or Contaminants, including migration onto or from the real property included in the Acquired Assets; (c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (d) any other obligations imposed under Environmental Law including pursuant to any applicable Authorizations issued pursuant to or under any Environmental Law; (e) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports with respect to any Liabilities pursuant to Environmental Law; and (f) all obligations with respect to personal injury, property damage, environmental damage, wrongful death, endangerment to the health or animal life, damage to plant life and other damages and losses arising under applicable Environmental Law.

"Essential Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary which are Material Contracts and specified as "Essential Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.[1]

"Excluded Assets" shall have the meaning ascribed thereto in Section 2.2.

"Excluded Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Excluded Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.

"Excluded Liabilities" shall have the meaning ascribed thereto in Section 2.4.

"Expense Reimbursement Amount" means the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by Purchasers or any Purchaser Related Party (including, for the avoidance of doubt, such costs, expenses and fees incurred by Washington Diamond Investments Holdings II, LLC and its Affiliates) in connection with

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[1] NTD: Subject to receipt from Sellers and review of proposed Schedule F list of Essential Contracts, as well as a list of Material Contracts.

evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the Ancillary Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by or on behalf of Purchasers or any Purchaser Related Party in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the CCAA Proceedings and other judicial and regulatory proceedings related to such transactions, which amount shall be secured by the Break-Up Fee Charge and shall be payable as set forth in Section 11.4.

"Filing Date" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Final Order" means an action taken or order issued by the CCAA Court or other applicable Governmental Body as to which: (i) no request or motion for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request or motion is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition or motion for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Body and the time for filing any such petition or motion is passed; (iii) the Governmental Body does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is not then under judicial review or appeal, there is no notice of leave to appeal, appeal or other motion or application for judicial review pending, and the deadline for filing such notice of appeal or other motion or application for judicial review has passed, including any extensions thereof.

"Financing" shall have the meaning ascribed thereto in Section 6.15(a) hereof.

"Financing Condition" shall have the meaning ascribed thereto in Section 8.13 hereof.

"Glowworm Lake Property" means the mineral leases held by DDM covering an area of 132,560 hectares bordering the eastern side of the Diavik Diamond Mine.

"GNWT" shall have the meaning ascribed thereto in Section 8.9.

"Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, board, commission, tribunal, agency or political subdivision thereof of any nature, whether national, international, multi-national, supra-national, foreign, federal, state, provincial, territorial, Aboriginal or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

"GST" means goods and services tax, including harmonized sales tax, payable under the GST Legislation.

"GST Legislation" means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.

"Guarantee" means any guarantee or other contingent liability, direct or indirect, with respect to any Indebtedness or obligations of another Person, through a Contract or otherwise.

"Guarantor" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Hazardous Material" means any substance, material, emission or waste which is defined, regulated, listed or prohibited by any Governmental Body, including petroleum and its by-products, asbestos, polychlorinated biphenyls and any material, waste or substance which is defined or identified as a "hazardous waste," "hazardous substance," "hazardous material," "restricted hazardous waste," "industrial waste," "solid waste," "contaminant,", "dangerous good", "deleterious substance", "greenhouse gas emission", "pollutant," "toxic waste" or "toxic substance" or words of similar import or otherwise regulated under or subject to any provision of Environmental Law.

"IFRS" means generally accepted accounting principles as set out in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards as applied by the International Accounting Standards Board, at the relevant time, applied on a consistent basis.

"Indebtedness" means, with respect to any Person, (a) all liabilities of such Person for borrowed money, whether secured or unsecured, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment of such borrowed money), (b) all liabilities of such Person evidenced by notes, debentures, bonds or similar instruments, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment thereof), for the payment of which such Person is responsible, (c) all obligations of such Person for the deferred purchase price of property or services (including "earn out" payments), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement; (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction, but excluding any obligations that are fully discharged at the Closing, (e) obligations under any interest rate, currency or other hedging arrangement or derivatives transaction, (f) all obligations of such Person with respect to the posting of collateral and similar obligations or as obligor, guarantor, surety or otherwise, including pursuant to "keep well" agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements, but excluding any such obligations that are fully discharged at the Closing; and (g) any change of control payments or prepayment premiums, penalties, charges or equivalents thereof with respect to any obligations of the type referred to in clauses (a) through (f) that are required to be paid at the time of, or the payment of which would become due and payable solely as a result of, the execution of this Agreement or the consummation of the transactions contemplated hereby.

"Initial Allocation" shall have the meaning ascribed thereto in Section 12.13(e).

"Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Intellectual Property" means all intellectual property and proprietary rights of any kind, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a's or similar filings related thereto, or any variant of any of them,

and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (d) computer software, computer programs, and databases (whether in source code, object code or other form); and (e) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

"Interim Facility" means the interim financing facility evidenced by the Interim Facility Credit Agreement, entered into to provide financing during the pendency of the CCAA Proceedings, as the same may be amended, restated or supplemented from time to time.

"Interim Facility Credit Agreement" means that certain Interim Facility Term Sheet among Washington Diamond, the other Interim Lenders party thereto, DDM, as the Borrower (as defined therein) thereunder, and the Guarantors (as defined therein), evidencing the Interim Facility to be provided by the Interim Lenders to DDM, as Borrower, as the same may be amended, modified or supplemented from time to time.

"Interim Lenders" means Washington Diamond and the other Interim Lenders (as defined in the Interim Facility Credit Agreement), as interim lenders under the Interim Facility Credit Agreement and the Interim Facility and any assignee(s) thereof.

"Inventory" means all diamonds and other inventory of any kind or nature, including stockpiles and goods, maintained, held or stored by or for any Seller, whether or not prepaid, and wherever located or held, including any goods in transit, and any prepaid deposits for any of the same, including all diamonds no longer held by DDMI prior to Closing in respect of the Diavik Joint Venture Interests and whose title has transferred to Sellers.

"Investment Canada Act" means the *Investment Canada Act*, as amended.

"IP Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(g).

"Joint Venture" means each of the Diavik Joint Venture, the Ekati Core Zone Joint Venture and the Lac de Gras Joint Venture.

"Joint Venture Agreements" means, collectively, the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement and the Lac de Gras Joint Venture Agreement, and "Joint Venture Agreement" means any one of them as applicable.

"Knowledge of Sellers" or "Sellers' Knowledge" means, with respect to any matter, the actual knowledge, after due inquiry, of each of the individuals set forth on Section 1.1(a) of the Seller Disclosure Letter.

"Lac de Gras" means the exploration property and assets (including products derived from such property) that is the subject of the Lac de Gras Joint Venture Agreement.

"Lac de Gras Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Lac de Gras Joint Venture Agreement in relation to Lac de Gras.

"Lac de Gras Joint Venture Agreement" means the joint venture agreement dated June 30, 2015 entered into among Dominion Diamond Holdings Ltd., 6355137 Canada Inc. and North Arrow Minerals Inc.

"Lac de Gras Joint Venture Interest" means an undivided 77.31% beneficial interest in Lac de Gras Joint Venture held by DDM pursuant to the Lac de Gras Joint Venture Agreement.

"Lac de Gras Leases" means the surface and mining leases constituting Lac de Gras.

"Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, treaty, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Liability" means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

"Limited Guaranty" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"LOI" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Mandatory Antitrust Approvals" means each of the approvals or consents of any Governmental Body, or the expiration of the applicable notice or waiting period, in each case required to consummate the Acquisition and the other transactions contemplated by this Agreement under applicable Antitrust Laws, including by means of a decision, in whatever form (including a declaration of lack of jurisdiction or a mere filing or notification, if the Closing can take place, pursuant to the applicable Antitrust Law, without a decision or the expiry of any waiting period) by any Governmental Body under the Antitrust Laws of any of any jurisdiction, authorizing or not objecting to the transactions contemplated by this Agreement, provided that any terms or conditions attached to such decision are acceptable to the Purchasers.

"Material Adverse Effect" means any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the Business, results of operations, condition (financial or otherwise), Acquired Assets or Assumed Liabilities of Sellers and their respective Subsidiaries, taken as a whole; or (b) the ability

of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that, for the purposes of clause (a), a Material Adverse Effect shall not be deemed to include events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy or credit, financial, or securities markets; (ii) any outbreak or escalation of war or any act of terrorism; (iii) changes in applicable Law; (iv) changes in IFRS; (v) Sellers' failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period (but, for the avoidance of doubt, not the underlying cause(s) of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (vi) changes in political conditions; (vii) general conditions in the industry in which Sellers and their respective Subsidiaries operate; (viii) the announcement of the transactions contemplated by this Agreement; or (ix) the commencement or pendency of the CCAA Proceedings; provided further, however, that any event, change, and effect referred to in clauses (i), (ii), (iii), (iv), (vi) and (vii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on Sellers and their respective Subsidiaries, taken as a whole, compared to other participants in the industries in which Sellers and their respective Subsidiaries conduct their businesses.

"Material Contract" means any Contract:

(a) that if terminated or modified or if it ceased to be in effect, would reasonably be expected to have a Material Adverse Effect;

(b) that is a partnership agreement, limited liability company agreement, joint venture agreement or similar agreement or arrangement, including the Joint Venture Agreements, relating to the formation, creation or operation of any partnership, limited liability company or joint venture in which Sellers or any of their Subsidiaries is a partner, member or joint venturer (or other participant) that is material to Sellers, their Subsidiaries or the Business, or the ability of Sellers and their Subsidiaries to develop any of their material projects, but excluding any such partnership, limited liability company or joint venture which is a wholly-owned Subsidiary of Sellers;

(c) under which Indebtedness for borrowed money in excess of $7,500,000 is or may become outstanding or pursuant to which any property or asset of Sellers or their Subsidiaries is mortgaged, pledged or otherwise subject to an Encumbrance securing Indebtedness for borrowed money in excess of $7,500,000 or under which Sellers or any of their Subsidiaries has guaranteed any liabilities or obligations of a third party in excess of $7,500,000, in each case, other than any such Contract between two or more wholly-owned Subsidiaries of Sellers or between Sellers and/or one or more of their wholly-owned Subsidiaries;

(d) under which Sellers or any of its Subsidiaries is obligated to make or expects to receive payments in excess of $7,500,000 over the remaining term;

(e) that creates an exclusive dealing arrangement or right of first offer or refusal;

(f) providing for the purchase, sale or exchange of, or option to purchase, sell or exchange, any property or asset where the purchase or sale price or agreed value or fair market value of such property or asset exceeds $15,000,000;

(g) that is a Collective Agreement;

(h) that limits or restricts in any material respect (a) the ability of Sellers or any of their Subsidiaries to incur Indebtedness, to engage in any line of business or carry on business in any geographic area, to compete with any Person, or to engage in any merger, consolidation or other business combination, or (b) the scope of Persons to whom Sellers or any of their Subsidiaries may sell products;

(i) between Sellers or any of their Subsidiaries, on the one hand, and any director or executive officer of the Sellers or any of their Subsidiaries, on the other hand;

(j) with Aboriginal Groups or Aboriginal business, including a joint venture in which an Aboriginal Group is a joint venture party;

(k) providing for the sale of diamonds representing more than 1% of annual production of Sellers and their Subsidiaries or pursuant to which Sellers and their Subsidiaries received during calendar year 2019 or could reasonably be expected to receive in calendar year 2020 or thereafter revenues in excess of $15,000,000;

(l) providing for indemnification by Sellers or their Subsidiaries of another Person, other than Contracts for goods or services, Contracts with directors or officers of Sellers or their Subsidiaries in their capacity as such or Contracts which provide for indemnification obligations of less than $15,000,000;

(m) providing for a royalty, streaming or similar arrangement or economically equivalent arrangement in respect of any of the Mine Properties; or

(n) that is or would reasonably be expected to be material to Sellers and their Subsidiaries, the Business or the Acquired Assets, taken as a whole.

"Mine Properties" means, collectively, the Diavik Diamond Mine and the Ekati Diamond Mine and "Mine Property" means any one of them as applicable.

"Mineral Rights" has the meaning ascribed thereto in Section 4.13(a).

"Monitor" means FTI Consulting Canada Inc., in its capacity as the CCAA Court-appointed Monitor in connection with the CCAA Proceedings.

"Monitor's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Sale Order, to be delivered by the Monitor to the Sellers and the Purchasers on Closing and thereafter filed by the Monitor with the CCAA Court, certifying that the Monitor has received the Conditions Certificates.

"Objection Notice" shall have the meaning ascribed thereto in Section 12.13(e).

"Order" means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any court or Governmental Body.

"Ordinary Course of Business" means, with respect to any Person, actions that (i) are taken in the ordinary and usual course of operations of the Business consistent with past practice in effect prior to filing of the CCAA Proceedings and prior to the enactment of measures taken in response to the COVID-19 pandemic, (ii) are taken in accordance with all applicable Laws and (iii) do not result from or arise out of and were not caused by, any breach of Contract, breach of warranty, tort, infringement or violation of Law by such Person or any Affiliate of such Person.

"Organizational Documents" means, with respect to a particular entity Person, (a) if a corporation, the articles or certificate of incorporation and bylaws, (b) if a general partnership, the partnership agreement and any statement of partnership, (c) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (d) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (e) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (f) all amendments or supplements to any of the foregoing.

"Other Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Other Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.

"Outside Date" shall have meaning ascribed thereto in Section 11.1(b)(i).

"Parent" shall have the meaning ascribed thereto in the Preamble hereof.

"Parties" means the Purchasers and Sellers collectively and a "Party" refers to any of them.

"Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: (1) any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grant from the Crown or a Governmental Body and any statutory limitations, exceptions, reservations and qualifications to title or Encumbrances imposed by Law; (2) any claim by any Aboriginal Group based on treaty rights, traditional territory, land claims or otherwise; (3) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (4) permits, reservations, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements (including, without in any way limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) in favor of any Governmental Body or utility company in connection with the development, servicing, use or operation of any property; (5) each of the following Encumbrances: (a) permits, reservations, covenants, servitudes, rights of access or user licenses, easements, rights of way and rights in the nature of easements in favor of any Person (other than those in (4) above); (b) any encroachments, title defects or irregularities existing; (c) any instrument, easement, charge, caveat,

lease, agreement or other document registered or recorded against title to any property so long as same have been complied with in all material respects; (d) agreements with any Governmental Body and any public utilities or private suppliers of services; and (e) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (a), (b), (c), (d) and (e), which do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto; (6) Encumbrances granted or arising pursuant to the Joint Venture Agreements included in the Acquired Assets; (7) Encumbrances to which the Purchasers consent in writing; and (8) for purposes of the representations and warranties given by Sellers on the Effective Date under Article IV hereof and Section 6.1(b)(v) only, all "Permitted Encumbrances" as defined in the Interim Credit Agreement.

"Person" means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority or natural person.

"Pre-Closing Period" means the period commencing on the Effective Date and ending on the earlier of the date upon which this Agreement is validly terminated pursuant to Article XI or the Closing Date.

"Pre-Closing Tax Period" means any taxable period (or portion thereof) ending on or before the Closing Date and any portion of any Straddle Period ending on the Closing Date.

"Pre-filing Credit Agreement" means the Revolving Credit Agreement, dated as of November 1, 2017 (as amended by the First Amendment and Waiver to Credit Agreement, dated as of July 30, 2019, the Second Amendment, dated as of March 4, 2020, and as further amended from time to time), among DDM, Parent, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"Pre-filing Indenture" means the Indenture, dated as of October 23, 2017, by and among Northwest Acquisitions ULC, Dominion Finco, Inc. and Wilmington Trust, National Association, as trustee (the "Indenture Trustee"), as supplemented by (i) the First Supplemental Indenture, dated as of November 1, 2017, by and among the Northwest Acquisitions ULC, Dominion Finco, Inc., the guarantors party thereto and the Indenture Trustee, (ii) the Second Supplemental Indenture, dated as of December 21, 2017, by and among Northwest Acquisitions ULC, as successor of Northwest Acquisitions ULC, Dominion Finco, Inc. and the Indenture Trustee, (iii) the Third Supplemental Indenture, dated as of December 21, 2017, by and among DDM, as successor of Northwest Acquisitions ULC, Dominion Finco, Inc. and the Indenture Trustee, (iv) the Fourth Supplemental Indenture, dated as of January 1, 2019, by and among the Indenture Trustee, Dominion Finco, Inc., DDM, and the guarantors party thereto, and (v) the Fifth Supplemental Indenture, dated as of December 13, 2019, by and among DDM, Dominion Finco, Inc., Washington Diamond Investments LLC, Dominion Diamond Holdings, LLC, and the Indenture Trustee.

"Previously Omitted Contract" shall have the meaning ascribed thereto in Section 2.6(b)(i).

"Previously Omitted Contract Designation" shall have the meaning ascribed thereto in Section 2.6(b)(i).

"Previously Omitted Contract Notice" shall have the meaning ascribed thereto in Section 2.6(b)(ii).

"Purchase Price" shall have the meaning ascribed thereto in Section 3.1(a).

"Purchaser Holdco" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchaser Holdco Acquired Interests" means shares of, or other equity interests in, the Acquired Subsidiaries.

"Purchaser Related Party" means any former, current or future direct or indirect director, manager, officer, employee, agent or Affiliate of Purchasers; any former, current or future, direct or indirect holder of any equity interests or securities of Purchasers (whether such holder is a limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of Purchasers; any equity or debt financing source of Purchasers; or any former, current or future director, officer, trustee, beneficiary, employee, agent, Representative, Affiliate, advisor, general or limited partner, manager, member, stockholder, or assignee of any of the foregoing.

"Purchaser Termination Fee" shall have the meaning ascribed thereto in Section 11.3.

"Purchasers" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchasers' Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"Regulation" means any Law, statute, regulation, code, guideline, protocol, policy, ruling, rule or Order of, administered or enforced by or on behalf of any Governmental Body and all judgments, orders, writs, injunctions, decisions and mandate of any Governmental Body which, although not actually having the force of law, are considered by such Governmental Body as requiring compliance as if having the force of law or which establish the interpretative position of the Law by such Governmental Body.

"Release" means any release, spill, deposit, emission, leaking, pumping, escape, emptying, leaching, seeping, disposal, discharge, dispersal or migration into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller as at the Closing Date, including the movement of Contaminants, including Hazardous Materials, through or in the air, soil, ground, surface water, groundwater or property.

"Representatives" means the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of any Person.

"Retained Subsidiaries" shall have the meaning ascribed thereto in Section 2.2(b).

"Rio Condition" shall have the meaning ascribed thereto in Section 8.11.

"Sale Advisor" means Evercore Group LLC.

"Sale Order" means an Order of the CCAA Court, substantially in the form of Schedule F hereto, with such changes as may be agreed by the Purchasers and the Sellers, each acting reasonably, approving the transactions contemplated by this Agreement and vesting the Acquired Assets in the Purchasers, free and clear of all Encumbrances, other than the Permitted Encumbrances.

"Seller Disclosure Letter" means the disclosure letter delivered by Sellers to Purchasers concurrently with the execution and delivery of this Agreement.

"Sellers" shall have the meaning ascribed thereto in the Preamble hereof.

"Sellers' Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"SISP" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"SISP Order" means the Amended and Restated Initial Order or any other Order of the CCAA Court, which shall be in the form attached hereto as Exhibit G, with such changes as may be agreed to by Purchasers in their sole discretion and Sellers in their reasonable discretion and which shall: (a) authorize and approve the SISP, (b) authorize and direct the Sellers, subject to approval of the Monitor to execute this Agreement, which will stand as the Stalking Horse Bid (for the purposes of the SISP), (c) approve this Agreement as the Initial Stalking Horse Bid (as defined in the SISP) pursuant to the SISP, (d) approve the Break-Up Fee and Expense Reimbursement Amount and grant the Break-Up Fee Charge, (e) approve the Interim Facility Credit Agreement and authorize DDM, as Borrower, to borrow amounts under the Interim Facility.

"Stalking Horse Term Sheet" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Stay" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Straddle Period" shall have the meaning ascribed thereto in Section 12.13(b).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, unlimited liability company, public liability company, private limited company, joint venture, partnership or other entity of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

"Successful Bidder" shall mean the successful bidder determined in accordance with the SISP.

"Surety Condition" shall have the meaning ascribed thereto in Section 8.9.

"Tax Act" means the Income Tax Act (Canada) and the regulations promulgated thereunder, as amended from time to time.

"Tax Return" means any report, return, information return, election, agreement, declaration or other document of any nature or kind required to be filed with any applicable Governmental Body in respect of Taxes, including any amendment, schedule, attachment or supplement thereto and whether in tangible or electronic form.

"Taxes" means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, GST, franchise, excise, value added, capital, license, payroll, employment, employer health, unemployment, pension, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer (including land registration or transfer), fuel, excess profits, occupational and interest equalization, windfall profits, severance and withholding and social security taxes imposed by Canada, the United States or any other country or by any state, province, territory, municipality, subdivision or instrumentality of Canada or the United States or of any other country or by any other Governmental Body, and employment or unemployment insurance premiums, Canada Pension Plan or Quebec Pension Plan contributions, together with all applicable penalties and interest, and such term shall include any interest, penalties or additions to tax attributable to such Taxes.

A "third party" means any Person other than any Seller, Purchasers or any of their respective Affiliates.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 12.13(a).

"Transferred Employees" shall have the meaning ascribed thereto in Section 7.1(a).

"Treasury Regulations" means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

"US$" means the currency of the United States, and all references to monetary amounts herein shall be in Dollars unless otherwise specified herein.

"Washington Diamond" means Washington Diamond Lending, LLC and any of its Affiliates or designees as an Interim Lender under the Interim Facility Credit Agreement.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning through this Agreement.

1.3 Other Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement, unless the express context otherwise requires.

(d) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under IFRS consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under IFRS, the definition set forth in this Agreement will control.

(e) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(f) Any provision of this Agreement that requires Purchasers to act reasonably shall not be deemed to require Purchasers to accept, agree or consent to any Order or supplement, amendment or modification thereto, or any other matter that adversely affects Purchasers or is inconsistent with the terms of this Agreement, in each case, other than in any de minimis respect.

(g) Any provision of this Agreement that requires any Party to use commercially reasonable efforts to satisfy conditions to Closing having a sole discretion standard do not require such Party to accept any term or agreement not acceptable to such Party in its sole discretion.

(h) Wherever the word "include," or "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation."

ARTICLE II

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1 Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchasers, and Purchasers shall purchase, acquire and take assignment and delivery of, all of the Sellers' right, title and interest in the assets and properties of Sellers other than the Excluded Assets (the "Acquired Assets") subject to Section 2.6 and Section 2.7, free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances), including the following:

(a) all of the issued and outstanding equity interests held by any Seller in Dominion Diamond Marketing Corporation, Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V. (collectively, the "Acquired Subsidiaries");

(b) the Diavik Joint Venture Interest, all rights and interests of any Seller under the Diavik Joint Venture Agreement, and all other rights, title and interests of any Seller in the Diavik Diamond Mine and the Diavik Joint Venture;

(c) the Ekati Core Zone Joint Venture Interest, all rights and interests of any Seller under the Ekati Core Zone Joint Venture Agreement, and all other rights, title and interests

of any Seller in the Ekati Diamond Mine, the Ekati Core Zone, the Ekati Core Zone Leases and the Ekati Core Zone Joint Venture;

(d) all rights, title and interests of any Seller in the Ekati Buffer Zone and the Ekati Buffer Zone Leases;

(e) the Lac de Gras Joint Venture Interest, all rights and interests of any Seller under the Lac de Gras Joint Venture Agreement, and all other rights, title and interests of any Seller in the Lac de Gras Leases and the Lac de Gras Joint Venture;

(f) all mineral rights held by DDM, including all mineral rights included in the Ekati Core Zone, Ekati Buffer Zone, Lac de Gras and the Glowworm Lake Property;

(g) all of Sellers' Cash and Cash Equivalents (except to the extent of the Cash Component), including all cash collateral and deposits posted by or for the benefit of Sellers as security for any letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise (except for retainers held by any professional in the CCAA Proceedings);

(h) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller;

(i) all prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(j) all equipment and other tangible assets of Sellers, including all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Seller related thereto;

(k) all Inventory;

(l) subject to Section 2.6, all of the Essential Contracts and Other Contracts set forth on Schedule F hereto (the "Assigned Contracts") and all rights thereunder;

(m) all Authorizations and all pending applications therefor, in each case, to the extent such Authorizations and pending applications therefor are transferrable;

(n) all rights, options, Claims or causes of action of any Seller or other Applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law;

(o) all other right, title and interest of any Seller in real property (including and all fixtures, improvements and appurtenances thereto);

(p) all Assumed Plans, together with all funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto), and all rights and obligations thereunder;

(q) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers' expense to the extent required by Law;

(r) any chattel paper owned or held by Sellers;

(s) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(t) the Intellectual Property owned or purported to be owned by any Seller;

(u) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(v) to the extent permitted by Law, Sellers' Documents; provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers' expense to the extent required by Law or as is necessary to wind-down Sellers;

(w) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(x) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or current employees and agents of Sellers or with third parties (including any non-disclosure, confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the CCAA Proceedings or pursuant to the SISP);

(y) telephone, fax numbers (if any) and email addresses, as well as the right to receive mail and other communications addressed to Sellers;

(z) to the extent transferable, any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchasers and will pay such amounts to the Purchasers forthwith following receipt thereof);

(aa) to the extent transferable, all prepaid Taxes and Tax credits of Sellers (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchasers and will pay such amounts to the Purchasers forthwith following receipt thereof);

(bb) all of Sellers' bank accounts (excluding an account established solely for the purpose of receiving payment of the Cash Component and winding-up the affairs of the Sellers therefrom); and

(cc) all other or additional assets, properties, privileges, rights and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement.

2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in DDM or Dominion Holdings;

(b) all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in, Dominion Finco, Inc., Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Dominion Diamond (Cyprus) Limited or Dominion Diamond (Luxembourg) S.a.r.l. (the "Retained Subsidiaries");

(c) all Excluded Contracts;

(d) Sellers' rights under this Agreement, including the right to the Cash Component, and under any Ancillary Documents;

(e) all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto running in favor of any Seller, including all insurance recoveries thereunder and rights to assert Claims with respect to any such insurance recoveries, in each case, as the same may run in favor of any Seller and arising out of actions taking place prior to the Closing Date;

(f) all assets that are removed from the Acquired Assets pursuant to Section 2.6 and Section 2.7; and

(g) Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchasers shall have the right to reasonably request, and Sellers shall reasonably cooperate to provide, copies of any portions of such documents solely as they relate to the Acquired Assets.

2.3 Assumed Liabilities. At the Closing, except as provided in Section 2.2 and/or in Section 2.4 hereof, and subject to Section 2.6, Section 2.7, Purchasers shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the following Liabilities) (collectively, the "Assumed Liabilities"):

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(a) all Liabilities and obligations of any Seller under the Assigned Contracts, including by making available the Cure Funding Amount to satisfy the Cure Amount in connection with the assumption and assignment of the Assigned Contracts, but excluding (i) trade payables arising on or after the Filing Date that are due and payable as of or prior to the Closing in the ordinary course, and (ii) any other Liabilities related to or arising out of a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing;

(b) all trade payables arising on or after the Filing Date that are not yet due and payable as of the Closing in the ordinary course;

(c) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(d) all payroll liabilities with respect to Transferred Employees for the payroll period which includes the Closing Date;

(e) any and all Liabilities relating to Claims, Actions, suits, arbitrations, litigation matters, proceedings, investigations or other Actions (in each case, whether involving private parties, Governmental Bodies, or otherwise) involving, against, or affecting the Acquired Assets or the operation of the Business from and after the Closing, whether commenced, filed, initiated, or threatened before or after the Closing and whether relating to facts, events, or circumstances arising or occurring before or after the Closing, but excluding, for the avoidance of doubt, any such Liabilities (i) arising in the CCAA Proceedings unrelated to the go-forward operations of the Business, (ii) insured under insurance policies that are not transferable to Purchasers; (iii) with respect to Excluded Contracts or any other Excluded Assets, (iv) to Employees or former Employees who are not Transferred Employees, or (v) expressly excluded pursuant to Section 2.4;

(f) solely with respect to the Acquired Assets, and subject to such agreements and arrangements as Purchasers may enter into in satisfaction of the Surety Condition and the Rio Condition, or otherwise in connection with the transactions contemplated hereby, any and all Environmental Liabilities and Obligations; and

(g) all intercompany Indebtedness among Sellers and the Acquired Subsidiaries; and

(h) all Liabilities under Authorizations included in the Acquired Assets, in each case solely in respect of the period commencing at the Closing Date and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing, subject to such agreements and arrangements as Purchasers may enter into in satisfaction of the Surety Condition.

2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchasers are not assuming, and shall not be obligated to pay, perform or otherwise discharge any Liability that is not an Assumed Liability (collectively, the "Excluded Liabilities"), including the following:

(a) any and all Liabilities arising out of, relating to or otherwise in respect of the Acquired Assets and/or Business arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities of any Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of any Retained Subsidiary;

(d) any and all Liabilities of any Seller for Indebtedness, including (i) all Liabilities with respect to the Pre-filing Credit Agreement and the Pre-filing Indenture, (ii) all intercompany Indebtedness between any Seller, on the one hand, and Parent or any Retained Subsidiary, on the other hand, and (iii) all Guarantees by Sellers, but excluding any intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(e) except as set forth in Section 12.13(a), any and all (i) Liabilities of any Seller for any Taxes (including, without limitation, Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to Section 160 of the Tax Act, Treasury Regulation Section 1502-6 (or any similar provision of any other Law) or otherwise and any Taxes owed by any Seller and arising in connection with the consummation of the transactions contemplated by this Agreement) arising or related to any period(s) on or prior to the Closing Date, and (ii) Taxes arising from or in connection with an Excluded Asset;

(f) any and all Liabilities of any Seller in respect of the Excluded Contracts and any other Contracts to which such Seller is party or is otherwise bound that are not Assigned Contracts;

(g) all Liabilities and obligations of any Seller under the Assigned Contracts in respect of (i) a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing, and (ii) trade payables arising on or after the Filing Date that are due and payable as of or prior to the Closing in the ordinary course;

(h) any and all Liabilities arising out of or relating to any business or property formerly owned or operated by any Seller, any Affiliate or predecessor thereof, but not presently owned and operated by such Seller;

(i) any and all Liabilities of any Seller or its predecessors arising out of any Contract, Authorization, franchise or claim that is not transferred to Purchasers as part of the Acquired Assets;

(j) any and all Liability for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the CCAA Proceedings (including the Monitor's fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Sellers or the Monitor, and the fees and expenses of the post-filing lenders or the pre-filing lenders incurred or owed in connection with the administration of the CCAA Proceedings); and (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;

(k) any and all Liabilities in respect of Employees other than the Liabilities relating to Transferred Employees that are expressly assumed under Section 2.3;

(l) any and all Liabilities with respect to change of control or similar arrangements with any officer, employee or contractor of any Seller;

(m) any and all Liabilities arising out of, relating to or otherwise in respect of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assigned Contracts occurring prior to the Closing;

(n) any and all Liabilities of Sellers under this Agreement;

(o) any and all Liabilities to any broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement;

(p) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Business (as currently or formerly conducted) or the ownership of the Acquired Assets for any Pre-Closing Tax Period, including any and all property Taxes with respect to any Pre-Closing Tax Period;

(q) any Liability for any Tax or Taxes of Sellers or their Affiliates for any taxable period, other than Transfer Taxes; and

(r) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement.

2.5 Allocation of Acquired Assets and Assumed Liabilities. Further to Sections 2.1 and 2.3, above, (i) the Canadian Assets shall be conveyed to the Canadian Purchaser from DDM in consideration of the assumption of the Assumed Liabilities and the portion of the Cash Component allocated to the Canadian Assets in accordance with Section 12.13(d); and the Purchaser Holdco Acquired Interests shall be conveyed to Purchaser Holdco from Dominion Holdings in consideration of the remaining portion of the Cash Component so allocated to the Purchaser Holdco Acquired Interests in accordance with Section 12.13(d).

2.6 Assigned Contracts/Previously Omitted Contracts.

(a) Assignment and Assumption at Closing.

(i) Schedule F sets forth, to the Sellers' Knowledge, (A) a list of all Contracts to which any Seller is party, including all Contracts that, to the Sellers' Knowledge, were entered into by a Seller following the Filing Date and, (B) with respect to each Contract listed therein, Sellers' good-faith estimate of the Cure Amount. Purchasers shall, in their sole discretion following consultation with Sellers, determine which Contracts are Assigned Contracts.

(ii) From and after the date hereof until the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, the Purchasers, without any adjustment to the

Cash Component, shall be entitled to make additions, deletions and modifications to the Contracts classified as an "Essential Contract," "Other Contract" or "Excluded Contract" on Schedule F in their sole discretion following consultation with Sellers by delivery of written notice to Sellers. For greater certainty, (A) any Contract designated by Purchasers as an Excluded Contract on Schedule F after the date of this Agreement shall be deemed to no longer be an Assigned Contract and to be an Excluded Contract, (B) any Contract designated by Purchasers as an Essential Contract on Schedule F after the date of this Agreement shall be deemed an Essential Contract for the purposes of this Agreement, and (C) any Contract designated by Purchasers as an Other Contract on Schedule F after the date of this Agreement shall be deemed an Other Contract for the purposes of this Agreement.

(iii) Sellers shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchasers. Purchasers may request, in their reasonable commercial judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assigned Contract, and Sellers shall cooperate with all reasonable requests of Purchasers to seek to obtain such modifications or amendments or to assist Purchasers in obtaining such modifications or amendments; provided that Purchaser shall make available the Cure Funding Amount to satisfy the Cure Amount. If Purchaser and Sellers are unable to obtain such modifications or amendments, Purchasers may, in their sole discretion following consultation with Sellers, designate any Contract as an Excluded Contract. For the avoidance of doubt, the failure to obtain modifications or amendments to an Essential Contract requested by Purchasers shall not result in a failure to satisfy the condition to closing set out in Section 8.7, unless the aggregate Cure Amount exceeds the Cure Funding Amount.

(iv) To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (A) the Sellers' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchasers pursuant to an Assignment Order, (B) the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date, and (C) if an Assignment Order is obtained in respect of such Assigned Contract, the Purchasers shall accept the assignment of such Assigned Contract on such terms.

(v) Unless the Parties otherwise agree, to the extent that any Cure Amount is payable with respect to any Assigned Contract, Sellers shall (A) where such Assigned Contract is assigned pursuant to an Assignment Order, pay such Cure Amount in accordance with such Assignment Order, and (B) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay such Cure Amount in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchasers and such counterparty.

(b) Previously Omitted Contracts.

(i) If prior to Closing, (A) it is discovered that a Contract should have been listed but was not listed on Schedule F, or (B) a Contract is entered into after the

Effective Date that would have been listed on Schedule F if any Seller had entered into such Contract on or before the Effective Date (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof or entry into such Contract (but in no event later than five (5) Business Days thereafter), notify Purchasers in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. Purchasers shall thereafter deliver written notice to Sellers, promptly following notification of such Previously Omitted Contract from Sellers and in any event prior to the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, designating such Previously Omitted Contract as an "Essential Contract", "Other Contract" or "Excluded Contract" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 2.6 as an "Excluded Contract" or with respect to which Purchasers fail to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract. There shall be no adjustment to the Cash Component in respect of any Previously Omitted Contract or any Previously Omitted Contract Designation.

(ii) If a Purchaser designates a Previously Omitted Contract as an "Essential Contract" or "Other Contract" in accordance with Section 2.6, Schedule F shall be amended to include such Previously Omitted Contract and Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amount with respect to such Previously Omitted Contract and Sellers' intention to assign such Previously Omitted Contract in accordance with this Section 2.6. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with seven (7) days to object, in writing to Sellers and the applicable Purchaser, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and the applicable Purchaser are unable to reach a consensual resolution with respect to an objection relating to a Previously Omitted Contract that has been designated as an "Essential Contract" in accordance with Section 2.6, Sellers will seek an expedited hearing before the CCAA Court for an Assignment Order in respect of such Essential Contract.

(c) Disclaimer of Assigned Contracts. Sellers shall not disclaim or seek to disclaim any Assigned Contract in the CCAA Proceedings or any other proceeding following the Effective Date and prior to any termination of this Agreement without the prior written consent of Purchasers, which Purchasers may withhold, condition or delay, in their sole discretion. For greater certainty, (i) all Contracts that have not been designated as "Assigned Contracts" as at the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court shall be deemed to be Excluded Contracts, and (ii) the Sellers shall be entitled, at any time from and after the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, to disclaim or seek to disclaim any Excluded Contracts.

2.7 Circumstances for Exclusion of Diavik Joint Venture Interests. Notwithstanding anything to the contrary set forth in this Agreement, if the Rio Condition is not satisfied on or before July 31, 2020, then the Parties shall proceed with the Acquisition on the terms and subject

to the conditions set forth in this Agreement, except that Purchasers shall not acquire or assume any rights or Liabilities with respect to the Diavik Joint Venture and the terms set forth in this Agreement shall be deemed to be amended on the following basis:

(a) the Cash Component shall remain unchanged (other than adjustments otherwise contemplated by Section 3.1(a));

(b) the Diavik Joint Venture Interest, and any diamonds distributed by the Diavik Joint Venture to DDM after the Filing Date shall become Excluded Assets;

(c) all Liabilities of Sellers with respect to the Diavik Joint Venture Interest, the Diavik Joint Venture Agreement, the Diavik Diamond Mine and the Diavik Joint Venture (including with respect to the Closure and Security Agreement) shall become Excluded Liabilities;

(d) Sellers shall be deemed not to make any representation or warranty with respect to the Diavik Joint Venture Interest, the Diavik Joint Venture Agreement, the Diavik Diamond Mine, the Diavik Joint Venture or DDMI (and, for greater certainty, references to the Business shall be deemed to exclude the operations of the Diavik Joint Venture);

(e) Sellers shall be deemed not to make any covenant or agreement with respect to the Diavik Joint Venture Interest;

(f) Sellers shall be permitted to sell, transfer or otherwise dispose of the Diavik Joint Venture Interest free and clear of any restriction under this Agreement;

(g) the Rio Condition and the condition set forth in Section 8.12 shall be deemed waived as of July 31, 2020 for all purposes hereunder;

(h) the aggregate amount of equity financing required to be committed in order to satisfy the Financing Condition would be reduced to US$70,000,000, less 50% of any debt raised; and

(i) Sellers and Purchasers shall agree in good faith to any other adjustments to the terms of this Agreement as may be necessary to implement the terms set forth in this Section 2.7.

2.8 Assets Held by Parent or Retained Subsidiaries. If it is determined at any time before or after the Closing that Parent or any Retained Subsidiary holds any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller, then Sellers and Parent shall, and shall cause such Retained Subsidiary to transfer and assign such assets to Purchasers or to one or more Designated Purchasers, as directed by Purchasers, subject to the terms of this Agreement. Without limiting the foregoing, Parent shall, and Parent and Sellers shall cause each of the Retained Subsidiaries to transfer and assign to Purchasers or to one ore more Designated Purchasers, as directed by Purchasers, all rights, options, Claims or causes of action of Parent or any such Retained Subsidiary against any party arising out of events occurring prior to the Closing, to the extent permitted under applicable Law. All assets, properties, rights, options, Claims or

causes of action transferred to Purchasers or a Designated Purchaser pursuant to this Section 2.8 shall constitute Acquired Assets for the purposes of this Agreement.

ARTICLE III

PURCHASE PRICE AND PAYMENT

3.1 Purchase Price.

(a) The purchase price for the Acquired Assets shall be the aggregate of the (i) the Cash Component and (ii) the Assumed Liabilities (the "Purchase Price").

(b) The "Cash Component" shall be equal to One Hundred Twenty-Six Million One Hundred Seven Thousand U.S. Dollars (US$126,107,000) (the "Cash Component"),

(i) *minus* the amount (if any) by which the principal and accrued interest on the Interim Facility outstanding at Closing is less than Fifty-Five Million U.S. Dollars (US$55,000,000); or

(ii) *plus*, if the Closing is after September 30, 2020, the amount (if any) by which the principal and accrued interest on the Interim Facility outstanding at Closing with respect to Advances (as defined in the Interim Facility) and accrued and unpaid interest after September 30, 2020 is more than Fifty-Five Million U.S. Dollars (US$55,000,000) up to a maximum of Five Million U.S. Dollars (US$5,000,000).

3.2 Satisfaction of Purchase Price.

(a) The Cash Component shall be satisfied in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Sellers at least two (2) Business Days prior to the Closing Date; provided however, to the extent any of the Cash Component of the Purchase Price will be paid to Washington Diamond in its capacity as Interim Lender under the Interim Facility Credit Agreement, Purchasers may deduct such amount from the Cash Component of the Purchase Price and Washington Diamond agrees the Claims held by Washington Diamond as against the Applicants shall be reduced dollar-for-dollar on account of the amount deducted from the Cash Component. Any dispute relating to the applicable amount of Claims held by Washington Diamond as against the Applicants shall be resolved by the CCAA Court in accordance with Section 12.8.

(b) The Assumed Liabilities will be assumed by the Purchasers pursuant to the Assignment and Assumption Agreement, the Assignment and Assumption of Leases and the IP Assignment and Assumption Agreement.

3.3 Further Assurances. From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchasers shall use commercially reasonable efforts to execute and deliver such documents and instruments of conveyance and transfer as Purchasers may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchasers title to the Acquired Assets transferred hereunder, and (b) Purchasers, upon the request of Sellers, shall use commercially

reasonable efforts to execute and deliver such documents and instruments of assumption as Sellers may reasonably request in order to confirm Purchasers' Liability for the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Seller Disclosure Letter, Sellers represent and warrant to Purchasers as of the Effective Date and the Closing Date, as follows:

4.1 Organization and Power. Dominion Holdings is a limited liability company duly formed under the laws of the State of Delaware, and is in good standing thereunder as of the Effective Date and the Closing. DDM is an unlimited liability company duly formed under the laws of British Columbia. Subject to the CCAA and the Amended and Restated Initial Order, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted. Each Seller has previously delivered to Purchasers true, complete and correct copies of its Organizational Documents, as amended and in effect on the Effective Date. Each Seller is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.2 Authority; No Violation. Subject to the issuance of the Sale Order, each Seller has all requisite limited liability company or unlimited liability company power and authority, as applicable, to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by each Seller shall be duly and validly authorized and approved by all necessary limited liability company or unlimited liability company action, as applicable. Subject to the issuance of the Sale Order by the CCAA Court (and assuming the due authorization, execution and delivery by the other Parties hereto), this Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

4.3 Consents.

(a) Except as set forth on Section 4.3(a) of the Seller Disclosure Letter, the execution, delivery and performance by Sellers of this Agreement or any Ancillary Document to which it is a party and the consummation of the transactions contemplated hereby or thereby in accordance with the Sale Order do not and will not (with or without notice or the passage of time): (i) contravene, violate or conflict with any term or provision of Sellers' Organizational Documents; (ii) violate any material Law applicable to any Seller or any Acquired Subsidiary or by which any property or asset of any Seller or any Acquired Subsidiary is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a

default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of any Seller or any Acquired Subsidiary under any Authorization or Material Contract, except in each case described in this clause (iii) to the extent that any such breach, default, right or requirement arises out of the commencement of the CCAA Proceedings or would be cured and the applicable Authorization or Material Contract would be assignable upon payment of the applicable Cure Amount hereunder.

(b) Except (i) for the issuance of the Sale Order, (ii) for compliance as may be required with the Competition Act or other applicable Antitrust Laws, and (iii) as set forth on Section 4.3(a) of the Seller Disclosure Letter, no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Sellers of this Agreement or the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business, in each case taken as a whole.

4.4 Subsidiaries.

(a) Except as would not, individually or in the aggregate, have a Material Adverse Effect, each Acquired Subsidiary is duly incorporated, organized or formed and validly existing under the laws of its jurisdiction of incorporation, organization or formation, and has the requisite power and capacity to own, lease, license and operate its assets and properties and conduct its business as now conducted and is duly registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or operated by it, or the nature of its activities, make such registration necessary.

(b) Section 4.4(b) of the Seller Disclosure Letter sets out, with respect to each Subsidiary of Sellers as of the date hereof: (A) its name; (B) the percentage owned directly or indirectly by any Seller and the percentage owned by registered holders of capital stock or other equity interests if other than Sellers and their Subsidiaries; and (C) its jurisdiction of incorporation, organization or formation.

(c) Dominion Holdings or DDM is, directly or indirectly, the registered and beneficial owner of all of the outstanding common shares or other equity interests as reflected as being owned by Dominion Holdings or DDM, as applicable, in Section 4.4(b) of the Seller Disclosure Letter, directly or indirectly, of each of its Subsidiaries, free and clear of any Encumbrance, other than Permitted Encumbrances, all such shares or other equity interests so owned by Sellers have been validly issued and are fully paid and non-assessable, as the case may be, and no such shares or other equity interests have been issued in violation of any pre-emptive or similar rights. Except for the shares or other equity interests owned by Dominion Holdings or DDM, directly or indirectly, in any Subsidiary, and except as set forth in Section 4.4(b) of the Seller Disclosure Letter neither any Seller nor any Subsidiary owns, beneficially or of record, any equity interests of any kind in any other Person as of the date hereof.

(d) No Acquired Subsidiary has any Indebtedness, other than with respect to the intercompany Indebtedness owed solely to Sellers or other Acquired Subsidiaries (and for the avoidance of doubt, trade payables incurred in the Ordinary Course of Business) and no Acquired Subsidiary has provided any Guarantee.

4.5 Title and Sufficiency of Assets.

(a) Sellers have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Acquired Subsidiaries have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) all assets and property which any such Acquired Subsidiary purports to own, free and clear of all Encumbrances other than Permitted Encumbrances, and there is no agreement, option or other right or privilege outstanding in favor of any Person for the purchase of any material asset from any Acquired Subsidiary outside the Ordinary Course of Business.

(c) The Acquired Assets, together with the assets and properties held by the Acquired Subsidiaries, include all of the properties and assets required to operate the Business in the Ordinary Course of Business.

(d) To the Knowledge of Sellers, neither Parent nor any of the Retained Subsidiaries holds any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller.

4.6 Financial Statements. Sellers have delivered to Purchaser Parent's audited consolidated financial statements as at and for the fiscal year ended December 31, 2019 and unaudited consolidated financial statements as at March 31, 2020 and for the three months ended March 31, 2020 and 2019 (including, in each case, any of the notes or schedules thereto, any report thereon and related management's discussion and analysis), each of which: (i) were prepared in accordance with IFRS; and (ii) present fairly, in all material respects, the assets, liabilities and financial condition of Parent and its Subsidiaries on a consolidated basis as at the respective dates thereof and the revenues, earnings, results of operations, changes in shareholders' equity and cash flow of Parent and its Subsidiaries on a consolidated basis for the periods covered thereby (except as may be indicated in the notes to such financial statements and subject in the case of unaudited financial statements to normal, year-end audit adjustments). Except as set forth in such financial statements, neither any Seller nor any Acquired Subsidiary is party to any off-balance sheet transaction with unconsolidated Persons.

4.7 Compliance with Laws. Sellers and each of the Acquired Subsidiaries are, and since February 1, 2018 have been, in compliance with Law in all material respects. Neither any Seller nor any Acquired Subsidiary is, to the Knowledge of Sellers, under any material investigation with respect to, or has been charged or threatened to be charged with, or has received notice of, any material violation or potential material violation of any Law from any Governmental Body.

4.8 Authorizations. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) each Seller and each Acquired Subsidiary owns, possesses or has obtained all Authorizations that are required by Law (including, for greater certainty, Environmental Law) to be owned, possessed or obtained by Sellers or any of the Acquired Subsidiaries in connection with the operation of the Business or in connection with the ownership, operation or use of the Acquired Assets; (ii) Sellers and the Acquired Subsidiaries, as applicable, lawfully hold, own or use, and have complied with all such Authorizations; (iii) each such Authorization is valid and in full force and effect, and is renewable by its terms or in the Ordinary Course of Business; and (iv) no action, investigation or proceeding is pending, or to the Knowledge of Sellers, threatened, against any Seller or any Acquired Subsidiary in respect of or regarding any such Authorization that could reasonably be expected to result in the suspension, loss or revocation of any such Authorization.

4.9 Material Contracts. Section 4.9 of the Seller Disclosure Letter sets out a complete and accurate list of all Material Contracts in effect or pursuant to which any Seller or any Acquired Subsidiary has surviving obligations as of the date hereof. True and complete copies of the Material Contracts have been disclosed in the Data Room and, other than as set out in the Data Room, no such Material Contract has been modified in any material respect. Each Material Contract is a legal, valid and binding agreement of the applicable Seller or the applicable Acquired Subsidiary, and is in full force and effect. Except as disclosed in Section 4.9 of the Seller Disclosure Letter and other than monetary defaults or such breaches arising out of the commencement of the CCAA Proceedings, neither any Seller nor any Acquired Subsidiary or, to the Knowledge of Seller, any other parties thereto, is in material breach or violation of or in default under (in each case, with or without notice or lapse of time or both) any Material Contract and no Seller or any Acquired Subsidiary has received or given any notice of any material breach or default under any Material Contract which remains uncured, and there exists no state of facts which after notice or lapse of time or both would constitute a material breach of or default under any Material Contract by any Seller or any Acquired Subsidiary or, to the Knowledge of Sellers, any other party thereto.

4.10 Diavik Joint Venture.

(a) DDM owns the Diavik Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Diavik Joint Venture Agreement, no Person has any Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Diavik Joint Venture. Except as specified in the Diavik Joint Venture Agreement, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Diavik Diamond Mine or the Diavik Joint Venture.

(b) A copy of the Diavik Joint Venture Agreement as currently in effect as of the date hereof has been made available to Purchasers in the Data Room.

4.11 Ekati Mine.

(a) DDM owns each of the Ekati Buffer Zone and the Ekati Core Zone Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, no Person has any

Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Ekati Buffer Zone or the Ekati Core Zone Joint Venture. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Ekati Buffer Zone, the Ekati Core Zone or the Ekati Core Zone Joint Venture.

(b) A copy of the Ekati Core Zone Joint Venture Agreement as currently in effect as of the date hereof has been made available to Purchasers in the Data Room.

4.12 Leased Property. With respect to the real property leased or subleased by any Seller or any Acquired Subsidiary, except as would not, individually or in the aggregate, have a Material Adverse Effect: (i) each lease or sublease for such property constitutes a legal, valid and binding obligation of the applicable Seller or the applicable Acquired Subsidiary, as the case may be, enforceable against such Seller or such Acquired Subsidiary, as the case may be, in accordance with its terms and is in full force and effect; (ii) except as disclosed in Section 4.12(ii) of the Seller Disclosure Letter, neither any Seller nor any Acquired Subsidiary, as the case may be, is in breach of or default under any such lease or sublease and no event has occurred which, without the giving of notice or lapse of time, or both, would constitute a breach of or default under any such lease or sublease; and (iii) except as disclosed in Section 4.12(iii) of the Seller Disclosure Letter, to the Knowledge of Sellers, no counterparty to any such lease or sublease is in default thereunder.

4.13 Interests in Properties and Mineral Rights.

(a) The Diavik Leases, the Ekati Buffer Zone Leases and the Ekati Core Zone Leases comprise all of Sellers' and the Acquired Subsidiaries' material real properties and all of Sellers' and the Acquired Subsidiaries' material mineral interests and rights, in each case, either existing under contract, by operation of Law or otherwise (collectively, and where material, the "Mineral Rights"). Neither Sellers nor the Acquired Subsidiaries own or have any interest in any other material real property or any other material mineral interests and rights.

(b) Other than pursuant to the Joint Venture Agreements, no person has any interest in the Mineral Rights or any right to acquire any such interest, and no person has any back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which would affect, in any material respect, DDM's or, to the Knowledge of Sellers, DDMI's interest in any of the Mineral Rights.

4.14 Litigation. Except as disclosed in Section 4.14 of the Seller Disclosure Letter, as of the date hereof, there are no claims, actions, suits, arbitrations, inquiries, investigations or proceedings pending, or, to the Knowledge of Sellers, threatened, against any Seller, any Acquired Subsidiary or, to the Knowledge of Sellers, DDMI, by or before any Governmental Body that, if determined adverse to the interests of any Seller, any Acquired Subsidiary or DDMI, would, individually or in the aggregate, have a Material Adverse Effect, or would be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby, and no Seller or Acquired Subsidiary or, to the Knowledge of Sellers, DDMI or any of the Mine Properties is subject to any outstanding judgment, order, writ, injunction or decree that would reasonably be expected to have a Material Adverse Effect.

4.15 Environmental Matters. Except as would not, individually or in the aggregate, have a Material Adverse Effect, to the Knowledge of Sellers, (i) there exists no fact, condition or occurrence concerning any Seller, any Acquired Subsidiary, DDMI or the operation of Business or Acquired Assets (including the Joint Ventures or the Mine Properties) with respect to any non-compliance with or obligation or liability under Environmental Laws; (ii) no unresolved complaint, notice or violation, citation, summons or order has been issued to any Seller or any Acquired Subsidiary or any of the Joint Ventures or the applicable manager/operator, as the case may be, alleging any violation by or liability of any Seller or any Acquired Subsidiary or any businesses or assets thereof, including the Joint Ventures or the Mine Properties, with respect to any Environmental Law; and (iii) the operation of the Business, including the Joint Ventures and the Mine Properties, is in compliance with Environmental Laws.

4.16 Aboriginal Claims.

(a) Section 4.16 of the Seller Disclosure Letter (to the Knowledge of Sellers, in respect of matters relating to the Diavik Joint Venture) contains a list of the current impact benefit or participation agreements, memoranda of understanding or similar arrangements (the "Aboriginal Agreements") with all Aboriginal Groups with whom any Seller, any Acquired Subsidiary or any of the Joint Ventures has any such dealings and any written notices of an Aboriginal Claim received by any Seller or any Acquired Subsidiary where there is no current Aboriginal Agreement in place with the Aboriginal Group, in each case, as of the date hereof. Copies of the Aboriginal Agreements as in effect as of the date hereof have been made available in the Data Room. Other than as disclosed in the Seller Disclosure Letter (including the Aboriginal Agreements), as of the date hereof, to the Knowledge of Sellers, neither Sellers, any of the Acquired Subsidiaries, the Ekati Buffer Zone, the Ekati Core Zone Joint Venture nor, any of the Diavik Joint Venture or its manager, as the case may be, has received any written notice of an Aboriginal Claim which materially affects Sellers, any of the Acquired Subsidiaries, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(b) The Sellers have not received written notice of any material Claims from any Aboriginal Group with respect to Sellers, any Acquired Subsidiary, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(c) The Sellers have materially complied with all material obligations under the Aboriginal Agreements.

4.17 Employees.

(a) All written contracts in relation to the top five compensated Employees (calculated based on annual base salary plus target cash bonus) have been made available in the Data Room.

(b) The independent contractors of Sellers and the Acquired Subsidiaries are not entitled to any severance or similar payments upon termination of their Contracts that would be material and each of such Contracts can be terminated with no more than 60 days' advance notice.

(c) No Employee has any agreement as to length of notice or severance payment required to terminate his or her employment or is entitled to notice or severance payments other than such as results by Law, nor are there any change of control payments or severance payments or agreements with Employees providing for cash or other compensation or benefits upon the consummation of, or relating to, the transactions contemplated by this Agreement other than the key employee retention plan approved by the CCAA Court in the Amended and Restated Intial Order.

4.18 Collective Agreements. Section 4.18 of the Seller Disclosure Letter sets forth a list of all Collective Agreements as of the date hereof. Except as disclosed in Section 4.18 of the Seller Disclosure Letter (A) there are no collective bargaining or union agreements or employee association agreements or other binding commitments in force with respect to Employees, (B) no Person holds bargaining rights with respect to any Employees and (C) to the Knowledge of Sellers, no Person has applied to be certified as the bargaining agent of any Employees.

4.19 Employee Plans.

(a) Section 4.19(a) of the Seller Disclosure Letter lists all written Employee Plans in effect as of the date hereof. Sellers have made available in the Data Room true, complete and up to date copies of all such material Employee Plans, as amended, together with all related documentation, including all material regulatory filings (including actuarial valuations) required to be filed with a Governmental Body and correspondence with Governmental Bodies with respect to such material regulatory filings (including actuarial valuations) of any Pension Plan (as defined in Section 4.19(a) of the Sellers Disclosure Letter).

(b) Sellers and the Acquired Subsidiaries have made all contributions and paid all premiums in respect of each material Employee Plan in a timely fashion in accordance with Law and in accordance with the terms of the applicable Employee Plan and all Collective Agreements. Except as would not, individually or in the aggregate, have a Material Adverse Effect, all financial liabilities of Sellers and the Acquired Subsidiaries (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and accurately disclosed in accordance with [IAS 19 Employee Benefits] in the financial statements referred to in Section 4.7 as of the dates of such financial statements .

(c) None of the Employee Plans (other than pension, retirement savings or retirement income plans) provide for retiree benefits or for benefits to retired or terminated Employees or to the beneficiaries or dependents of retired or terminated Employees.

(d) The execution of this Agreement and the completion of the transactions contemplated will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of indebtedness, vesting, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee or former Employee or their beneficiaries.

4.20 Taxes.

(a) DDM is not a non-resident of Canada for the purposes of Section 116 of the Tax Act.

(b) Seller and each of the Acquired Subsidiaries has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Body when required by Law to do so.

(c) The Purchaser Holdco Acquired Interests are not "taxable Canadian property" for the purposes of Section 116 of the Tax Act.

(d) The Canadian Assets include all or substantially all of each Seller's "Canadian Resource Property" for the purposes of sections 66 and 66.7 of the Tax Act.

(e) The Canadian Assets constitute all or substantially all of the assets used in carrying on the Business for the purposes of section 22 of the Tax Act.

(f) For the purposes of the GST Legislation, (i) DDM carries on a business, and (ii) the Canadian Assets constitute all or substantially all of the property necessary for the Canadian Purchaser to be capable of carrying on the business.

(g) DDM is registered for the purposes of the GST Legislation and its registration number is [___________].

(h) the Purchaser Holdco Acquired Interests are "financial instruments" for the purposes of the GST Legislation.

4.21 Brokers and Finders. Other than the Sale Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and Purchasers are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Sellers or their Subsidiaries.

4.22 No Other Representations or Warranties. Except for the representations, warranties and covenants of Sellers expressly contained herein or any certificate delivered hereunder, neither Sellers nor any of their respective Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Sellers, including, without limitation, as to (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Purchasers after the Closing, (b) the probable success or results in connection with the CCAA Court and the Sale Order, or (c) the value, use or condition of the Acquired Assets, which are being conveyed hereby on an "As-Is", "Where-Is" condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASERS

Each Purchaser represents and warrants to Sellers as of the Effective Date as follows:

5.1 Organization and Power. Purchaser Holdco is a limited partnership, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted. Canadian Purchaser is an unlimited liability company, validly existing and in good standing under the laws of British Columbia, with full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

5.2 Purchaser's Authority; No Violation. Purchasers have all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by Purchasers shall be duly and validly authorized and approved by all necessary limited partnership or unlimited liability company action. This Agreement shall constitute the legal and binding obligation of Purchasers, enforceable against Purchasers in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the issuance of the Sale Order by the CCAA Court and subject to compliance with the applicable requirements of the Competition Act, the entering into of this Agreement, and the consummation by Purchaser of the transactions contemplated hereby will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of Purchasers' Organizational Documents, violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of Purchasers under, any Encumbrance, contract, agreement, license, lease, instrument, indenture, Order, arbitration award, judgment, or decree to which any Purchaser are a party or by which it is bound, or to which any property of any Purchaser is subject.

5.3 Consents, Approvals or Authorizations. Except for compliance as may be required by the Competition Act or other applicable Antitrust Laws, no consent, waiver, approval, Order or Authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchasers of this Agreement or the Ancillary Documents to which such Purchaser is a party, the compliance by Purchasers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities or the taking by Purchasers of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchasers' ability to perform their obligations under this Agreement and the Ancillary Documents to which any such Purchaser is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities.

5.4 Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchasers in connection with the transactions contemplated by this Agreement that would obligate Sellers to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchasers.

5.5 GST Registration. The Canadian Purchaser shall be registered for the purposes of the GST Legislation. This registration will have an effective date on or before the Closing Date.

5.6 "As Is, Where Is" Basis. Notwithstanding any other provision of this Agreement, the Purchasers acknowledge, agree and confirm that:

(a) except for the representations and warranties of the Sellers set forth in Article IV, and subject to the other covenants and agreements set forth herein, the Purchasers are entering into this Agreement, acquiring the Acquired Assets and assuming the Assumed Liabilities on an "as is, where is" basis as they exist as at Closing and will accept the Acquired Assets in their state, condition and location as at Closing except as expressly set forth in this Agreement and the sale of the Acquired Assets is made without legal warranty and at the risk of the Purchasers;

(b) except for the representations and warranties of the Sellers set forth in Article IV, neither the Sellers, the Sale Advisor, nor the Monitor or their Representatives have made or are making, and the Purchasers are not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Acquired Assets, the Sellers' right, title or interest in or to the Acquired Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Acquired Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any applicable Law in any jurisdiction, which the Purchasers confirm do not apply to this Agreement and are hereby waived in their entirety by the Purchasers;

(c) except as otherwise expressly provided in this Agreement, the Purchasers hereby unconditionally and irrevocably waive any and all actual or potential rights or Claims the Purchasers might have against the Sellers, Monitor, Sale Advisor and their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Sellers expressly set forth in Article IV. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including Claims regarding defects, whether or not discoverable or latent, product liability Claims, or similar Claims, and all other Claims that may be later created or conceived in strict liability or as strict liability type Claims and rights;

(d) none of the representations and warranties of the Sellers contained in this Agreement shall survive Closing and, subject to Sections 11.1 and 11.4, the Purchasers' sole

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recourse for any breach of representation or warranty of the Sellers in Article IV shall be for the Purchasers not to complete the transactions as contemplated by this Agreement and for greater certainty the Purchasers shall have no recourse or claim of any kind against the Sellers or the proceeds of the transactions contemplated by this Agreement following Closing; and

(e) this Section 5.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

5.7 Investment Canada Act. The Canadian Purchaser is a trade agreement investor or a WTO investor for the purposes of the Investment Canada Act.

5.8 No Other Representations or Warranties. Except for the representations, warranties and covenants of Purchasers expressly contained herein or any certificate delivered hereunder, neither Purchasers nor any of their Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Purchasers.

ARTICLE VI

COVENANTS OF SELLERS AND/OR PURCHASERS

6.1 Conduct of Business of Sellers.

(a) During the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement, the Amended and Restated Initial Order, the Interim Facility Credit Agreement or the SISP or (z) as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall, and shall cause their Subsidiaries to:

(i) continue operations at the Ekati Diamond Mine on care and maintenance only; and

(ii) use commercially reasonable efforts to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, subject to continuation of all furlough arrangements in place as of the Effective Date, (D) maintain and preserve satisfactory relationships with Aboriginal Groups and Governmental Bodies, and (E) comply in all material respects with the budget and other obligations set forth by the Interim Facility.

(b) Without limiting the generality of Section 6.1(a), during the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement or the SISP or (z) as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) re-start operations at the Ekati Diamond Mine;

(ii) end any employee furlough or similar arrangement that is in place as of the Effective Date;

(iii) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any material Acquired Asset, including any diamonds or other Inventory;

(iv) settle or compromise any material litigation or claims relating to the Business or the Acquired Assets or that would impose any restrictions or Liabilities on the Business or Purchaser's use of the Acquired Assets after the Closing;

(v) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances;

(vi) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets;

(vii) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement or employee association agreement with any labor organization affecting any such Persons;

(viii) grant any increase in the compensation or benefits of any employee or former employee or any dependent or other person claiming through an employee or former employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee;

(ix) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract;

(x) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder;

(xi) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that could reasonably be expected to have any adverse effect on the Purchasers or any of their Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or

(xii) agree in writing to do any of the foregoing.

6.2 Consents and Approvals.

(a) Sellers and Purchasers shall each use commercially reasonable efforts (i) to obtain all consents and approvals, as reasonably requested by Purchasers and Sellers, to more effectively consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Contracts and Assumed Liabilities, as applicable, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, if required, the Competition Act Approval and any other Mandatory Antitrust Approvals, (ii) to make, as reasonably requested by Purchasers and Sellers, all filings, applications, statements and reports to all authorities which are required to be made prior to the Closing Date by or on behalf of Purchasers and/or Sellers or any of their respective Affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby, (iii) to obtain, as reasonably requested by Purchasers and Sellers, all required consents and approvals (if any) to assign and transfer the Authorizations to Purchasers at Closing and, to the extent that one or more of the Authorizations are not transferable, to obtain replacements therefor, and (vi) to satisfy the conditions precedent set out in Article VIII and Article IX by such dates as required to achieve the applicable target closing date set out in the SISP.

(b) In furtherance and not in limitation of the foregoing, each of Sellers and Purchasers shall prepare and file: (i) on a timetable to be agreed by the Parties, all filings required and desirable to obtain Competition Act Approval and any other Mandatory Antitrust Approval, in each case if and to the extent required, including pre-merger notification filings in accordance with Part IX of the Competition Act; and (ii) all other necessary documents, registrations, statements, petitions, filings and applications for other Antitrust Approvals and any other consent or approval of any other Governmental Body required to satisfy the conditions set forth in Section 8.2 and Section 9.2.

(c) In furtherance and not in limitation of the foregoing, Purchasers shall use commercially reasonable efforts to negotiate an acceptable agreement with DDMI to satisfy the Rio Condition and to negotiate an acceptable agreement with GNWT and the sureties to satisfy the Surety Condition. Sellers shall cooperate in a timely and commercially reasonable manner with Purchasers in their efforts to satisfy the Rio Condition and the Surety Condition, including providing information, assisting in evaluation and analysis, and facilitating discussions as reasonably requested by Purchasers. Purchasers shall provide Sellers an opportunity to participate with one attendee in any meetings of a substantive nature with DDMI, GNWT and the sureties.

(d) Subject to the provisions of Section 3.3 and this Section 6.2, in the event that certain Authorizations are not transferable or replacements therefor are not obtainable on or before the Closing, but such Authorizations are transferable or replacements therefor are obtainable after the Closing, Purchasers and Sellers shall continue to use such reasonable efforts in cooperation with the other after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Authorizations after Closing and shall do all things reasonably necessary to give Purchasers the benefits which would be obtained under such Authorizations; provided, however, that Sellers' obligations under this Section 6.2(d) shall not restrict Sellers from making any distributions in or terminating the CCAA Proceedings or otherwise winding up their respective affairs or cancelling their existence upon the completion of any such winding up.

(e) Sellers and Purchasers shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Parties informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Body and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, including providing to the other Parties copies of all such material communications given or received; (iii) provide to the other Party reasonable opportunity to comment on drafts of filings and submissions prior to submitting same to a Governmental Body; and (iv) consult with each other in advance of any meeting or conference (whether in person or by telephone) with any Governmental Body, including in connection with any proceeding by a private party, and provide the other Party an opportunity to participate with at least one attendee in any meetings of a substantive nature with a Governmental Body. The foregoing obligations in this Section 6.2(e) shall be subject to any attorney-client, solicitor-client, work product, or other privilege, and each of the Parties hereto shall coordinate and cooperate fully with the other Parties hereto in exchanging such information and providing such assistance as such other Parties may reasonably request in connection with the foregoing.

(f) If, (i) notwithstanding the applicable provisions of the CCAA, the Sale Order, the Assignment Order (if applicable) and the commercially reasonable efforts of Sellers, any consent to the assignment of an Assigned Contract is not obtained prior to Closing and as a result thereof the Purchasers shall be prevented by a third party from receiving the rights and benefits with respect to an Acquired Asset intended to be transferred hereunder, (ii) any attempted assignment of an Acquired Asset would adversely affect the rights of Sellers thereunder so that the Purchasers would not in fact receive all of the rights and benefits contemplated or (iii) any Acquired Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order, the Assignment Order and the CCAA), then, in each case, Sellers shall, subject to any approval of the CCAA Court that may be required, at the request of the Purchasers and subject to Section 3.3, cooperate with Purchasers in any lawful and commercially reasonable arrangement under which the Purchasers would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Purchasers.

6.3 Confidentiality. Purchasers and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 6.5, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality Agreement, dated **[____]**, 2020, between Washington Diamond Investments Holdings II, LLC and DDM (the "Confidentiality Agreement"). Sellers agree that except as may otherwise be required in connection with the CCAA Proceedings or by Law, they will treat any confidential information provided to or retained by them in accordance with this Agreement as if they were the receiving party under the Confidentiality Agreement and Sellers agree that for purposes of Sellers' confidentiality obligation hereunder, the term contained in Section **[__]** of the Confidentiality Agreement shall be deemed to be three (3) years from the Closing Date. The Parties agree that the provisions regarding confidentiality contained in the Confidentiality Agreement shall survive the termination of this Agreement and the Confidentiality Agreement in accordance with the terms set

forth therein but shall terminate upon the Closing as to Purchasers and their Representative (as defined therein).

6.4 Change of Name. Promptly following the Closing, Sellers shall, and shall cause their respective direct and indirect Subsidiaries to, discontinue the use of the "Dominion Diamonds" name (and any other trade names or "d/b/a" names currently utilized by Sellers or their respective direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Dominion Diamond Mines" or any other similar name or mark confusingly similar thereto without the prior written consent of Purchasers, and Sellers shall, if requested by the Purchasers, to make an application to the CCAA Court requesting the name of Sellers in the title of the CCAA Proceedings to be changed; provided, however, that Sellers and their respective Subsidiaries may continue to use their current names (and any other names or d/b/a's currently utilized by Sellers or their respective Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to seventy-five (75) days solely for purposes of winding down the affairs of Sellers; provided that when utilizing such materials, other than in incidental respects, Sellers and each of their respective direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each).

6.5 Purchasers' Access to Sellers' Records. From and after Sellers' execution and delivery of this Agreement, Sellers shall continue to facilitate the due diligence investigations of Purchasers with respect to the Sellers and the Business in the same manner and scope it provides to Potential Bidders (as defined in the SISP) pursuant to the SISP. At such time as the Purchasers become the Successful Bidder (as defined in the SISP), the Sellers' shall provide Purchasers (or their designated Representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as Purchasers deem appropriate or necessary in order to facilitate Purchasers' efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with Purchasers in this regard.

6.6 Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to Purchasers of (i) any notice or other communication from any Person alleging that the consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents, is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or to the issuance of the Sale Order, and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement other than as may be provided for in the SISP or communications which are confidential, without prejudice or privileged by their nature.

(b) Each Party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event that would or

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would reasonably be expected to (i) constitute a breach or inaccuracy of any of the representations and warranties of such Party had such representation or warranty been made at the time of the occurrence or nonoccurrence of such event, (ii) constitute a breach of any covenant of such Party, or (iii) make the satisfaction of any condition to Closing impossible or unlikely to be satisfied; provided that no such notice shall be deemed to amend or modify the representations and warranties made hereunder or the Seller Disclosure Letter for purposes of Section 8.4, Section 9.4 or otherwise, or limit the remedies available to any Party hereunder.

6.7 Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Purchasers agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period commencing on the Effective Date and ending at such date on which an orderly wind-down of Sellers' operations has occurred in the reasonable judgment of Purchasers and Sellers and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, facilitating the continuing administration of the CCAA Proceedings, any insurance Claims by, legal proceedings or Tax audits against or governmental investigations of Sellers or Purchasers or in order to enable Sellers or Purchasers to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or Purchasers, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

6.8 Publicity. Neither Sellers nor Purchasers shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchasers or Sellers, disclosure is otherwise required by such party by applicable Law or by the CCAA Court with respect to filings to be made with the CCAA Court in connection with this Agreement; provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or CCAA Court requirement to consult with the other Party with respect to the text thereof.

6.9 Material Adverse Effect. Sellers shall promptly inform Purchasers in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect or otherwise cause the failure of any of Purchasers' conditions to Closing set forth in Article VIII.

6.10 Sale Free and Clear; No Successor Liability. On the Closing Date, the Acquired Assets shall be transferred to the Purchasers free and clear of all obligations, Liabilities and Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by the CCAA.

6.11 Casualty Loss. If, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall promptly notify Purchasers promptly in writing of such fact, (i) in the case

of condemnation or taking, Sellers shall promptly assign or pay, as the case may be, any proceeds thereof to Purchasers at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchasers at Closing. Notwithstanding the foregoing, the provisions of this Section 6.11 shall not in any way modify Purchasers' other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect or otherwise cause the failure of any of Purchasers' conditions to Closing set forth in Article VIII.

6.12 Debtors-in-Possession. From the commencement of the CCAA Proceedings through the Closing, Sellers shall continue to operate their business pursuant to and in accordance with the CCAA and Orders of the CCAA Court. Sellers shall not convert or seek to convert the CCAA Proceedings into any form of a liquidation proceeding under the CCAA or any other applicable legislation.

6.13 CCAA Court Filings.

(a) Sellers shall use their reasonable best efforts to obtain the approval of the CCAA Court to enter the SISP Order on or prior to [June 19], 2020.

(b) If required under the SISP, Sellers shall conduct the Auction for the Acquired Assets on or prior to September 3, 2020.

(c) If Purchasers are the Successful Bidder pursuant to the SISP, subject to satisfaction of the Financing Condition, Surety Condition and Rio Condition, Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Sale Order on or prior to September 28, 2020.

(d) If Purchasers are the Successful Bidder pursuant to the SISP, Sellers shall serve notices of assumption of the Assigned Contracts, including the designation of Cure Amounts, on all necessary parties on or prior to **[_____]**, 2020.

(e) If requested by Purchasers and provided that the Purchasers are the Successful Bidder pursuant to the SISP, subject to satisfaction of the Financing Condition, Surety Condition and Rio Condition. Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Assignment Order on or prior to date the Sale Order is issued.

(f) Sellers shall use their commercially reasonable efforts to provide Purchasers for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement to be filed with the CCAA Court, including the motions for issuance of the Sale Order and the Assignment Order (if applicable).

(g) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify Purchasers of such appeal or stay request and shall provide Purchasers promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchasers with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and Purchasers agree to use their

reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the Parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been issued and has not been stayed and the Purchasers, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(h) Sellers and the Purchasers acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to CCAA Court approval.

(i) After issuance of the Sale Order, neither the Purchasers nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

6.14 Not a Required Back-Up Bidder. If Purchasers participate in and submit an Overbid at the Auction (each as defined in the SISP), then, if required by the SISP as then in effect and applicable to all other Persons submitting an Overbid, Purchasers shall act as Back-Up Bidder (as defined in the SISP) following the Auction in the event that the Purchasers are not selected as the Successful Bidder (as defined in the SISP). Purchasers shall not be required to act as a Back-Up Bidder under any other circumstances.

6.15 Financing Matters.

(a) Purchasers shall use commercially reasonable efforts to satisfy the Financing Condition and, without limiting the generality of the foregoing, shall use commercially reasonable efforts to (i) obtain financing commitments on terms satisfactory to Purchasers in their sole discretion in amounts sufficient to satisfy the Financing Condition (the financing contemplated by such financing commitments being referred to herein as the "Financing"), (ii) satisfy on a timely basis all conditions applicable to Purchasers in such commitments that are within Purchasers' control, and (iii) consummate the Financing at or prior to the Closing to the extent all of the conditions set forth in each of the financing commitments have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, but subject to those conditions being satisfied at the Closing).

(b) Sellers shall use commercially reasonable efforts to provide, and shall use commercially reasonable efforts to cause their respective Representatives to provide, on a timely basis, such cooperation as is reasonably required or requested in connection with Purchasers' efforts to satisfy the Financing Condition, including the arrangement of the Purchasers' Financing, which cooperation may include using commercially reasonable efforts to: (i) upon reasonable advance notice, participate in a reasonable number of due diligence or other sessions with third parties, and provide reasonable access to documents and other information in connection with due diligence investigations and (ii) reasonably assist with Purchasers' and their Representatives' preparation of definitive documentation and the creation of security interests on the Acquired Assets as part of Purchasers' acquisition financing; and (iii) to the extent required, cooperate as necessary and appropriate with respect to the release of security interests.

6.16 Parent Guaranty. Parent hereby guarantees and covenants and agrees, in favor of the Sellers and the Purchasers, to cause the due, prompt and faithful performance and discharge by, and compliance with, all of the obligations, covenants, agreements, terms, conditions and undertakings of Sellers under this Agreement in accordance with the terms hereof, and hereby covenants and agrees to take all actions contemplated by this Agreement to be taken by Parent (including, without limitation, those set forth in Section 2.8).

6.17 Payment of Cure Amount. Following the Closing, Purchasers will make available the Cure Funding Amount to satisfy the Cure Amount. Following the Closing, Purchasers shall provide to Sellers evidence that the Cure Amount (if any) in respect of each Assigned Contract has been paid by Purchasers in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, or (ii) the consent of the applicable counterparty or as otherwise agreed upon by Purchasers and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order, in each case promptly following such payment.

6.18 GNWT Royalties. Prior to or concurrent with the Closing, Sellers shall pay from the proceeds of the Interim Facility, and/or otherwise obtain releases in full in a form satisfactory to Purchasers of all obligations in respect of any period that are due and payable prior to Closing in respect of royalties or similar payment obligations to GNWT, which shall include (for the avoidance of any doubt) all royalty and similar payments obligations to GNWT in respect of fiscal year 2019.

ARTICLE VII

EMPLOYEE MATTERS

7.1 Covenants of Sellers with respect to Employees.

(a) Purchasers intend to make employment offers to substantially all Employees of Sellers, subject to and consistent with requirements based on the plan for resumption of operations at Sellers' facilities, and in consultation with Sellers' management on terms and conditions that are substantially similar to those under which the Employees are employed at the time of Closing. Sellers shall provide reasonable assistance to facilitate the transfer of all Employees that Purchasers elect to hire, which may be subject to any temporary layoff or reduction in effect at Closing, including, without limitation, providing Purchasers access to such Employees' personnel records and such other information regarding the Employees as Purchasers may reasonably request, consistent with Section 7.2 hereof. All Employees who receive employment offers from Purchasers and who accept such offers of employment are hereinafter referred to as the "Transferred Employees". The Purchasers acknowledge that they are successors under all collective agreements set out in Section 4.18 of the Seller Disclosure Letter.

(b) During the Pre-Closing Period, except as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), and without limiting the obligations and restrictions set forth in Section 6.1, Sellers (i) shall satisfy all pre-Closing legal or contractual requirements to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in

connection with the transactions contemplated by this Agreement, and (ii) shall not (A) enter into, establish, adopt, materially amend or terminate any Employee Plan (or any plan or arrangement that would be an Employee Plan if in existence on the date of this Agreement), other than as required by Law, (B) increase the compensation and benefits payable or to become payable to Employees or former Employees or any dependent or other person claiming through an Employee or former Employee, (C) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (D) promote, hire or terminate the employment of (other than for cause) any Employee or (E) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee.

7.2 Covenants of Purchasers with respect to Employees.

(a) Purchasers shall assume the Employee Plans (collectively, the "Assumed Plans"). Purchasers, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause Purchasers to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(b) On and following the Effective Date, Sellers and Purchasers shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.2, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(c) The provisions of this Section 7.2 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a Party to this Agreement, nor shall any provision of this Agreement except solely for the purpose of giving effect to sections 7.2(a) and 7.2(b) be deemed to be the adoption of, or an amendment to, any Employee Plan, or otherwise to limit the right of Purchasers or Sellers to amend, modify or terminate any such Employee Plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any Employee Plan or (ii) prohibit the termination or change in terms of employment of any Employee (including any Transferred Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any Employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

ARTICLE VIII

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASERS

The obligations of Purchasers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Purchasers) of the following conditions precedent on or before the Closing Date.

8.1 CCAA Court Approvals. The SISP Order, the Sale Order and the Assignment Orders (if applicable) shall have been issued by the CCAA Court and shall have become Final Orders.

8.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

8.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

8.4 Representations and Warranties True as of Both Effective Date and Closing Date. Each of the representations and warranties of Sellers (a) contained herein (other than as set forth in clause (c) below) that are not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all material respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, (b) contained herein (other than as set forth in clause (c) below) that are qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and (c) contained in Section 4.1, Section 4.2, Section 4.4 and Section 4.6 shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

8.5 Compliance with Covenants. Sellers shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

8.6 No Material Adverse Effect. Since the Effective Date, there shall not have been a Material Adverse Effect.

8.7 Essential Contracts; Cure Amount. (i) All consents, approvals or waivers necessary to assign the Essential Contracts to the Purchasers shall have been obtained, or an Assignment Order shall have been granted by the CCAA Court in respect of such Essential Contracts where necessary consents, approvals or waivers have not been obtained; (ii) the Cure Amount payable

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with respect to Essential Contracts[2] (other than the Diavik Joint Venture Agreement) shall not exceed the Cure Funding Amount (calculated based on a US$ to Cdn$ exchange rate of [•] with respect to any amounts to be paid in Canadian dollars) and (iii) the Assignment Order shall provide that the Cure Amount with respect to Assigned Contracts subject to the Assignment Order shall not be payable earlier than 30 days following Closing.

8.8 Authorizations. Purchasers (or the applicable Designated Purchaser) shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to Purchasers, either by transfer or re-issuance, all material Authorizations required to operate the Business and Acquired Assets, including those set forth (or required to be set forth) on Section 4.3(a) of the Seller Disclosure Letter, consistent in all material respects with historical operations.

8.9 Surety Condition. Purchasers shall have entered into an agreement, in form and substance satisfactory to Purchasers at their sole discretion, with the issuers of any surety bond supporting the obligations of the Sellers and the Government of the Northwest Territories ("GNWT") with respect to collateralization of reclamation obligations of Purchasers under environmental agreements, Authorizations, licenses and subleases to be transferred (the "Surety Condition").

8.10 Ordinary Course Operations. Purchasers shall not be subject to any mandatory governmental Regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) Purchasers from conducting operations at the Ekati Diamond Mine substantially consistent with the level of operations contemplated by Sellers' business plan in effect prior to COVID-related impacts; or (ii) Purchasers' ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts.

8.11 Diavik Mine. Purchasers shall have reached an agreement acceptable to Purchasers with DDMI and the GNWT, in form and substance satisfactory to Purchasers at their sole discretion, in relation to the timing and quantum of capital calls and reclamation liabilities with respect to the Diavik Joint Venture (the "Rio Condition").

8.12 Diavik Good Standing. Purchasers shall have determined, acting reasonably, that upon payment of any outstanding cash calls with interest and the posting of cash collateral in respect of its portion of the reclamation Liability in accordance with the existing closure security agreement or pursuant to other arrangements to be agreed that: (i) Purchasers will be in full compliance with its obligations under the Diavik Joint Venture Agreement when assigned to Purchasers, (ii) Purchasers shall hold a 40% participating interest in the Diavik Joint Venture free and clear of any Encumbrance other than as imposed by DDMI under the Diavik Joint Venture Agreement and (iii) DDMI shall agree to deliver any diamond inventory which accrued to the account of DDM under the Diavik Joint Venture Agreement which had not yet been delivered.

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[2] NTD: Subject to receipt from Sellers and review of proposed Schedule F list of Essential Contracts and a schedule of Material Contracts.

8.13 Financing. Purchasers shall have obtained third party equity and debt commitments on terms satisfactory to Purchasers in their sole discretion in amounts that, in the aggregate are sufficient to pay the Purchase Price (including satisfaction of the Assumed Liabilities), and the aggregate amount of equity financing committed by parties not affiliated with Washington Diamond Investments Holdings II, LLC or any of its Affiliates shall exceed US$140,000,000 less 50% of any debt raised (the "Financing Condition").

8.14 Delivery of Acquired Assets. Each of the deliveries required to be made to Purchasers pursuant to Section 10.2 shall have been so delivered and at Closing, Sellers shall deliver possession of all Acquired Assets to Purchasers, *in situ,* wherever such Acquired Assets are located at Closing consistent with the terms of this Agreement.

8.15 Corporate Documents. Sellers shall have delivered to Purchasers copies of the resolutions of Sellers' board of directors or similar governing body, as applicable, evidencing the approval of this Agreement and the transactions contemplated hereby.

8.16 Release of Encumbrances. The Sale Order shall provide for the release of any and all Encumbrances on the Acquired Assets other than Permitted Encumbrances, and Purchasers shall have received such documents or instruments as may be required, in Purchasers' reasonable discretion, to demonstrate that, effective as of the Closing Date, the assets of the Acquired Subsidiaries are released from any and all Encumbrances other than Permitted Encumbrances.

8.17 Accounts Payable. Sellers shall have paid all trade payables arising from the provision of goods and services on or after the Filing Date that are due and payable at or before the Closing, other than such amounts which are disputed by the Sellers in good faith for which adequate reserves have been created under the DIP Budget.

8.18 Interim Facility Compliance. Immediately prior to the Closing, there has not been an Event of Default as defined in the Interim Facility Credit Agreement.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) of the following conditions precedent on or before the Closing Date:

9.1 CCAA Court Approvals. The SISP Order, the Sale Order shall have been issued by the CCAA Court and shall have become Final Orders.

9.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

9.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

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9.4 Representations and Warranties True as of Both Effective Date and Closing Date. The representations and warranties of each Purchaser (a) contained herein that are not qualified by "materiality" or "material adverse effect" shall be true and correct in all material respects on and as of the Effective Date, and shall also be true in all material respects on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) with the same force and effect as though made by each Purchaser on and as of the Closing Date, and (b) contained herein that are qualified by "materiality" or "material adverse effect" shall be true and correct in all respects on and as of the Effective Date, and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date), in each case, except where the failure of such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on each Purchaser's ability to consummate the transactions contemplated by this Agreement.

9.5 Compliance with Covenants. Purchasers shall have performed or complied in all material respects with all of its covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

9.6 Corporate Documents. Purchasers shall have delivered to Sellers copies of the resolutions of Purchasers' board of managers evidencing the approval of this Agreement and the transactions contemplated hereby.

ARTICLE X

CLOSING

10.1 Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place on the fifth (5th) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VIII and Article IX (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time as the Parties may agree.

10.2 Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver, in addition to the other documents contemplated by this Agreement, the following to Purchasers:

(a) a bill of sale in the form of Schedule A duly executed by Sellers;

(b) an assignment and assumption agreement in the form of Schedule B (the "Assignment and Assumption Agreement") duly executed by Sellers;

(c) duly executed instruments for the sale, transfer, assignment or other conveyance to the Purchasers and relevant Designated Purchasers, of the equity interests in the

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Acquired Subsidiaries, in accordance with the requirements of applicable local Law and this Agreement;

(d) a true copy of the Sale Order and any Assignment Orders (if applicable);

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller certifying that the conditions set forth in Section 8.4 and Section 8.5 have been satisfied;

(f) an instrument of assumption and assignment of the Assigned Contracts regarding leased real property substantially in the form of Schedule C (the "Assignment and Assumption of Leases"), duly executed by each Seller, in form for recordation with the appropriate public land records to the extent the underlying lease is of record;

(g) an Intellectual Property Assignment and Assumption Agreement substantially in the form of Schedule D (the "IP Assignment and Assumption Agreement"), duly executed by each Seller;

(h) possession of all owned real property included in the Acquired Assets, together with duly executed and acknowledged transfer deeds for all such owned real property conveying the owned real property subject only to Permitted Encumbrances, and any existing surveys, legal descriptions and title policies that are in the possession of Sellers;

(i) possession of the Acquired Assets and the Business *in situ,* wherever such Acquired Assets are located at the Closing consistent with the terms of this Agreement;

(j) stock powers or similar instruments of transfer, duly executed by the applicable Seller, transferring all of the capital stock or other equity interests of the Acquired Subsidiaries to Purchasers (it being understood that such instruments shall address the requirements under applicable Law local to the jurisdiction of organization of each such Acquired Subsidiary necessary to effect and make enforceable the transfer to Purchasers of the legal and beneficial title to such capital stock or other equity interests);

(k) all tax elections or designations described in Section 12.13, duly executed by DDM;

(l) a certificate duly executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b)(2)(iv);

(m) a bill of sale and assignment agreement with respect to the conveyance of any Acquired Assets required to be transferred and assigned to Purchasers pursuant to Section 2.8, in form and substance reasonably satisfactory to Purchasers, duly executed by Parent and each of the Retained Subsidiaries; and

(n) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Purchasers, as Purchasers may reasonably request to vest in Purchasers all of

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Sellers' right, title and interest of Sellers in, to or under any or all the Acquired Assets, including all owned real property included in the Acquired Assets.

10.3 Deliveries by Purchasers. At the Closing, Purchasers will deliver the following:

(a) the Cash Component payable pursuant to and in accordance with Section 3.1;

(b) a confirmation, acknowledgement or other documentation satisfactory to the Sellers to be delivered by Washington Diamond, confirming the quantum of the credit to be applied against the obligations owing by the Sellers to Washington Diamond under the Interim Financing Credit Agreement towards satisfaction of the Cash Component all as contemplated by Section 3.2(a), such confirmation being subject to Monitor approval;

(c) the Assignment and Assumption Agreement duly executed by the applicable Purchaser;

(d) the Assignment and Assumption of Leases duly executed by the applicable Purchaser;

(e) the IP Assignment and Assumption Agreement, executed by applicable Purchaser;

(f) all tax elections or designations described in Section 12.13, duly executed by Canadian Purchaser;

(g) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Purchaser certifying that the conditions set forth in Section 9.4 and Section 9.5 have been satisfied; and

(h) such other documents as Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

10.4 Monitor's Certificate. Upon satisfaction or waiver by the Purchasers of all conditions precedent to Closing under Article VIII and delivery to the Purchasers of all Closing deliverables under Section 10.2, the Purchasers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Purchasers' Conditions Certificate"). Upon satisfaction or waiver by the Sellers of all conditions precedent to Closing under Article IX and delivery to the Sellers of all Closing deliverables under Section 10.3, the Sellers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Sellers' Conditions Certificate" and together with the Purchasers' Conditions Certificate, the "Conditions Certificates"). Upon receipt by the Monitor of each of the Conditions Certificates, the Monitor shall (i) forthwith issue its Monitor's Certificate concurrently to the Sellers and the Purchasers, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Sellers and the

Purchasers). For greater certainty, the Monitor shall be entitled to rely exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

ARTICLE XI

TERMINATION

11.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time on or prior to the Closing Date:

(a) Mutual Consent. By mutual written consent of Purchasers and Sellers.

(b) Termination by Purchasers or Sellers.

(i) by Purchasers or Sellers, if the Closing shall not have occurred on or prior to October 31, 2020 (the "Outside Date"); provided, however, that Sellers and Purchasers shall not be entitled to terminate this Agreement pursuant to this Section 11.1(b)(i) if the failure of the Closing to have occurred by the date specified above is caused by such Party's breach of any of its obligations under this Agreement;

(ii) by Purchasers or Sellers, if the CCAA Court or other court of competent jurisdiction or a governmental, quasi-governmental, regulatory or administrative department, agency, commission or authority shall have issued or enacted an Order or Law restraining, enjoining or otherwise prohibiting the Closing, which is not capable of appeal; provided, however, that Sellers and Purchasers shall not be entitled to terminate this Agreement pursuant to this Section 11.1(b)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement;

(iii) by Purchasers or Sellers, if the Auction has occurred and the Purchasers are not the Successful Bidder; or

(iv) by Purchasers or Sellers, if the CCAA Court issues an Order approving an Alternate Transaction.

(c) Termination by Purchasers.

(i) by Purchasers, if (A) the SISP Order, including approval of the Break-Up Fee and Expense Reimbursement Amount and the granting of the Break-Up Fee Charge, shall not have been entered by the CCAA Court on or prior to June [19], 2020 (B) the SISP Order is amended, supplemented or otherwise modified in any manner adverse to the Purchasers or (C) the SISP Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any manner adverse to the Purchasers (other than in any de minimums respect), in each case without the prior written consent of the Purchasers;

(ii) by Purchasers, if (A) the Sale Order shall not have been issued by the CCAA Court on or prior to September 28, 2020 or if the Sale Order has been issued by

such date but has been amended, supplemented or otherwise modified in any respect without the prior written consent of Purchasers, or (B) following its issuance, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Purchasers, acting reasonably;

(iii) by Purchasers, if there is any unwaived and uncured Event of Default (as defined in the Interim Facility Credit Agreement) under the Interim Facility or if at any time Washington Diamond is not an Interim Lender;

(iv) by Purchasers, if the CCAA Proceedings are terminated or a licensed insolvency trustee or receiver is appointed in respect of the Sellers, and such licensed insolvency trustee or receiver refuses to proceed with the transactions contemplated by this Agreement;

(v) by Purchasers, if a breach of any representation, warranty, covenant or agreement on the part of Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article VIII not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Sellers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period;

(vi) by Purchasers, if either (a) Sellers or their Affiliates request or (b) the CCAA Court approves any amendments or modifications to the SISP that adversely affects the interests of Purchasers, the Interim Lenders, or the transactions contemplated by this Agreement (which, for the avoidance of doubt, include any amendments or modifications to the Minimum Purchase Price or the Outside Date (as defined and established under the SISP), any amendments or modifications to the requirements set out for Phase 1 Qualified Bids in section 15 of the SISP or for Phase 2 Qualified Bids in section 23 of the SISP, and any amendment or modification to the terms and conditions set forth in sections 2, 3, 5, 9, 15, 17, 18, 20, 21, 23, 24-31, 35 and 36-38 of the SISP);

(vii) by Purchasers, acting reasonably, if the CCAA Court enters any Order inconsistent with the SISP Order, the Sale Order or the Acquisition, other than in any de minimus respect;

(viii) by Purchasers, if any creditor of any Seller obtains a final and unstayed Order of the CCAA Court granting relief from the stay to foreclose or exercise enforcement rights on any portion of the Acquired Assets in excess of Cdn$500,000 in the aggregate;

(ix) by Purchasers, if a Material Adverse Effect occurs; or

(x) by Purchasers, if, for any reason (including, without limitation, an Order of the CCAA Court), Purchasers are unable to credit bid up to the full amount of the Liabilities owed to Washington Diamond under the Interim Facility Credit Agreement in satisfaction of all or any portion of the Cash Component.

(d) Termination by Sellers.

(i) by Sellers, if a breach of any representation, warranty, covenant or agreement on the part of Purchasers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article IX not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Purchasers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period; or

(ii) by Sellers, with the consent of Credit Suisse AG, Cayman Islands Branch, as administrative agent under the Pre-filing Credit Agreement, on or before the first Business Day after the Phase 2 Bid Deadline (as defined in the SISP) if Purchasers do not remove or satisfy the Financing Condition on or before July 31, 2020.

11.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 11.1, written notice thereof shall forthwith be given to the other Parties to this Agreement and the Monitor and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Article XI.

11.3 Breach by Purchasers. If this Agreement is terminated solely as a result of a material breach by Purchasers pursuant to Section 11.1(d)(i) hereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of $12,610,700 (the "Purchaser Termination Fee"), which shall be payable by Purchasers by giving the Sellers a credit towards the Indebtedness owed to Washington Diamond under the Interim Facility Credit Agreement or by wire transfer of immediately available funds. The Parties hereby agree that the foregoing dollar amount is a fair and reasonable estimate of the total detriment that Sellers would suffer in the event of Purchasers' default and failure to complete the transaction hereunder. Sellers' receipt or credit of the Purchaser Termination Fee in full pursuant to and in accordance with this Section 11.3 shall be the sole and exclusive remedy of Sellers and their Affiliates, attorneys, accountants, Representatives or agents, and, except for payment or credit of the Purchaser Termination Fee pursuant to and in accordance with this Section 11.3 or pursuant to the Limited Guaranty, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against Purchasers, any Purchaser Related Party, any potential debt or equity financing source and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Representatives or Affiliates, for any Liability suffered with respect to this Agreement and the transactions contemplated by or in connection with this Agreement (including any breach or failure to perform by Purchasers, whether willfully, intentionally, unintentionally or otherwise), the termination of this Agreement, the failure of the transactions contemplated under this Agreement to be consummated for any reason or no reason or any breach of this Agreement by Purchasers, and in no event shall Sellers or any of the other Applicants be entitled to seek or obtain any other damages or other remedy of any kind, at law or in equity, against any such Person, including consequential, special, indirect, exemplary or punitive damages or for diminution in value, lost profits or lost business. Sellers further acknowledge that the Purchaser Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will appropriately compensate Sellers under the circumstances.

11.4 Break-Up Fee and Expense Reimbursement Amount.

(a) In consideration of Purchasers and their Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate the Purchasers as a stalking-horse bidder, if the Financing Condition and the Rio Condition have been satisfied or waived on or before July 31, 2020, and

(i) this Agreement is terminated and (A) a Successful Bid (as defined in the SISP) or (B) any other sale of assets or plan in the CCAA Proceedings that (I) results in a change in control of DDM, (II) provides cash on closing to the Sellers or the Applicants equal to or greater than the Minimum Purchase Price (as defined in the SISP), and (III) did not arise following a termination of this Agreement solely pursuant to Section 11.1(d)(i) due to a material breach of this Agreement by Purchasers, is consummated, or

(ii) this Agreement is terminated and any other transaction is consummated within nine (9) months after termination of the SISP that (A) (i) results in a change in control of DDM, or (ii) provides cash on closing to the Sellers or the Applicants equal to or greater than the Minimum Purchase Price (as defined in the SISP), and (B) did not arise following a termination of this Agreement solely pursuant to Section 11.1(d)(i) due to a material breach of this Agreement by Purchasers,

(in either case, an "Alternate Transaction"), then Sellers shall pay to Purchaser Holdco (or as otherwise directed by Purchaser Holdco) in cash immediately following the closing of such Alternate Transaction:

(iii) the Expense Reimbursement Amount, not to exceed US$2,250,000, and

(iv) an amount equal to US$2,522,140 (the "Break-Up Fee") as consideration for the disposition of Purchaser Holdco's rights under this Agreement.

Sellers' obligation to pay the Break-Up Fee pursuant to this Section 11.4 shall survive termination of this Agreement and shall be secured by the Break-Up Fee Charge granted in favor of the Purchasers pursuant to the SISP Order. No other amounts shall be payable by the Sellers to the Purchasers arising from or in connection with the termination of this Agreement other than as provided for in this Section 11.4.

ARTICLE XII

MISCELLANEOUS

12.1 Expenses. Except as otherwise provided herein (including without limitation Section 11.4) or the SISP Order, each Party hereto shall bear its own expenses with respect to the transactions contemplated hereby.

12.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon

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the Closing Date. Except as otherwise provided herein, the Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

12.3 Amendment; Waiver. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided that, notwithstanding the foregoing, the Acquired Assets and Assigned Contracts may be amended in accordance with Section 2.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4 Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service (such as FedEx):

(A) If to Sellers, addressed as follows:

Dominion Diamond Mines
900 – 606 4 Street SW
Calgary, Alberta, Canada
T2P 1T1
Attention: Brendan Bell
Email: brenbellnt@gmail.com

With a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600
Vancouver, BC, Canada
V7X 1L3
Attention: Linc Rogers
Attention: Susan Tomaine
Email: linc.rogers@blakes.com
Email: susan.tomaine@blakes.com

(B) If to Purchasers, addressed as follows:

c/o The Washington Companies
101 International Drive
Missoula, MT 59808
Attention: Larry Simkins
Email: lsimkins@washcorp.com

With a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001-8602
Attention: Stephen F. Arcano
Attention: Marie L. Gibson
Email: Stephen.Arcano@skadden.com
Email: Marie.Gibson@skadden.com

and

Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, Illinois 60606
Attention: Ron E. Meisler
Email: Ron.Meisler@skadden.com

and

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada
Attention: Brendan O'Neill
Attention: Michael Partridge
Email: boneill@goodmans.ca
Email: mpartridge@goodmans.ca

(C) If to the Monitor, addressed as follows

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

With a copy (which shall not constitute notice) to

Bennett Jones LLP
4500 Bankers Hall East

855 - 2nd Street SW
Calgary AB T2P 4K7
Attention: Chris Simard
Email: simardc@bennettjones.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

12.5 Effect of Investigations. Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of Purchasers shall not limit, qualify, modify or amend the representations, warranties and covenants of, and indemnities by, Sellers made or undertaken pursuant to this Agreement, irrespective of the knowledge and information received (or which should have been received) therefrom by Purchasers.

12.6 Counterparts; Electronic Signatures.

(a) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

12.7 Headings. The headings preceding the text of Articles and Sections of this Agreement and the Seller Disclosure Letter are for convenience only and shall not be deemed part of this Agreement.

12.8 Applicable Law and Jurisdiction. Subject to any provision in this Agreement and any Ancillary Document to the contrary, this Agreement (and all documents, instruments, and agreements executed and delivered pursuant to the terms and provisions hereof) shall be governed by and construed and enforced in accordance with the laws of Alberta and the laws of Canada applicable therein. Purchasers and Sellers further agree that the CCAA Court shall have jurisdiction over all disputes and other matters relating to (a) the interpretation and enforcement of this Agreement or any Ancillary Document and/or (b) the Acquired Assets and/or Assumed Liabilities and the Parties expressly consent to and agree not to contest such jurisdiction.

12.9 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, provided that, Purchasers may grant a security interest in its rights and interests hereunder to its third party lender(s). Nothing contained herein, express or implied, is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12.10 Designated Purchasers. In connection with the Closing, notwithstanding Section 12.9 or anything to the contrary contained herein, Purchasers shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchasers to (a) purchase specified Acquired Assets (including specified Assigned Contracts) and pay the corresponding Purchase Price amount, (b) assume specified Assumed Liabilities, (c) employ specified Transferred Employees on and after the Closing Date, (d) perform any of the other covenants and agreements hereunder to be performed by Purchasers and (e) be entitled to the rights and benefits afforded to Purchasers hereunder (any such Subsidiary or Affiliate of Purchasers that shall be designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the corresponding Purchase Price, the specified Assumed Liabilities and employment of the specified Transferred Employees. Any reference to Purchasers made in this Agreement in respect of any right, obligation, purchase, assumption or employment referred to in this paragraph shall be deemed a reference to the appropriate Designated Purchaser, if any, with respect to the applicable obligation or right. All obligations of Purchasers and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchasers nor any other Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by a particular Designated Purchaser at the Closing and any prior obligations of the Purchasers are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect any limitation on Purchasers' obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchasers and any Designated Purchaser(s) hereunder. The above designations shall be made by Purchasers by way of a written notice to be delivered to Sellers in no event later than five (5) Business Days prior to the anticipated Closing Date; provided, however, that no such designation may be made if the timing of such designation would reasonably be expected to delay the Closing; provided, further, that such designation shall not be permitted unless the Sellers' confirm, acting reasonably, that the Designated Purchasers, or any party guaranteeing the obligations of such Designated Purchasers, are sufficiently creditworthy. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchasers are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchasers.

12.11 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective Affiliates and no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, Liability, reimbursement, Claim of Action or other right.

12.12 No Recourse. This Agreement may only be enforced against, and any Claims or causes of Action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as Parties hereto and no Purchaser Related Party (other than the Guarantor to the extent set forth in the Limited Guaranty) shall have any Liability for any obligations or liabilities of the Parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith. Without limiting the rights of Sellers against Purchasers hereunder, in no event shall Sellers or any of their Affiliates, and Sellers agree not to and to cause their Affiliates not to, seek to enforce this Agreement against, make any Claims for breach of this Agreement against, or seek to recover

monetary damages from, any Purchaser Related Party (other than any payment from the Guarantor to the extent set forth in the Limited Guaranty).

12.13 Tax Matters.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or similar fees or other Taxes (other than any Taxes based on income, receipts, profits, or capital), governmental charges and recording charges (including any interest and penalty thereon) which may be applicable to, or resulting from, or payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne by Purchasers as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchasers shall properly file on a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to Sellers evidence of payment of all Transfer Taxes.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a "Straddle Period"), (i) Taxes imposed on the Acquired Assets that are based upon or related to income or receipts or imposed on a transaction basis (including all related items of income, gain, deduction or credit) will be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date, and (ii) any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period and in each of (i) and (ii), such amounts shall be the responsibility of Sellers (and, for the avoidance of doubt, such amounts shall be an Excluded Liability for purposes of clause (ii) of Section 2.4(e)).

(c) Purchasers shall prepare and file (or cause to be prepared and filed) all Tax Returns for any Pre-Closing Tax Period or Straddle Period in respect of the Acquired Subsidiaries that is required to be filed after the Closing Date. Prior to filing any such Tax Returns, Purchasers shall provide a draft thereof to Sellers for Sellers' review, comment and approval (such approval not to be unreasonably withheld or delayed), unless otherwise required by applicable Law. Purchasers shall consider in good faith any comments provided by Sellers to such Tax Returns. To the extent any Taxes reflected on any such Tax Return are an Excluded Liability, Sellers shall pay to Purchasers the amount of such liability within ten (10) days of receiving notice from Purchasers that such Tax Return has been filed or that Purchasers has paid such Liability, except to the extent such Taxes were paid by Sellers to the applicable Governmental Body prior to the filing of such Tax Return.

(d) Cooperation on Tax Matters. Purchasers shall make available to Sellers, and Sellers shall make available to Purchasers, (i) such records, personnel and advisors as any such Party may require for the preparation of any Tax Returns required to be filed by Sellers or Purchasers, as the case may be, and (ii) such records, personnel and advisors as Sellers or Purchasers may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchasers was included. Sellers agree to provide all reasonable cooperation to Purchasers, and shall make available to Purchasers such records,

personnel and advisors as is reasonably necessary for Purchasers, in determining the Tax attributes of Sellers and their Subsidiaries.

(e) Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with their respective fair market values. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Purchasers shall provide Sellers with a draft allocation of the Purchase Price for all purposes, including any liabilities properly included therein among the Acquired Assets and the agreements provided for herein, for all purposes (the "Initial Allocation"). Within forty-five (45) days of the receipt of the Initial Allocation, Sellers shall deliver a written notice (the "Objection Notice") to Purchasers, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes. Sellers may make reasonable inquiries of Purchasers and their accountants and employees relating to the Initial Allocation, and Purchasers shall use reasonable efforts to cause any such accountants and employees to cooperate with, and provide such requested information to, Sellers in a timely manner. If prior to the conclusion of such forty-five (45)-day period, Sellers notify Purchasers in writing that they will not provide any Objection Notice or if Sellers do not deliver an Objection Notice within such forty-five (45)-day period, then Purchasers' proposed Initial Allocation shall be deemed final, conclusive and binding upon each of the Parties hereto. Within thirty (30) days of Sellers' delivery of the Objection Notice, Sellers and Purchasers shall attempt to resolve in good faith any disputed items, and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to an Arbitrating Accountant. The fees and expenses of the Arbitrating Accountant shall be paid 50% by Purchasers and 50% by Sellers, unless the Arbitrating Accountant determines that one party's position was unreasonable in light of the circumstances, in which case such party shall bear 100% of such costs. Such determination by the Arbitrating Accountant shall be (i) in writing, (ii) furnished to Purchasers and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), (iii) made in accordance with the principles set forth in this Section 12.13(e), and (iv) non-appealable and incontestable by Purchasers and Sellers. As used herein, the "Allocation" means the allocation of the Purchase Price, the Assumed Liabilities and other related items among the Acquired Assets and the agreements provided for herein as finally agreed between Purchasers and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 12.13(e). The Allocation shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, local or foreign Law, as appropriate). Purchasers and Sellers shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective U.S. federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation, including in the course of any Tax audit, Tax review or Tax litigation relating thereto, unless otherwise required under applicable Law. Sellers shall provide Purchasers and Purchasers shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

(f) Section 22 Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian Purchaser shall jointly execute and file an election pursuant to section 22 of the Tax Act and the corresponding provisions of any

.

applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, with respect to the sale of accounts receivable, and shall designate therein the portion of the Purchase Price allocated to the accounts receivable pursuant to paragraph (e) of this Section as consideration paid by Canadian Purchaser for the accounts receivable of Sellers.

(g) Section 20(24) Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian Purchaser shall jointly execute and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, in respect of deferred revenue of the Business or the Canadian Assets for an amount of such deferred revenue that is being so transferred to Canadian Purchaser in consideration for Canadian Purchaser undertaking future obligations in connection with the deferred revenue. In this regard, DDM and Canadian Purchaser acknowledge that if such election is made, a portion of the Canadian Assets having a value equal to the elected amount under subsection 20(24) of the Tax Act is being transferred by DDM to Canadian Purchaser as a payment for the assumption of such future obligations by Canadian Purchaser.

(h) Successor Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian Purchaser shall jointly execute and file an election described in paragraph 66.7(7)(e) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the time limits set out in that section, in respect of the Canadian Resource Property (as that term is defined in subsection 66(15) of the Tax Act) acquired by Canadian Purchaser from DDM under this Agreement, provided that any such filing or filings does not give rise to any Tax Liability to DDM.

(i) Section 167 Election. At the Closing, DDM and the Canadian Purchaser will jointly execute an election pursuant to subsections 167(1) and (1.1) of the GST Legislation so that DDM is not required to collect GST in respect of the transfer of the Canadian Assets. The Canadian Purchaser shall file the election within the time prescribed by the GST Legislation.

(j) Withholding. Purchasers, and any Person acting on their behalf, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchasers are required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment; provided that Purchasers shall consult with the affected Sellers or other Persons in good faith prior to making such withholding or deduction and the Parties hereto shall reasonably cooperate to reduce or eliminate any such amounts. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Sellers or the Person in respect of whom such deductions and withholding was made, as the case may be.

12.14 Construction.

(a) The information contained in the Seller Disclosure Letter is disclosed solely for the purposes of this Agreement and may include items or information not required to be disclosed under this Agreement, and no information contained in any Seller Disclosure Letter shall be deemed to be an admission by any Party hereto to any third Person of any matter whatsoever, including an admission of any violation of any Laws or breach of any agreement. No information

contained in any section of the Seller Disclosure Letter shall be deemed to be material (whether individually or in the aggregate) to the Business, assets, liabilities, financial position, operations, or results of operations of Sellers nor shall it be deemed to give rise to circumstances which may result in a Material Adverse Effect, in each case solely by reason of it being disclosed. Information contained in a section or subsection of the Seller Disclosure Letter (or expressly incorporated therein) shall qualify the representations and warranties made in the identically numbered Section or, if applicable, subsection of this Agreement and all other representations and warranties made in any other section or subsection of the Seller Disclosure Letter to the extent its applicability to such section or subsection of the Seller Disclosure Letter is reasonably apparent on its face. References to agreements in the Seller Disclosure Letter are not intended to be a full description of such agreements, and all such disclosed agreements should be read in their entirety, and nothing disclosed in any section or subsection of the Seller Disclosure Letter is intended to broaden any representation or warranty contained in Article IV or Article V.

(b) References in Article IV or Article V to documents or other materials "provided" or "made available" to Purchasers or similar phrases mean that such documents or other materials were present (and available for viewing by Purchasers and their Representatives) in the Data Room.

12.15 Entire Understanding. This Agreement, together with the Ancillary Documents and the Interim Facility Credit Agreement, set forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement and the Ancillary Documents hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement or in any Ancillary Documents hereto.

12.16 No Presumption Against Drafting Party. Each of the Purchasers and Sellers acknowledge that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule or Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

12.17 No Punitive Damages. The Parties hereto expressly acknowledge and agree that no Party hereto shall have any Liability under any provision of this Agreement for any punitive damages relating to the breach or alleged breach of this Agreement.

12.18 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

12.19 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity,

illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

PURCHASER HOLDCO:

CANADIAN DIAMOND HOLDINGS, L.P.

____
By:
Its:

CANADIAN PURCHASER:

CA CANADIAN DIAMOND MINES ULC

____
By:
Its:

[Signature Page to Asset Purchase Agreement]

SELLERS:

Dominion Diamond Holdings, LLC

____
By:
Its:

Dominion Diamond Mines ULC

____
By:
Its:

PARENT:

Washington Diamond Investments, LLC

____
By:
Its:

[Signature Page to Asset Purchase Agreement]

SCHEDULE A

BILL OF SALE

SCHEDULE B

ASSIGNMENT AND ASSUMPTION AGREEMENT

.

SCHEDULE C

ASSIGNMENT AND ASSUMPTION OF LEASES

SCHEDULE D

IP ASSIGNMENT AND ASSUMPTION AGREEMENT

SCHEDULE E

FORM OF SALE ORDER

SCHEDULE F

ASSIGNED CONTRACTS

SCHEDULE G

FORM OF SISP ORDER

This is Exhibit "D"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Execution Version

ASSET PURCHASE AGREEMENT

BY AND AMONG

DDJ CAPITAL MANAGEMENT, LLC,

BRIGADE CAPITAL MANAGEMENT, LP,

DOMINION DIAMOND HOLDINGS, LLC,

DOMINION DIAMOND MINES ULC,

DOMINION DIAMOND DELAWARE COMPANY LLC,

DOMINION DIAMOND MARKETING CORPORATION,

DOMINION DIAMOND CANADA ULC

AND

DOMINION FINCO INC.

Dated as of December 6, 2020

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is dated as of December 6, 2020 (the "Effective Date"), by and among DDJ Capital Management, LLC ("DDJ"), Brigade Capital Management, LP ("Brigade", and together with DDJ, the "Bidders" and each individually, a "Bidder"), Dominion Diamond Holdings, LLC, a Delaware limited liability company ("Dominion Holdings"), Dominion Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Dominion Holdings ("DDM"), Dominion Diamond Delaware Company LLC, a Delaware limited liability company and a wholly owned subsidiary of DDM ("DDC"), Dominion Diamond Marketing Corporation, a wholly owned subsidiary of Dominion Holdings ("Dominion Marketing"), Dominion Diamond Canada ULC, a wholly owned subsidiary of DDC ("DDCU"), Dominion Finco Inc. ("Finco" and together with Dominion Holdings, DDM, DDC, Dominion Marketing and DDCU, the "Sellers").

WHEREAS, DDM is a diamond producer with ownership interests in diamond projects in the Northwest Territories and Sellers are engaged, directly and indirectly through the Acquired Subsidiaries (as defined below), in the business of mining and selling rough diamonds to the global market (the "Business");

WHEREAS, on April 22, 2020 (the "Filing Date"), the Sellers obtained an initial order (the "Initial Order") under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Alberta Court of Queen's Bench (the "CCAA Court") that, among other things, commenced the CCAA proceedings (the "CCAA Proceedings") and granted an initial stay of proceedings in respect of the Sellers (the "Stay"). On May 1, 2020, the Sellers obtained an amended and restated version of the Initial Order from the CCAA Court (as further amended and restated from time to time, the "Amended and Restated Initial Order") that, among other things, extended the Stay.

WHEREAS, the Bidders intend and have agreed to constitute one or more special purpose acquisition vehicles (the "Purchaser") to purchase the Sellers' right, title and interest in and to the Acquired Assets (as defined below) and assume the Assumed Liabilities (as defined below) on the terms and subject to the conditions set forth in this Agreement, subject to obtaining the Sale Order (as defined below) (the "Acquisition");

WHEREAS, the Sellers and Bidders have agreed that, pending the constitution of the Purchaser, the Bidders shall have executed this Agreement on behalf of the Purchaser, who shall upon constitution, become a Party to and accept the terms and conditions of this Agreement and undertake to perform all of the obligations of and exercise all of the rights of the Purchaser under this Agreement; and

WHEREAS, the Parties desire to consummate the Acquisition as promptly as practicable following the satisfaction of the conditions precedent set out herein, including the issuance of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 Specific Definitions. Capitalized terms used herein shall have the meanings set forth below:

"Aboriginal Agreements" shall have the meaning ascribed thereto in Section 5.16(a).

"Aboriginal Claims" means any and all claims (whether or not proven) by any Person, pursuant to section 35 of the *Constitution Act, 1982 Schedule B to the Canada Act, 1982 (U.K.)* or otherwise, to or in respect of: (1) rights, title or interests of any Aboriginal Group by virtue of its status as an Aboriginal Group; (2) treaty rights; (3) Métis rights, title or interests; or (4) rights under land claims and agreements; or (5) specific or comprehensive claims being considered by the Government of Canada; and includes any alleged or proven failure of the Crown to have satisfied, prior to the date hereof, any of its duties to any claimant of any of the foregoing.

"Aboriginal Group" means any band (as defined in the *Indian Act* (Canada)), First Nation, Métis community, Inuit group, tribal council, band council or other aboriginal organization in Canada.

"Acquired Assets" shall have the meaning ascribed thereto in Section 3.1.

"Acquired Subsidiaries" shall have the meaning ascribed thereto in Section 3.1(a).

"Acquisition" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Action" means any litigation (in Law or in equity), arbitration, mediation, action, lawsuit, proceeding, written complaint, written charge, written claim, written demand, hearing, investigation or like matter (whether public or private) commenced, brought, conducted, or heard before or otherwise involving any Governmental Body, whether administrative, judicial or arbitral in nature.

"Advance Ruling Certificate" means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the Competition Act with respect to the transactions contemplated by this Agreement.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, none of the Bidders are, nor will the Purchaser be, an Affiliate of Sellers for purposes of this Agreement or otherwise.

"Agreement" means this Asset Purchase Agreement, including all Schedules hereto and the Seller Disclosure Letter, as it may be further amended from time to time in accordance with its terms.

"Allocation" shall have the meaning ascribed thereto in Section 13.14(e).

"Alternate Transaction" shall have the meaning ascribed thereto in Section 12.4(a).

"Amended and Restated Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Ancillary Documents" means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated by this Agreement.

"Antitrust Approvals" means the Competition Act Approval, if required, and each of the other Mandatory Antitrust Approvals (if any).

"Antitrust Laws" means the Competition Act and any competition, merger control and antitrust Law of any other applicable supranational, national, federal, state, provincial or local Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the transactions contemplated by this Agreement.

"Arbitrating Accountant" means an internationally recognized certified public accounting firm jointly selected by Purchaser and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchaser.

"Assigned Contracts" shall have the meaning ascribed thereto in Section 3.1(l).

"Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 11.2(b).

"Assignment and Assumption of Leases" shall have the meaning ascribed thereto in Section 11.2(f).

"Assignment Order" means an Order of the CCAA Court made in the CCAA Proceedings, in form and substance acceptable to Parties, acting reasonably, assigning to the Purchaser the rights and obligations of Sellers under an Assigned Contract for which a consent, approval or waiver necessary for the assignment of such Assigned Contract has not been obtained.

"Assumed Liabilities" shall have the meaning ascribed thereto in Section 3.3.

"Assumed Plans" shall have the meaning ascribed thereto in Section 8.2(a).

"Authorization" means with respect to any Person, any order, permit, approval, consent, waiver, license, registration, qualification, certification or similar authorization of any Governmental Body having jurisdiction over the Person, and shall include all environmental permits, licenses and other Authorizations, and all surface leases and water or riparian rights, and for greater certainty in respect of the Sellers shall include the Environmental Agreement.

"Bidder Advisor" means Houlihan Lokey, Inc.

"Bidder Parties" means the Bidders and the Purchaser, collectively, and a "Bidder Party" refers to any of them.

"Bidder Related Party" means any former, current or future direct or indirect director, manager, officer, employee, agent or Affiliate of any of the Bidder Parties; any former, current or future, direct or indirect holder of any equity interests or securities of any of the Bidder Parties (whether such holder is a limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of any of the Bidder Parties; any equity or debt financing source of any of the Bidder Parties; any former, current or future direct or indirect funds or accounts managed or advised by any of the Bidder Parties; or any former, current or future director, officer, trustee, beneficiary, employee, agent, Representative, Affiliate, advisor, general or limited partner, manager, member, stockholder, or assignee of any of the foregoing.

"Bidders" shall have the meaning ascribed thereto in the Preamble hereof.

"Break-Up Fee" shall have the meaning ascribed thereto in Section 12.4(a).

"Brigade" shall have the meaning ascribed thereto in the Preamble hereof.

"Budget" shall mean a budget of receipts and expenditures prepared by Sellers and approved by the Bidders on or prior to the Effective Date for the period up to Closing, as it may be amended and updated from time to time with the approval of the Bidders, acting reasonably.

"Business" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a statutory holiday in New York City, New York, U.S.A. or Calgary, Alberta, Canada.

"Canadian Assets" means all Acquired Assets other than the Purchaser Acquired Interests.

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

"CCAA" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Court" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Proceedings" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Claims" means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

"Closing" shall have the meaning ascribed thereto in Section 11.1.

"Closing Cure Amount" means the Cure Amount in respect of Assigned Contracts which is payable on Closing, provided that in no event shall such aggregate amount exceed US$10,500,000.

"Closing Date" means the date on which the Closing shall occur.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collective Agreement" means any collective agreement, letter of understanding, letter of intent or any other similar Contract with or commitment to any trade union, employee association, labour organization or similar entity.

"Commissioner" means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

"Competition Act" means the *Competition Act* (Canada), as amended.

"Competition Act Approval" means: (i) the issuance of an Advance Ruling Certificate and such Advance Ruling Certificate has not been rescinded prior to Closing; or (ii) the Purchaser and the Sellers have given the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act has expired or has been terminated in accordance with the Competition Act; or (iii) the obligation to give the requisite notice has been waived pursuant to paragraph 113(c) of the Competition Act, and, in the case of (ii) or (iii), the Purchaser has been advised in writing by the Commissioner that, in effect, such person is of the view that sufficient grounds at that time do not exist to initiate proceedings before the Competition Tribunal under section 92 of the Competition Act with respect to the transactions contemplated by this Agreement and therefore the Commissioner, at that time, does not intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement ("no-action letter"), and the form of and any terms and conditions attached to any such advice are acceptable to the Purchaser, acting reasonably, and such advice has not been rescinded prior to Closing.

"Competition Tribunal" means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

"Conditions Certificate" shall have the meaning ascribed thereto in Section 11.4.

"Confidentiality Agreement" shall have the meaning ascribed thereto in Section 7.3.

"Contaminants" means any noise, heat, vibration or Hazardous Materials that can be discharged into or be present in the Environment.

"Contract" means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment, whether express or implied.

"Cure Amount" means (i) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Sellers' monetary defaults existing as at the Closing Date under such Assigned Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Sellers to the Purchaser (which amount shall be set out on the form of contractual consent agreed to by the Purchaser and the counterparty to such Assigned Contract).

"Cure Funding Amount" means the aggregate of (i) the Closing Cure Amount and (ii) such other amount as may be required to satisfy the Cure Amount, provided that in no event shall the aggregate "Cure Funding Amount" be greater than US$20,500,000.

"Data Room" means the material contained in the virtual data room established by Sellers in connection with the CCAA Proceedings as of 5:00 p.m. (Eastern time) on December 3, 2020.

"DDC" shall have the meaning ascribed thereto in the Preamble hereof.

"DDCU" shall have the meaning ascribed thereto in the Preamble hereof.

"DDJ" shall have the meaning ascribed thereto in the Preamble hereof.

"DDM" shall have the meaning ascribed thereto in the Preamble hereof.

"DDMI" means Diavik Diamond Mines (2012), Inc., a company incorporated under the laws of Canada, as the manager of the Diavik Joint Venture.

"Designated Purchaser" shall have the meaning ascribed thereto in Section 13.11.

"Diavik Diamond Mine" means the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Diavik Diamond Mine."

"Diavik Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the Diavik Diamond Mine.

"Diavik Joint Venture Agreement" means the joint venture agreement dated March 23, 1995 between DDM and DDMI originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and DDMI.

"Diavik Joint Venture Interest" means the undivided 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik Joint Venture held by DDM pursuant to the Diavik Joint Venture Agreement.

"Diavik Leases" means the surface and mining leases constituting the Diavik Diamond Mine and subject to the Diavik Joint Venture Agreement.

"Diavik Realization Account" shall have the meaning ascribed to it in Section 7.1(a)(iv).

"Diavik Realization Assets" shall have the meaning ascribed to it in Section 3.1(b).

"Documents" means all of Sellers' books, records and other information in any form relating to the Business or the Acquired Assets, including accounting books and records, sales and purchase records, lists of suppliers and customers, lists of potential customers, credit and pricing information, personnel and payroll records of Employees, Tax records, business reports, plans and projections, production reports and records, inventory reports and records, business, engineering and consulting reports, marketing and advertising materials, research and development reports and records, maps, all plans, surveys, specifications, and as-built drawings relating to the Mine Properties, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Ekati Diamond Mine, the Diavik Diamond Mine and any other real property interests included in the Acquired Assets, including all such electrical, mechanical and structural drawings related thereto, environmental reports, soil and substratum studies, inspection records, financial records, and all other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Acquired Assets or the Employees, and other similar materials, in each case, whether in electronic, paper or other form, but excluding Sellers' corporate charter, minute and stock record books, and corporate seal.

"Dominion Holdings" shall have the meaning ascribed thereto in the Preamble hereof.

"Dominion Marketing" shall have the meaning ascribed thereto in the Preamble hereof.

"Effective Date" shall have the meaning ascribed thereto in the Preamble hereof.

"Ekati Buffer Zone" means the property and assets (including products derived from such property) comprising the Ekati Buffer Zone as described in the technical report entitled "Ekati Diamond Mine, Northwest Territories, Canada, NI-43-101 Technical Report" dated July 31, 2016.

"Ekati Buffer Zone Leases" means the surface and mining leases constituting the Ekati Buffer Zone.

"Ekati Core Zone" means the property and assets (including products derived from such property) that are the subject of the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Ekati Core Zone Joint Venture Agreement in relation to the Ekati Core Zone.

"Ekati Core Zone Joint Venture Agreement" means the joint venture agreement titled 'Northwest Territories Diamonds Joint Venture Agreement – Core Zone Property' dated April 17, 1997 originally entered into among BHP Diamonds Inc., Dia Met Minerals Ltd., Charles E. Fipke and Dr. Stewart L. Blusson, as amended from time to time, with the current parties thereto being DDM and 1012986 B.C. Ltd.

"Ekati Core Zone Joint Venture Interest" means an undivided 88.889% beneficial interest in the Ekati Core Zone Joint Venture, held by DDM pursuant to the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Leases" means the surface and mining leases constituting the Ekati Core Zone and subject to the Ekati Core Zone Joint Venture Agreement.

"Ekati Diamond Mine" means the diamond mine located approximately 310 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Ekati Diamond Mine."

"Employee" means an individual who, as of the applicable date, is employed by Sellers or their Subsidiaries in connection with the Business.

"Employee Plan" means all employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, vacation pay, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, agreement or arrangement, including post-retirement health and life insurance benefit plans, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Sellers or any of their Subsidiaries for the benefit of the Employees or former Employees and their dependents or beneficiaries by which the Sellers or any of their Subsidiaries are bound or with respect to which the Sellers or any of their Subsidiaries participate or have any actual or potential Liability (excluding, for greater certainty, any statutory benefits plan).

"Encumbrance" means any caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgements, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other Claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

"Environment" means the components of the earth, and includes: (a) land, water, and air, including all layers of the atmosphere, (b) all organic and inorganic matter and living organisms, and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

"Environmental Agreement" means the Environmental Agreement, dated as of January 6, 1997 as amended on April 14, 2003, on April 10, 2013 and on November 21, 2018 between Her Majesty The Queen in Right of Canada and the Government of the Northwest Territories and Dominion Diamond Ekati ULC.

"Environmental Law" means the Environmental Agreement and any Regulation which is related to or which regulates or otherwise imposes obligations, liability or standards of conduct concerning the Environment, health and safety, mineral resources, discharges, Contaminants, reclamation and restoration, Releases or threatened Releases of Contaminants, including Hazardous Materials, into the Environment or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Materials.

"Environmental Liabilities and Obligations" means all Liabilities arising from or relating to the Environment, mineral resources, health or safety, Contaminants, reclamation and restoration or arising under any, or arising from any Environmental Law, including Liabilities related to: (a) the manufacture, processing, handling, generation, treatment, distribution, recycling, transportation, storage, use, cleanup, arrangement for disposal or disposal of, or exposure to, Hazardous Materials and/or Contaminants; (b) the Release of Hazardous Materials and/or Contaminants, including migration onto or from the real property included in the Acquired Assets; (c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (d) any other obligations imposed under Environmental Law including pursuant to any applicable Authorizations issued pursuant to or under any Environmental Law; (e) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports with respect to any Liabilities pursuant to Environmental Law; and (f) all obligations with respect to personal injury, property damage, environmental damage, wrongful death, endangerment to the health or animal life, damage to plant life and other damages and losses arising under applicable Environmental Law.

"Essential Contracts" means, collectively, (i) the Aboriginal Agreements and related agreements, and (ii) those other Contracts to which a Seller is a party or beneficiary which are Material Contracts and specified as "Essential Contracts" on Schedule A, as may be modified from time to time after the date of this Agreement pursuant to Section 3.6.

"Excluded Assets" shall have the meaning ascribed thereto in Section 3.2.

"Excluded Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Excluded Contracts" on Schedule A, as may be modified from time to time after the date of this Agreement pursuant to Section 3.6.

"Excluded Liabilities" shall have the meaning ascribed thereto in Section 3.4.

"Filing Date" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Final Order" means an action taken or order issued by the CCAA Court or other applicable Governmental Body as to which: (i) no request or motion for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request or motion is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition or motion for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Body and the time for filing any such petition or motion is passed; (iii) the Governmental Body does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is

not then under judicial review or appeal, there is no notice of leave to appeal, appeal or other motion or application for judicial review pending, and the deadline for filing such notice of appeal or other motion or application for judicial review has passed, including any extensions thereof.

"Finco" shall have the meaning ascribed thereto in the Preamble hereof.

"First Lien Lenders" means the lenders under the Pre-filing Credit Agreement.

"First Lien Lender MSA" means the Mutual Support Agreement dated as of December 4, 2020 between the Bidders, Western Asset Management Company, LLC and the First Lien Lenders and attached hereto as Schedule B.

"Glowworm Lake Property" means the mineral leases held by DDM covering an area of 132,560 hectares bordering the eastern side of the Diavik Diamond Mine.

"GNWT" shall have the Government of the Northwest Territories.

"Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, board, commission, tribunal, agency or political subdivision thereof of any nature, whether national, international, multi-national, supra-national, foreign, federal, state, provincial, territorial, Aboriginal or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

"GST" means goods and services tax, including harmonized sales tax, payable under the GST Legislation.

"GST Legislation" means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.

"Guarantee" means any guarantee or other contingent liability, direct or indirect, with respect to any Indebtedness or obligations of another Person, through a Contract or otherwise.

"Hazardous Material" means any substance, material, emission or waste which is defined, regulated, listed or prohibited by any Governmental Body, including petroleum and its by-products, asbestos, polychlorinated biphenyls and any material, waste or substance which is defined or identified as a "hazardous waste," "hazardous substance," "hazardous material," "restricted hazardous waste," "industrial waste," "solid waste," "contaminant,", "dangerous good", "deleterious substance", "greenhouse gas emission", "pollutant," "toxic waste" or "toxic substance" or words of similar import or otherwise regulated under or subject to any provision of Environmental Law.

"IFRS" means generally accepted accounting principles as set out in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards as applied by the International Accounting Standards Board, at the relevant time, applied on a consistent basis.

"Indebtedness" means, with respect to any Person, (a) all liabilities of such Person for borrowed money, whether secured or unsecured, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment of such borrowed money), (b) all liabilities of such Person evidenced by notes, debentures, bonds or similar instruments, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment thereof), for the payment of which such Person is responsible, (c) all obligations of such Person for the deferred purchase price of property or services (including "earn out" payments), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction, but excluding any obligations that are fully discharged at the Closing, (e) obligations under any interest rate, currency or other hedging arrangement or derivatives transaction, (f) all obligations of such Person with respect to the posting of collateral and similar obligations or as obligor, guarantor, surety or otherwise, including pursuant to "keep well" agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements, but excluding any such obligations that are fully discharged at the Closing, and (g) any change of control payments or prepayment premiums, penalties, charges or equivalents thereof with respect to any obligations of the type referred to in clauses (a) through (f) that are required to be paid at the time of, or the payment of which would become due and payable solely as a result of, the execution of this Agreement or the consummation of the transactions contemplated hereby.

"Indemnity Assumption" shall have the meaning ascribed thereto in Section 4.2(b).

"Initial Allocation" shall have the meaning ascribed thereto in Section 13.14(e).

"Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Intellectual Property" means all intellectual property and proprietary rights of any kind, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a's or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b) copyrights and copyrightable subject matter (including works and any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies, in each case whether patentable or not; (d) computer software, computer programs, and databases (whether in source code, object code or other form); (e) patents, industrial designs and inventions, together with all registrations and applications related to the foregoing; and (f) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

"Interim Facility" means the interim financing facility evidenced by the Interim Facility Credit Agreement, entered into to provide financing during the pendency of the CCAA Proceedings, as the same may be amended, restated or supplemented from time to time.

"Interim Facility Credit Agreement" means that certain Amended and Restated Interim Financing Term Sheet dated as of June 15, 2020 among Washington Diamond Lending, LLC, the other Interim Lenders party thereto, DDM, as the Borrower (as defined therein) thereunder, and the Guarantors (as defined therein), evidencing the Interim Facility to be provided by the Interim Lenders to DDM, as Borrower, as the same may be amended, modified or supplemented from time to time.

"Interim Lenders" means Washington Diamond Lending, LLC and the other Interim Lenders (as defined in the Interim Facility Credit Agreement), as interim lenders under the Interim Facility Credit Agreement and the Interim Facility and any assignee(s) thereof.

"Inventory" means all diamonds and other inventory of any kind or nature, including stockpiles and goods, maintained, held or stored by or for any Seller, whether or not prepaid, and wherever located or held, including any goods in transit, and any prepaid deposits for any of the same, including all diamonds no longer held by DDMI prior to Closing in respect of the Diavik Joint Venture Interests and whose title has transferred to Sellers.

"Investment Canada Act" means the *Investment Canada Act*, as amended.

"IP Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 11.2(g).

"Joint Venture" means each of the Diavik Joint Venture, the Ekati Core Zone Joint Venture and the Lac de Gras Joint Venture.

"Joint Venture Agreements" means, collectively, the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement and the Lac de Gras Joint Venture Agreement, and "Joint Venture Agreement" means any one of them as applicable.

"Knowledge of Sellers" or "Sellers' Knowledge" means, with respect to any matter, the actual knowledge, after due inquiry, of each of the individuals set forth on Section 1.1(a) of the Seller Disclosure Letter.

"Lac de Gras" means the exploration property and assets (including products derived from such property) that is the subject of the Lac de Gras Joint Venture Agreement.

"Lac de Gras Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Lac de Gras Joint Venture Agreement in relation to Lac de Gras.

"Lac de Gras Joint Venture Agreement" means the joint venture agreement dated June 30, 2015 entered into among Dominion Diamond Holdings Ltd., 6355137 Canada Inc. and North Arrow Minerals Inc.

"Lac de Gras Joint Venture Interest" means an undivided 77.31% beneficial interest in Lac de Gras Joint Venture held by DDM pursuant to the Lac de Gras Joint Venture Agreement.

"Lac de Gras Leases" means the surface and mining leases constituting Lac de Gras.

"Law" means any federal, territorial, state, provincial, local, municipal, foreign or international, multinational or other law, treaty, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Liability" means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

"Mandatory Antitrust Approvals" means each of the approvals or consents of any Governmental Body, or the expiration of the applicable notice or waiting period, in each case required to consummate the Acquisition and the other transactions contemplated by this Agreement under applicable Antitrust Laws, including by means of a decision, in whatever form (including a declaration of lack of jurisdiction or a mere filing or notification, if the Closing can take place, pursuant to the applicable Antitrust Law, without a decision or the expiry of any waiting period) by any Governmental Body under the Antitrust Laws of any of any jurisdiction, authorizing or not objecting to the transactions contemplated by this Agreement, provided that any terms or conditions attached to such decision are acceptable to the Purchaser.

"Material Adverse Effect" means any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the Business (other than in relation to the Diavik Joint Venture Interest), results of operations, condition (financial or otherwise), Acquired Assets or Assumed Liabilities of Sellers and their respective Subsidiaries, taken as a whole; or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that, for the purposes of clause (a), a Material Adverse Effect shall not be deemed to include events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy or credit, financial, or securities markets; (ii) any outbreak or escalation of war or any act of terrorism; (iii) changes in applicable Law; (iv) changes in IFRS; (v) Sellers' failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period (but, for the avoidance of doubt, not the underlying cause(s) of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (vi) changes in political conditions; (vii) general conditions in the industry in which Sellers and their respective Subsidiaries operate; (viii) the announcement of the transactions contemplated by this Agreement; or (ix) the commencement or pendency of the CCAA Proceedings; provided further, however, that any event, change, and effect referred to in clauses (i), (ii), (iii), (iv), (vi) and (vii) immediately above shall be taken into account in determining whether a Material Adverse Effect

has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on Sellers and their respective Subsidiaries, taken as a whole, compared to other participants in the industries in which Sellers and their respective Subsidiaries conduct their businesses.

"Material Contract" means any Contract:

(a) that if terminated or modified or if it ceased to be in effect, would reasonably be expected to have a Material Adverse Effect;

(b) that is a partnership agreement, limited liability company agreement, joint venture agreement or similar agreement or arrangement, including the Joint Venture Agreements, relating to the formation, creation or operation of any partnership, limited liability company or joint venture in which Sellers or any of their Subsidiaries is a partner, member or joint venturer (or other participant) that is material to Sellers, their Subsidiaries or the Business, or the ability of Sellers and their Subsidiaries to develop any of their material projects, but excluding any such partnership, limited liability company or joint venture which is a wholly-owned Subsidiary of Sellers;

(c) under which Indebtedness for borrowed money in excess of $7,500,000 is or may become outstanding or pursuant to which any property or asset of Sellers or their Subsidiaries is mortgaged, pledged or otherwise subject to an Encumbrance securing Indebtedness for borrowed money in excess of $7,500,000 or under which Sellers or any of their Subsidiaries has guaranteed any liabilities or obligations of a third party in excess of $7,500,000, in each case, other than any such Contract between two or more wholly-owned Subsidiaries of Sellers or between Sellers and/or one or more of their wholly-owned Subsidiaries;

(d) under which Sellers or any of its Subsidiaries is obligated to make or expects to receive payments in excess of $7,500,000 over the remaining term;

(e) that creates an exclusive dealing arrangement or right of first offer or refusal;

(f) providing for the purchase, sale or exchange of, or option to purchase, sell or exchange, any property or asset where the purchase or sale price or agreed value or fair market value of such property or asset exceeds $15,000,000;

(g) that is a Collective Agreement;

(h) that limits or restricts in any material respect (a) the ability of Sellers or any of their Subsidiaries to incur Indebtedness, to engage in any line of business or carry on business in any geographic area, to compete with any Person, or to engage in any merger, consolidation or other business combination, or (b) the scope of Persons to whom Sellers or any of their Subsidiaries may sell products;

(i) between Sellers or any of their Subsidiaries, on the one hand, and any director or executive officer of the Sellers or any of their Subsidiaries, on the other hand;

(j) with any Aboriginal Group or Aboriginal business, including a joint venture in which an Aboriginal Group is a joint venture party;

(k) providing for the sale of diamonds representing more than 1% of annual production of Sellers and their Subsidiaries or pursuant to which Sellers and their Subsidiaries received during calendar year 2019 or could reasonably be expected to receive in calendar year 2020 or thereafter revenues in excess of $15,000,000;

(l) providing for indemnification by Sellers or their Subsidiaries of another Person, other than Contracts for goods or services, Contracts with directors or officers of Sellers or their Subsidiaries in their capacity as such or Contracts which provide for indemnification obligations of less than $15,000,000;

(m) providing for a royalty, streaming or similar arrangement or economically equivalent arrangement in respect of any of the Mine Properties; or

(n) that is or would reasonably be expected to be material to Sellers and their Subsidiaries, the Business (other than in relation to the Diavik Joint Venture Interest) or the Acquired Assets, taken as a whole.

"Mine Properties" means, collectively, the Diavik Diamond Mine and the Ekati Diamond Mine and "Mine Property" means any one of them as applicable.

"Mineral Rights" has the meaning ascribed thereto in Section 5.13(a).

"Monitor" means FTI Consulting Canada Inc., in its capacity as the CCAA Court-appointed monitor in connection with the CCAA Proceedings.

"Monitor's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Sale Order, to be delivered by the Monitor to the Sellers and the Bidder Parties on Closing and thereafter filed by the Monitor with the CCAA Court, certifying that the Monitor has received the Conditions Certificates.

"Objection Notice" shall have the meaning ascribed thereto in Section 13.14(e).

"Order" means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any court or Governmental Body.

"Ordinary Course of Business" means, with respect to any Person, actions that (i) are taken in the ordinary and usual course of operations of the Business consistent with past practice in effect prior to filing of the CCAA Proceedings and prior to the enactment of measures taken in response to the COVID-19 pandemic, (ii) are taken in accordance with all applicable Laws and (iii) do not result from or arise out of and were not caused by, any breach of Contract, breach of warranty, tort, infringement or violation of Law by such Person or any Affiliate of such Person.

"Organizational Documents" means, with respect to a particular entity Person, (a) if a corporation, the articles or certificate of incorporation and bylaws, (b) if a general partnership, the partnership agreement and any statement of partnership, (c) if a limited partnership, the limited

partnership agreement and certificate of limited partnership, (d) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (e) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (f) all amendments or supplements to any of the foregoing.

"Other Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Other Contracts" on Schedule A, as may be modified from time to time after the date of this Agreement pursuant to Section 3.6.

"Outside Date" shall have the meaning ascribed thereto in Section 12.1(b)(i).

"Parent" means Washington Diamond Investments, LLC.

"Parties" means at a given time, the parties to this Agreement, collectively and a "Party" refers to any of them.

"Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: (1) any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grant from the Crown or a Governmental Body and any statutory limitations, exceptions, reservations and qualifications to title or Encumbrances imposed by Law; (2) any claim by any Aboriginal Group based on treaty rights, traditional territory, land claims or otherwise; (3) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (4) permits, reservations, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements (including, without in any way limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) in favor of any Governmental Body or utility company in connection with the development, servicing, use or operation of any property which (y) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (z) have been complied with to date in all material respects; (5) each of the following Encumbrances: (a) permits, reservations, covenants, servitudes, rights of access or user licenses, easements, rights of way and rights in the nature of easements in favor of any Person (other than those in (4) above); (b) any encroachments, title defects or irregularities existing; (c) any instrument, easement, charge, caveat, lease, agreement or other document registered or recorded against title to any property so long as same have been complied with in all material respects; (d) agreements with any Governmental Body and any public utilities or private suppliers of services; and (e) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (a), (b), (c), (d) and (e), which (I) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (II) have been complied with to date in all material respects; (6) Encumbrances granted or arising pursuant to the Joint Venture Agreements included in the Acquired Assets; (7) Encumbrances in respect of all equipment and other tangible assets of Sellers (including all vehicles) which are subject to any true lease, financing lease, conditional

sales contract, or similar agreement that is an Assigned Contract; (8) miner's liens and associated certificates of pending litigation filed by trade creditors party to Assigned Contracts who have agreed that certain Cure Amounts owed to them will be paid after the Closing Date; (9) Encumbrances to which the Purchaser consents in writing; (10) in respect of only the Diavik Realization Assets, Encumbrances that are held by or for the benefit of the First Lien Lenders pursuant to the Pre-filing Credit Agreement; and (11) Encumbrances set out in the schedules to the Sale Order.

"Person" means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority or natural person.

"Pre-Closing Period" means the period commencing on the Effective Date and ending on the earlier of the date upon which this Agreement is validly terminated pursuant to Article XII or the Closing Date.

"Pre-Closing Tax Period" means any taxable period (or portion thereof) ending on or before the Closing Date and any portion of any Straddle Period ending on the Closing Date.

"Pre-filing Credit Agreement" means the Revolving Credit Agreement, dated as of November 1, 2017 (as amended by the First Amendment and Waiver to Credit Agreement, dated as of July 30, 2019, the Second Amendment, dated as of March 4, 2020, and as further amended from time to time), among DDM, Parent, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"Pre-filing Indebtedness Assumption" shall have the meaning ascribed thereto in Section 4.2(a).

"Pre-filing Indenture" means the Indenture, dated as of October 23, 2017, by and among Northwest Acquisitions ULC, Finco and Wilmington Trust, National Association, as trustee (the "Indenture Trustee"), as supplemented by (i) the First Supplemental Indenture, dated as of November 1, 2017, by and among the Northwest Acquisitions ULC, Finco, the guarantors party thereto and the Indenture Trustee, (ii) the Second Supplemental Indenture, dated as of December 21, 2017, by and among Northwest Acquisitions ULC, as successor of Northwest Acquisitions ULC, Finco and the Indenture Trustee, (iii) the Third Supplemental Indenture, dated as of December 21, 2017, by and among DDM, as successor of Northwest Acquisitions ULC, Finco and the Indenture Trustee, (iv) the Fourth Supplemental Indenture, dated as of January 1, 2019, by and among the Indenture Trustee, Finco, DDM, and the guarantors party thereto, and (v) the Fifth Supplemental Indenture, dated as of December 13, 2019, by and among DDM, Finco, Parent, Dominion Diamond Holdings, LLC, and the Indenture Trustee.

"Previously Omitted Contract" shall have the meaning ascribed thereto in Section 3.6(b)(i).

"Previously Omitted Contract Designation" shall have the meaning ascribed thereto in Section 3.6(b)(i).

"Previously Omitted Contract Notice" shall have the meaning ascribed thereto in Section 3.6(b)(ii).

"Purchase Price" shall have the meaning ascribed thereto in Section 4.1.

"Purchaser" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchaser Acquired Interests" means shares of, or other equity interests in, the Acquired Subsidiaries.

"Purchaser's Conditions Certificate" shall have the meaning ascribed thereto in Section 11.4.

"Regulation" means any Law, statute, regulation, code, guideline, protocol, policy, ruling, rule or Order of, administered or enforced by or on behalf of any Governmental Body and all judgments, orders, writs, injunctions, decisions and mandate of any Governmental Body which, although not actually having the force of law, are considered by such Governmental Body as requiring compliance as if having the force of law or which establish the interpretative position of the Law by such Governmental Body.

"Release" means any release, spill, deposit, emission, leaking, pumping, escape, emptying, leaching, seeping, disposal, discharge, dispersal or migration into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller as at the Closing Date, including the movement of Contaminants, including Hazardous Materials, through or in the air, soil, ground, surface water, groundwater or property.

"Representatives" means the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of any Person.

"Retained Subsidiaries" shall have the meaning ascribed thereto in Section 3.2(b).

"Sale Advisor" means Evercore Group LLC.

"Sale Order" means an Order of the CCAA Court in form and content satisfactory to the Sellers and the Bidders, acting reasonably, approving the transactions contemplated by this Agreement, vesting the Acquired Assets in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances and containing such other provisions as the Sellers or the Bidders may reasonably require.

"Second Lien Notes" means the secured second lien notes issued under and pursuant to the Pre-filing Indenture.

"Seller Disclosure Letter" means the disclosure letter delivered by Sellers to Purchaser on or prior to December 11, 2020 in form and content satisfactory to the Bidders, acting reasonably.

"Sellers" shall have the meaning ascribed thereto in the Preamble hereof.

"Sellers' Conditions Certificate" shall have the meaning ascribed thereto in Section 11.4.

"Stay" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Straddle Period" shall have the meaning ascribed thereto in Section 13.14(b).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, unlimited liability company, public liability company, private limited company, joint venture, partnership or other entity of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

"Sureties" means those parties defined as Sureties in the Sureties Support Confirmations.

"Sureties Support Confirmations" means the confirmations of support from the Sureties to the Bidders dated December 4, 2020 and delivered confidentially to Sellers.

"Tax Act" means the Income Tax Act (Canada) and the regulations promulgated thereunder, as amended from time to time.

"Tax Return" means any report, return, information return, election, agreement, declaration, designation, filing or other document of any nature or kind required to be filed with any applicable Governmental Body in respect of Taxes, including any amendment, schedule, attachment or supplement thereto and whether in tangible or electronic form.

"Taxes" means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added (including GST), capital, license, payroll, employment, employer health, unemployment, pension, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer (including land registration or transfer), fuel, excess profits, occupational and interest equalization, windfall profits, severance and withholding and social security taxes imposed by Canada, the United States or any other country or by any state, province, territory, municipality, subdivision or instrumentality of Canada or the United States or of any other country or by any other Governmental Body, and employment or unemployment insurance premiums, Canada Pension Plan or Quebec Pension Plan contributions, together with all applicable penalties and interest, and such term shall include any interest, penalties or additions to tax attributable to such Taxes.

A "third party" means any Person other than any Seller, Bidder Party or any of their respective Affiliates.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 13.14(a).

"Transferred Employees" shall have the meaning ascribed thereto in Section 8.1(a).

"Treasury Regulations" means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

"US$" means the currency of the United States, and all references to monetary amounts herein shall be in Dollars unless otherwise specified herein.

"Wind-Down Account" shall have the meaning ascribed thereto in Section 7.1(a)(iii).

"Working Capital Financing" shall have the meaning ascribed thereto in Section 4.3.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning through this Agreement.

1.3 Other Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement, unless the express context otherwise requires.

(d) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under IFRS consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under IFRS, the definition set forth in this Agreement will control.

(e) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(f) Any provision of this Agreement that requires the Bidder Parties to act reasonably shall not be deemed to require the Bidder Parties to accept, agree or consent to any Order or supplement, amendment or modification thereto, or any other matter that adversely affects such Bidder Parties or is inconsistent with the terms of this Agreement, in each case, other than in any de minimis respect.

(g) Any provision of this Agreement that requires any Party to use commercially reasonable efforts to satisfy conditions to Closing having a sole discretion standard do not require such Party to accept any term or agreement not acceptable to such Party in its sole discretion.

(h) Wherever the word "include," or "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation."

ARTICLE II

FORMATION OF PURCHASER; BIDDERS' COVENANT

2.1 Formation. The Bidders shall use commercially reasonable efforts to take all steps, deliver all documents and comply with all requirements, as soon as reasonably practicable, to ensure that Purchaser is formed in accordance with applicable Law and pursuant to the terms and conditions of this Agreement. The Bidders shall cause the Purchaser to enter into and accept the terms and conditions under this Agreement.

2.2 Purpose of Purchaser. Purchaser shall be formed with the purpose and objects as would facilitate the due exercise and performance by Purchaser of the rights and obligations under this Agreement set out in respect of the "Purchaser" and for undertaking such other activities as are necessary for or incidental to the transactions contemplated by this Agreement.

2.3 Bidders' Covenant. The Bidders shall, or shall cause the Purchaser to, purchase the Acquired Assets, satisfy the Purchase Price (including, to the extent necessary, funding all or a portion of the Closing Cure Amount from the Working Capital Financing) and provide the Working Capital Financing and otherwise consummate the transactions contemplated hereby, subject to the terms and conditions of this Agreement.

2.4 First Lien Lender MSA. The Bidders shall comply with their obligations pursuant to the First Lien Lender MSA. The Bidders shall use reasonable best efforts to have executed and delivered the definitive documentation, in form and content satisfactory to the First Lien Lenders and the Bidders, regarding the transactions between such parties contemplated by the First Lien Lender MSA prior to the Outside Date in satisfaction of the condition set out in Section 9.15.

2.5 Sureties Support Confirmations. The Bidders shall use reasonable best efforts to have executed and delivered the definitive documentation, in form and content satisfactory to the Sureties and the Bidders, regarding the transactions contemplated by the Sureties Support Confirmations prior to the Outside Date in satisfaction of Section 9.9.

ARTICLE III

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

3.1 Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, all of the Sellers' right, title and interest in the assets and properties of Sellers other than the Excluded Assets (the "Acquired Assets") subject to Section 3.6, free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances), including the following:

(a) all of the issued and outstanding equity interests held by any Seller in Dominion Diamond (India) Private Limited, Dominion Diamond Marketing N.V., Dominion Diamond (Cyprus) Limited and, if and to the extent elected by the Bidders before Closing, in another Seller (collectively, the "Acquired Subsidiaries");

(b) assignment of all of Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik Joint Venture Interest (including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized or realizable by or on behalf of Sellers) (collectively, the "Diavik Realization Assets"), which shall be assigned to Purchaser subject only to the continuing liens and charges of the First Lien Lenders pursuant to the Pre-filing Credit Agreement until such time as all letters of credit issued by the First Lien Lenders in respect of the Diavik Diamond Mine shall have been cash collateralized or cancelled and all related fees shall have been paid;

(c) the Ekati Core Zone Joint Venture Interest, all rights and interests of any Seller under the Ekati Core Zone Joint Venture Agreement, and all other rights, title and interests of any Seller in the Ekati Diamond Mine, the Ekati Core Zone, the Ekati Core Zone Leases and the Ekati Core Zone Joint Venture;

(d) all rights, title and interests of any Seller in the Ekati Buffer Zone and the Ekati Buffer Zone Leases;

(e) the Lac de Gras Joint Venture Interest, all rights and interests of any Seller under the Lac de Gras Joint Venture Agreement, and all other rights, title and interests of any Seller in the Lac de Gras Leases and the Lac de Gras Joint Venture;

(f) all mineral rights held by DDM, including all mineral rights included in the Ekati Core Zone, the Ekati Buffer Zone, Lac de Gras and the Glowworm Lake Property;

(g) all of Sellers' Cash and Cash Equivalents, including all cash collateral and deposits posted by or for the benefit of Sellers as security for any letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise (except for retainers held by any professional in the CCAA Proceedings);

(h) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller provided, however, that all receivables in respect of the Diavik Joint Venture Interest collected by the Sellers following the Effective Date shall constitute Diavik Realization Assets;

(i) all prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(j) all equipment and other tangible assets of Sellers, including all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Seller related thereto;

(k) all Inventory;

(l) subject to Section 3.6, all of the Essential Contracts and Other Contracts set forth on Schedule A hereto (the "Assigned Contracts") and all rights thereunder;

(m) all Authorizations and all pending applications therefor, in each case, to the extent such Authorizations and pending applications therefor are transferrable;

(n) all rights, options, Claims or causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law;

(o) all other right, title and interest of any Seller in real property (including and all fixtures, improvements and appurtenances thereto);

(p) all Assumed Plans, together with all funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto), and all rights and obligations thereunder;

(q) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers' expense to the extent required by Law;

(r) any chattel paper owned or held by Sellers;

(s) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(t) the Intellectual Property owned or purported to be owned by any Seller;

(u) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(v) to the extent permitted by Law, Sellers' Documents; provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers' expense to the extent required by Law or as is necessary to wind-down Sellers;

(w) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(x) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or current employees and agents of Sellers or with third parties (including any non-disclosure,

confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the CCAA Proceedings);

(y) telephone, fax numbers (if any) and email addresses, as well as the right to receive mail and other communications addressed to Sellers;

(z) any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchaser and will pay such amounts to the Purchaser forthwith following receipt thereof);

(aa) all prepaid Taxes and Tax credits of Sellers (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchaser and will pay such amounts to the Purchaser forthwith following receipt thereof);

(bb) all of Sellers' bank accounts (excluding the Diavik Realization Account and the Wind-Down Account); and

(cc) all other or additional assets, properties, privileges, rights and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement.

3.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) the Diavik Joint Venture Agreement;

(b) subject to Section 3.1(a), all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in, Dominion Finco Inc., Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC and Dominion Diamond (Cyprus) Limited (the "Retained Subsidiaries");

(c) all Excluded Contracts;

(d) Sellers' rights under this Agreement, and under any Ancillary Documents;

(e) all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto running in favor of any Seller, including all insurance recoveries thereunder and rights to assert Claims with respect to any such insurance recoveries, in each case, as the same may run in favor of any Seller and arising out of actions taking place prior to the Closing Date;

(f) all equipment and other tangible assets of Sellers (including all vehicles) which are subject to any financing lease, true lease, conditional sales contract or similar agreement that is not an Assigned Contract;

(g) all assets that are removed from the Acquired Assets pursuant to Section 3.6 or by designation of Bidders or Purchaser prior to Closing; and

(h) Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchaser shall have the right to reasonably request, and Sellers shall reasonably cooperate to provide, copies of any portions of such documents solely as they relate to the Acquired Assets.

3.3 Assumed Liabilities. At the Closing, except as provided in Section 3.2 and/or in Section 3.4 hereof, and subject to Section 3.6, Purchaser shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the following Liabilities) (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of any Seller under the Assigned Contracts, including by making available the Closing Cure Amount (to the extent necessary, from the Working Capital Financing) at Closing in connection with the assumption and assignment of the Assigned Contracts, but excluding (i) trade payables arising on or after the Filing Date that are overdue for payment as of Closing, and (ii) any other Liabilities related to or arising out of a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing;

(b) all trade payables arising on or after the Filing Date for which the permitted payment period has not yet expired as of the Closing in the ordinary course and which the Sellers have not yet paid but has reserved for in the Budget;

(c) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(d) all payroll liabilities with respect to Transferred Employees for the payroll period which includes the Closing Date;

(e) any and all Liabilities relating to Claims, Actions, suits, arbitrations, litigation matters, proceedings, investigations or other Actions (in each case, whether involving private parties, Governmental Bodies, or otherwise) arising from the operation of the Business as it relates to the Ekati Diamond Mine and the Acquired Assets from and after the Closing but excluding, for the avoidance of doubt, any such Liabilities (i) arising in the CCAA Proceedings unrelated to the go-forward operations of the Business as it relates to the Ekati Diamond Mine, (ii) insured under insurance policies that are not transferable to Purchaser; (iii) with respect to Excluded Contracts or any other Excluded Assets, (iv) to Employees or former Employees who are not Transferred Employees, or (v) expressly excluded pursuant to Section 3.4;

(f) solely with respect to the Acquired Assets, and subject to such agreements and arrangements as Purchaser may enter into in satisfaction of the Sureties Support

Confirmations, or otherwise in connection with the transactions contemplated hereby, any and all Environmental Liabilities and Obligations;

(g) all intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(h) all Liabilities under Authorizations included in the Acquired Assets, in each case solely in respect of the period commencing at the Closing Date and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing, subject to such agreements and arrangements as Purchaser may enter into in connection with the Sureties Support Confirmations; and

(i) all Liabilities with respect to letters of credit issued pursuant to the Pre-filing Credit Agreement with respect to Ekati Diamond Mine, subject to such Liabilities being assumed in the manner contemplated by the First Lien Lender MSA.

3.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchaser is not assuming, and shall not be obligated to pay, perform or otherwise discharge any Liability that is not an Assumed Liability (collectively, the "Excluded Liabilities"), including the following:

(a) any and all Liabilities arising out of, relating to or otherwise in respect of the Acquired Assets and/or Business arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities of any Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of the Retained Subsidiaries;

(d) any and all Liabilities of any Seller for Indebtedness, including (i) all Liabilities with respect to the Pre-filing Credit Agreement (other than pursuant to the Pre-filing Indebtedness Assumption), the Pre-filing Indenture and the Interim Facility, (ii) all intercompany Indebtedness between any Seller, on the one hand, and the Retained Subsidiaries, on the other hand, and (iii) all Guarantees by Sellers, but excluding any intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(e) except as set forth in Section 13.14(a), any and all (i) Liabilities of any Seller for any Taxes (including, without limitation, Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to section 160 of the Tax Act, Treasury Regulation section 1.1502-6 (or any similar provision of any other Law) or otherwise and any Taxes owed by any Seller and arising in connection with the consummation of the transactions contemplated by this Agreement) arising or related to any period(s) on or prior to the Closing Date, and (ii) Taxes arising from or in connection with an Excluded Asset;

(f) any and all Liabilities of any Seller in respect of the Excluded Contracts and any other Contracts to which such Seller is party or is otherwise bound that are not Assigned Contracts;

(g) any and all Liabilities of any Seller in respect of the Diavik Joint Venture Agreement, the Diavik Joint Venture, the Diavik Joint Venture Interest, the Diavik Diamond Mine and the Diavik Realization Assets;

(h) all Liabilities and obligations of any Seller under the Assigned Contracts in respect of (i) a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing, and (ii) trade payables arising on or after the Filing Date that are overdue for payment as of Closing;

(i) any and all Liabilities arising out of or relating to any business or property formerly owned or operated by any Seller, any Affiliate or predecessor thereof, but not owned and operated by such Seller immediately prior to Closing;

(j) any and all Liabilities of any Seller or its predecessors arising out of any Contract, Authorization, franchise or claim that is not transferred to Purchaser as part of the Acquired Assets;

(k) any and all Liability for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the CCAA Proceedings (including the Monitor's fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Sellers or the Monitor, and the fees and expenses of the post-filing lenders or the pre-filing lenders incurred or owed in connection with the administration of the CCAA Proceedings); (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement; and (iii) all other Sellers' legal, financial, advisory, consulting or similar costs and expenses incurred or arising prior to the Closing;

(l) any and all Liabilities in respect of Employees other than the Liabilities relating to Transferred Employees that are expressly assumed under Section 3.3;

(m) any and all Liabilities with respect to change of control, severance, termination or similar arrangements with any officer, employee or contractor of any Seller;

(n) any and all Liabilities arising out of, relating to or otherwise in respect of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assigned Contracts occurring prior to the Closing;

(o) any and all Liabilities of Sellers under this Agreement;

(p) any and all Liabilities to any broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement or otherwise;

(q) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Business (as currently or formerly conducted) or the ownership of the Acquired Assets for any Pre-Closing Tax Period, including any and all property Taxes with respect to any Pre-Closing Tax Period;

(r) any Liability for any Tax or Taxes of Sellers or their Affiliates (other than the Acquired Subsidiaries) for any taxable period; and

(s) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement.

3.5 Conveyance and Consideration. Further to Section 3.1 and Section 3.3, above, (i) the Acquired Assets shall be conveyed to Purchaser from Sellers in consideration of the Purchase Price, which shall be allocated to the Acquired Assets in accordance with Section 13.14(e).

3.6 Assigned Contracts/Previously Omitted Contracts.

(a) Assignment and Assumption at Closing.

(i) Schedule A sets forth, to the Sellers' Knowledge, (A) a list of all Contracts to which any Seller is party, including all Contracts that, to the Sellers' Knowledge, were entered into by a Seller following the Filing Date and, (B) with respect to each Contract listed therein, Sellers' good-faith estimate of the Cure Amount if such Contract were an Assigned Contract. The "Assigned Contracts" shall be the Essential Contracts and Other Contracts designated on such Schedule A.

(ii) From and after the date hereof until the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, Bidders shall be entitled to make additions, deletions and modifications to the Contracts classified as an "Essential Contract," "Other Contract" or "Excluded Contract" on Schedule A in their sole discretion following consultation with Sellers by delivery of written notice to Sellers. For greater certainty, (A) any Contract designated by Bidders as an Excluded Contract on Schedule A after the date of this Agreement shall be deemed to no longer be an Assigned Contract and to be an Excluded Contract, (B) any Contract designated by Bidders as an Essential Contract on Schedule A after the date of this Agreement shall be deemed an Essential Contract for the purposes of this Agreement, and (C) any Contract designated by Bidders as an Other Contract on Schedule A after the date of this Agreement shall be deemed an Other Contract for the purposes of this Agreement.

(iii) Sellers shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchaser. The Bidder Parties may request, in their reasonable commercial judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assigned Contract, and Sellers shall cooperate with all reasonable requests of the Bidder Parties to seek to obtain such modifications or amendments or to assist the Bidder Parties in obtaining such modifications or amendments; provided that Purchaser shall make available the Cure Funding Amount to satisfy the Cure Amount. If the Bidder Parties and Sellers are unable to obtain such modifications or amendments, the Bidder Parties may, in their sole discretion following consultation with Sellers, designate any Contract as an Excluded Contract. For the avoidance of doubt, the failure to obtain modifications or amendments to an Essential

Contract requested by the Bidder Parties shall not result in a failure to satisfy the condition to closing set out in Section 9.7.

(iv) To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (A) the Sellers' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order, (B) the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date, and (C) if an Assignment Order is obtained in respect of such Assigned Contract, the Purchaser shall accept the assignment of such Assigned Contract on such terms.

(v) Unless the Parties otherwise agree, to the extent that any Cure Amount is payable with respect to any Assigned Contract, Sellers shall (A) where such Assigned Contract is assigned pursuant to an Assignment Order, pay such Cure Amount in accordance with such Assignment Order, including paying the Closing Cure Amount at Closing, and (B) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay such Cure Amount in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty, including paying the Closing Cure Amount at Closing.

(b) Previously Omitted Contracts.

(i) If prior to Closing, (A) it is discovered that a Contract should have been listed but was not listed on Schedule A, or (B) a Contract is entered into after the Effective Date that would have been listed on Schedule A if any Seller had entered into such Contract on or before the Effective Date (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof or entry into such Contract (but in no event later than five (5) Business Days thereafter), notify the Bidder Parties in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. The Bidder Parties shall thereafter deliver written notice to Sellers, promptly following notification of such Previously Omitted Contract from Sellers and in any event prior to the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, designating such Previously Omitted Contract as an "Essential Contract", "Other Contract" or "Excluded Contract" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 3.6 as an "Excluded Contract" or with respect to which the Bidder Parties fail to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract.

(ii) If the Bidder Parties designate a Previously Omitted Contract as an "Essential Contract" or "Other Contract" in accordance with Section 3.6, Schedule A shall be amended to include such Previously Omitted Contract and Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amount with respect to such Previously Omitted Contract and Sellers' intention to assign such Previously Omitted Contract in accordance with this Section 3.6. The Previously Omitted Contract Notice shall

provide the counterparties to such Previously Omitted Contract with seven (7) days to object, in writing to Sellers and the Bidder Parties, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and the Bidder Parties are unable to reach a consensual resolution with respect to an objection relating to a Previously Omitted Contract that has been designated as an "Essential Contract" in accordance with Section 3.6, Sellers will seek an expedited hearing before the CCAA Court for an Assignment Order in respect of such Essential Contract.

(c) Disclaimer of Assigned Contracts. Sellers shall not disclaim or seek to disclaim any Assigned Contract in the CCAA Proceedings or any other proceeding following the Effective Date and prior to any termination of this Agreement without the prior written consent of the Bidder Parties, which the Bidder Parties may withhold, condition or delay, in their sole discretion. For greater certainty, (i) all Contracts that have not been designated as "Assigned Contracts" as at the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court shall be deemed to be Excluded Contracts, and (ii) the Sellers shall be entitled, at any time from and after the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, to disclaim or seek to disclaim any Excluded Contracts.

3.7 Assets Held by the Retained Subsidiaries. If it is determined at any time before or after the Closing that the Retained Subsidiaries hold any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller, then Sellers shall, and shall cause the Retained Subsidiaries to transfer and assign such assets to Purchaser or to one or more Designated Purchasers, as directed by Purchaser, subject to the terms of this Agreement. Without limiting the foregoing, Sellers shall cause the Retained Subsidiaries to transfer and assign to Purchaser or to one or more Designated Purchasers, as directed by Purchaser, all rights, options, Claims or causes of action of the Retained Subsidiaries against any party arising out of events occurring prior to the Closing, to the extent permitted under applicable Law. All assets, properties, rights, options, Claims or causes of action transferred to Purchaser or a Designated Purchaser pursuant to this Section 3.7 shall constitute Acquired Assets for the purposes of this Agreement.

ARTICLE IV

PURCHASE PRICE AND PAYMENT

4.1 Purchase Price. The purchase price for the Acquired Assets shall be the aggregate of:

(a) the amount of the Pre-filing Indebtedness Assumption;

(b) the amount of the Indemnity Assumption; and

(c) the amount of the Assumed Liabilities,

(the aggregate of the foregoing being collectively referred to herein as the "Purchase Price")

4.2 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied by the Purchaser as follows:

(a) the assumption by Purchaser on Closing (or, at Purchaser's option and if permitted under the First Lien Lender MSA, the repayment on Closing) of US$70,000,000 of outstanding Indebtedness under the Pre-filing Credit Agreement, on and subject to the terms and conditions set out in the First Lien Lender MSA and the definitive documents to be delivered pursuant thereto (the "Pre-filing Indebtedness Assumption");

(b) the assumption by Purchaser on Closing of indemnity and related obligations in respect of certain bonds in the face amount of $278,970,785 Canadian dollars issued by the Sureties for the benefit of the Sellers, on and subject to the terms and conditions set out in the Sureties Support Confirmations and the definitive documents to be delivered pursuant thereto (the "Indemnity Assumption");

(c) The cash payment on Closing of the Closing Cure Amount (to be paid, to the extent necessary, from the Working Capital Financing) and the assumption by the Purchaser of the obligation to pay the balance of the Cure Funding Amount;

(d) the assumption by Purchaser on Closing of the Assumed Liabilities (other than any amounts addressed in Section 4.2(a) through Section 4.2(c)), by execution and delivery of the Assignment and Assumption Agreement.

4.3 Additional Consideration/Capitalization. At Closing, the Bidders shall provide to and make available to the Purchaser new financing (the "Working Capital Financing") of US$70,000,000 to fund Purchaser's post-Closing satisfaction of Assumed Liabilities, operations at the Ekati Diamond Mine and general working capital, all on and subject to the terms and conditions set out in the First Lien Lender MSA and the definitive documents to be delivered pursuant thereto.

4.4 Further Assurances. From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchaser, shall use commercially reasonable efforts to execute and deliver such documents and instruments of conveyance and transfer as Purchaser may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchaser title to the Acquired Assets transferred hereunder, and (b) Purchaser, upon the request of Sellers, shall use commercially reasonable efforts to execute and deliver such documents and instruments of assumption as Sellers may reasonably request in order to confirm Purchaser's Liability for the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Seller Disclosure Letter, Sellers represent and warrant to the Bidder Parties as of the Effective Date and the Closing Date, as follows:

5.1 Organization and Power. Each Seller is duly formed and validly existing under its jurisdiction of formation and is validly existing in good standing thereunder. Subject to the CCAA and the Amended and Restated Initial Order, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted. Each Seller has previously delivered to the Bidder Parties true, complete and correct copies of its Organizational Documents, as amended and in effect on the Effective Date. Each Seller is duly qualified to do business and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.2 Authority; No Violation. Subject to the issuance of the Sale Order, each Seller has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by each Seller shall be duly and validly authorized and approved by all necessary company action. Subject to the issuance of the Sale Order (and assuming the due authorization, execution and delivery by the other Parties hereto), this Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

5.3 Consents.

(a) Except as set forth on Section 5.3(a) of the Seller Disclosure Letter, the execution, delivery and performance by Sellers of this Agreement or any Ancillary Document to which it is a party and the consummation of the transactions contemplated hereby or thereby in accordance with the Sale Order do not and will not (with or without notice or the passage of time): (i) contravene, violate or conflict with any term or provision of Sellers' Organizational Documents; (ii) violate any material Law applicable to any Seller or any Acquired Subsidiary or by which any property or asset of any Seller or any Acquired Subsidiary is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of any Seller or any Acquired Subsidiary under any Authorization or Material Contract, except in each case described in this clause (iii) to the extent that any such breach, default, right or requirement arises out of the commencement of the CCAA Proceedings or would be cured and the applicable Authorization or Material Contract would be assignable upon payment of the applicable Closing Cure Amount hereunder.

(b) Except (i) for the issuance of the Sale Order, (ii) for compliance as may be required with the Competition Act or other applicable Antitrust Laws, and (iii) as set forth on Section 5.3(a) of the Seller Disclosure Letter, no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Sellers of this Agreement or the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be

expected to be material to the Acquired Assets, the Assumed Liabilities or the Business (other than in relation to the Diavik Joint Venture Interest), in each case taken as a whole.

5.4 Subsidiaries.

(a) Except as would not, individually or in the aggregate, have a Material Adverse Effect, each Acquired Subsidiary is duly incorporated, organized or formed and validly existing under the laws of its jurisdiction of incorporation, organization or formation, and has the requisite power and capacity to own, lease, license and operate its assets and properties and conduct its business as now conducted and is duly registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or operated by it, or the nature of its activities, make such registration necessary.

(b) Section 5.4(b) of the Seller Disclosure Letter sets out, with respect to each Subsidiary of Sellers as of the date hereof: (A) its name; (B) the percentage owned directly or indirectly by any Seller and the percentage owned by registered holders of capital stock or other equity interests if other than Sellers and their Subsidiaries; and (C) its jurisdiction of incorporation, organization or formation.

(c) Dominion Holdings or DDM is, directly or indirectly, the registered and beneficial owner of all of the outstanding common shares or other equity interests as reflected as being owned by Dominion Holdings or DDM, as applicable, in Section 5.4(b) of the Seller Disclosure Letter, directly or indirectly, of each of its Subsidiaries, free and clear of any Encumbrance, other than Permitted Encumbrances, all such shares or other equity interests so owned by Sellers have been validly issued and are fully paid and non-assessable, as the case may be, and no such shares or other equity interests have been issued in violation of any pre-emptive or similar rights. Except for the shares or other equity interests owned by Dominion Holdings or DDM, directly or indirectly, in any Subsidiary, and except as set forth in Section 5.4(b) of the Seller Disclosure Letter neither any Seller nor any Subsidiary owns, beneficially or of record, any equity interests of any kind in any other Person as of the date hereof.

(d) No Acquired Subsidiary has any Indebtedness, other than with respect to the intercompany Indebtedness owed solely to Sellers or other Acquired Subsidiaries (and for the avoidance of doubt, trade payables incurred in the Ordinary Course of Business) and no Acquired Subsidiary has provided any Guarantee.

5.5 Title and Sufficiency of Assets.

(a) Sellers have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Acquired Subsidiaries have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) all assets and property which any such Acquired Subsidiary purports to own, free and clear of all Encumbrances other than Permitted Encumbrances, and there is no agreement, option or other right or privilege outstanding in favor of any Person for the purchase of any material asset from any Acquired Subsidiary outside the Ordinary Course of Business.

(c) The Acquired Assets, together with the assets and properties held by the Acquired Subsidiaries, include all of the properties and assets required to operate the Business (other than in relation to the Diavik Joint Venture Interest) in the Ordinary Course of Business.

(d) To the Knowledge of Sellers, neither Parent nor the Retained Subsidiaries hold any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller.

5.6 Financial Statements. Sellers have delivered to the Bidder Parties Parent's audited consolidated financial statements as at and for the fiscal year ended December 31, 2019 and unaudited consolidated financial statements as at March 31, 2020 and for the three months ended March 31, 2020 and 2019 (including, in each case, any of the notes or schedules thereto, any report thereon and related management's discussion and analysis), each of which: (i) were prepared in accordance with IFRS; and (ii) present fairly, in all material respects, the assets, liabilities and financial condition of Parent and its Subsidiaries on a consolidated basis as at the respective dates thereof and the revenues, earnings, results of operations, changes in shareholders' equity and cash flow of Parent and its Subsidiaries on a consolidated basis for the periods covered thereby (except as may be indicated in the notes to such financial statements and subject in the case of unaudited financial statements to normal, year-end audit adjustments). Except as set forth in such financial statements, neither any Seller nor any Acquired Subsidiary is party to any off-balance sheet transaction with unconsolidated Persons.

5.7 Compliance with Laws. Sellers and each of the Acquired Subsidiaries are, and since February 1, 2018 have been, in compliance with Law in all material respects. Neither any Seller nor any Acquired Subsidiary is, to the Knowledge of Sellers, under any material investigation with respect to, or has been charged or threatened to be charged with, or has received notice of, any material violation or potential material violation of any Law from any Governmental Body.

5.8 Authorizations. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) each Seller and each Acquired Subsidiary owns, possesses or has obtained all Authorizations that are required by Law (including, for greater certainty, Environmental Law) to be owned, possessed or obtained by Sellers or any of the Acquired Subsidiaries in connection with the operation of the Business (other than in relation to the Diavik Joint Venture Interest) or in connection with the ownership, operation or use of the Acquired Assets; (ii) Sellers and the Acquired Subsidiaries, as applicable, lawfully hold, own or use, and have complied with all such Authorizations; (iii) each such Authorization is valid and in full force and effect, and is renewable by its terms or in the Ordinary Course of Business; and (iv) no action, investigation or proceeding is pending, or to the Knowledge of Sellers, threatened, against any Seller or any Acquired Subsidiary in respect of or regarding any such Authorization that could reasonably be expected to result in the suspension, loss or revocation of any such Authorization.

5.9 Material Contracts. Section 5.9 of the Seller Disclosure Letter sets out a complete and accurate list of all Material Contracts in effect or pursuant to which any Seller or any Acquired Subsidiary has surviving obligations as of the date hereof. True and complete copies of the Material Contracts have been disclosed in the Data Room and, other than as set out in the Data Room, no such Material Contract has been modified in any material respect. Each Material Contract is a

legal, valid and binding agreement of the applicable Seller or the applicable Acquired Subsidiary, and is in full force and effect. Except as disclosed in Section 5.9 of the Seller Disclosure Letter and other than monetary defaults or such breaches arising out of the commencement of the CCAA Proceedings, neither any Seller nor any Acquired Subsidiary or, to the Knowledge of Seller, any other parties thereto, is in material breach or violation of or in default under (in each case, with or without notice or lapse of time or both) any Material Contract and no Seller or any Acquired Subsidiary has received or given any notice of any material breach or default under any Material Contract which remains uncured, and there exists no state of facts which after notice or lapse of time or both would constitute a material breach of or default under any Material Contract by any Seller or any Acquired Subsidiary or, to the Knowledge of Sellers, any other party thereto.

5.10 Intentionally Deleted.

5.11 Ekati Mine.

(a) DDM owns each of the Ekati Buffer Zone and the Ekati Core Zone Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, no Person has any Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Ekati Buffer Zone or the Ekati Core Zone Joint Venture. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Ekati Buffer Zone, the Ekati Core Zone or the Ekati Core Zone Joint Venture.

(b) A copy of the Ekati Core Zone Joint Venture Agreement as currently in effect as of the date hereof has been made available to the Bidder Parties in the Data Room.

5.12 Leased Property. With respect to the real property leased or subleased by any Seller or any Acquired Subsidiary: (i) each lease or sublease for such property constitutes a legal, valid and binding obligation of the applicable Seller or the applicable Acquired Subsidiary, as the case may be, enforceable against such Seller or such Acquired Subsidiary, as the case may be, in accordance with its terms and is in full force and effect; (ii) except as disclosed in Section 5.12 (ii) of the Seller Disclosure Letter, neither any Seller nor any Acquired Subsidiary, as the case may be, is in breach of or default under any such lease or sublease and no event has occurred which, without the giving of notice or lapse of time, or both, would constitute a breach of or default under any such lease or sublease; and (iii) except as disclosed in Section 5.12 (iii) of the Seller Disclosure Letter, to the Knowledge of Sellers, no counterparty to any such lease or sublease is in default thereunder. Each Seller and each Acquired Subsidiary, as applicable, has good and valid leasehold title to the leased premises demised by such lease or sublease, free and clear of all Encumbrances, except for Permitted Encumbrances. Except as disclosed in Section 5.12 of the Seller Disclosure Letter, no third-party consent is required to be obtained by the Seller or the Acquired Subsidiary, nor is any notice required to be given by the Seller or the Acquired Subsidiary under any such lease or sublease in connection with the completion of the transactions contemplated herein. Except as disclosed in Section 5.12 of the Seller Disclosure Letter, neither the Seller nor any Acquired Subsidiary is a party to any written or oral subleases, licences or other contracts granting any Person the right to use, occupy, possess, lease or enjoy any leased premises nor has the Seller

or any Acquired Subsidiary collaterally assigned or granted any other security interest in any of the leased premises or any interest therein.

5.13 Interests in Properties and Mineral Rights.

(a) The Diavik Leases, the Ekati Buffer Zone Leases and the Ekati Core Zone Leases comprise all of Sellers' and the Acquired Subsidiaries' material real properties and all of Sellers' and the Acquired Subsidiaries' material mineral interests and rights, in each case, either existing under contract, by operation of Law or otherwise (collectively, and where material, the "Mineral Rights"). Neither Sellers nor the Acquired Subsidiaries own or have any interest in any other material real property or any other material mineral interests and rights.

(b) Other than pursuant to the Joint Venture Agreements, no Person has any interest in the Mineral Rights or any right to acquire any such interest, and no Person has any back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which would affect, in any material respect, DDM or, to the Knowledge of Sellers, DDMI's interest in any of the Mineral Rights.

5.14 Litigation. Except as disclosed in Section 5.14 of the Seller Disclosure Letter, as of the date hereof, there are no claims, actions, suits, arbitrations, inquiries, investigations or proceedings pending, or, to the Knowledge of Sellers, threatened, against any Seller, any Acquired Subsidiary or, to the Knowledge of Sellers, DDMI, by or before any Governmental Body that, if determined adverse to the interests of any Seller, any Acquired Subsidiary or DDMI, would, individually or in the aggregate, have a Material Adverse Effect, or would be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby, and no Seller or Acquired Subsidiary or, to the Knowledge of Sellers, DDMI or any of the Mine Properties is subject to any outstanding judgment, order, writ, injunction or decree that would reasonably be expected to have a Material Adverse Effect.

5.15 Environmental Matters. Except as would not, individually or in the aggregate, have a Material Adverse Effect, to the Knowledge of Sellers, (i) there exists no fact, condition or occurrence concerning any Seller, any Acquired Subsidiary, DDMI or the operation of the Business or Acquired Assets (including the Joint Ventures or the Mine Properties) with respect to any non-compliance with or obligation or liability under Environmental Laws; (ii) no unresolved complaint, notice or violation, citation, summons or order has been issued to any Seller or any Acquired Subsidiary or any of the Joint Ventures or the applicable manager/operator, as the case may be, alleging any violation by or liability of any Seller or any Acquired Subsidiary or any businesses or assets thereof, including the Joint Ventures or the Mine Properties, with respect to any Environmental Law; and (iii) the operation of the Business, including the Joint Ventures and the Mine Properties, is in compliance with Environmental Laws.

5.16 Aboriginal Claims.

(a) Section 5.16 of the Seller Disclosure Letter (to the Knowledge of Sellers, in respect of matters relating to the Diavik Joint Venture) contains a list of the current impact benefit or participation agreements, memoranda of understanding or similar arrangements (the "Aboriginal Agreements") with all Aboriginal Groups with whom any Seller, any Acquired

Subsidiary or any of the Joint Ventures has any such dealings and any written notices of an Aboriginal Claim received by any Seller or any Acquired Subsidiary where there is no current Aboriginal Agreement in place with the Aboriginal Group, in each case, as of the date hereof. Copies of the Aboriginal Agreements as in effect as of the date hereof have been made available in the Data Room. Other than as disclosed in the Seller Disclosure Letter (including the Aboriginal Agreements), as of the date hereof, to the Knowledge of Sellers, neither Sellers, any of the Acquired Subsidiaries, the Ekati Buffer Zone, the Ekati Core Zone Joint Venture, nor any of the Diavik Joint Venture or its manager, as the case may be, has received any written notice of an Aboriginal Claim which materially affects Sellers, any of the Acquired Subsidiaries, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(b) The Sellers have not received written notice of any material Claims from any Aboriginal Group with respect to Sellers, any Acquired Subsidiary, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(c) The Sellers have materially complied with all material obligations under the Aboriginal Agreements.

5.17 Employees.

(a) All material written contracts in relation to Employees (calculated based on annual base salary plus target cash bonus) have been made available in the Data Room.

(b) The independent contractors of Sellers and the Acquired Subsidiaries are not entitled to any severance or similar payments upon termination of their Contracts that would be material and each of such Contracts can be terminated with no more than 60 days' advance notice.

(c) Other than as disclosed in Section 5.17 of the Seller Disclosure Letter, no Employee has any agreement as to length of notice or severance payment required to terminate his or her employment or is entitled to notice or severance payments other than such as results by Law, nor are there any change of control payments or severance payments or agreements with Employees providing for cash or other compensation or benefits upon the consummation of, or relating to, the transactions contemplated by this Agreement other than the key employee retention plan approved by the CCAA Court in the Amended and Restated Initial Order.

5.18 Collective Agreements. Section 5.18 of the Seller Disclosure Letter sets forth a list of all Collective Agreements as of the date hereof. Except as disclosed in Section 5.18 of the Seller Disclosure Letter (A) there are no collective bargaining or union agreements or employee association agreements or other binding commitments in force with respect to Employees, (B) no Person holds bargaining rights with respect to any Employees and (C) to the Knowledge of Sellers, no Person has applied to be certified as the bargaining agent of any Employees.

5.19 Employee Plans.

(a) Section 5.19(a) of the Seller Disclosure Letter lists all written Employee Plans in effect as of the date hereof. Sellers have made available in the Data Room true, complete and up to date copies of all such material Employee Plans, as amended, together with all related

documentation, including all material regulatory filings (including actuarial valuations) required to be filed with a Governmental Body and correspondence with Governmental Bodies with respect to such material regulatory filings (including actuarial valuations) of any Pension Plan (as defined in Section 5.19(a) of the Sellers Disclosure Letter).

(b) Sellers and the Acquired Subsidiaries have made all contributions and paid all premiums in respect of each material Employee Plan in a timely fashion in accordance with Law and in accordance with the terms of the applicable Employee Plan and all Collective Agreements. Except as would not, individually or in the aggregate, have a Material Adverse Effect, all financial liabilities of Sellers and the Acquired Subsidiaries (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and accurately disclosed in accordance with IAS 19 Employee Benefits in the financial statements referred to in Section 5.6 as of the dates of such financial statements.

(c) None of the Employee Plans (other than pension, retirement savings or retirement income plans) provide for retiree benefits or for benefits to retired or terminated Employees or to the beneficiaries or dependents of retired or terminated Employees.

(d) The execution of this Agreement and the completion of the transactions contemplated will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of Indebtedness, vesting, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee or former Employee or their beneficiaries.

5.20 Taxes.

(a) Each of the Sellers and the Acquired Subsidiaries has duly and timely filed all material Tax Returns and such Tax Returns are true, complete and correct in all material respects.

(b) Each of the Sellers and the Acquired Subsidiaries has paid all Taxes, including all installments on account thereof, that are due and payable by it.

(c) Each Seller: (i) is not a non-resident of Canada for purposes of section 116 of the Tax Act; or (ii) is not disposing of Acquired Assets which are considered to be "taxable Canadian property" of the Seller for purposes of section 116 of the Tax Act.

(d) Each of the Sellers and the Acquired Subsidiaries has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Body when required by Law to do so.

(e) The Canadian Assets include all or substantially all of each Seller's "Canadian resource property" for the purposes of sections 66 and 66.7 of the Tax Act.

(f) Each of DDM, DDCU and Dominion Marketing is registered for purposes of the GST Legislation. Each of DDM, DDCU and Dominion Marketing's GST registration numbers are set out in Section 5.20(f) of the Seller Disclosure Letter.

(g) The Purchaser Acquired Interests are "financial instruments" for the purposes of the GST Legislation.

(h) DDC is, and at all times has been, classified as an entity disregarded from its owner for U.S. federal tax purposes.

5.21 Brokers and Finders. Other than the Sale Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and the Bidder Parties are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Sellers or their Subsidiaries.

5.22 No Other Representations or Warranties. Except for the representations, warranties and covenants of Sellers expressly contained herein or any certificate delivered hereunder, neither Sellers nor any of their respective Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Sellers, including, without limitation, as to (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Purchaser after the Closing, (b) the probable success or results in connection with the CCAA Court and the Sale Order, or (c) the value, use or condition of the Acquired Assets, which are being conveyed hereby on an "As-Is", "Where-Is" condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE BIDDERS

Each Bidder hereby represents and warrants, on a several and not joint basis, to Sellers as of the Effective Date as follows:

6.1 Organization and Power. Such Bidder Party is duly formed and validly existing under its jurisdiction of formation and is validly existing in good standing thereunder. Such Bidder has full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

6.2 Purchaser's Authority; No Violation. Such Bidder has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by such Bidder shall be duly and validly authorized and approved by all necessary company action. This Agreement shall constitute the legal and binding obligation of such Bidder, enforceable against such Bidder in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the issuance of the Sale Order and subject to compliance with the

applicable requirements of the Competition Act, the entering into of this Agreement, and the consummation by such Bidder of the transactions contemplated hereby will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of such Bidder's Organizational Documents, violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of such Bidder under, any Encumbrance, contract, agreement, license, lease, instrument, indenture, Order, arbitration award, judgment, or decree to which such Bidder is a party or by which it is bound, or to which any property of such Bidder is subject.

6.3 Consents, Approvals or Authorizations. Except for compliance as may be required by the Competition Act or other applicable Antitrust Laws, no consent, waiver, approval, Order or Authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by such Bidder of this Agreement or the Ancillary Documents to which such Bidder is a party, the compliance by such Bidder with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities by Purchaser or the taking by such Bidder of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on such Bidder's ability to perform its obligations under this Agreement and the Ancillary Documents to which such Bidder is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities by Purchaser.

6.4 Brokers. Other than the Bidder Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for such Bidder in connection with the transactions contemplated by this Agreement that would obligate Sellers to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of such Bidder.

6.5 GST Registration. By or before the Closing Date, the Purchaser shall be registered for the purposes of the GST Legislation. This registration will have an effective date on or before the Closing Date.

6.6 "As Is, Where Is" Basis. Notwithstanding any other provision of this Agreement, each Bidder acknowledges, agrees and confirms that:

(a) except for the representations and warranties of the Sellers set forth in Article V, and subject to the other covenants and agreements set forth herein, such Bidder is entering into this Agreement and the Purchaser will acquire the Acquired Assets and assume the Assumed Liabilities on an "as is, where is" basis as they exist as at Closing and will accept the Acquired Assets in their state, condition and location as at Closing except as expressly set forth in this Agreement and the sale of the Acquired Assets is made without legal warranty and at the risk of the Purchaser;

(b) except for the representations and warranties of the Sellers set forth in Article V, neither the Sellers, the Sale Advisor, nor the Monitor or their Representatives have made

or are making, and such Bidder is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Acquired Assets, the Sellers' right, title or interest in or to the Acquired Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Acquired Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any applicable Law in any jurisdiction, which such Bidder confirms does not apply to this Agreement and are hereby waived in their entirety by such Bidder;

(c) except as otherwise expressly provided in this Agreement, such Bidder hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims such Bidder might have against the Sellers, Monitor, Sale Advisor and their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Sellers expressly set forth in Article V. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including Claims regarding defects, whether or not discoverable or latent, product liability Claims, or similar Claims, and all other Claims that may be later created or conceived in strict liability or as strict liability type Claims and rights;

(d) none of the representations and warranties of the Sellers contained in this Agreement shall survive Closing and, subject to Section 12.1, the Bidders' sole recourse for any breach of representation or warranty of the Sellers in Article V shall be for the Bidders not to complete the transactions as contemplated by this Agreement pursuant to the rights set forth in Article XII and for greater certainty the Bidders shall have no recourse or claim of any kind against the Sellers or the proceeds of the transactions contemplated by this Agreement following Closing; and

(e) this Section 6.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

6.7 Investment Canada Act. As of the Closing Date, the Purchaser shall be a trade agreement investor or a WTO investor for the purposes of the Investment Canada Act.

6.8 Financial Capability. The Bidders have and will have on the Closing Date access without condition to the requisite financial resources to, or to cause the Purchaser to, purchase the Acquired Assets, satisfy the Purchase Price, provide the Working Capital Financing and otherwise consummate the transactions contemplated hereby, subject to the terms and conditions set out herein. The performance of any obligation by the Bidders under this Agreement is not conditioned on any third party financing commitments or arrangements.

6.9 No Other Representations or Warranties. Except for the representations, warranties and covenants of the Bidders expressly contained herein or any certificate delivered hereunder,

none of the Bidders nor any of their Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of the Bidders.

6.10 Joint and Several. Without limiting the generality of Section 13.4, the representations and warranties of each Bidder to Sellers under this Agreement are several, and not joint and not joint and several.

ARTICLE VII

COVENANTS OF SELLERS AND/OR PURCHASER

7.1 Conduct of Business of Sellers.

(a) During the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement, the Amended and Restated Initial Order or (z) as consented to in writing by the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall, and shall cause their Subsidiaries to:

(i) take all actions reasonably necessary or appropriate in furtherance of re-starting operations at the Ekati Diamond Mine as soon as possible, and shall in any case ensure that such operations are re-started by no later than January 29, 2021, all in accordance with the re-start plan shown to and approved by the Bidders including, without limitation, by procuring all necessary or desirable supplies, equipment, contractors and employees and taking such other actions as may be reasonably requested by the Bidders in furtherance of satisfying the requirements of this Section 7.1, provided, however, that the foregoing shall be subject to the terms of the First Lien Lender MSA;

(ii) use commercially reasonable efforts to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, subject to continuation of all temporary employee layoffs in place as of the Effective Date except as may be otherwise required by Section 7.1(a)(i) of this Agreement, (D) minimize discretionary expenditures, and (E) maintain and preserve satisfactory relationships with Aboriginal Groups and Governmental Bodies;

(iii) from cash on hand, fund a designated bank account (which may be a bank account in the name of the Monitor) with a sufficient amount to cover the costs to facilitate the wind-down of the Sellers' estates including the administration of the Diavik Realization Assets both before and after the Closing, such amount not to exceed US$250,000 (the "Wind-Down Account");

(iv) from cash on hand, fund a designated bank account (which may be a bank account in the name of the Monitor) with a sufficient amount to cover the costs to administer the Diavik Realization Assets both before and after the Closing, in the amount of US$1,000,000 (the "Diavik Realization Account");

(v) immediately prior to Closing, pay in full, net of any retainers, all unpaid obligations secured by priority charges ordered by the Court in the CCAA Proceedings and all professional fees and expenses of the legal and financial advisors to the Sellers and the Monitor due and payable at Closing; and

(vi) immediately prior to Closing, pay in full all professional fees and expenses of the legal and financial advisors to the First Lien Lenders due and payable at Closing.

(b) Without limiting the generality of Section 7.1(a), during the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement or contemplated in the First Lien Lender MSA or (z) as consented to in writing by the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) end any temporary employee layoff or similar arrangement that is in place as of the Effective Date, except as may be required under Section 7.1(a)(i), or terminate the employment of any employee of the Sellers;

(ii) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any material Acquired Asset, other than the sale of Inventory in accordance with the Budget, with reasonable prior notice delivered to the Monitor and the Bidders;

(iii) settle or compromise any material litigation or claims relating to the Business or the Acquired Assets or that would impose any restrictions or Liabilities on the Business or Purchaser's use of the Acquired Assets after the Closing;

(iv) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances and, if required, any DIP loan in the manner contemplated by the First Lien Lender MSA;

(v) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets;

(vi) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement or employee association agreement with any labor organization affecting any such Persons;

(vii) grant any increase in the compensation or benefits of any employee or former employee or any dependent or other person claiming through an employee or former employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee;

(viii) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract;

(ix) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder;

(x) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that may reasonably be expected to have any adverse effect on the Purchaser or any of its Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or

(xi) agree in writing to do any of the foregoing.

7.2 Consents and Approvals.

(a) Sellers and the Bidders shall each use commercially reasonable efforts (i) to obtain all consents and approvals, as reasonably requested by the Bidder Parties and Sellers, to more effectively consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Contracts and Assumed Liabilities, as applicable, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, if required, the Competition Act Approval and any other Mandatory Antitrust Approvals, (ii) to make, as reasonably requested by the Bidder Parties and Sellers, all filings, applications, statements and reports to all authorities which are required to be made prior to the Closing Date by or on behalf of the Bidder Parties and/or Sellers or any of their respective Affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby, (iii) to obtain, as reasonably requested by the Bidder Parties and Sellers, all required consents and approvals (if any) to assign and transfer the Authorizations to Purchaser at Closing and, to the extent that one or more of the Authorizations are not transferable, to obtain replacements therefor, and (iv) to satisfy the conditions precedent set out in Article IX and Article X by such dates as required to achieve the Closing on or prior to the Outside Date.

(b) In furtherance and not in limitation of the foregoing, each of Sellers and the Bidder Parties shall prepare and file: (i) within 10 Business Days after the date of the Sale Order or on such other timetable as may be agreed to by the Parties, all filings required and desirable to obtain Competition Act Approval and, to the extent required, including pre-merger notification filings in accordance with Part IX of the Competition Act, (ii) as soon as reasonably practicable after the date of this Agreement, all filings required and desirable to obtain any other Mandatory Antitrust Approvals, and (iii) all other necessary documents, registrations, statements, petitions, filings and applications for other Antitrust Approvals and any other consent or approval of any other Governmental Body required to satisfy the conditions set forth in Section 9.2 and Section 10.2.

(c) Subject to the provisions of Section 4.4 and this Section 7.2, in the event that certain Authorizations are not transferable or replacements therefor are not obtainable on or before the Closing, but such Authorizations are transferable or replacements therefor are obtainable after the Closing, the Bidder Parties and Sellers shall continue to use such reasonable

efforts in cooperation with the other after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Authorizations after Closing and shall do all things reasonably necessary to give Purchaser the benefits which would be obtained under such Authorizations; provided, however, that Sellers' obligations under this Section 7.2(c) shall not restrict Sellers from making any distributions in or terminating the CCAA Proceedings or otherwise winding up their respective affairs or cancelling their existence upon the completion of any such winding up.

(d) Sellers and the Bidder Parties shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Parties informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Body and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, including providing to the other Parties copies of all such material communications given or received; (iii) provide to the other Party reasonable opportunity to comment on drafts of filings and submissions prior to submitting same to a Governmental Body; and (iv) consult with each other in advance of any meeting or conference (whether in person or by telephone) with any Governmental Body, including in connection with any proceeding by a private party, and provide the other Party an opportunity to participate with at least one attendee in any meetings of a substantive nature with a Governmental Body. The foregoing obligations in this Section 7.2(d) shall be subject to any attorney-client, solicitor-client, work product, or other privilege, and each of the Parties hereto shall coordinate and cooperate fully with the other Parties hereto in exchanging such information and providing such assistance as such other Parties may reasonably request in connection with the foregoing.

(e) If, (i) notwithstanding the applicable provisions of the CCAA, the Sale Order, the Assignment Order (if applicable) and the commercially reasonable efforts of Sellers, any consent to the assignment of an Assigned Contract is not obtained prior to Closing and as a result thereof the Purchaser shall be prevented by a third party from receiving the rights and benefits with respect to an Acquired Asset intended to be transferred hereunder, (ii) any attempted assignment of an Acquired Asset would adversely affect the rights of Sellers thereunder so that the Purchaser would not in fact receive all of the rights and benefits contemplated or (iii) any Acquired Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order, the Assignment Order and the CCAA), then, in each case, Sellers shall, subject to any approval of the CCAA Court that may be required, at the request of the Bidders and subject to Section 4.4, cooperate with the Bidders in any lawful and commercially reasonable arrangement under which the Purchaser would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Purchaser.

(f) Notwithstanding any other provision of this Agreement, the Bidders shall control and lead all communications and strategy relating to the Competition Act Approval and any other Mandatory Antitrust Approvals, and the final determination as to any appropriate courses of action shall be made by the Bidders.

7.3 Confidentiality. The Bidders and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 7.5, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality Agreements dated June 8, 2020 between each of the Bidders and DDM (the "Confidentiality Agreement"). Sellers agree that except as may otherwise be required in connection with the CCAA Proceedings or by Law, they will treat any confidential information provided to or retained by them in accordance with this Agreement as if they were the receiving party under the Confidentiality Agreement and Sellers agree that for purposes of Sellers' confidentiality obligation hereunder, the term contained in the fourteenth paragraph of the Confidentiality Agreement shall be deemed to be three (3) years from the Closing Date. The Parties agree that the provisions regarding confidentiality contained in the Confidentiality Agreement shall survive the termination of this Agreement and the Confidentiality Agreement in accordance with the terms set forth therein but shall terminate upon the Closing as to the Bidder Parties and their Representatives (as defined therein).

7.4 Change of Name. Promptly following the Closing, Sellers shall, and shall cause their respective direct and indirect Subsidiaries to, discontinue the use of the "Dominion Diamonds" name (and any other trade names or "d/b/a" names currently utilized by Sellers or their respective direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Dominion Diamond Mines" or any other similar name or mark confusingly similar thereto without the prior written consent of Purchaser, and Sellers shall, if requested by the Purchaser, make an application to the CCAA Court requesting the name of Sellers in the title of the CCAA Proceedings to be changed; provided, however, that Sellers and their respective Subsidiaries may continue to use their current names (and any other names or d/b/a's currently utilized by Sellers or their respective Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to seventy-five (75) days solely for purposes of winding down the affairs of Sellers; provided that when utilizing such materials, other than in incidental respects, Sellers and each of their respective direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each).

7.5 Bidder Parties' Access to Sellers' Records. The Sellers' shall provide the Bidder Parties (or their designated Representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as the Bidder Parties deem appropriate or necessary in order to facilitate the Bidder Parties' efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with the Bidder Parties in this regard.

7.6 Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to the Bidder Parties of (i) any notice or other communication from any Person alleging that the consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents, is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or to the

issuance of the Sale Order, and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement other than communications which are confidential, without prejudice or privileged by their nature.

(b) Each Party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event that would or would reasonably be expected to (i) constitute a breach or inaccuracy of any of the representations and warranties of such Party had such representation or warranty been made at the time of the occurrence or nonoccurrence of such event, (ii) constitute a breach of any covenant of such Party, or (iii) make the satisfaction of any condition to Closing impossible or unlikely to be satisfied; provided that no such notice shall be deemed to amend or modify the representations and warranties made hereunder or the Seller Disclosure Letter for purposes of Section 9.4, Section 10.4 or otherwise, or limit the remedies available to any Party hereunder.

7.7 Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) agree and the Purchaser shall agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period commencing on the Effective Date and ending at such date on which an orderly wind-down of Sellers' operations has occurred in the reasonable judgment of the Bidder Parties and Sellers and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, facilitating the continuing administration of the CCAA Proceedings, any insurance Claims by, legal proceedings or Tax audits against or governmental investigations of Sellers or the Bidder Parties or in order to enable Sellers or the Bidder Parties to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or the Bidder Parties, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

7.8 Publicity. Neither Sellers nor the Bidder Parties shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of the Bidder Parties or Sellers, disclosure is otherwise required by such party by applicable Law or by the CCAA Court with respect to filings to be made with the CCAA Court in connection with this Agreement; provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or the CCAA Court requirement to consult with the other Party with respect to the text thereof.

7.9 Material Adverse Effect. Sellers shall promptly inform the Bidder Parties in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse

Effect or otherwise cause the failure of any of the Bidder Parties' conditions to Closing set forth in Article IX.

7.10 Sale Free and Clear; No Successor Liability. On the Closing Date, the Acquired Assets shall be transferred to the Purchaser free and clear of all obligations, Liabilities and Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by the CCAA.

7.11 Casualty Loss. If, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall promptly notify the Bidder Parties promptly in writing of such fact, (i) in the case of condemnation or taking, Sellers shall promptly assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 7.11 shall not in any way modify the Bidder Parties' other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect or otherwise cause the failure of any of the Bidder Parties' conditions to Closing set forth in Article IX.

7.12 Debtors-in-Possession. From the commencement of the CCAA Proceedings through the Closing, Sellers shall continue to operate their business pursuant to and in accordance with the CCAA and Orders of the CCAA Court. Sellers shall not convert or seek to convert the CCAA Proceedings into any form of a liquidation proceeding under the CCAA or any other applicable legislation.

7.13 CCAA Court Filings.

(a) Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Sale Order on or prior to December 11, 2020.

(b) Sellers shall serve notices of assumption of the Assigned Contracts, including the designation of Cure Amounts, on all necessary parties on or prior to the date which is not less than five (5) Business Days prior to the date designated by the Bidders to appear before the CCAA Court to request the Assignment Order, or such other date as may be agreed to by the Parties.

(c) Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Assignment Order on or prior to such date as may be designated by the Bidders, acting reasonably.

(d) Sellers shall use their commercially reasonable efforts to provide the Bidder Parties for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement to be filed with the CCAA Court, including the motions for issuance of the Sale Order and the Assignment Order (if applicable).

(e) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify the Bidder Parties of such appeal or stay request and

shall provide the Bidder Parties promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide the Bidder Parties with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and the Bidder Parties agree to use their reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the Parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been issued and has not been stayed and the Bidder Parties, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(f) Sellers and the Bidder Parties acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to approval by the CCAA Court.

(g) After issuance of the Sale Order, neither the Bidder Parties nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

7.14 Payment of Cure Amount. The Closing Cure Amount shall be paid in accordance with Section 4.2(c). Any Cure Amounts other than the Closing Cure Amount shall be paid by the Purchaser following Closing pursuant to the terms and conditions set out in settlement agreements entered into by the Sellers and which are in respect of or constitute the Assigned Contracts. Following the Closing, Purchaser shall provide to Sellers, if requested, evidence that the Closing Cure Amount, and subsequent payments of the Cure Amount (if any) in respect of each Assigned Contract has been paid by Purchaser in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, or (ii) the consent of the applicable counterparty or as otherwise agreed upon by Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order, in each case promptly following such payment.

7.15 GNWT Royalties. Prior to or concurrent with the Closing, Sellers shall pay and/or otherwise obtain releases in full in a form satisfactory to the Bidder Parties of all obligations in respect of any period that are due and payable prior to Closing in respect of royalties or similar payment obligations to GNWT, which shall include (for the avoidance of any doubt) all royalty and similar payments obligations to GNWT in respect of fiscal year 2019.

7.16 Permitted Encumbrances/Assigned Contracts. For greater certainty, Purchaser shall not be required at Closing to assume any Encumbrance or agreement other than Permitted Encumbrances and Assigned Contracts. If the Sale Order designates any Permitted Encumbrances that prior to Closing are determined to relate to agreements which are not Assigned Contracts, Sellers shall give prompt written notice thereof to the beneficiaries of such Encumbrances. Upon Sellers giving such written notice, which shall be given not less than 10 days prior to Closing, the effect of the Sale Order shall be to vest title in the Acquired Assets in Purchaser free and clear of all such Encumbrances at Closing without need for further order of the Court and notwithstanding their original inclusion in the Sale Order's list of Permitted Encumbrances.

ARTICLE VIII

EMPLOYEE MATTERS

8.1 Covenants of Sellers with respect to Employees.

(a) Purchaser shall make employment offers to substantially all Employees of Sellers, subject to and consistent with requirements based on the plan for resumption of operations at Sellers' facilities, and in consultation with Sellers' management on terms and conditions that are substantially similar to those under which the Employees are employed at the time of Closing. Sellers shall provide reasonable assistance to facilitate the transfer of all Employees that Purchaser elects to hire, which may be subject to any temporary layoff or reduction in effect at Closing, including, without limitation, providing Purchaser access to such Employees' personnel records and such other information regarding the Employees as Purchaser may reasonably request, consistent with Section 8.2 hereof. All Employees who receive employment offers from Purchaser and who accept such offers of employment are hereinafter referred to as the "Transferred Employees". The Purchaser shall acknowledge that it is successor under all collective agreements set out in Section 5.18 of the Seller Disclosure Letter.

(b) During the Pre-Closing Period, except as consented to in writing by the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), and without limiting the obligations and restrictions set forth in Section 7.1, Sellers (i) shall satisfy all pre-Closing legal or contractual requirements to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in connection with the transactions contemplated by this Agreement, and (ii) shall not (A) enter into, establish, adopt, materially amend or terminate any Employee Plan (or any plan or arrangement that would be an Employee Plan if in existence on the date of this Agreement), other than as required by Law, (B) increase the compensation and benefits payable or to become payable to Employees or former Employees or any dependent or other person claiming through an Employee or former Employee, (C) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (D) promote, hire or terminate the employment of (other than for cause) any Employee or (E) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee.

8.2 Covenants of Purchaser with respect to Employees.

(a) Purchaser shall assume the Employee Plans (collectively, the "Assumed Plans"). Purchaser, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by any Party to cause Purchaser to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(b) On and following the Effective Date, Sellers and the Bidder Parties shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated

by this Section 8.2, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(c) The provisions of this Section 8.2 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a Party to this Agreement, nor shall any provision of this Agreement except solely for the purpose of giving effect to Section 8.2(a) and Section 8.2(b) hereof be deemed to be the adoption of, or an amendment to, any Employee Plan, or otherwise to limit the right of Purchaser or Sellers to amend, modify or terminate any such Employee Plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any Employee Plan or (ii) prohibit the termination or change in terms of employment of any Employee (including any Transferred Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any Employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of the Purchaser, and of the Bidders to cause Purchaser, to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by the Bidders) of the following conditions precedent on or before the Closing Date.

9.1 CCAA Court Approvals. The Sale Order and the Assignment Orders (if applicable) shall have been issued by the CCAA Court and shall have become a Final Order.

9.2 Antitrust Approvals. All Antitrust Approvals and other necessary regulatory approvals shall have been obtained.

9.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

9.4 Representations and Warranties True as of Both Effective Date and Closing Date. Each of the representations and warranties of Sellers (a) contained herein (other than as set forth in clause (c) below) that are not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all material respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, (b) contained herein (other than as set forth in clause (c) below) that are qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects on and as of the Effective Date (except for such

representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and (c) contained in Section 5.1, Section 5.2, Section 5.4 and Section 5.6 shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

9.5 Compliance with Covenants. Sellers shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

9.6 No Material Adverse Effect. Since the Effective Date, there shall not have been a Material Adverse Effect.

9.7 Essential Contracts; Cure Amount. (i) All consents, approvals or waivers necessary to assign the Essential Contracts to the Purchaser shall have been obtained, or an Assignment Order shall have been granted by the CCAA Court in respect of such Essential Contracts where necessary consents, approvals or waivers have not been obtained, provided for clarity that any consent in respect of the Aboriginal Agreements and related agreements shall be in form and substance satisfactory to the Bidder Parties; (ii) the Cure Amount shall not exceed the Cure Funding Amount (calculated based on an exchange rate of US$1 to Cdn$1.32 with respect to any amounts to be paid in Canadian dollars) and (iii) the Assignment Order shall provide that the Cure Amount with respect to Assigned Contracts subject to the Assignment Order shall not be payable earlier than 30 days following Closing.

9.8 Authorizations. Purchaser (or the applicable Designated Purchaser) shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to the Bidder Parties, either by transfer or re-issuance, all material Authorizations required to operate the Business and Acquired Assets, including the Environmental Agreement and Aboriginal Agreements and related agreements and those other Authorizations set forth (or required to be set forth) on Section 5.3(a) of the Seller Disclosure Letter, consistent in all material respects with historical operations.

9.9 Sureties Support Confirmations. The Sureties shall have taken all steps contemplated by the Sureties Support Confirmations.

9.10 Ordinary Course Operations. Purchaser shall not be subject to any mandatory governmental Regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) Purchaser from taking actions and conducting operations at the Ekati Diamond Mine substantially consistent with the re-start plan shown to and approved by Bidders; or (ii) Purchaser's ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts.

9.11 Delivery of Acquired Assets. Each of the deliveries required to be made to Purchaser pursuant to Section 11.2 shall have been so delivered and, at Closing, Sellers shall

deliver possession of all Acquired Assets to Purchaser, *in situ,* wherever such Acquired Assets are located at Closing consistent with the terms of this Agreement.

9.12 Corporate Documents. Sellers shall have delivered to Purchaser copies of the resolutions of Sellers' board of directors or similar governing body, as applicable, evidencing the approval of this Agreement and the transactions contemplated hereby.

9.13 Release of Encumbrances. The Sale Order shall provide for the release of any and all Encumbrances on the Acquired Assets other than Permitted Encumbrances, and Purchaser shall have received such documents or instruments as may be required, in Purchaser's reasonable discretion, to demonstrate that, effective as of the Closing Date, the assets of the Acquired Subsidiaries are released from any and all Encumbrances other than Permitted Encumbrances.

9.14 Accounts Payable. Sellers shall have paid all trade payables arising from the provision of goods and services on or after the Filing Date for which the permitted payment period has not yet expired as of Closing, other than such amounts which are disputed by the Sellers in good faith for which adequate reserves have been created under the Budget.

9.15 First Lien Lender MSA Documents. The First Lien Lenders shall have executed and delivered the definitive documentation, in form and content satisfactory to the First Lien Lenders and the Bidder Parties, acting reasonably, regarding the transactions between such parties contemplated by the First Lien Lender MSA.

ARTICLE X

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) of the following conditions precedent on or before the Closing Date:

10.1 CCAA Court Approvals. The Sale Order shall have been issued by the CCAA Court and shall have become Final Orders.

10.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

10.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

10.4 Representations and Warranties True as of Both Effective Date and Closing Date. The representations and warranties of the Bidder Parties (a) contained herein that are not qualified by "materiality" or "material adverse effect" shall be true and correct in all material respects on and as of the Effective Date, and shall also be true in all material respects on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) with the same force and effect as though made by the Bidder Parties on and as of the Closing Date, and (b) contained herein

that are qualified by "materiality" or "material adverse effect" shall be true and correct in all respects on and as of the Effective Date, and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date), in each case, except where the failure of such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Bidder Parties' ability to consummate the transactions contemplated by this Agreement.

10.5 Compliance with Covenants. The Bidders shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

10.6 Corporate Documents. Purchaser shall have delivered to Sellers copies of the resolutions of Purchaser's board of directors or other governing body evidencing the approval of this Agreement and the transactions contemplated hereby.

ARTICLE XI

CLOSING

11.1 Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place on the fifth (5th) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article IX and Article X (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time as the Parties may agree.

11.2 Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver, in addition to the other documents contemplated by this Agreement, the following to Purchaser:

(a) a bill of sale in form and content satisfactory to Sellers and Bidders, acting reasonably, duly executed by Sellers;

(b) an assignment and assumption agreement in form and content satisfactory to Sellers and Bidders, acting reasonably (the "Assignment and Assumption Agreement"), duly executed by Sellers;

(c) duly executed instruments for the sale, transfer, assignment or other conveyance to Purchaser or relevant Designated Purchasers, of the equity interests in the Acquired Subsidiaries, in accordance with the requirements of applicable local Law and this Agreement;

(d) a true copy of the Sale Order and any Assignment Orders (if applicable);

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller certifying that the conditions set forth in Section 9.4 and Section 9.5 have been satisfied;

(f) an instrument of assumption and assignment of the Assigned Contracts regarding leased real property in form and content satisfactory to Sellers and Bidders, acting reasonably (the "Assignment and Assumption of Leases"), duly executed by each Seller, in form for recordation with the appropriate public land records to the extent the underlying lease is of record;

(g) an Intellectual Property Assignment and Assumption Agreement in form and content satisfactory to Sellers and Bidders, acting reasonably (the "IP Assignment and Assumption Agreement"), duly executed by each Seller;

(h) possession of all owned real property included in the Acquired Assets, together with duly executed and acknowledged transfer deeds for all such owned real property conveying the owned real property subject only to Permitted Encumbrances, and any existing surveys, legal descriptions and title policies that are in the possession of Sellers;

(i) possession of the Acquired Assets and the Business *in situ,* wherever such Acquired Assets are located at the Closing consistent with the terms of this Agreement;

(j) stock powers or similar instruments of transfer, duly executed by the applicable Seller, transferring all of the capital stock or other equity interests of the Acquired Subsidiaries to Purchaser (it being understood that such instruments shall address the requirements under applicable Law local to the jurisdiction of organization of each such Acquired Subsidiary necessary to effect and make enforceable the transfer to Purchaser of the legal and beneficial title to such capital stock or other equity interests);

(k) all tax elections or designations described in Section 13.14;

(l) a certificate duly executed by each Seller, in the form prescribed under Treasury Regulation section 1.1445-2(c);

(m) a bill of sale and assignment agreement with respect to the conveyance of any Acquired Assets required to be transferred and assigned to Purchaser pursuant to Section 3.7, in form and substance reasonably satisfactory to Purchaser, duly executed by Parent and the Retained Subsidiaries; and

(n) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to the Bidder Parties, as the Bidder Parties may reasonably request to vest in Purchaser all of Sellers' right, title and interest in, to or under any or all the Acquired Assets, including all owned real property included in the Acquired Assets.

11.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver the following:

(a) the Assignment and Assumption Agreement duly executed by the Purchaser;

(b) the Assignment and Assumption of Leases duly executed by the Purchaser;

(c) the IP Assignment and Assumption Agreement, executed by the Purchaser;

(d) all tax elections or designations described in Section 13.14, duly executed by Purchaser;

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of the Purchaser certifying that the conditions set forth in Section 10.4 and Section 10.5 have been satisfied; and

(f) definitive documentation executed by the Bidders to provide the Working Capital Financing;

(g) to the extent necessary and from the Working Capital Facility, the portion of the Cure Funding Amount required to satisfy the Closing Cure Amount;

(h) such other documents as Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

11.4 Monitor's Certificate. Upon satisfaction or waiver by the Purchaser of all conditions precedent to Closing under Article IX and delivery to the Purchaser of all Closing deliverables under Section 11.2, the Purchaser shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Purchaser's Conditions Certificate"). Upon satisfaction or waiver by the Sellers of all conditions precedent to Closing under Article X and delivery to the Sellers of all Closing deliverables under Section 11.3, the Sellers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Sellers' Conditions Certificate" and together with the Purchaser's Conditions Certificate, the "Conditions Certificates"). Upon receipt by the Monitor of each of the Conditions Certificates, the Monitor shall (i) forthwith issue its Monitor's Certificate concurrently to the Sellers and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Sellers and the Purchaser). For greater certainty, the Monitor shall be entitled to rely exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

ARTICLE XII

TERMINATION

12.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time on or prior to the Closing Date:

(a) Mutual Consent. By mutual written consent of the Bidders and Sellers.

(b) Termination by the Bidder Parties or Sellers.

(i) by the Bidders or Sellers, if the Closing shall not have occurred on or prior to February 1, 2021 or such later date as may be designated by the Bidders (the "Outside Date"); provided that neither the Bidders nor the Sellers shall be entitled to terminate this Agreement pursuant to this Section 12.1(b)(i) if the failure of the Closing to have occurred by the date specified above is caused by such Party's breach of any of its obligations under this Agreement; provided, however, that either the Bidders or the Sellers may, on the day that is not less two (2) Business Days immediately prior to the then Outside Date, elect to extend the Outside Date by delivering a written notice to the other Party stating that, if, on the Outside Date, the required approvals from any Governmental Body to transfer or reissue any material Authorization required to operate the Business and the Acquired Assets, including any of those set forth (or required to be set forth) on Section 5.3(a) of the Seller Disclosure Letter, has not been obtained, then the Outside Date shall extend by seven (7) days; provided, further, that there shall be no more than four of such seven (7) day extensions; or

(ii) by the Bidders or Sellers, if the CCAA Court or other court of competent jurisdiction or a governmental, quasi-governmental, regulatory or administrative department, agency, commission or authority shall have issued or enacted an Order or Law restraining, enjoining or otherwise prohibiting the Closing, which is not capable of appeal; provided, however, that Sellers and the Bidders shall not be entitled to terminate this Agreement pursuant to this Section 12.1(b)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement.

(c) Termination by the Bidders.

(i) by the Bidders, if (A) the Sale Order shall not have been issued on or prior to December 11, 2020 or if the Sale Order has been issued by such date but has been amended, supplemented or otherwise modified in any respect without the prior written consent of the Bidders, or (B) following its issuance, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Bidders, acting reasonably;

(ii) by the Bidders, if the CCAA Proceedings are terminated or a licensed insolvency trustee or receiver is appointed in respect of the Sellers, and such licensed insolvency trustee or receiver refuses to proceed with the transactions contemplated by this Agreement;

(iii) by the Bidders, if a breach of any representation, warranty, covenant or agreement on the part of Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article IX not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Sellers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period;

(iv) by the Bidders, if either (a) Sellers or their Affiliates request or (b) the CCAA Court approves any amendment or modification to the Amended and Restated Initial Order that adversely affects the interests of the Bidder Parties;

(v) by the Bidders, acting reasonably, if the CCAA Court enters any Order inconsistent with the Sale Order or the Acquisition (including, without limitation, any provisions of this Agreement), other than in any de minimis respect;

(vi) by the Bidders, if any creditor of any Seller obtains a final and unstayed Order of the CCAA Court granting relief from the stay to foreclose or exercise enforcement rights on any portion of the Acquired Assets in excess of Cdn$500,000 in the aggregate; or

(vii) by the Bidders, if a Material Adverse Effect occurs.

(d) Termination by Sellers.

(i) by Sellers, if a breach of any representation, warranty, covenant or agreement on the part of Bidders set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article X not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Bidders have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period.

12.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 12.1, written notice thereof shall forthwith be given to the other Parties to this Agreement and the Monitor and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Article XII.

12.3 Breach by Bidder. If this Agreement is terminated solely as a result of a material breach by any Bidder pursuant to Section 12.1(d) hereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of US$7,000,000 (the "Purchaser Termination Fee"), which shall be payable by the breaching Bidder or Bidders by wire transfer of immediately available funds. Liability for the Purchaser Termination Fee shall be several, and not joint, and shall be the sole responsibility of the breaching Bidder or Bidders. In the event that there is more than one breaching Bidder, liability for payment of the Purchaser Termination Fee shall be split among all breaching Bidders on a pro rata basis relative to their respective holdings of Second Lien Notes on the Effective Date and Sellers shall in no event be entitled to recover in the aggregate more than the amount of the Purchaser Termination Fee. The Parties hereby agree that the foregoing dollar amount of the Purchaser Termination Fee is a fair and reasonable estimate of the

total detriment that Sellers would suffer in the event of any Bidder's default and failure to complete the transaction hereunder. Sellers' receipt of the Purchaser Termination Fee in full pursuant to and in accordance with this Section 12.3 shall be the sole and exclusive remedy of Sellers and their Affiliates, attorneys, accountants, Representatives or agents, and, except for payment of the Purchaser Termination Fee pursuant to and in accordance with this Section 12.3, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against the Bidder Parties, any Bidder Related Party, any potential debt or equity financing source and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Representatives or Affiliates, for any Liability suffered with respect to this Agreement and the transactions contemplated by or in connection with this Agreement (including any breach or failure to perform by Bidder Parties, whether willfully, intentionally, unintentionally or otherwise), the termination of this Agreement, the failure of the transactions contemplated under this Agreement to be consummated for any reason or no reason or any breach of this Agreement by Bidders, and in no event shall Sellers or any of the other applicants be entitled to seek or obtain any other damages or other remedy of any kind, at law or in equity, against any such Person, including consequential, special, indirect, exemplary or punitive damages or for diminution in value, lost profits or lost business. Sellers further acknowledged that the Purchaser Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will appropriately compensate Sellers under the circumstances.

12.4 Break-up Fee

(a) In consideration of the Bidders having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, if: (i) this Agreement is terminated or the transaction contemplated herein is not completed for any reason other than the Bidders' non-compliance with their obligations under this Agreement; and (ii) an alternative transaction is consummated within nine (9) months of the date of this Agreement for the sale or restructuring of the Sellers or any material portion of their assets and pursuant to which Indebtedness under the Pre-filing Credit Agreement is repaid in full in cash ("Alternate Transaction"); then in such event (and in addition to such other amounts to which the Bidder Parties may be entitled pursuant to Section 13.1 hereof and otherwise) Sellers shall pay to Bidders immediately following the closing of such Alternate Transaction an amount equal to US$2,522,140 (the "Break-Up Fee") as consideration for the disposition of Bidders' rights under this Agreement.

(b) Sellers' obligation to pay the Break-Up Fee pursuant to this Section 12.4 shall survive termination of this Agreement and shall be secured by a charge against all of the Sellers' properties and assets to be included in the Sale Order, which charge shall rank subsequent to: (i) other priority charges ordered by the Court in the CCAA Proceedings prior to the date of this Agreement; and (ii) charges in respect of Indebtedness under the Pre-filing Credit Agreement.

ARTICLE XIII

MISCELLANEOUS

13.1 Expenses. Sellers shall, immediately upon issuance of the Sale Order and from time to time thereafter, promptly pay and reimburse all costs and expenses incurred and to be incurred

by Bidder Parties and the ad hoc group of holders of Second Lien Notes in the CCAA Proceedings in respect of this Agreement, the transactions contemplated hereby, and participation or representation in the CCAA Proceedings including, without limitation: (i) any and all professional fees and expenses of legal and financial advisors; and (ii) a maximum of US$150,000 in respect of any and all fees or expense reimbursements or other amounts of any kind payable to actual or prospective sources of debt or equity financing incurred on or prior to the Effective Date. In addition to the foregoing, Sellers shall on Closing pay and reimburse all legal fees and expenses incurred by the trustee under the Pre-filing Indenture in respect of its participation or representation in the CCAA Proceedings up to an aggregate maximum amount satisfactory to the Bidders.

13.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. Except as otherwise provided herein, the Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

13.3 Amendment; Waiver. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided that, notwithstanding the foregoing, the Acquired Assets and Assigned Contracts may be amended in accordance with Section 3.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

13.4 Bidders.

(a) Any right given to, or election or decision to be made by, Bidders in this Agreement or any Ancillary Documents may be exercised by a majority in number of all Bidders who control, at the relevant time, a majority in principal amount of the aggregate Second Lien Notes held by all Bidders in their managed or advisory funds and accounts. Bidders agree to cooperate with each other reasonably and in good faith with respect to all matters relating to this Agreement and the transaction contemplated herein. The representations, warranties, covenants, agreements, obligations and commitments of Bidders to Sellers or any other Person under this Agreement or any Ancillary Document are several, and not joint. The Parties acknowledge and agree that Bidders and Purchaser are separate Persons and that any obligations, liabilities or commitments of Purchaser, under this Agreement or otherwise, are not obligations, liabilities or commitments of Bidders. Sellers acknowledge that Bidders are financial management and advisory companies and are entering into this Agreement on behalf of certain managed or advisory funds and accounts. No such managed or advisory funds and accounts shall under any

circumstance whatsoever assume or incur any obligation, liability or commitment whatsoever to Sellers in respect of this Agreement, the Ancillary Documents or the transaction contemplated therein. Any obligation or commitment of Bidders herein to cause Purchaser to take any action or omit to take any action shall be limited to the commercially reasonable efforts of each such Bidder.

(b) The Parties hereto acknowledge that all representations, warranties, covenants and other agreements made by any Bidder that is an investment manager on behalf of a separately managed account managed by such Bidder are being made only with respect to the assets managed by such Bidder on behalf of such separately managed account, and shall not apply to (or be deemed to be made in relation to) any assets or interests that may be beneficially owned by such separately managed account that are not held through accounts managed by such Bidder.

13.5 Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service (such as FedEx):

(A) If to Sellers, addressed as follows:

Dominion Diamond Mines
900 – 606 4 Street SW
Calgary, Alberta, Canada
T2P 1T1
Attention: Brendan Bell
Email: brenbellnt@gmail.com

With a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600
Vancouver, BC, Canada
V7X 1L3
Attention: Susan Tomaine
Email: susan.tomaine@blakes.com

(B) If to the Bidder Parties, to each Bidder Party, addressed as follows:

to DDJ:

DDJ Capital Management, LLC
130 Turner Street
Building 3, Suite 600
Waltham, MA 02453
Attention: Beth Duggan and Eric Hoff
Email: legal@ddjcap.com

to Brigade:

Brigade Capital Management, LP
399 Park Avenue, 16th Floor
New York, NY 10022
Attention: Andy Petitjean
Attention: Chris Chaice
Email: apetitjean@brigadecapital.com
Email: cchaice@brigadecapital.com

With a copy (which shall not constitute notice) to

Torys LLP
79 Wellington St. West, 30th Floor
Toronto, Ontario, M5K1N2
Attention: Tony DeMarinis
Email: tdemarinis@torys.com

(C) If to the Monitor, addressed as follows

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

With a copy (which shall not constitute notice) to

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary AB T2P 4K7
Attention: Chris Simard
Email: simardc@bennettjones.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

13.6 Effect of Investigations. Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of the Bidder Parties shall not limit, qualify, modify or amend the representations, warranties and covenants of, and indemnities by, Sellers made or undertaken pursuant to this Agreement, irrespective of the knowledge and information received (or which should have been received) therefrom by the Bidder Parties.

13.7 Counterparts; Electronic Signatures.

(a) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

13.8 Headings. The headings preceding the text of Articles and Sections of this Agreement and the Seller Disclosure Letter are for convenience only and shall not be deemed part of this Agreement.

13.9 Applicable Law and Jurisdiction. Subject to any provision in this Agreement and any Ancillary Document to the contrary, this Agreement (and all documents, instruments, and agreements executed and delivered pursuant to the terms and provisions hereof) shall be governed by and construed and enforced in accordance with the laws of Alberta and the laws of Canada applicable therein. Bidders and Sellers further agree that the CCAA Court shall have jurisdiction over all disputes and other matters relating to (a) the interpretation and enforcement of this Agreement or any Ancillary Document and/or (b) the Acquired Assets and/or Assumed Liabilities and the Parties expressly consent to and agree not to contest such jurisdiction.

13.10 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, provided that, the Bidder Parties may grant a security interest in their rights and interests hereunder to their third party lender(s). Nothing contained herein, express or implied, is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.11 Designated Purchasers. In connection with the Closing, notwithstanding Section 13.10 or anything to the contrary contained herein, the Bidders and the Purchaser shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchaser to (a) purchase specified Acquired Assets (including specified Assigned Contracts) and pay the corresponding Purchase Price amount, (b) assume specified Assumed Liabilities, (c) employ specified Transferred Employees on and after the Closing Date, (d) perform any of the other covenants and agreements hereunder to be performed by Purchaser, and (e) be entitled to the rights and benefits afforded to Purchaser hereunder (any such Subsidiary or Affiliate of Purchaser that shall be designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the corresponding Purchase Price (if any), the specified Assumed Liabilities and employment of the specified Transferred Employees. Any reference to Purchaser

or Bidder Party made in this Agreement in respect of any right, obligation, purchase, assumption or employment referred to in this paragraph shall be deemed a reference to the appropriate Designated Purchaser, if any, with respect to the applicable obligation or right. All obligations of Purchaser and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchaser nor any other Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by a particular Designated Purchaser at the Closing and any prior obligations of Purchaser are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect any limitation on Purchaser's obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchaser and any Designated Purchaser(s) hereunder. The above designations shall be made by the Bidder Parties by way of a written notice to be delivered to Sellers in no event later than five (5) Business Days prior to the anticipated Closing Date; provided, however, that no such designation may be made if the timing of such designation would reasonably be expected to delay the Closing; provided, further, that such designation shall not be permitted unless Sellers confirm, acting reasonably, that the Designated Purchaser(s), or any party guaranteeing the obligations of such Designated Purchaser(s), are sufficiently creditworthy. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchaser(s) are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchaser(s).

13.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective Affiliates and, other than with respect to the Purchaser or Designated Purchasers, no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, Liability, reimbursement, Claim of Action or other right.

13.13 No Recourse. This Agreement may only be enforced against, and any Claims or causes of Action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as Parties hereto and no Bidder Related Party shall have any Liability for any obligations or liabilities of the Parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith. Without limiting the rights of Sellers against the Bidder Parties hereunder, in no event shall Sellers or any of their Affiliates, and Sellers agree not to and to cause their Affiliates not to, seek to enforce this Agreement against, make any Claims for breach of this Agreement against, or seek to recover monetary damages from, any Bidder Related Party.

13.14 Tax Matters.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or similar fees or Taxes (other than any Taxes based on income, receipts, profits, or capital), governmental charges and recording charges (including any interest and penalty thereon) which may be applicable to, or resulting from, or payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne by Purchaser as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchaser shall properly file on

a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to Sellers evidence of payment of applicable Transfer Taxes.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a "Straddle Period"), (i) Taxes imposed on the Acquired Assets that are based upon or related to income or receipts or imposed on a transaction basis (including all related items of income, gain, deduction or credit) will be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date, and (ii) any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period and in each of (i) and (ii), such amounts shall be the responsibility of Sellers (and, for the avoidance of doubt, such amounts shall be an Excluded Liability for purposes of clause (ii) of Section 3.4(e)).

(c) Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns for any Pre-Closing Tax Period or Straddle Period in respect of the Acquired Subsidiaries that is required to be filed after the Closing Date. Prior to filing any such Tax Returns, Purchaser shall provide a draft thereof to Sellers for Sellers' review, comment and approval (such approval not to be unreasonably withheld or delayed), unless otherwise required by applicable Law. Purchaser shall consider in good faith any comments provided by Sellers to such Tax Returns. To the extent any Taxes reflected on any such Tax Return are an Excluded Liability, Sellers shall pay to Purchaser the amount of such liability within ten (10) days of receiving notice from Purchaser that such Tax Return has been filed or that Purchaser has paid such Liability, except to the extent such Taxes were paid by Sellers to the applicable Governmental Body prior to the filing of such Tax Return.

(d) Cooperation on Tax Matters. Purchaser shall make available to Sellers, and Sellers shall make available to Purchaser such records, personnel and advisors (i) as any such Party may require for the preparation of any Tax Returns required to be filed by Sellers or Purchaser, as the case may be, and (ii) as Sellers or Purchaser may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchaser was included. Sellers agree to provide all reasonable cooperation to Purchaser, and shall make available to Purchaser such records, personnel and advisors as is reasonably necessary for Purchaser, in determining the Tax attributes of Sellers and their Subsidiaries.

(e) Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with their respective fair market values. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Purchaser shall provide Sellers with a draft allocation of the Purchase Price for all purposes, including any liabilities properly included therein among the Acquired Assets and the agreements provided for herein, for all purposes (the "Initial Allocation"). Sellers may make reasonable inquiries of Purchaser and their accountants and employees relating to the Initial Allocation, and Purchaser shall use reasonable efforts to cause any such accountants and employees to cooperate with, and provide such requested information to, Sellers in a timely manner. Within forty-five (45) days of the receipt of the Initial Allocation, Sellers shall either (i) deliver a written notice (the "Objection

Notice") to Purchaser, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes or (ii) notify Purchaser in writing that they will not provide any Objection Notice (or if Sellers do not deliver an Objection Notice within such forty-five (45)-day period) in which case the Purchaser's proposed Initial Allocation shall be deemed final, conclusive and binding upon each of the Parties hereto. Within thirty (30) days of Sellers' delivery of the Objection Notice, Sellers and Purchaser shall attempt to resolve in good faith any disputed items, and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to an Arbitrating Accountant. The fees and expenses of the Arbitrating Accountant shall be paid 50% by Purchaser and 50% by Sellers, unless the Arbitrating Accountant determines that one party's position was unreasonable in light of the circumstances, in which case such party shall bear 100% of such costs. Such determination by the Arbitrating Accountant shall be (i) in writing, (ii) furnished to Purchaser and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), (iii) made in accordance with the principles set forth in this Section 13.14(e), and (iv) non-appealable and incontestable by Purchaser and Sellers. As used herein, the "Allocation" means the allocation of the Purchase Price, the Assumed Liabilities and other related items among the Acquired Assets and the agreements provided for herein as finally agreed between Purchaser and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 13.14(e). The Allocation shall be prepared in accordance with section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, provincial, territorial, local or foreign Law, as appropriate). Purchaser and Sellers shall each report the federal, state provincial, territorial and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective U.S. federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation, including in the course of any Tax audit, Tax review or Tax litigation relating thereto, unless otherwise required under applicable Law. Sellers shall provide Purchaser and Purchaser shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under section 1060 of the Code.

(f) Section 22 Election. To the extent available and if requested by Purchaser, in Purchaser's sole discretion, one or more of DDM, DDCU and Dominion Marketing and Purchaser shall jointly execute and file an election pursuant to section 22 of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, with respect to the sale of accounts receivable, and shall designate therein the portion of the Purchase Price allocated to the accounts receivable pursuant to Section 13.14(e) hereof as consideration paid by Purchaser for the accounts receivable of Sellers.

(g) Subsection 20(24) Election. One or more of DDM, DDCU and Dominion Marketing and Purchaser shall, if applicable, jointly execute and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, as to such amount paid by Sellers to Purchaser for assuming future obligations of the Business or relating to the Canadian Assets. In this regard, DDM, DDCU and Dominion Marketing, as applicable, and Purchaser acknowledge that if such election is made, a portion of the Canadian

Assets having a value equal to the elected amount under subsection 20(24) of the Tax Act is being transferred by DDM, DDCU and Dominion Marketing, as applicable, to Purchaser as a payment for the assumption of such future obligations by Purchaser.

(h) Successor Election and Designation. If requested by Purchaser, in Purchaser's sole discretion, (i) one or more of DDM and DDCU and Purchaser shall jointly execute and file an election described in paragraph 66.7(7)(e) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the time limits set out in that section, in respect of the "Canadian resource property" (as that term is defined in subsection 66(15) of the Tax Act) acquired by Purchaser from DDM or DDCU, as applicable, under this Agreement and (ii) DDM or DDCU, as applicable, shall execute and file the designation contemplated by subsection 66.7(12.1) of the Tax Act (within the time and in the manner prescribed therefor by the Tax Act) so as to designate in favour of Purchaser the maximum amount of successored pools reasonably available pursuant to the Tax Act, provided that any such filings would not give rise to any Tax Liability to DDM or DDCU, as applicable.

(i) Section 167 Election. At the Closing, each of DDM, DDCU and Dominion Marketing and the Purchaser will, if applicable, jointly execute an election pursuant to subsections 167(1) and (1.1) of the GST Legislation so that it is not required to collect GST in respect of the transfer of the Canadian Assets. The Purchaser shall file the election within the time prescribed by the GST Legislation.

(j) Withholding. Purchaser, and any Person acting on its behalf, shall be entitled to deduct or withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchaser is required to deduct or withhold under the Code, the Tax Act or any Tax Law, with respect to the making of such payment; provided that Purchaser shall consult with the affected Sellers or other Persons in good faith prior to making such withholding or deduction and the Parties hereto shall reasonably cooperate to reduce or eliminate any such amounts. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to Sellers or the Person in respect of whom such deductions or withholding was made, as the case may be.

13.15 Construction.

(a) The information contained in the Seller Disclosure Letter is disclosed solely for the purposes of this Agreement and may include items or information not required to be disclosed under this Agreement, and no information contained in any Seller Disclosure Letter shall be deemed to be an admission by any Party hereto to any third Person of any matter whatsoever, including an admission of any violation of any Laws or breach of any agreement. No information contained in any section of the Seller Disclosure Letter shall be deemed to be material (whether individually or in the aggregate) to the Business, assets, liabilities, financial position, operations, or results of operations of Sellers nor shall it be deemed to give rise to circumstances which may result in a Material Adverse Effect, in each case solely by reason of it being disclosed. Information contained in a section or subsection of the Seller Disclosure Letter (or expressly incorporated therein) shall qualify the representations and warranties made in the identically numbered Section or, if applicable, Subsection of this Agreement and all other representations and warranties made

in any other section or subsection of the Seller Disclosure Letter to the extent its applicability to such section or subsection of the Seller Disclosure Letter is reasonably apparent on its face. References to agreements in the Seller Disclosure Letter are not intended to be a full description of such agreements, and all such disclosed agreements should be read in their entirety, and nothing disclosed in any section or subsection of the Seller Disclosure Letter is intended to broaden any representation or warranty contained in Article V or Article VI.

(b) References in Article V or Article VI to documents or other materials "provided" or "made available" to the Bidder Parties or similar phrases mean that such documents or other materials were present (and available for viewing by the Bidder Parties and its Representatives) in the Data Room.

13.16 Entire Understanding. This Agreement, together with the Ancillary Documents, set forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement and the Ancillary Documents hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement or in any Ancillary Documents hereto.

13.17 No Presumption Against Drafting Party. Each of the Bidders and Sellers acknowledge that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule or Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

13.18 No Punitive Damages. The Parties hereto expressly acknowledge and agree that no Party hereto shall have any Liability under any provision of this Agreement for any punitive damages relating to the breach or alleged breach of this Agreement.

13.19 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

13.20 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

BIDDERS:

DDJ Capital Management, LLC,
acting in its capacity as investment manager on behalf of certain funds and accounts it manages and/or advises that are beneficial owners of Second Lien Notes

By: David J. Breazzano
Its: President

Brigade Capital Management, LP,
on behalf of certain funds and accounts that it manages and/or advises

____
By:
Its:

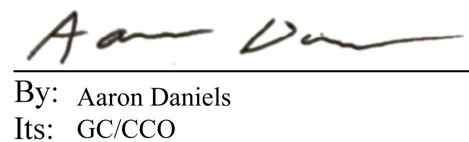
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

BIDDERS:

DDJ Capital Management, LLC, acting in its capacity as investment manager on behalf of certain funds and accounts it manages and/or advises that are beneficial owners of Second Lien Notes

____
By:
Its:

Brigade Capital Management, LP, on behalf of certain funds and accounts that it manages and/or advises



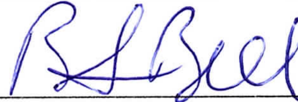
By: Aaron Daniels
Its: GC/CCO

SELLERS:

Dominion Diamond Holdings, LLC

By: Brendan Bell
Its: Authorized Signatory

Dominion Diamond Mines ULC



By: Brendan Bell
Its: Director

Dominion Diamond Delaware Company LLC

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Marketing Corporation

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Canada ULC

____
By: Kristal Kaye
Its: Chief Financial Officer

SELLERS:

Dominion Diamond Holdings, LLC

____
By: Brendan Bell
Its: Authorized Signatory

Dominion Diamond Mines ULC

____
By: Brendan Bell
Its: Director

Dominion Diamond Delaware Company LLC

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Marketing Corporation

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Canada ULC

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Finco Inc.

By: Brendan Bell
Its: Authorized Signatory

[Signature Page to Asset Purchase Agreement]

SCHEDULE A

ASSIGNED AND EXCLUDED CONTRACTS

[*To be finalized pursuant to Section 3.6.*]

SCHEDULE B

FIRST LIEN LENDER MSA

MUTUAL SUPPORT AGREEMENT

WHEREAS, this mutual support agreement (the "**Support Agreement**"), dated as of December 6, 2020, sets out the agreement among (i) the undersigned first lien secured lenders (collectively, the "**1L Lenders**") to Dominion Diamond Mines ULC (the "**Company**") and various of its affiliates pursuant to a Revolving Credit Agreement dated as of November 1, 2017 (the revolving facility draws outstanding thereunder and interest accrued thereon being the "**First Lien Debt**"); and (ii) the undersigned holders of the 7.125% secured second lien notes of the Company (the "**Second Lien Notes**") (collectively, the "**2L AHG**") regarding an acquisition transaction in respect of the Company (the "**Transaction**"), as further described in the term sheet attached as Schedule A (the "**Term Sheet**", with the terms of the Transaction set out therein and herein being, collectively, the "**Transaction Terms**"), which Transaction Terms are to form the basis of the Transaction to be implemented within the Company's ongoing proceedings under the *Companies' Creditors Arrangement Act* (the "**Proceedings**").

NOW THEREFORE, the 1L Lenders and the 2L AHG (collectively the "**Parties**" and each a "**Party**") hereby agree as follows:

1. Transaction

The Transaction Terms as agreed among the Parties are set forth in this Support Agreement and in the Term Sheet, which Term Sheet is incorporated herein and made a part of this Support Agreement. In the case of a conflict between the provisions contained in the main body of this Support Agreement and the Term Sheet, the provisions of the main body of this Support Agreement shall govern.

2. Subject Debt Purchase

(a) Each member of the 2L AHG irrevocably and unconditionally agrees, on a several basis in accordance with its respective amount set forth on its signature page to this Support Agreement, to purchase the Subject Debt (as defined below) from the 1L Lenders on the earlier of the closing of the Transaction and January 29, 2021 (the "**Subject Debt Purchase**"). The Parties shall enter into assignment agreements in respect of their applicable portion of the Subject Debt Purchase substantially in the form of The Loan Syndication and Trading Association ("**LSTA**") form attached as Schedule B.

(b) For the purposes of this Support Agreement, "**Subject Debt**" shall mean (i) in the event that the Transaction is not completed prior to January 29, 2021, an aggregate principal amount of US$15 million of the funded portion of the First Lien Debt; or (ii) in the event of the completion of the Transaction prior to January 29, 2021, an aggregate principal amount of US$15 million of the term loan debt to be received by the 1L Lenders under the Transaction as contemplated hereby. For greater certainty, Subject Debt shall not include any debts or liabilities relating to letters of credit issued by the 1L Lenders for the benefit of the Company.

(c) The aggregate purchase price for the Subject Debt shall be US$15 million.

(d) The 2L AHG shall have no voting rights with respect to the Subject Debt other than with respect to changes to any of the following terms of the Subject Debt, which shall require approval of all Subject Debt holders: (i) principal amount; (ii) term or maturity date; (iii) interest rate or fees; (iv) payment dates; (v) security interests, charges or guarantees; (vi) pro rata sharing rights among lenders; (vii) agent and agent's powers; (viii) rights of transfer, sale and assignment by lenders; (ix) information, disclosure, reporting, Company representations and warranties, and notice rights; and (x) the voting and approval rights provided for in this Section 2(d).

(e) For the avoidance of doubt, the Subject Debt Purchase shall not be subject to any conditions precedent to completion, including but not limited to completion of the Transaction, but shall be conditional on satisfaction and compliance by the 1L Lenders of their obligations and commitments under this Support Agreement.

3. Representations and Warranties

Each Party, severally and not jointly, hereby represents and warrants to the other Parties that as of the date hereof:

(a) it is the sole beneficial owner of First Lien Debt and Second Lien Notes (collectively, "**Debt**"), as applicable, in the principal amount(s) set forth on its signature page to this Support Agreement (together with all obligations owing in respect thereof, including accrued and unpaid interest and any other amount that such Party is entitled to claim in respect thereof, its "**Relevant Debt**"), and no other Debt.

(b) it (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Support Agreement; (ii) has conducted its own analysis and made its own decision to enter into this Support Agreement; (iii) has obtained such independent advice in this regard as it deemed appropriate; and (iv) has not relied in such analysis or decision on any person other than its own independent advisors;

(c) this Support Agreement has been duly authorized, executed and delivered by it, and, assuming the due authorization, execution and delivery by the other Parties, this Support Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to laws of general application and bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity;

(d) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all approvals necessary to execute and deliver this Support Agreement and to perform its obligations hereunder; and

(e) it has not deposited any of its Relevant Debt into a voting trust, or granted (or permitted to be granted) any proxies or powers of attorney or attorney in fact, or entered into a voting agreement, understanding or arrangement with respect to its Relevant Debt that would reasonably be expected to restrict in any material manner the ability of such Party to comply with its obligations under this Support Agreement, including the obligations in Section 4.

4. Parties' Covenants and Agreements

Each Party hereby acknowledges, covenants and agrees:

(a) to the Transaction and the Transaction Terms and the implementation of same within the Proceedings;

(b) not to, directly or indirectly, from the date hereof to the date this Support Agreement is terminated, sell, assign, lend, pledge, hypothecate, dispose or otherwise transfer any of its Relevant Debt or any rights or interests therein (or permit any of the foregoing with respect to any of its Relevant Debt) or enter into any agreement, arrangement or understanding in connection therewith except with the prior written consent of the other Parties, provided that each Party may transfer some or all of its Relevant Debt to any other Party or to a transferee that has executed a joinder agreement in form and substance satisfactory to the other Parties, acting reasonably, whereby such transferee is bound by the terms of this Support Agreement in respect of such transferred Relevant Debt and in which event the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Support Agreement in respect of such Relevant Debt;

(c) not to take any action, or omit to take any action, that is inconsistent with its obligations under this Support Agreement or that would frustrate, hinder or delay the consummation of the Transaction;

(d) not to propose, file, solicit, or otherwise support any alternative transaction, offer, restructuring, liquidation, workout or plan of compromise or arrangement or reorganization of, for or in respect of the Company that is inconsistent with the Transaction;

(e) to the extent applicable, to vote (or cause to be voted) all of its Relevant Debt in favour of the approval, consent ratification and adoption of the Transaction (and any actions required in furtherance thereof) and against the approval, consent, ratification and adoption of any matter or transaction that, if approved, consented to, ratified or adopted could reasonably be expected to delay, challenge, frustrate or hinder the consummation of the Transaction;

(f) to disclose this Agreement to the Company and its representatives and to allow the Company to disclose the existence and essential terms of this Agreement in any public disclosure including, without limitation, in any press releases and court materials relating to the approval and implementation of the Transaction;

(g) that the Company shall be permitted to make the expenditures set out in the attached Schedule C for the restart of the Ekati mine prior to obtaining court approval of the APA (as defined below) in the Proceedings, which is anticipated to occur by December 11, 2020, and only such other expenditures for the restart of the Ekati mine as may be expressly consented to by the Parties (such consent not to be unreasonably withheld);

(h) in the event that approval of the APA in the Proceedings has not been obtained by December 18, 2020, the Parties shall preserve their rights to oppose or support expenditures by the Company to restart the Ekati mine prior to obtaining approval of the APA in the Proceedings;

(i) following approval of the APA in the Proceedings and provided that there shall not exist or have occurred any material adverse change that would have a materially adverse effect on or prevent or materially delay the consummation of the Transaction, to support the making of the expenditures set out in the Company's Ekati mine restart budget attached as Schedule D and to support the taking of other reasonable Company actions that have been determined by the Company in consultation with the Parties in furtherance of the re-start of full operations at the Ekati mine as soon as possible; and

(j) for the avoidance of doubt, the Schedules hereto cannot be modified in any manner whatsoever without the express consent of each of the Parties hereto, in their sole discretion.

5. Negotiation of Documents and Transaction Terms

(a) Each Party hereby covenants and agrees (i) to cooperate and negotiate in good faith, and consistent with this Support Agreement, the definitive documents implementing, achieving and relating to the Transaction and any Court orders relating thereto, and (ii) to the extent it is a party thereto, to execute, deliver and perform its obligations under such documents.

(b) The Parties shall cooperate with each other and shall coordinate their activities in respect of (i) the timely satisfaction of conditions with respect to the effectiveness of the Transaction, (ii) all matters concerning the implementation of the Transaction, and (iii) the pursuit and support of the Transaction, subject to the terms hereof, and each of the Parties shall take such actions as may be reasonably necessary to carry out the purposes and intent of this Support Agreement.

(c) The Parties acknowledge and agree that the Transaction Terms set out in this Agreement are intended to be indicative and not exhaustive or definitive with respect to the proposed Transaction. Any obligations and commitments of the Parties to complete the Transaction (including, without limitation, with respect to the 2L AHG's obligations regarding the New Money Commitment set out in the Term Sheet) are subject to and conditional on the negotiation, settlement and execution of: (i) a definitive APA (as defined below) satisfactory to the Parties;

and (ii) other definitive Transaction documents satisfactory to the 2L AHG; in each case containing additional terms and conditions not specified in this Agreement. Nothing herein shall be interpreted as restricting the discretion of: (x) the Parties with respect to the negotiation and settlement of such definitive APA; and (y) the 2L AHG with respect to the negotiation and settlement of such other definitive Transaction documents; in each case in a manner consistent with Sections 5(a) and (b) hereof.

6. Transaction Process/Structure

Unless otherwise agreed by the Parties, the Transaction shall be implemented pursuant to an asset purchase agreement (the "**APA**") to be executed by DDJ Capital Management, LLC, Brigade Capital Management, LP, and the Company under which a newly created entity or entities ("**NewCo**") shall acquire substantially all of the assets of the Company other than the Company's Diavik mine joint venture agreement interests but including (subject to the 1L Lenders' continuing lien until cash collateralization or cancellation of all Diavik letters of credit issued by the 1L Lenders and the payment of all related fees) all receivables, diamond production, claims, sales proceeds and other rights and assets realized or recovered in respect of such Diavik mine joint venture agreement interests (collectively, the "**Diavik Assets**"). The Parties shall agree to a mechanism for the pursuit of the realization and recovery of the Diavik Assets, which among other things shall provide for a duly authorized independent official to have control and carriage thereof and for the costs thereof to be funded initially by the Company's payment at closing of the Transaction of US$1,000,000 from the Transaction proceeds at NewCo's direction to such official and thereafter to be funded at the cost of the 1L Lenders if they so elect in their sole discretion. The APA shall have terms and conditions satisfactory to the Parties and consistent with this Support Agreement including, without limitation, with respect to: (i) the Company's prompt payment and reimbursement, upon and from time to time following court approval of the APA in the Proceedings, of all the 2L AHG's reasonable and documented (with only brief summary descriptions of service) costs and expenses incurred from and after the commencement of the Proceedings; and (ii) the Company's prompt payment of a break fee in the event that the Company APA is terminated or the Transaction is not completed for any reason other than the non-compliance by DDJ Capital Management, LLC or Brigade Capital Management, LP with their obligations under the APA and an alternative transaction is consummated within nine (9) months of the date of the APA for the sale or restructuring of the Company or any material portion of its assets pursuant to which the First Lien Debt is repaid in full in cash. The Parties shall work cooperatively in furtherance of obtaining court approval for the APA on December 11, 2020 or as soon thereafter as is practicable.

7. Termination

(a) 1L Lenders holding in aggregate not less than half (50%) of the aggregate principal amount of the First Lien Debt may terminate this agreement, in their sole discretion, by providing written notice to the 2L AHG in accordance with Section 11(l) hereof: (i) upon the breach of any representation, warranty, covenant or acknowledgement of a Party within the 2L AHG made in this Support

Agreement that could reasonably be expected to have a material adverse impact on the Transaction and that remains uncured within five (5) business days after the receipt by the 2L AHG of written notice of such breach (unless the event giving rise to the termination right is caused by the 1L Lender(s)); or (ii) if the Transaction has not been completed by January 29, 2021 or such other date as the Parties may agree in writing (the "**Outside Date**").

(b) Members of the 2L AHG holding in aggregate not less than half (50%) of the aggregate principal amount of Second Lien Notes held by the 2L AHG may terminate this agreement, in their sole discretion, by providing written notice to the 1L Lenders in accordance with Section 11(l) hereof: (i) upon the breach of any representation, warranty, covenant or acknowledgement of the 1L Lenders made in this Support Agreement that could reasonably be expected to have a material adverse impact on the Transaction and that remains uncured within five (5) business days after the receipt by the 1L Lenders of written notice of such breach (unless the event giving rise to the termination right is caused by a Party or Parties within the 2L AHG); or (ii) if the Transaction has not been completed by the Outside Date.

8. Effect of Termination

(a) Subject to paragraphs 8(b) and 8(c) below, this Support Agreement, upon its termination, shall be of no further force and effect, and each Party hereto shall be automatically and simultaneously released from its commitments, undertakings, covenants, and agreements under or directly related to this Support Agreement.

(b) Each Party shall be responsible and shall remain liable for any breach of this Support Agreement by such Party occurring prior to the termination of this Support Agreement.

(c) Notwithstanding the termination of this Support Agreement pursuant to Section 8, the agreements and obligations of the Parties in Sections 2 and 11 hereof shall survive such termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof.

9. Further Assurances

Each Party shall take all such actions as are commercially reasonable, deliver to the other Parties such further information and documents and execute and deliver to the other Parties such further instruments and agreements as another Party shall reasonably request to consummate or confirm the transactions provided for in this Support Agreement, to accomplish the purpose of this Support Agreement or to assure to the other Party the benefits of this Support Agreement, including, the consummation of the Transaction.

10. Public Announcements

All public announcements made in respect of this Support Agreement shall be in form and substance acceptable to the Parties, each acting reasonably. Notwithstanding the

foregoing, nothing herein shall prevent a Party from making public disclosure in respect of the Transaction to the extent required by applicable law.

11. Miscellaneous

(a) The headings in this Support Agreement are for reference only and shall not affect the meaning or interpretation of this Support Agreement.

(b) Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.

(c) This Support Agreement (including the Term Sheet), as it may be modified, amended and supplemented pursuant to Section 11(d) hereof, constitutes the entire agreement and supersedes all prior agreements and understandings, both oral and written, among the Parties with respect to the subject matter hereof.

(d) This Support Agreement may be modified, amended or supplemented as to any matter in writing (which may include e-mail) by the Parties.

(e) Any person signing this Support Agreement in a representative capacity (i) represents and warrants that he/she is authorized to sign this Support Agreement on behalf of the Party he/she represents and that his/her signature upon this Support Agreement will bind the represented Party to the terms hereof, and (ii) acknowledges that the other Parties hereto have relied upon such representation and warranty.

(f) Any provision of this Support Agreement may be waived if, and only if, such waiver is in writing (which may include e-mail) by the Party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise.

(g) Any date, time or period referred to in this Support Agreement shall be of the essence except to the extent to which the Parties agree in writing to vary any date, time or period, in which event the varied date, time or period shall be of the essence.

(h) This Support Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction) and all actions or proceedings arising out of or relating to this Support Agreement shall be heard and determined exclusively in the courts of the Province of Ontario.

(i) It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Support Agreement and each non-breaching Party shall be entitled, in addition to any other remedy that may be

available under applicable law, to specific performance and injunctive or other equitable relief as a remedy of any such breach, including an order by a court of competent jurisdiction requiring any Party to comply promptly with any of such obligations.

(j) Unless expressly stated otherwise herein, this Support Agreement is intended to solely bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators and representatives. No other person or entity shall be a third party beneficiary hereof.

(k) Except as is otherwise contemplated herein, no Party may assign, delegate or otherwise transfer any of its rights, interests or obligations under this Support Agreement without the prior written consent of the other Parties hereto.

(l) All notices, requests, consents and other communications hereunder to any Party shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by internationally-recognized overnight courier or e-mail. All notices required or permitted hereunder shall be deemed effectively given: (i) upon personal delivery to the Party to be notified, (ii) when sent by email if sent during normal business hours of the recipient and, if not, then on the next business day of the recipient; or (iii) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All deliveries required or permitted hereunder shall be deemed effectively made: (A) upon personal delivery to the Party receiving the delivery; (B) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt; or (C) upon receipt of delivery in accordance with instructions given by the Party receiving the delivery. Any Party may change the address to which notice should be given to such Party by providing written notice to the other Parties hereto of such change. The address and email for each of the Parties shall be as follows:

(i) If to one or more of the 1L Lenders at:

The address set forth for each applicable 1L Lender on its signature page to this Support Agreement, with a required copy (which shall not be deemed notice) to:

Osler, Hoskin & Harcourt LLP
100 King Street West, Suite 6200
Toronto, Ontario
M5X 1B8

Attention: Marc Wasserman & Michael De Lellis
Email: mwasserman@osler.com;
mdelellis@osler.com

-and-

Cahill Gordon & Reindel LLP
32 Old Slip, New York,
NY 10005

Attention: Joel H. Levitin
Email: jlevitin@cahill.com

(ii) If to the 2L AHG at:

The address set forth on the applicable signature pages to this Support Agreement, with a required copy (which shall not be deemed notice) to:

Torys LLP
79 Wellington St., 30th Floor
Toronto, Ontario
M5K 1N2

Attention: Tony DeMarinis
Email: tdemarinis@torys.com

(m) The Parties acknowledge that each member of the 2L AHG is an investment manager (a "**Manager**") who holds Second Lien Notes in its managed and advisory accounts. All representations, warranties, covenants and other agreements made by a Manager herein are being made: (i) on behalf of holders of Second Lien Notes that are separately managed or advisory accounts of the Manager; and (ii) only with respect to the assets managed by such Manager on behalf of such holders of Second Lien Notes, and shall not apply to (or be deemed to be made in relation to) any assets or interests that may be beneficially owned by such holders of Second Lien Notes that are not held through accounts managed by such Manager.

(n) If any term, provision, covenant or restriction of this Support Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions, including terms, covenants and restrictions, of this Support Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated and the Parties shall negotiate in good faith to modify this Support Agreement so as to effect the original intent of the Parties as closely as possible in a reasonably acceptable manner so that the transactions contemplated herein are consummated as originally contemplated to the greatest extent possible.

(o) This Support Agreement may be executed by electronic means and in one or more counterparts, all of which shall be considered one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Support Agreement to be duly executed and delivered by its proper and duly authorized officer as of the date first written above.

Name of Party: ________________________________

By: ________________________________
Name:
Title:

____

____

____

____

____

Debt	**Principal Amount**
First Lien Debt	
Second Lien Notes	
Amount of Subject Debt Purchase	

SCHEDULE A

TERM SHEET[1]

New Money Commitment:

- US$70 million New 2L Bond funded by the 2L AHG (and by other Second Lien Noteholders if the APA or applicable court orders provide for their participation in such funding, in which case the 2L AHG shall fully backstop the funding), with the following terms:
  - Interest Rate: 5.0% cash / 12.5% PIK (compounded)
  - Maturity Date: 12/31/2027
  - Security: Second Lien on Ekati and other assets of NewCo (or the restructured Company, if applicable in an alternative transaction process)
  - Backstop Fees: To be determined by the parties, acting reasonably
  - Other: Stapled to 100% of the equity of NewCo (or the restructured Company, if applicable in an alternative transaction process), or such other agreed structure
  - Other: No priority baskets available
- US$25 million DIP loan to be provided by 2L AHG if necessary for the purposes of funding Company operations in the Proceedings and to execute on completing the Transaction;
- DIP loan will rank pari passu to the funded portion of the First Lien Debt (the "**RCF**") and will be converted into New 2L Bond debt on completion of Transaction.

RCF Lenders Receive:

- A $70 million Term Loan (plus approximately C$6 million of pre-filing LCs to secure the Ekati operating licenses and permits) with the following terms:
  - Interest Rate:
    - Year 1: L + 500 (1.00% LIBOR floor)
    - Year 2: L + 600 (1.00% LIBOR floor)
    - Year 3: L + 800 (1.00% LIBOR floor)
    - Year 4: L + 1000 (1.00% LIBOR floor)
  - Amortization Rate: 7.5% / year (on initial principal amount)
  - Maturity Date: 12/31/2024
  - Security: First Lien on Ekati and other assets of NewCo (or the restructured

[1] All amounts in US$ millions, unless otherwise noted. This is a non-exhaustive list of key economic terms and conditions.

Company, if applicable in an alternative transaction process)

- The approximately C$6 million of pre-filing LCs securing certain Ekati operating licenses and permits are to be rolled forward on the above terms;

- The Term Loan shall be structured as either: (i) an assumption and amendment of the funded portion of the existing First Lien Debt; or (ii) repayment of the funded portion of the existing First Lien Debt and the advance of new funding to NewCo in respect of the Term Loan, all on closing.

- $10 million of Incremental 2L Bond with the following terms:

  - Interest Rate: 5.0% cash / 12.5% PIK (compounded)

  - Maturity Date: 12/31/2027

  - Security: Second Lien on Ekati and other assets of NewCo (or the restructured Company, if applicable in an alternative transaction process) for the Incremental 2L Bond (which will be pari passu with the New 2L Bond)

  - Other: Callable at par plus accrued interest

  - Not stapled to equity of NewCo (or the restructured Company, if applicable in an alternative transaction process)

- $8.5 million New 3L Bond with the following terms:

  - Interest Rate: 14% PIK (compounded)

  - Maturity Date: 12/31/2030

  - Security: Third Lien on Ekati and other assets of NewCo (or the restructured Company, if applicable in an alternative transaction process)

  - Change of Control Put Right (percentage is applicable to principal + compounded PIK):

    - Year 1-2: 200%

    - Year 3: 175%

    - Year 4: 150%

    - Year 5: 125%

    - Year 6 and thereafter: 100%

  - Callable at applicable put right price

- Any net proceeds realized with respect to the Company's interest in Diavik on the sale of Diavik diamonds delivered to or for the benefit of the Company following the date hereof or otherwise will be used first to cash collateralize any outstanding Diavik LCs or to repay the 1L Lenders for any Diavik LCs that are called (not to exceed the total amount of any outstanding Diavik LCs existing as of the date hereof, less any existing

cash collateral for those Diavik LCs);

- 1L Lenders to retain their First Lien claims against the Company's Diavik interests and any other assets not purchased by NewCo for the approximately C$105 million existing as of the date hereof (less cash collateral currently held) of pre filing LCs securing the Company's Diavik reclamation obligations

- 1L Lenders to keep $15 million cash collateral securing the Diavik LCs

- 25% of quarterly net excess free cash flow, as reasonably determined by NewCo in accordance with generally accepted accounting standards and subject to maintenance at all times of minimum NewCo cash-on-hand of at least US$15 million, to be utilized within forty-five days of the calendar quarter ending on December 31, 2021 and each calendar quarter thereafter at the direction of NewCo (the "**Cash Flow Terms**") to cash collateralize Ekati LCs or paydown Term Loan and (i) no dividends or distributions shall be declared or paid; (ii) no NewCo or Company shares or equity interests shall be redeemed, purchased or otherwise acquired; and (iii) no loans or other benefits shall be given to direct or indirect shareholders or holders of other equity interests of NewCo or the Company, in each case until the Term Loan is paid down in full in cash. The 2L AHG represents and warrants that the Cash Flow Terms, including the standard for determining excess free cash flow, minimum cash-on-hand requirements and utilization terms, are each as or more favorable to the 1L Lenders as those terms that are or may be provided to any sureties. If, on or after the date hereof, any surety is provided any terms that differ from the Cash Flow Terms, this Agreement shall be, without any further action by any Party, automatically amended and modified in an economically and legally equivalent manner such that the 1L Lenders shall receive the benefit of any more favourable term to be provided to such surety. The 2L AHG shall provide immediate written notice to the Agent of any such terms being provided to a surety and the automatic changes being provided to the 1L Lenders as a result.

- The value of all payments or cash collateral received by the 1L Lenders in respect of: (i) the Company's Diavik mine joint venture agreement interests (including, without limitation, receivables, diamond production, claims, sales proceeds and other rights and assets); and (ii) the existing $15 million cash collateral securing the Diavik LC's; shall in no circumstance exceed the total liability exposure of the 1L Lenders under the Diavik LC's

Second Lien Notes:

- Right to participate in the New 2L Bond if provided for in the APA or applicable court orders.

Unsecured Claims:

- Critical vendors paid in cash, unless otherwise agreed by the 1L Lenders and the 2L AHG.

Surety Bonds:

- $205 million commitment remains outstanding and on terms to be determined

- Cash collateralized over time, terms to be determined, subject to the provisions set forth under *"RCF Lenders Receive"*.

Existing Equity: No consideration shall be given to or for the benefit of the existing equity of the Company or any existing Second Lien Noteholder other than, if provided for in the APA or applicable court orders, participation in funding the New 2L Bond.

Other:

- Payment of all remaining professional fees upon emergence
- Mine to restart as soon as possible, in consultation with the 2L AHG;
- Need to get an acceptable deal with the sureties / GNWT;
- Transaction to close on or before January 29, 2021; and
- The Approval & Vesting Order with respect to the Transaction shall be in form and substance satisfactory to the 1L Lenders, acting reasonably.

SCHEDULE B

LSTA FORM

Form of Assignment Agreement

August 8, 2014

ASSIGNMENT AND ASSUMPTION[1]

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each][2] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each] [3] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees][4] hereunder are several and not joint.][5] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: ______________________________

____

2. Assignee[s]: ______________________________

____

[Assignee is an [Affiliate][Approved Fund] of [*identify Lender*]

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[1] The LSTA's Form of Assignment Agreement has been drafted so that parties need not tailor the agreement depending on the identity of each assignee. In this way, electronic settlement platforms do not need to create "pop-ups", ie, questions which appear or "pop-up" on the screen of the person completing the assignment agreement and which must be answered before the assignment agreement can be populated and finalised. By avoiding "pop-ups", the loan market can operate more efficiently, for trades will be able to settle more promptly.

[2] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[3] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[4] Select as appropriate.

[5] Include bracketed language if there are either multiple Assignors or multiple Assignees.

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3. Borrower(s): ______________________________

4. Administrative Agent: ______________________, as the administrative agent under the Credit Agreement

5. Credit Agreement: [The [*amount*] Credit Agreement dated as of _______ among [*name of Borrower(s)*], the Lenders parties thereto, [*name of Administrative Agent*], as Administrative Agent, and the other agents parties thereto]

6. Assigned Interest[s]:

Assignor[s][6]	Assignee[s][7]	Facility Assigned[8]	Aggregate Amount of Commitment/Loans for all Lenders[9]	Amount of Commitment/Loans Assigned[8]	Percentage Assigned of Commitment/ Loans[10]	CUSIP Number
			$	$	%	
			$	$	%	
			$	$	%	

[7. Trade Date: ______________][11]

[Page break]

[6] List each Assignor, as appropriate.

[7] List each Assignee, as appropriate.

[8] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g., "Revolving Credit Commitment," "Term Loan Commitment," etc.)

[9] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[10] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[11] To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

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Effective Date: _____________ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S][12]
[NAME OF ASSIGNOR]

By:______________________________
Title:

[NAME OF ASSIGNOR]

By:______________________________
Title:

ASSIGNEE[S][13]
[NAME OF ASSIGNEE]

By:______________________________
Title:

[NAME OF ASSIGNEE]

By:______________________________
Title:

[Consented to and][14] Accepted:

[NAME OF ADMINISTRATIVE AGENT], as
Administrative Agent

By: _________________________________
Title:

[Consented to:][15]

[NAME OF RELEVANT PARTY]

By: ________________________________
Title:

---

[12] Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[13] Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[14] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[15] To be added only if the consent of the Borrower and/or other parties (e.g., Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

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ANNEX 1

[_________________][16]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document[17], (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section [*Successors and Assigns*] of the Credit Agreement (subject to such consents, if any, as may be required thereunder)[18], (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section ___ thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender[19] attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

---

[16] Describe Credit Agreement at option of Administrative Agent.

[17] The term “Loan Document” should be conformed to that used in the Credit Agreement.

[18] By confirming that it meets all the requirements to be an assignee under the Successors and Assigns provision of the Credit Agreement, the assignee is also confirming that it is not a Disqualified Institution (see section (h) of the Successors and Assigns provision).

[19] The concept of “Foreign Lender” should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up. If the Borrower is a U.S. Borrower, the bracketed language should be deleted.

DRAFT

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.[20] Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York [*confirm that choice of law provision parallels the Credit Agreement*].

LSTA

[20] The Administrative Agent should consider whether this method conforms to its systems. In some circumstances, the following alternative language may be appropriate:

"From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor[s] and the Assignee[s] shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves."

SCHEDULE C

APPROVED EKATI RESTART EXPENDITURES

Dominion Diamond Mines

Memorandum

Date: November 27, 2020

To: Adhoc Group

From: Kristal Kaye, Chief Financial Officer

Re: Restart Expenditures and Commitments

This memo outlines the cash expenditures and financial commitments required in the immediate short term to continue with our restart schedule as presented. I have also detailed the cash flows by week in the latter weeks leading up to full restart.

Cash Expenditures

The cash expenditures for restart from **today to December 11th** are outlined in the table below by week.

Most of the expense incurred relates to Fuel shipments to Yellowknife. The balance includes the first round of employees recalled, key mobile part orders, prep work at Misery Underground and work streams to restart equipment and prepare site for restart. *(*Some of these expenditures may be delayed a week or so depending on start time.)*

	Unpaid Seasonal	13-Nov-20	20-Nov-20	27-Nov-20	04-Dec-20	11-Dec-20	Total
Budget Submitted							
Labour		-	223,080	-	713,159	-	936,238
Mobile Equipment Parts	488,777	-	-	-	584,105	1,051,233	2,124,115
Light Vehicle Parts		-	-		48,333	36,250	84,583
MUG Preparation		-	-				-
Partners In Performance		-	-	-	-	-	-
Open Pit Preparation		-	-		-	-	-
Health and Safety Support		-	-	-		-	-
Warehouse Materials		-	-	-	-		-
Corporate Support		-	37,504	11,704	11,704	29,910	90,821
Camp and Travel		3,500	6,300	5,600	5,600	63,683	84,683
Comms Parts		-		-	-	-	-
Emergency Power Generator			-	-	-	-	-
SAP PM Improvements		3,000	3,000	4,500	4,500	3,375	18,375
Sable Fire System Commissioning		-		-	-	-	-
Contingency		648	24,818	9,325	27,743	81,564	144,099
	488,777	**7,148**	**294,702**	**31,129**	**1,395,143**	**1,266,015**	**3,482,915**
Diesel		-			3,109,375	3,109,375	6,218,750
Winter Road Consumables							-
	-	**-**	**-**	**-**	**3,109,375**	**3,109,375**	**6,218,750**
							-
	488,777	**7,148**	**294,702**	**31,129**	**4,504,518**	**4,375,390**	**9,701,665**

Apart from Fuel, the only additional cash cost being incurred that was not part of the original forecast for restart before December 11th is <u>$1.6 Million for mobile equipment parts</u>.

Dominion Diamond Mines

The cash expenditures for restart from **December 18th to January 15th** are outlined in the table below by week.

Most of the expenses incurred relate to site-based labour, MUG preparation and equipment preparation for restart. The payment of the last of the fuel and winter road consumable orders also will fall into this period.

	18-Dec-20	25-Dec-20	01-Jan-21	08-Jan-21	15-Jan-21	Total
Budget Submitted						
Labour	-	2,717,228	-	1,321,544	-	4,038,772
Mobile Equipment Parts	922,649	732,014	743,329	92,250	-	2,490,243
Light Vehicle Parts	36,250	36,250	36,250	96,667	-	205,417
MUG Preparation	-	396,647	399,024	816,121	316,490	1,928,282
Partners In Performance	238,000	238,000	204,000	136,000	-	816,000
Open Pit Preparation	-	5,400	16,200	14,040		35,640
Health and Safety Support	-	18,750	56,250	-	75,000	150,000
Warehouse Materials	38,438	38,438	38,438	51,250	38,438	205,000
Corporate Support	19,260	13,935	13,935	63,580	-	110,711
Camp and Travel	102,278	117,468	109,253	179,880	-	508,878
Comms Parts	-	88,000	-	-	-	88,000
Emergency Power Generator	8,820	-	-	-	-	8,820
SAP PM Improvements	3,375	3,375	3,375	4,500	-	14,625
Sable Fire System Commissioning	-	-	8,820	-	-	8,820
Contingency	282,498	320,271	194,882	129,042	500,000	1,426,693
	1,651,567	**4,725,775**	**1,823,756**	**2,904,874**	**929,928**	**12,035,899**
						-
Diesel	3,109,375	-	-	3,109,375	-	6,218,750
Winter Road Consumables		290,000	495,500	540,000	1,200,000	2,525,500
	3,109,375	**290,000**	**495,500**	**3,649,375**	**1,200,000**	**8,744,250**
						-
	4,760,942	**5,015,775**	**2,319,256**	**6,554,249**	**2,129,928**	**20,780,149**

Commitments

A few commitments are required now to allow us to continue with the restart plan. These have been summarized in the table below.

Financial Commitments	CAD	Comments
Labour	2,717,228	(next full rotation of three weeks employees and contractors)
Mobile Equipment Parts	1,635,338	(mobile parts needed at site by next rotation)
MUG Preparation	795,671	(prep work required prior to start up)
Diesel	6,218,750	(10 Million Litres committed, other 10 Million still to be confirmed)
Total	**11,366,986**	

Contractor recalls

- Procon want a PO issued for the value of their new contract and some form of proof of new ownership support before they will start calling in staff. Originally scheduled to be in on the Dec. 23rd rotation, we now are pushing them to December 30th. The contract terms allow for cancellation should the PO be issued; however, we would still be on the hook for the demobilization of their equipment at a cost up to $15 Million which is the same as today.

- Domco (Camp and Catering) should be able to meet the Dec. 30th date but needs 30-day notice as some of their staff have taken other temp work and will need notice time
- Other contractors should be OK for the 30th based on keeping our 30-day notice period.

Employee recalls

- Same issue as contractors, won't know what we get until we can phone and offer employment.

Fuel

- We need to order the final 10 Million litres as soon as possible. The refineries will eventually stop making arctic diesel when there is no demand for it. We have notified our supplier that we hope to make that order between next Friday and December 11th.

Mobile parts

- Due to lead times, several parts need to be ordered now to be at site by the December 23rd and 30th rotations. They are not paid for until delivered, but orders need to be placed.

SCHEDULE D

COMPANY'S EKATI RESTART BUDGET

Financial Commitments	CAD	Comments
Labour	2,717,228	(next full rotation of three weeks employees and contractors)
Mobile Equipment Parts	1,567,594	(mobile parts needed at site by next rotation)
MUG Preparation	795,671	(prep work required prior to start up)
Diesel	6,218,750	(10 Million Litres committed, other 10 Million still to be confirmed)
Total	**11,299,242**	

	18-Dec-20	25-Dec-20	1-Jan-21	8-Jan-21	15-Jan-21	Total	Total Restart
Budget Submitted							
Labour	-	2,717,228	-	1,321,544	-	4,038,772	4,975,010
Mobile Equipment Parts	922,649	732,014	743,329	92,250	-	2,490,243	4,614,358
Light Vehicle Parts	36,250	36,250	36,250	96,667	-	205,417	290,000
MUG Preparation	-	396,647	399,024	816,121	316,490	1,928,282	1,928,282
Partners In Performance	238,000	238,000	204,000	136,000	-	816,000	816,000
Open Pit Preparation	-	5,400	16,200	14,040		35,640	35,640
Health and Safety Support	-	18,750	56,250	-	75,000	150,000	150,000
Warehouse Materials	38,438	38,438	38,438	51,250	38,438	205,000	205,000
Corporate Support	19,260	13,935	13,935	63,580	-	110,711	201,532
Camp and Travel	102,278	117,468	109,253	179,880	-	508,878	593,560
Comms Parts	-	88,000	-	-	-	88,000	88,000
Emergency Power Generator	8,820	-	-	-	-	8,820	8,820
SAP PM Improvements	3,375	3,375	3,375	4,500	-	14,625	33,000
Sable Fire System Commissioning	-	-	8,820	-	-	8,820	8,820
Contingency	282,498	320,271	194,882	129,042	500,000	1,426,693	1,570,793
	1,651,567	**4,725,775**	**1,823,756**	**2,904,874**	**929,928**	**12,035,899**	**15,518,814**
						-	-
Diesel	3,109,375	-	-	3,109,375	-	6,218,750	12,437,500
Winter Road Consumables		290,000	495,500	540,000	1,200,000	2,525,500	2,525,500
	3,109,375	**290,000**	**495,500**	**3,649,375**	**1,200,000**	**8,744,250**	**14,963,000**
						-	-
	4,760,942	**5,015,775**	**2,319,256**	**6,554,249**	**2,129,928**	**20,780,149**	**30,481,814**

MOBILE MAINTENANCE

MUG PREPARATION

OPEN PIT PREPARATION

FIXED PLANT AND ELECTRICAL

HEALTH AND SAFETY SUPPORT, ENVIRONMENT, TRAINING

SUPPLY CHAIN AND SITE SERVICES

CORPORATE SUPPORT

This is Exhibit "E"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

KK

JOINDER AGREEMENT

To:	DDJ Capital Management, LLC ("**DDJ**")
And To:	Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Bidders**")
And To:	Dominion Diamond Holdings, LLC ("**Dominion Holdings**")
And To:	Dominion Diamond Mines ULC ("**DDM**")
And To:	Dominion Diamond Delaware Company LLC ("**DDC**")
And To:	Dominion Diamond Marketing Corporation ("**Dominion Marketing**")
And To:	Dominion Diamond Canada ULC ("**DDCU**")
And To:	Dominion Finco Inc. ("**Finco**", and together with Dominion Holdings, DDM, DDC, Dominion Marketing, DDCU, the "**Sellers**")
Re:	Asset Purchase Agreement dated December 6, 2020 (the "**APA**") by and among the Bidders and the Sellers

Capitalized terms used in this Joinder Agreement but not otherwise defined herein shall have the respective meanings attributed thereto in the APA.

WHEREAS the Bidders and the Sellers entered into the APA pursuant to which, *inter alia,* the Purchaser, a special purpose acquisition vehicle, shall acquire the Acquired Assets and assume the Assumed Liabilities in accordance with the terms and conditions set forth in the APA;

AND WHEREAS pursuant to Section 2.1 of the APA, the Bidders shall cause the Purchaser to enter into and accept the terms and conditions under the APA.

NOW THEREFORE pursuant to and in accordance with Section 2.1 of the APA, the undersigned hereby agrees that upon the execution of this Joinder Agreement, it shall become a party to the APA and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the APA as though an original party thereto.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of this 31st day of January, 2021.

ARCTIC CANADIAN DIAMOND COMPANY LTD.

By:

Name: Patrick Evans
Title: Director

This is Exhibit “F”

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province 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, DOMINION FINCO INC. AND DOMINION DIAMOND MARKETING CORPORATION**
DOCUMENT	**APPROVAL AND VESTING ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BLAKE, CASSELS & GRAYDON LLP** Barristers and Solicitors 3500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309

DATE ON WHICH ORDER WAS PRONOUNCED:	December 11, 2020
LOCATION OF HEARING:	Calgary
NAME OF JUDGE WHO MADE THIS ORDER:	The Hon. Madam Justice K. Eidsvik

UPON THE APPLICATION by Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), Dominion Diamond Canada ULC ("**DDCU**"), Dominion Finco Inc. ("**Finco**") (Dominion Diamond, Dominion Holdings, DDC, Dominion Marketing, DDCU and Finco collectively, the "**Sellers**") and Washington Diamond Investments, LLC ("**Parent**") for, *inter alia*, an order (i) approving the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement (as may be further amended from time to time in accordance with the terms thereof and this Order, the "**Purchase Agreement**") dated as of December 6, 2020, by and among, *inter alia*, the Sellers, as sellers, and DDJ Capital Management, LLC and Brigade Capital Management, LP (the "**Contracting Purchasers**"), a copy of which is attached as **Schedule "A"** hereto, (ii) vesting in one or more entities duly designated by the Contracting Purchasers in accordance with the Purchase Agreement (collectively, the "**Purchasers**" and each, a "**Purchaser**") all of the Sellers' right, title and interest in and to the Acquired Assets, free and clear of all Encumbrances other than the Permitted Encumbrances (as defined below), and (iii) granting related relief;

AND UPON having read the Application, the Affidavits of Brendan Bell sworn sworn May 21, 2020, June 12, 2020, October 4, 2020, October 23, 2020, and December 7, 2020; the Affidavits of John Startin sworn May 21, 2020, June 12, 2020, and October 5, 2020; **AND UPON** having read the Affidavit of Thomas Croese sworn December 10, 2020; **AND UPON** reading the Eleventh Report of FTI Consulting Canada Inc. (the "**Monitor**"), filed;

AND UPON hearing counsel for the Applicants, counsel for the Purchasers, counsel for the Monitor, counsel for Credit Suisse AG, Cayman Islands Branch, counsel for Diavik Diamond Mines (2012) Inc., and those other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

DEFINED TERMS

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement or the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020 (as amended and restated on May 1, 2020, further amended on May 15, 2020, and further amended and restated on June 19, 2020, and as may be further amended, restated or supplemented from time to time, the "**Initial Order**").

APPROVAL OF TRANSACTION

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

VESTING OF PROPERTY

4. Upon delivery of a Monitor's certificate to the Purchasers substantially in the form set out in **Schedule "B"** hereto (the "**Monitor's Certificate**"), all of the Sellers' right, title and interest in and to the Acquired Assets described in the Purchase Agreement shall vest absolutely in the name of each applicable Purchaser free and clear of and from any and all caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements,

charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including, without limiting the generality of the foregoing:

(a) any encumbrances or charges as created by the Initial Order or any other Orders granted in the within CCAA proceedings;

(b) any charges, security interests or claims evidenced by registrations, filing or publication pursuant to (i) the *Personal Property Security Act*, SNWT 1994, c 8 (NWT); (ii) the *Personal Property Security Act*, RSO 1990, c P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c P-7 (Alberta); (iii) the *Personal Property Security Act*, RSBC 1996, c 359 (British Columbia)*;* (iv) the Uniform Commercial Code (U.C.C.); (v) the *Land Titles Act*, RSNWT 1988, c 8 (the "***Land Titles Act* (NWT)**"); the (vi) *Northwest Territories Mining Regulation*, SOR/2014-68; and (vii) any other personal or real property registration system;

(c) any charges, security interests or claims evidenced by registrations at the Canadian Intellectual Property Office or similar intellectual property offices in Canada or elsewhere in the world; and

(d) any liens or claims of lien under the (i) *Miners Lien Act*, RSNWT 1988, c M-12 (NWT); and (ii) the *Garage Keepers' Lien Act*, RSA 2000, c G-2 (Alberta);

but in each case, excluding the permitted encumbrances listed in **Schedule "E"** hereto (collectively, the "**Permitted Encumbrances**"), as such Permitted Encumbrances may be hereafter modified pursuant to paragraph 5 of this Order, and for greater certainty, this Court orders that all Claims including Encumbrances, other than Permitted Encumbrances, affecting or relating to the Acquired Assets, are hereby expunged, discharged and terminated as against the Acquired Assets. Except as set forth in the last sentence of Section 8.1(a) of the Purchase Agreement, the Purchasers' acquisition of the Acquired Assets shall be free and clear of any "successor liability" Liabilities or Claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing; *provided* that nothing in this sentence shall limit Purchasers' agreement

to assume the Assumed Liabilities in accordance with the terms of the Purchase Agreement.

5. If Schedule "E" to this Order designates any Permitted Encumbrances that prior to Closing are determined to relate to agreements which are not Assigned Contracts, such Permitted Encumbrances shall become Encumbrances and the Sellers shall give prompt written notice thereof to the beneficiaries of such Encumbrances. Upon Sellers giving such written notice, which shall be given not less than 10 days prior to Closing, title in the Acquired Assets shall vest in the Purchaser free and clear of all such Encumbrances at Closing without need for further order of this Court and notwithstanding their original inclusion on Schedule "E" to this Order as Permitted Encumbrances.

6. Without limiting paragraph 4, upon delivery of the Monitor's Certificate, all right, title and interest in and to any assets held by any Applicant that are used or useful in connection with the Business (other than the Excluded Assets) or that would otherwise constitute Acquired Assets if held by any Seller, shall vest absolutely in the name of each applicable Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, and for greater certainty, all such assets shall constitute Acquired Assets and each Applicant shall constitute a Seller hereunder with respect to any such Acquired Assets.

7. Upon delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acquired Assets including, without limitation, those referred to at paragraph 8 of this Order (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to (i) accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchasers clear title to the Acquired Assets subject only to Permitted Encumbrances, and (ii) take such steps as are necessary to give effect to the terms of this Order and the Purchase Agreement. Presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest free and clear of any Encumbrances other than Permitted Encumbrances.

8. Without limiting the generality of foregoing paragraph 7:

   (a) each applicable Registrar under the Government of the Northwest Territories - Department of Industry, Tourism and Investment, including the Mining Recorder's Office of the Northwest Territories and all other government ministries and authorities in the Northwest Territories exercising jurisdiction with respect to the Acquired Assets, and each applicable Registrar under the Crown-Indigenous Relations and Northern Affairs Canada (Nunavut), including the Mining Recorder's Office of Nunavut shall and is hereby authorized, requested and directed to transfer in the name of one or more of the Purchasers, the mining leases, mineral claims and surface leases listed in **Schedule "C"** hereto free and clear of all Encumbrances, including without limitation, the Encumbrances listed in **Schedule "D"** hereto, other than the Permitted Encumbrances; and

   (b) the applicable Registrar of the Canadian Intellectual Property Office shall be and is hereby authorized and directed to (i) cancel and discharge those Encumbrances, if any, other than the Permitted Encumbrances, registered against the estate or interest of the Sellers in and to the Acquired Assets, and (ii) transfer all of the right, title and interest of the Sellers in and to the Acquired Assets free and clear of and from any and all Encumbrances, if any, other than the Permitted Encumbrances.

9. No further authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Acquired Assets shall be required for the Closing and post-Closing implementation of the Transaction contemplated in the Purchase Agreement.

10. Upon delivery of the Monitor's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the NWT Land Registrar in accordance with section 175 of the *Land Titles Act* (NWT), and notwithstanding that the appeal period in respect of this Order has not elapsed.

11. Upon completion of the Transaction, the Sellers and all Persons who claim by, through or under the Sellers in respect of the Acquired Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Acquired Assets, save and except for the Persons entitled to the benefit of the Permitted Encumbrances (but solely with respect to and to the extent of such Permitted Encumbrances), shall stand absolutely and forever

barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption, or other Claim or Encumbrance whatsoever in respect of or to the Acquired Assets, and to the extent that any such Persons remain in the possession or control of any of the Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate or interest in and to the Acquired Assets, they shall forthwith deliver possession thereof to the applicable Purchaser.

12. Following completion of the Transaction, the Sellers are hereby permitted to complete, execute and file any necessary application, articles of amendment, certificate of amendment or such other documents or instruments as may be required to change their respective legal names, to the extent required pursuant to any of the Transaction Documents, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable governmental authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any applicable federal, provincial or state legislation.

13. The Purchasers shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for their own use and benefit without any interference of or by any Person claiming by, through or against the Sellers.

14. Immediately upon Closing of the Transaction, the holders of the Permitted Encumbrances, other than the First Lien Lenders and their agents, shall have no claim whatsoever against the Monitor or the Sellers.

15. Notwithstanding any other provision of this Order (including, without limitation, paragraphs 4, 11 and 14), any encumbrances ("**DDMI Encumbrances**") which Diavik Diamond Mines (2012), Inc. ("**DDMI**") may hold pursuant to the Diavik Joint Venture Agreement against the Applicants' share of Diavik Diamond Mine production, or proceeds therefrom pursuant to the Monetization Process approved by this Court on November 4, 2020, which have never been (or which have never been required to be) released or delivered to the Applicants or any replacement or assignee (collectively, "**Undelivered DDM Diamonds**") shall, subject always to DDMI's compliance with all orders of this Court, be unaffected by this Order and shall continue to attach to the Undelivered DDM Diamonds until such time as the Undelivered DDM Diamonds are (or are required to be) released or delivered to the

Applicants or any replacement or assignee. For greater certainty, all DDMI Encumbrances shall be automatically, immediately and forever released and discharged by operation of this Order from and against any Undelivered DDM Diamonds that at any time are, or are required to be, released or delivered to the Applicants or any replacement or assignee, and any such Undelivered DDM Diamonds shall constitute Diavik Realization Assets which are free and clear of DDMI Encumbrances.

16. This Order shall be without prejudice to the rights of each of Sandstorm Gold Ltd. (as successor in interest to Repadre Capital Corporation) and Christopher Jennings to seek, by notice of application to this Court to be served on all counsel of record in these proceedings no later than January 15, 2021, payment or entitlement to payment of certain royalty amounts from the Diavik Realization Assets and/or in respect of the Applicants' share of production from the Diavik Diamond Mine pursuant to two separate agreements made the 30th day of September, 2003, all without prejudice to the rights of any other person to oppose any such requested relief.

17. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchasers.

18. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Monitor and the Sellers are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Sellers' records pertaining to the Sellers' past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in accordance with applicable law.

19. The Sureties Support Confirmations shall inure to the benefit of the Applicants and their respective agents, successors, and assigns, all of whom are hereby deemed to be beneficiaries of such Sureties Support Confirmations.

BREAK-UP FEE AND CHARGE

20. The Sellers' obligation to pay the Break-Up Fee pursuant to and in accordance with the Purchase Agreement is hereby approved.

21. The Bidders shall be entitled to the benefit of and are hereby granted a charge (the "**Break-Up Fee Charge**") on the Property as security for the payment of the Break-Up Fee by the Sellers pursuant to and in accordance with the Purchase Agreement.

22. The Break-Up Fee Charge shall rank in priority subsequent to the security securing the (i) Charges; (ii) indebtedness under the Diavik Joint Venture Agreement; and (iii) indebtedness under the Pre-filing Credit Agreement.

MISCELLANEOUS MATTERS

23. Notwithstanding:

    (a) the pendency of these proceedings CCAA proceedings;

    (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") in respect of the Sellers and any bankruptcy order issued pursuant to any such applications;

    (c) any application for a receivership order; or

    (d) the provisions of any federal or provincial statute,

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

24. The Monitor, the Sellers, the Purchasers and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

25. This Honourable Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order, the Purchase Agreement, all amendments thereto, in connection with any disputes involving the Applicants, and to

adjudicate, if necessary, any and all disputes concerning the Applicants and related in any way to the Transaction; *provided*, *however*, that in the event that this Honourable Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, including Delaware, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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

Justice of the Court of Queen's Bench of Alberta

This is Exhibit "G"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

KK

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COM
Dec. 11 2020
Justice Eidsvik

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	ELEVENTH 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. **December 9, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<u>**MONITOR**</u> FTI Consulting Canada Inc. 1610, 520, 5th Ave S.W. Calgary, AB T2P 3R7 Deryck Helkaa / Tom Powell Telephone: (403) 454-6031 / (604) 551-9881 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com E-mail: tom.powell@fticonsulting.com <u>**COUNSEL**</u> Bennett Jones LLP 4500 Bankers Hall East, 855 - 2nd Street SW Calgary, AB, T2P 4K7 Christopher Simard / Kelsey Meyer Telephone: (403) 298-4485 / (403) 298-3323 Fax: (403) 265-7219 E-mail: simardc@bennettjones.com E-mail: meyerk@bennettjones.com

ELEVENTH REPORT OF THE MONITOR

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INTRODUCTION

1. On April 22, 2020, Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Dominion Diamond Canada ULC ("**DDCU**"); Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC ("**Dominion Holdings**") and Dominion Finco Inc. ("**Finco**" and, 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. On September 18, 2020, Dominion Diamond Marketing Corporation ("**Dominion Marketing**") was added as an applicant in the CCAA Proceedings.

2. The Initial Order appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings ("**FTI**" or the "**Monitor**") and established a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until May 2, 2020. On October 30, 2020, this Honourable Court granted an order extending the Stay of Proceedings to December 15, 2020.

3. On June 19, 2020, this Honourable Court granted a second Amended and Restated Initial Order (the "**Second ARIO**") including, among other things, the following relief:

    a. approving a financial advisor agreement dated April 22, 2020 between the Applicants and Evercore Group L.L.C. ("**Evercore**");

    b. approving procedures for a sales and investment solicitation process (the "**SISP**"); and

    c. authorizing DDH and DDM to execute a stalking horse agreement of purchase and sale (the "**Stalking Horse Bid**") with an affiliate of Washington Diamond Investments Holdings II, LLC (the "**Stalking Horse Bidder**").

4. As described in the Sixth Report of the Monitor dated September 22, 2020, the Applicants, in conjunction with Evercore, marketed the business and assets of Dominion in accordance with the SISP. The detailed timelines and procedures of the SISP are described in the Fifth Report of the Monitor and are not repeated herein.

5. The Applicants received one or more qualified bids in addition to the Stalking Horse Bid prior to the Phase I non-binding bid deadline, and therefore advanced the SISP to Phase 2. However, at the conclusion of Phase 2 of the SISP, the Applicants did not receive any third-party bids to compete with the Stalking Horse Bid.

6. On October 5, 2020, the Applicants filed a Notice of Application for a sale approval and vesting order to approve the sale transaction contemplated by the Stalking Horse Bid.

7. The Stalking Horse Bid remained subject to, among other things, entering into agreements with the Government of the Northwest Territories ("**GNWT**") and Dominion's surety providers (the "**Sureties**") with respect to collateralization obligations of the Stalking Horse Bidder under environmental agreements, permits, licenses and subleases to be transferred.

8. On October 9, 2020 Dominion issued a press release disclosing, among other things, that it had been advised by the Sureties and the Stalking Horse Bidder that those parties had reached an impasse in negotiations and that there was no reasonable prospect of reaching a satisfactory agreement and that as a result of the foregoing, Dominion did not anticipate it would be able to complete the transaction contemplated by the Stalking Horse Bid.

9. On November 8, 2020, the Stalking Horse Bidder formally gave notice to the Applicants that it had terminated the Stalking Horse Bid.

10. The Applicants continued to facilitate ongoing discussions with representatives of key creditor constituencies, including the First Lien Lenders, the ad hoc committee of senior secured second lien lenders (the "**Ad Hoc Group**"), the Sureties, and other stakeholders

with respect to the terms on which they would be supportive of a going concern restructuring transaction.

11. On December 6, 2020 Dominion Holdings, DDM, DDC, Dominion Marketing, DDCU and Finco (collectively, the "**Sellers**") reached an agreement with DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Bidders**") for the purchase and sale of certain of the Sellers' assets pursuant to an asset purchase agreement (the "**APA**"). Also, on December 6, 2020, the Bidders, Western Asset Management Company, LLC and the First Lien Lenders entered into a Mutual Support Agreement (the "**MSA**") with respect to the transaction contemplated by the APA (the "**Transaction**"). A copy of the APA including the MSA is attached as Appendix "**A**".

12. On December 6, 2020, the Applicants filed a Notice of Application for the following orders:

    a. a sale approval and vesting order (the "**Approval and Vesting Order**") approving the Transaction and vesting the purchased assets in the Bidders; and

    b. an extension of the Stay of Proceedings until and including March 1, 2021 (the "**Stay Extension**").

PURPOSE

13. The purpose of this Eleventh Report is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to:

    a. the APA, MSA and Dominion's application for the Approval and Vesting Order;

    b. the Applicants' actual cash receipts and disbursements for the 32-week period ended November 27, 2020 as compared to the cash flow statement included in the

Seventh Report of the Monitor dated October 27, 2020 (the "**Fifth Cash Flow Statement**");

c. a summary of the updated cash flow statement (the "**Sixth Cash Flow Statement**") prepared by the Applicants for the nine weeks ending January 29, 2021, including the key assumptions on which it is based;

d. the Applicants' request for the Stay Extension; and

e. the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

14. 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**").

15. 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.

16. 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.

17. 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.

18. All capitalized terms that are used in this Eleventh Report but not defined herein are intended to bear their meanings as defined in the Monitor's prior Reports.

19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

APA

20. The APA provides for the purchase and sale of substantially all of the assets of Dominion with the exception of certain "Excluded Assets" as defined in the APA.

21. The key commercial terms of the APA are summarized as follows:

    a. the Bidders shall form one or more special purpose acquisition vehicles (the "**Purchaser**") for the purpose of completing the Transaction;

        i. the Sellers shall sell to the Purchaser all of the Sellers' right, title and interest in the assets of the Sellers, other than certain excluded assets (the "**Acquired Assets**");

    b. the Acquired Assets shall exclude the following assets (collectively, the "**Excluded Assets**"):

        i. the Diavik Joint Venture Agreement;

        ii. all equity interest in Finco, DDC, DDCU and Dominion Diamond (Cyprus) Ltd.;

        iii. certain excluded contracts;

        iv. the Seller's rights under the APA and ancillary agreements;

        v. all insurance policies including insurance recoveries thereunder arising out of actions taking place prior to closing;

vi. all equipment and tangible assets that are subject to a lease that is not an Assigned Contract as defined in the APA;

vii. all assets removed from the Acquired Assets by designation of the Bidders or Purchaser prior to closing; and

viii. certain corporate documents, records and seals.

c. the Acquired Assets include the Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Sellers' 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik joint venture held by DDM pursuant to the Diavik Joint Venture Agreement (the "**Diavik Joint Venture Interest**"), including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized by or on behalf of the Sellers (collectively, the "**Diavik Realization Assets**") which shall be assigned to the Purchaser subject only to the continuing liens and charges of the First Lien Lenders until such time as all letters of credit issued by the First Lien Lenders in respect of the Diavik diamond mine have been cash collateralized or cancelled and all related fees have been paid;

d. the Purchaser shall assume only the following liabilities (collectively, the "**Assumed Liabilities**"):

i. all liabilities under the Assigned Contracts as defined in the APA, including cure cost funding amounts of up to US$20.5 million (the "**Cure Funding Amount**") of which the closing cure amount of not more than US$10.5 million (the "**Closing Cure Amount**") will be made available at closing;

ii. all post-filing trade payables for which the permitted payment period has not expired and which the Sellers have not yet paid but have reserved for in the Budget;

iii. liabilities with respect to transferred employees under the assumed pension and benefits plans arising prior to closing and for the payroll for the period which includes the closing date;

iv. all liabilities for claims and actions arising from the operation of the Ekati diamond mine and the Acquired Assets from and after closing;

v. any and all environmental obligations with respect to the Acquired Assets;

vi. intercompany indebtedness among the Sellers and the acquired subsidiaries; and

vii. all liabilities with respect to letters of credit issued pursuant to the First Lien Lenders' pre-filing revolving credit agreement with respect to the Ekati Diamond Mine, subject to such liabilities being assumed in a manner contemplated by the MSA.

e. the Purchaser shall take assignment of certain Assigned Contracts to the extent of the Cure Funding Amount;

f. the purchase price ("**Purchase Price**") for the Acquired Assets shall be the aggregate of:

i. the assumption by the Purchaser at closing (or, at Purchaser's option and if permitted under the MSA, the repayment at closing) of US$70 million of outstanding indebtedness to the First Lien Lenders on the terms set out in the MSA;

ii. the assumption by the Purchaser of indemnity obligations in respect of certain bonds in the face amount of $279 million (US$204 million) issued by the Sureties for the benefit of the Seller;

iii. the cash payment at closing of up to $10.5 million of the Cure Funding Amount (to be paid, to the extent necessary, from working capital financing to be provided by the Bidders) and the assumption by the Purchaser of the balance of the Cure Funding Amount up to an aggregate maximum of $20.5 million; and

iv. the assumption by the Bidders on closing of the Assumed Liabilities.

g. at closing, the Bidders shall provide the Purchaser with new working capital financing of US$70 million to fund the Purchaser's post-closing satisfaction of the Assumed Liabilities, operations of the Ekati diamond mine and general working capital on terms set out in the MSA;

h. prior to closing, the Sellers shall, among other things, take all actions reasonably necessary or appropriate in furtherance of restarting operations at the Ekati diamond mine as soon as possible and shall in any case ensure that such operations are restarted by no later that January 29, 2021 in accordance with the restart plan approved by the Bidders (subject to compliance with the MSA);

i. the Sellers shall, from cash on hand, fund a designated bank account with a sufficient amount to cover the costs to facilitate the wind-down of the Seller's estate, such amount not to exceed US$250,000 (the "**Wind-down Account**");

j. the Sellers shall, from cash on hand, fund a designated bank account with a sufficient amount to cover the costs to administer the Diavik Realization Assets both before and after closing, such amount not to exceed US$1,000,000 (the "**Diavik Realization Account**");

k. immediately prior to closing, the Sellers shall pay in full, net of any retainers, all unpaid obligations secured by priority charges ordered by the Court in the CCAA Proceedings and all professional fees and expenses of the legal and financial

advisors to the Sellers and the Monitor due and payable at closing as well as all professional fees and expenses of the First Lien Lenders;

l. prior to or concurrent with closing, the Sellers shall pay and/or otherwise obtain releases in a form satisfactory to the Bidders of all obligations in respect of any period that are due and payable prior to closing in respect of royalties or similar payment obligations to GNWT including, for the avoidance of doubt, all royalty and similar payments to GNWT in respect of fiscal year 2019;

m. the sale of the Acquired Assets and assumption of the Assumed Liabilities are subject to, among other things:

    i. approval of this Honourable Court;

    ii. all necessary regulatory approvals having been obtained;

    iii. the Purchaser shall have received all material authorizations required to operate the business and Acquired Assets including the Environmental Agreement and Aboriginal Agreements as described in the APA;

    iv. the Sureties shall have taken all the steps contemplated by the Sureties Support Confirmations;

    v. the Purchaser not being subject to any mandatory government regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) the Purchaser from taking actions and conducting operations at the Ekati diamond mine substantially consistent with the restart plan approved by the Bidders, or (ii) the Purchaser's ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts;

    vi. the entering into of the definitive documents contemplated by the MSA; and

vii. the receipt of all consents, approvals or waivers, or an Assignment Order, in respect of the assignment of Essential Contracts, and the Cure Funding Amount not exceeding US$20.5 million.

n. the closing of the APA shall occur on the fifth business day following full satisfaction or waiver of the closing conditions; and

o. if the APA is terminated as a result of a material breach by any of the Bidders of any representation, warranty, covenant or agreement on the part of the Bidders that would cause any of the conditions precedent to the obligations of the Sellers not to be satisfied and such breach is incapable of being cured or, if capable of being cured, the Sellers have failed to cure the breach within 30 days of receipt of notice of the same or by its nature or timing the breach cannot be cured within that time period, the Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of US$7 million (the "**Purchaser Termination Fee**");

p. if the APA is terminated for any reason other than the Bidders' non-compliance with their obligations under the APA, and an alternative transaction is consummated within nine months of the date of the APA (which alternate transaction requires the Indebtedness under the Pre-filing Credit Agreement to be repaid in full) the Sellers shall pay to the Bidders a break-up fee of approximately US$2.5 million as consideration for disposition of the Bidders' rights under the APA (the "**Break-up Fee**"). The Seller's obligation to pay the Break-up Fee shall be secured by a charge (the "**Break-up Fee Charge**") against all of the Sellers' properties to be included in the Approval and Vesting Order, which charge shall rank subsequent to other priority charges ordered in the CCAA Proceedings and indebtedness under the Pre-filing Credit Agreement; and

q. the Sellers shall, immediately upon issuance of the Approval and Vesting Order, and from time to time thereafter, pay all costs and expenses incurred by the Bidders and the Ad Hoc Group in respect of the APA and CCAA Proceedings; and

r. the Sellers shall pay at closing all legal fees and expenses incurred by the indenture trustee of the second lien notes in respect of its participation or representation in the CCAA Proceedings up to a maximum amount satisfactory to the Bidders.

CONTRACT ASSIGNMENT AND CURE COST PAYMENTS

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

Defined Terms Relevant to the Assumption of Executory Contracts

a. at closing, the purchasers will assume the "Assumed Liabilities"[1] which include, among other things, all liabilities of any Seller under "Assigned Contracts";[2]

b. "Assigned Contracts" include two subcategories of contracts: [3]

    i. "Essential Contracts"; and

    ii. "Other Contracts";

c. the purchasers will not assume any liabilities of any Seller under "Excluded Contracts";[4]

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

d. Schedule "A" to the APA ("**Schedule A**") will list all executory contracts to which any Seller is a party and shall also, for each executory contract:

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1 APA, s. 3.3
2 APA, s. 3.3(a)
3 APA, s. 3.1(l)
4 APA, s. 3.4(b), 3.2(c)

i. identify the Seller's good faith estimate of the Cure Amount (the definition of which is described below) for each such contract that is an Assigned Contract; and

ii. categorize each contract as an Essential Contract, an Other Contract or an Excluded Contract;[5]

e. the Bidders shall have the sole discretion to determine which contracts are Assigned Contracts and shall have the right, up to five business days before the date of the application for the Assignment Order (the definition of which is described below), to change the categorization of a contract as between Essential Contracts, Other Contracts and Excluded Contracts;[6] and

f. if, prior to closing, the Bidders discover an executory contract that should have been listed in Schedule "A", or the Sellers have entered into an executory contract since the execution of the APA (a "**Previously Omitted Contract**"), the Sellers must notify the Bidder Parties of such contract, and the Cure Amount relating thereto, and the Bidder Parties must designate such contract as an Essential Contract, an Other Contract or an Excluded Contract. If a Previously Omitted Contract is designated as an Essential Contract or an Other Contract, the counterparty will be notified and if the parties cannot consent to the assignment thereof and the Cure Amount, the sellers will seek an Assignment Order respecting that contract;[7]

5 APA, s. 3.6(a)
6 APA, s. 3.6(a)
7 APA, s. 3.6(b)

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

g. the Sellers are obligated to use commercially reasonable efforts to obtain all consents from counterparties necessary to assign the Assigned Contracts to the Purchaser;[8]

h. the Bidder Parties may request modifications or amendments to Assigned Contracts and the sellers are obligated to cooperate and seek to obtain counterparties' agreement to same. If such modifications or amendments cannot be obtained, the Bidder Parties may, in their sole discretion following consultation with the Sellers, designate any such Contract as an Excluded Contract;[9]

i. if the Bidder Parties and Sellers are unable to obtain a counterparties' consent to assign an Assigned Contract and such Assigned Contract is not assignable without consent, the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contracts, prior to the Closing Date;[10]

j. the "Assignment Order" is to be an order of this Honourable Court, in form and substance acceptable to the Sellers and Bidders, acting reasonably, assigning to the purchasers any Assigned Contract for which the Sellers have not obtained the counterparty's consent; and

k. the Sellers cannot disclaim any Assigned Contracts without the consent of the Bidder Parties but are free to seek to do so with respect to any Excluded Contracts, from and after the date that is five business days prior to the application for the Assignment Order.[11]

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8 APA, s. 3.6(a)
9 APA, s. 3.6(a)
10 APA, s. 3.6(a)
11 APA, s. 3.6(c)

The Mechanism for the Payment of Cure Amounts

l. the "Cure Amount" is, with respect to an Assigned Contract, the amount required to be paid pursuant to the Assignment Order to remedy all of the Sellers' monetary defaults as at the Closing Date, or the amount required to be paid to a counterparty to secure its consent to the assignment;[12]

m. if a Cure Amount is payable for the assignment of any Assigned Contract, the Sellers shall pay such Cure Amounts, either in accordance with the consent agreed to with the counterparty, or in accordance with the Assignment Order;[13]

n. the "Cure Funding Amount" is the aggregate of the "Closing Cure Amount" and such other amount as may be required to satisfy the aggregate Cure Amount, and shall not exceed the aggregate sum of US$20.5 million;[14]

o. the "Closing Cure Amount" means the Cure Amount in respect of Assigned Contracts which is payable on Closing, and shall not exceed US$10.5 million;[15]

p. therefore, the Closing Cure Amount of up to US$10.5 million will be paid at Closing. The balance of the Cure Funding Amount will be paid after closing, pursuant to the terms and conditions set out in settlement agreements entered into between the Sellers and counterparties to Assigned Contracts;[16]

q. as reported in para. 35 of the December 7, 2020 Affidavit of Brendan Bell, the Sellers have engaged in confidential settlement negotiations with many trade creditors and suppliers; and

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12 APA, s. 1.1
13 APA, s. 3.6(a)
14 APA, s. 1.1
15 APA, s. 1.1
16 APA, s. 7.14

Closing Conditions Related to Executory Contracts

r. the following events or occurrences, among others, are conditions precedent to the Purchaser's obligations to consummate the purchase and sale transaction pursuant to the APA:

i. the granting of the Assignment Order in form and substance acceptable to the Bidder Parties and Sellers, acting reasonably, and such order(s) being final;[17]

ii. all consents necessary for the assignment of the Essential Contracts must have been obtained, or an Assignment Order must have been granted authorizing the assignment of the Essential Contracts;[18] and

iii. the Cure Amount shall not exceed the Cure Funding Amount.[19]

MSA

23. The MSA sets out the agreement among the First Lien Lenders and the Ad Hoc Group (comprised of the Bidders and Western Asset Management Company, LLC) with respect to the Transaction.

24. The key commercial terms of the MSA are as follows:

a. each party agrees to the Transaction terms and the implementation of same in the CCAA Proceedings subject to the terms of the MSA;

b. the Ad Hoc Group agrees to purchase US$15 million of the New First Lien Term Debt (subsequently defined) or, should the Transaction not close by January 29, 2021 (the "**Closing Date**"), US$15 million of the funded amounts owed to the First

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[17] APA, s. 1.1, 9.1
[18] APA, s. 9.7
[19] APA, s. 9.7

Lien Lenders under the Pre-filing Credit Agreement, subject to restricted voting rights;

c. the Ad Hoc Group agrees to provide a new money commitment of a US$70 million second lien bond to the Purchaser, stapled to 100% of the equity of the Purchaser (the "**New Second Lien Bond**", and referred to above in this report as the working capital facility);

d. the Ad Hoc Group will provide a US$25 million debtor-in-possession loan if necessary for funding the Applicants' operations in the CCAA Proceedings and to execute on the Transaction, to rank *pari passu* to the funded portion of the pre-filing revolving credit facility and which would be converted into New Second Lien Bond debt upon completion of the Transaction;

e. the First Lien Lenders will receive:

    i. the Purchaser's assumption of US$70 million of the funded portion of the First Lien Lenders' pre-filing indebtedness (the "**New First Lien Term Loan**"), on and subject to the terms and conditions set out in the MSA plus the Purchaser's assumption of approximately $6 million of pre-filing letters of credit to secure operating licenses and permits for the Ekati diamond mine;

    ii. a US$10 million second lien bond, callable at par plus accrued interest;

    iii. a US$8.5 million third lien bond with various call rights and change-of-control put rights throughout the term of the loan until maturity at December 31, 2030;

    iv. any net proceeds realized with respect to the Applicants' interest in Diavik on the sale of Diavik diamonds delivered to or for the benefit of the Applicants following the date of the MSA (December 6, 2020) will be used

first to collateralize the outstanding Diavik letters of credit or to repay the First Lien Lenders for any Diavik letters of credit that are called;

v. the First Lien Lenders will retain their first lien claims against the Applicants' Diavik interests and other assets not acquired by the Purchaser for the approximately $105 million of existing letters of credit securing the Applicants' Diavik exposure; and

vi. 25% of the Purchaser's quarterly net excess free cash flow is to be used to cash collateralize Ekati letters of credit or paydown the New First Lien Term Loan, beginning in December 31, 2021; and

f. all remaining professional fees are to be paid upon emergence;

g. each party agrees that Dominion shall be permitted to make certain expenditures for the restart of the Ekati mine prior to obtaining the Approval and Vesting Order and only such other expenditures for the restart of the Ekati mine as may be expressly consented to by the parties. The restart costs forecast to be incurred during the period of the Stay Extension total approximately $33 million and are described in paragraph 34(e); and

h. in the event the Approval and Vesting Order has not been obtained by December 18, 2020, the parties shall preserve their right to oppose or support expenditures by Dominion to restart the Ekati mine prior to granting of the Approval and Vesting Order.

25. The illustrative sources and uses of the Transaction as contemplated by the APA and MSA are summarized in the table below:

Illustrative Tranaction Sources and Uses US$ Millions			
Sources		**Uses**	
Non-Cash		**Non-Cash**	
Ekati Surety Bonds	$ 205.0	Ekati Surety Bonds	$ 205.0
New First Lien Term Debt	74.4	Ekati LCs	4.4
New Second Lien Bond	10.0	Pre-filing Revolving Credit Facility	70.0
New Third Lien Bond	8.5	Other Claims of First Lien Lenders	18.5
Cash		**Cash**	
Ending Cash (Net of Closing Cure Amount)	4.5	Cash Available at Close	74.5
New Second Lien Bond Proceeds	70.0		
Total Sources	$ 372.4	**Total Uses**	$ 372.4

SURETIES SUPPORT CONFIRMATIONS

26. The Sureties Support Confirmations are confidential letters of confirmation provided by the Sureties to the Ad Hoc Group. The Sureties Support Confirmations provide that, upon the completion of the Transaction, the Sureties will issue the necessary documentation to replace the existing surety bond coverage for Dominion, with new surety bond coverage for the Purchaser. This confirmation is subject to certain conditions, including the provision by the Purchaser and certain of its affiliates, if applicable, of a General Indemnity Agreement.

27. The Monitor has reviewed the Sureties Support Confirmations and is of the view that they provide reasonable comfort and certainty that ongoing surety bonds will be provided by the Sureties if the Transaction closes, and if the Purchaser executes the General Indemnity Agreements.

APPROVAL AND VESTING ORDER

28. The Approval and Vesting Order provides for, among other things:

    a. approval of the APA and the Transaction;

b. upon delivery of a Monitor's certificate, vesting the Sellers' right title and interest in and to the Acquired Assets, free and clear of any encumbrances other than certain permitted encumbrances;

c. authorizing and directing each applicable registrar under the GNWT to transfer in the name of the Purchaser, the applicable mining leases, mineral claims and surface leases;

d. declaring that the Sureties Support Confirmations shall enure to the benefit of the Applicants and their respective agents, successors and assigns, all of whom are deemed to be beneficiaries of such Sureties Support Confirmations; and

e. approving the Break-up Fee and Break-up Fee Charge.

29. The Monitor's comments with respect to the APA and Approval and Vesting Order are as follows:

a. the Applicants, in conjunction with Evercore, have marketed the business and assets in a fair and transparent manner and all participants were treated consistently and with equal access to information and in a manner that managed against potential conflicts of interest among related parties;

b. the price and terms of the APA represent the highest and best offer in respect of the Acquired Assets and are fair and reasonable in the circumstances;

c. the Transaction will result in a significantly higher recovery to creditors than would likely be achieved in a liquidation of the Acquired Assets;

d. the Transaction is supported by the First Lien Lenders, Ad Hoc Group and Sureties as documented in the MSA and Sureties Support Confirmations;

e. the Transaction will provide for substantial recoveries to Dominion vendors under operational contracts and joint venture agreements as well as on amounts due to employees, unions, First Nations, aboriginal groups and GNWT;

f. the Transaction and new money commitment allow for a near-term restart of the Ekati diamond mine which is of strategic importance to numerous stakeholders including Northern-based employees, contractors, suppliers and the Northern communities in general;

g. the Diavik Realization Account and the Wind-down Account provide funding for estate costs to completion of the CCAA Proceedings and administration of Dominion's ongoing interest in recoveries from the Diavik Joint Venture Agreement;

h. the Purchaser Termination Fee and Break-up Fee are commercially reasonable in the circumstances and have been agreed amongst stakeholders. Given that that the Break-up Fee will only become payable if the Applicants are proceeding with an Alternative Transaction, the securing of this obligation via the Break-up Fee Charge is appropriate in the circumstances;

i. concluding the Transaction in a timely manner will allow the Applicants to mitigate the substantial ongoing cost of care and maintenance operations and the professional fee costs of the CCAA Proceedings; and

j. overall, the Transaction is in the best interests of the Dominion's creditors.

CASH FLOW VARIANCE ANALYSIS

30. The Applicants' actual cash flows in comparison to those contained in the Fifth Cash Flow Statement for the period April 22, 2020 to November 27, 2020 are summarized below:

Cash Flow Variance Analysis Thirty-Two Week Period Ending November 27, 2020 *($ thousands)*	Actual	Forecast	Variance
Operating Receipts			
Sales	$ 82,796	$ 113,314	$ (30,518)
Total Operating Receipts	82,796	113,314	(30,518)
Operating Disbursements			
Payroll and Benefits	21,893	22,045	(152)
Consultants and Contractors	6,508	6,312	196
Rent	906	867	39
Equipment Leases	6,177	6,824	(647)
Underground Mining Contractor	3,003	3,602	(599)
Travel	623	649	(26)
Insurance	3,926	5,778	(1,852)
IT & Software	3,320	3,337	(17)
IBA Payments	619	1,733	(1,115)
Power	1,141	1,144	(3)
Site Maintenance & Environment	2,471	3,915	(1,444)
CCAA Professional Fees	20,783	22,320	(1,537)
Critical Vendors Accounts Payable	2,510	2,409	101
Winter Road & Diesel Purchases	9,313	8,863	450
Net GST	(13,150)	(12,479)	(672)
Other	2,890	4,448	(1,559)
Total Operating Disbursements	72,931	81,766	(8,835)
Startup Disbursements			
Diesel Purchases / Freight	-	8,706	(8,706)
Other Winter Road consumables	762	2,597	(1,835)
Total Startup Disbursements	762	11,303	(10,541)
Net Change in Cash from Operations	9,104	20,245	(11,142)
Financing			
Intercompany Receipts / (Disbursements)	6,072	4,482	1,590
Interest & Bank Charges	(4,672)	(4,993)	320
DIP Facility Interest	(437)	(439)	2
Government Support Program	6,108	6,108	-
FX on DIP Draw	(2,198)	(2,198)	-
DIP Facility Draw	42,600	42,600	-
DIP Facility Repayment	(40,402)	(40,402)	-
Net Change in Cash from Financing	7,070	5,158	1,912
Net Change in Cash	16,174	25,403	(9,229)
Opening Cash	26,823	26,823	-
Ending Cash	**$ 42,997**	**$ 52,226**	**$ (9,229)**

a. Operating Receipts are approximately $31 million lower than forecast due to the timing of repatriation to Canada of the net proceeds of diamonds sold during the

week ended November 27, 2020 for which cash is expected to be received in the week ending December 4, 2020;

b. Operating Disbursements are approximately $9 million lower than forecast which is primarily a result of timing differences which are expected to reverse in future periods;

c. Startup Costs are approximately $11 million below forecast due to timing differences in certain fuel orders and delays in the restart program the delivery of winter road consumables, all of which are expected to reverse in following weeks; and

d. Net Change in Cash from Financing is lower than expected by approximate $2 million due to the intercompany receipt of cash repatriated from the wind-up of the Dominion Diamond Luxembourg entity.

31. As at November 27, 2020, the Applicants have an ending cash balance of approximately $43 million.

SIXTH CASH FLOW STATEMENT

32. Management has prepared the Sixth Cash Flow Statement to set out the Applicants' liquidity requirements for the nine weeks ending January 29, 2021 (the "**Forecast Period**"). A copy of the Sixth Cash Flow Statement is attached as Appendix "**B**".

33. The Sixth Cash Flow Statement is summarized as follows:

($ thousands)	April 22 to November 27 Actuals	November 28 to January 29 Forecast	Total
Operating Receipts			
Sales	$ 82,796	$ 90,630	**$ 173,426**
Total Operating Receipts	82,796	90,630	**173,426**
Operating Disbursements			
Payroll and Benefits	21,893	9,095	**30,988**
Consultants and Contractors	6,508	4,674	**11,182**
Rent	906	143	**1,048**
Equipment Leases	6,177	1,813	**7,990**
Underground Mining Costs	3,003	2,796	**5,800**
Travel	623	634	**1,257**
Insurance	3,926	4,055	**7,981**
IT & Software	3,320	3,258	**6,577**
IBA Payments	619	454	**1,072**
Power	1,141	390	**1,531**
Site Maintenance & Environment	2,471	2,943	**5,414**
CCAA Professional Fees	20,783	28,935	**49,718**
Closing Costs	-	31,055	**31,055**
Critical Vendors Accounts Payable	2,510	-	**2,510**
Winter Road & Diesel Purchases	9,313	2,500	**11,813**
Net Taxes	(13,150)	110	**(13,040)**
Other	2,890	2,360	**5,250**
Total Operating Disbursements	72,931	95,215	**168,146**
Startup Disbursements			
Diesel Purchases / Freight	-	12,438	**12,438**
Other Winter Road Consumables	762	4,566	**5,327**
Ramp-up costs	-	15,888	**15,888**
Total Startup Disbursements	762	32,891	**33,653**
Net Change in Cash from Operations	9,104	(37,476)	**(28,373)**
Financing			
Intercompany Receipts / (Disbursements)	6,072	(1,137)	**4,935**
Interest & Bank Charges	(4,672)	(1,927)	**(6,599)**
DIP Facility Interest	(437)	-	**(437)**
Government Support Program	6,108	1,576	**7,683**
FX on DIP Draw	(2,198)	-	**(2,198)**
DIP Facility Draw	42,600	-	**42,600**
DIP Facility Repayment	(40,402)	-	**(40,402)**
Net Change in Cash from Financing	7,070	(1,489)	**5,582**
Net Change in Cash	16,174	(38,965)	**(22,791)**
Opening Cash	26,823	42,997	**26,823**
Ending Cash	$ 42,997	$ 4,032	**$ 4,032**

34. The key assumptions on which the Sixth Cash Flow Statement is based are summarized as follows:

   a. operating receipts include $91 million in net proceeds from diamond sales expected to occur during the forecast period and the repatriation of net proceeds of recent sales;

   b. operating disbursements relate to ongoing care and maintenance costs and an assumed restart of mining operations in January 2021, as provided for in the APA;

   c. professional fees are forecast to be approximately $29 million during the period, inclusive of estimated fees due upon completion of the Transaction. These include payment of professional fees and expenses for the First Lien Lenders, Ad Hoc Group, and, subject to a cap to be approved by the Bidders, the indenture trustee of the senior secured second lien notes, each of which are to be paid under the terms of the APA and MSA. The fees set out in the table below are based on estimates which have been provided by the First Lien Lenders and the Ad Hoc Group and payment in full is a requirement of the APA and MSA. A summary of the fees forecast to be incurred by role are set out in the table below:

($ thousands) Role	Weeks 1 - 32 Actuals	Weeks 33 - 41 Forecast	Weeks 1 - 41 Total
Financial Advisor to Applicant	$ 4,635	$ 9,285	**$ 13,921**
Legal Counsel to Applicants	5,390	3,750	**9,140**
Monitor	1,117	750	**1,867**
Legal Counsel to Monitor	345	300	**645**
Legal Counsel to The Washington Companies	4,444	-	**4,444**
Legal Counsel to the First Lien Lenders	3,317	2,671	**5,988**
Financial Advisor to the First Lien Lenders	1,496	1,762	**3,259**
Legal Counsel to the Ad Hoc Group and the Indenture Trustee	-	4,740	**4,740**
Financial Advisor to the Ad Hoc Group	-	5,420	**5,420**
Other	39	258	**296**
Total Professional Fees	**$ 20,783**	**$ 28,935**	**$ 49,718**

   The Monitor understands that the amounts forecast to be paid to certain professional firms remain subject to change based on ongoing discussions and negotiations amongst parties;

d. other closing costs included in the forecast are approximately $31 million, based on an assumed closing date of January 29, 2021 and are summarized in the table below:

($ thousands)		
Closing Costs		**Total**
Wind-Down Account	$	340
Diavik Realization Account		1,360
GNWT Royalty Payment		4,200
Cure Funding Amount		14,280
Royalty Audit		5,000
Surety Renewal		3,250
Other		2,625
Total Closing Costs	**$**	**31,055**

e. $33 million is forecast to be incurred for start-up disbursements which specifically relate to the estimated costs to restart the Ekati Mine in mid-January 2021. These costs include diesel purchases and related freight costs, winter road consumables and ramp up costs. Ramp up costs include payroll costs of employees to be brought back to prepare for the mine restart, contractor support, equipment spare parts and additional camp, catering, travel and site service costs associated with the period leading up to the restart.

35. Overall, the Applicants are forecasting to have $4 million in cash on hand at the end of the forecast period.

STAY EXTENSION

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

a. the Applicants, in conjunction with their key financial stakeholders, have made significant progress towards a going concern restructuring transaction which has resulted in the APA and preparation for a near-term restart of mining operations. The proposed extension will provide the Applicants with time to complete the Transactions and address other remaining restructuring matters;

b. the Sixth Cash Flow Statement forecasts that the Applicants have available liquidity though the scheduled closing date under the APA. Should the Transaction not be completed by the end of the Forecast Period, the Applicants plan to provide a further cash flow forecast to cover the remaining period of the Stay Extension;

c. the Stay Extension allows the Applicants to continue to perform ongoing care and maintenance activities to preserve the Ekati mine site and related assets, ensure ongoing compliance with the Applicants' environmental and regulatory obligations and take steps towards the planned restart of mining operations in early 2021;

d. the Stay Extension is supported by certain key creditor constituencies including the First Lien Lenders, the Ad Hoc Group, the Sureties, and certain other stakeholders;

e. the Applicants are acting in good faith and with due diligence; and

f. Dominion's overall prospects of effecting a viable restructuring transaction will be enhanced by the Stay Extension.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

37. The APA and ancillary agreements provide Dominion with a successful going-concern restructuring transaction that is in the best interest of the Applicants' stakeholders. The proposed extension will provide the Applicants with time to complete the Transactions and address other remaining restructuring matters.

38. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the Approval and Vesting Order and the Stay Extension.

*****

All of which is respectfully submitted this 9th day of December, 2020.

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

Deryck Helkaa
Senior Managing Director

Tom Powell
Senior Managing Director

This is Exhibit "H"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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	**AFFIDAVIT #6 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

AFFIDAVIT #6 OF THOMAS CROESE
Sworn on December 10, 2020

I, Thomas Croese, of the City of Yellowknife, Northwest Territories, **SWEAR AND SAY THAT:**

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true. Capitalized terms used in this Affidavit and not otherwise defined shall have the same meaning as in the JVA (as defined below) or the Asset Purchase Agreement (the "**Purchase Agreement**"), which is before the Court for approval in the Application presently returnable on December 11, 2020.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995

TMC

between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

3. Pursuant to the JVA, DDMI holds a sixty percent (60%) interest in, and Dominion holds a forty percent (40%) interest in, a diamond mine site and various surrounding exploration properties (collectively, the "**Diavik Mine**") located approximately 300 kilometers northeast of Yellowknife, Northwest Territories.

4. In connection with Dominion's application returnable December 11, 2020 at 2:00 pm MST for an order (the "**SAVO**") approving the Purchase Agreement, I note the following:

(a) I am advised by counsel to DDMI that the Notice of Application was provided at approximately 9:00 pm last Sunday night (December 6). The Affidavit of Brendan Bell was provided at approximately 5:00 pm on Monday (December 6) and Dominion Diamond's Bench Brief was provided at approximately 3:00 p.m. on Wednesday (December 7). The late service of Dominion's materials is a serial and recurring process employed by Dominion in this matter;

(b) DDMI has a number of individuals involved in the review and assessment of court applications in relation to this matter. Such individuals are spread across time zones with an 11 hour time difference;

(c) DDMI has endeavoured to review, assimilate, and formulate a position in time for the December 11 application. Following such review, DDMI determined that the formulation of the proposed Purchase Agreement and SAVO is fundamentally flawed inasmuch as it purports to allow a transfer of the Diavik Mine and Products (including diamonds) to the purchaser in contravention of the JVA including, but without limitation, for reasons that include a purported and wrongful conveyance of Products (including diamonds) to the purchaser free and clear of the Cover Payment Security. I am advised by counsel to DDMI that they arranged a call with the Monitor and its counsel that took place on the morning of December 8. I am further advised that, during the call, counsel articulated DDMI's concerns with the Purchase Agreement and the SAVO. The Monitor and its counsel indicated that it understood the concerns, would seek Dominion and the First Lien Lenders advice with respect to the concerns, and would revert with its advice;

TMC

(d) On December 9, 2020, the Monitor provided its advice by way of email to DDMI's counsel. The text of the email is set out below and the email is attached as **Exhibit "A"** to this Affidavit:

> "Sean,
>
> As we advised yesterday, we have discussed with counsel for the company, and the 1Ls and 2Ls, the issues you raised yesterday. Here is the consensus view from those parties:
>
> - The APA does not convey any of Dominion's interest in the Diavik JV. Essentially, what is being conveyed by Dominion to the Purchaser is all receivables that Dominion receives out of the Diavik JV
> - In other words, it is only Dominion's share of diamonds that are transferred to it by DDMI, that would then be acquired by the Purchaser
> - Consistent with that concept:
>   - The definition of "Inventory" is not intended to capture any of Dominion's diamonds in the possession of DDMI that are subject to DDMI's cover payment security interests. Inventory would only capture diamonds that have been transferred by DDMI to Dominion;
>   - Paras. 11 and 14 of the Vesting Order are not intended to override DDMI's rights to hold diamonds per Eidsvik J's collateral orders and require delivery of diamonds other than as contemplated in that order, nor to somehow derogate from DDMI's cover payment claims
> - On all the foregoing points, the company, 1L's and 2L's will work on some revisions to the Vesting Order to make these points clear
>
> Happy to discuss if you'd like. Let me know."

(e) I am advised by counsel to DDMI that, on December 10, 2020, counsel for DDMI, Dominion and the First Lien Lenders had a conference call and that counsel for the First Lien Lenders advised that a revised form of SAVO would be provided to DDMI. As at the time of swearing this my Affidavit, no revised form of SAVO has been received.

TM

Process for Commissioning of this Affidavit

5. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

(a) I have shown the Commissioner the front and back of my current government-issued photo identification ("**ID**") and the Commissioner has compared my video image to the information on my ID;

(b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

(c) the Commissioner and I have a paper copy of this Affidavit before us;

(d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

(e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video conference on December 10, 2020	)	
	)	
A COMMISSIONER FOR OATHS in and for the Province of Alberta	)	THOMAS CROESE

TMC

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS*
	)	*ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED*
PROVINCE OF	)	*AND IN THE MATTER OF A PLAN OF COMPROMISE OR*
	)	*ARRANGEMENT OF DOMINION DIAMOND MINES ULC,*
ALBERTA	)	*DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION*
	)	*DIAMOND CANADA ULC, WASHINGTON DIAMOND*
	)	*INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND*
	)	*DOMINION FINCO INC.*

I, Colleen Bonnyman, of the City of Calgary, in the Province of Alberta, Student-At-Law, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated December 10, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 10th day of December, 2020.

Colleen Bonnyman

A Commissioner for Oaths in
and for the Province of Alberta

154213/516250
MT DOCS 21029905

TMC

This is Exhibit "A" referred to in the Affidavit of Thomas Croese

sworn before me by two-way video conference this 10th day of December, 2020.

____

A Commissioner for Oaths in and for the Province of Alberta

TMC

Doran, Katie

From: Chris Simard <SimardC@bennettjones.com>
Sent: Wednesday, December 09, 2020 11:59 AM
To: Collins, Sean F.; MacLeod, Walker W.; Taylor, Adam
Cc: Helkaa, Deryck; Powell, Tom; Kelsey Meyer
Subject: [EXT] Dominion AVO and APA issues

Sean,

As we advised yesterday, we have discussed with counsel for the company, and the 1Ls and 2Ls, the issues you raised yesterday. Here is the consensus view from those parties:

- The APA does not convey any of Dominion's interest in the Diavik JV. Essentially, what is being conveyed by Dominion to the Purchaser is all receivables that Dominion receives out of the Diavik JV
- In other words, it is only Dominion's share of diamonds that are transferred to it by DDMI, that would then be acquired by the Purchaser
- Consistent with that concept:
    - The definition of "Inventory" is not intended to capture any of Dominion's diamonds in the possession of DDMI that are subject to DDMI's cover payment security interests. Inventory would only capture diamonds that have been transferred by DDMI to Dominion;
    - Paras. 11 and 14 of the Vesting Order are not intended to override DDMI's rights to hold diamonds per Eidsvik J's collateral orders and require delivery of diamonds other than as contemplated in that order, nor to somehow derogate from DDMI's cover payment claims
- On all the foregoing points, the company, 1L's and 2L's will work on some revisions to the Vesting Order to make these points clear

Happy to discuss if you'd like. Let me know.

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. 403 298 4485 | F. 403 265 7219
E. simardc@bennettjones.com

KINCENTRIC Employer

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External Email: Exercise caution before clicking links or opening attachments | **Courriel externe:** Soyez prudent avant de cliquer sur des liens ou d'ouvrir des pièces jointes

TMC

This is Exhibit "I"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Court File No. VLC-S-S-206419
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DOMINION DIAMOND MINES ULC

PLAINTIFF

AND

DIAVIK DIAMOND MINES (2012) INC.

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

(a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or

(d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. Dominion Diamond Mines ULC ("**Dominion**") is an unlimited liability company incorporated under the laws of British Columbia. Dominion is Canada's largest independent producer of natural and responsibly mined premium rough diamonds.

2. Diavik Diamond Mines (2012) Inc. ("**DDMI**"), is a company incorporated under the laws of Canada and is a wholly-owned subsidiary of Rio Tinto plc ("**Rio**"). Rio is a global mining and metals company operating in approximately 36 countries with a current market capitalization of approximately USD$65 Billion.

The Diavik Diamond Mine

3. Dominion supplies rough diamonds to the global market from its operation of the Ekati Diamond Mine, in which it has an approximate 90% interest, and the Diavik Diamond Mine (the "**Diavik Mine**"), in which it has a 40% interest. DDMI has a 60% interest in the Diavik Mine.

4. The Diavik Mine, consisting of the mine site and surrounding exploration properties, is located on a 20-kilometer island in Lac de Gras, approximately 300 kilometers northeast of Yellowknife, in the Northwest Territories. Commercial production commenced at the Diavik Mine in 2003.

5. The resources at the Diavik Mine were discovered by Dominion (then Aber Resources Limited (**"Aber"**)) in the early 1990s. Due to the costs required to develop the mine, Dominion entered into a joint venture with Kennecott Canada ULC (**"Kennecott"**) in 1995 and Kennecott became the Manager of the joint venture.

6. The Diavik Mine is currently operated by DDMI. All licenses and permits required to undertake operations at Diavik Mine are held by DDMI, as operator. All employees engaged at the Diavik Mine are the employees of DDMI.

The JV Agreement

7. Dominion and DDMI are successors in interest to a joint venture agreement dated as of March 23, 1995 between Aber and Kennecott. The JV Agreement was subsequently amended pursuant to:

(a) Amending Agreement, dated as of December 1, 1995, between Kennecott and Aber;

(b) Amending Agreement No.2, dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber; and

(c) Amending Agreement No.3, dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber.

(collectively, the **"JV Agreement"**).

8. The fundamental purpose of the JV Agreement is the exploitation of mineral interests such that both DDMI and Dominion can benefit from the assets of the joint venture through a proportionate share of production. Dominion's proportionate share of production under the JV Agreement is taken in kind in the form of rough diamonds. At all relevant times DDMI was aware that Dominion depended on the sale of its share of production to finance operation of the Diavik Mine.

9. DDMI acts as Manager under the JV Agreement and exercises an executive role over the operations of the joint venture, subject to direction by the Management Committee. Pursuant to the JV Agreement Dominion's and DDMI's votes on the Management Committee are equal to their participating interests, and nearly all decisions of the Management Committee are decided by a simple majority vote of the participating interests.

10. As the majority participant, DDMI effectively controls the Management Committee. Together with DDMI's position as Manager under the JV Agreement, DDMI exercises all discretionary authority under the JV Agreement, including overall joint venture property and funds supplied by Dominion pursuant to cash calls.

11. Section 7.3 of the JV Agreement provides that the Manager must conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices. As a minority joint venture participant, Dominion is further entitled to expect that DDMI's efforts – and the funds supplied by Dominion – will be devoted to maximizing the profitable production of diamonds from the Diavik Mine.

COVID-19 Impact

12. COVID-19 has had an acute negative impact on all segments of the global diamond industry. Dominion's ability to move its rough diamond inventory from the point of extraction in the Northwest Territories to sorting facilities in India for further movement and eventual sale on the world market has been effectively frozen.

13. Dominion's inability to generate revenues from its share of production at the Diavik Mine, among other factors, created a liquidity crisis for Dominion that rendered it insolvent and in urgent need of protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").

14. On April 22, 2020, upon the application of Dominion and certain of its affiliates (together, the **"CCAA Applicants"**), the Alberta Court of Queen's Bench in Bankruptcy and Insolvency (the **"CCAA Court"**) granted an initial order with respect to the CCAA Applicants.

DDMI's Cash Calls

14. DDMI's operation of the Diavik Mine is significantly over budget, and production has failed to meet targets. DDMI's poor performance preceded the impact of COVID-19 and has continued to deteriorate. In 2019, costs rose approximately 7% above the stretch plan, while total carats recovered were 8.5% below plan. In November 2019, DDMI committed to achieving its stretch plan and embarking on a program that would focus on cost reduction, among other initiatives. However, in the first quarter of 2020, cash costs were more than 19% above DDMI's stretch plan, while at the same time carats recovered were 13.6% below plan. Dominion has repeatedly objected to DDMI's failure to reduce cash consumption, particularly considering its record of poor production.

15. Despite DDMI's failure to meet production and grade plans, DDMI has taken no effective steps to mitigate, and instead has continually demanded that Dominion satisfy increasingly large cash calls. In the first three months of 2020 alone, those cash calls totaled $68.9 million. In April 2020, DDMI issued further cash calls to Dominion totaling approximately $33 million.

16. Despite repeated requests for information, DDMI has refused or neglected to provide all relevant current information to Dominion, including resource and reserve reconciliation reports and information regarding an ongoing reclamation feasibility study being conducted, all of which has been funded by joint venture funds.

17. At the direction of Rio, DDMI has been and continues to prioritize the interests of DDMI and Rio in its management of the Diavik Mine to the detriment of Dominion and the joint venture as a whole.

18. DDMI has continued to maintain full operations at the Diavik Mine without taking into account the disruptions to the diamond industry caused by the COVID-19 and, in particular, without taking into account Dominion's circumstances. DDMI has done so knowing that Dominion has no ability to pay for such cash calls because it cannot materially monetize diamond inventories to pay for them.

19. Without Dominion being able to generate revenues due to COVID-19 related impacts on the diamond market and Dominion's business operations, the DDMI cash call payments have drained Dominion's cash reserves and contributed to Dominion's liquidity crisis. The continued cash calls will also negatively impact Dominion's restructuring efforts.

DDMI's Breaches

20. Despite express knowledge that Dominion is particularly harmed by DDMI's conduct, DDMI has and continues to breach its obligations under the JV Agreement, including by, without limitation:

(a) failing to meet cost budgets, production plans and diamond recovery budgets, including failures in the period preceding the COVID-19 pandemic;

(b) failing to achieve agreed-upon and appropriate cost reductions;

(c) deliberately attempting to extract as much capital as possible from Dominion with knowledge of its liquidity crisis;

(d) utilizing funds supplied by Dominion pursuant to recent bi-weekly cash calls to operate the mine in a manner that is not economically efficient and does not maximize profitability;

(e) failing to develop adequate modelling to support economic development of resources;

(f) failing or refusing to base operational and management decisions on sound engineering, mining and economic principles;

(g) mining the deposits in a manner inconsistent with the planned program;

(h) failing to disclose all relevant information to Dominion;

(i) failing to adequately consult with Dominion; and

(j) placing DDMI's and Rio's interests ahead of the joint venture with the result of depriving Dominion of the benefit of the JV Agreement.

(together, DDMI's "**Misconduct**")

Part 2: RELIEF SOUGHT

21. Dominion seeks the following relief against DDMI:

(a) a declaration that DDMI has conducted operations in breach of or in a manner inconsistent with the JV Agreement;

(b) general damages;

(c) special damages;

(d) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

(e) costs; and

(f) such further and other relief as this Court may deem just.

Part 3: LEGAL BASIS

Breach of Contract

22. Pursuant to the JV Agreement and in light of its fundamental purpose, Dominion is entitled to reasonably expect, among other things, that:

(a) the funds supplied by Dominion pursuant to the terms of the JV Agreement will be devoted to optimizing profitable economic production;

(b) DDMI will regularly consult with Dominion; and

(c) the Participants, including DDMI in its capacity as Manager, will not operate in such a manner as to cause significant harm to Dominion or substantially impair the objective of the agreement, being, again, the profitable economic production of product from the Diavik Mine.

23. The Manager and Management Committee must exercise decision-making powers in accordance with the JV Agreement and the duties of all participants to act fairly and in good faith. As both Manager and controlling participant on the Management Committee, DDMI's fundamental obligations include a duty not to undermine the purposes of the JV Agreement and not to deprive Dominion of the intended benefits of the JV Agreement.

24. DDMI's continued course of conduct, including its Misconduct, defies reasonable expectations and amounts to a flagrant breach of DDMI's obligations under to the JV Agreement, including its fundamental duty to act honestly, reasonably and in good faith in the performance of its contractual obligations.

Breach of Fiduciary Duty

25. At all material times and by virtue of DDMI's role as Manager, DDMI owed and continues to owe fiduciary obligations to Dominion, including but not limited to fiduciary obligations of loyalty, good faith, disclosure and avoidance of a conflict of duty and self-interest. DDMI's continued course of conduct, including but not limited to the Misconduct, amounts to a breach of DDMI's fiduciary obligations.

Willful Misconduct and Gross Negligence

26. At all material times, DDMI owed and continues to owe a duty of care requiring DDMI to, among other things, conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices.

27. DDMI's continued course of conduct, including but not limited to DDMI's Misconduct, breached DDMI's duty of care and amounts to willful misconduct and gross negligence. Dominion's acts and omissions exhibit a conscious or reckless indifference to Dominion's rights and a marked departure from the standards according to which a reasonable Manager in DDMI's position would conduct themselves.

Loss and Damage to Dominion

28. As a result of DDMI's wrongful acts and omissions, including the breaches, willful misconduct, and negligence described herein, Dominion has suffered and continues to suffer loss and damage including but not limited to economic losses and damages resulting from DDMI's misuse of funds supplied by Dominion during DDMI's management of the Diavik Mine.

Plaintiff's address for service:	Blake, Cassels & Graydon LLP Barristers and Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Joe McArthur
Fax number address for service (if any):	604-631-3309
E-mail address for service (if any):	N/A
Place of trial:	Vancouver, B.C.
The address of the registry is:	800 Smithe Street, Vancouver, B.C.

Date: 16/June/2020

Signature of Joe McArthur
[x] lawyer for Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a List of Documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim in breach of contract, breach of fiduciary duty and negligence related to a joint venture.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
[ ] a motor vehicle accident
[ ] medical malpractice
[ ] another cause

A dispute concerning:
[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[x] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues concerning the probate of an estate
[ ] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[ ] a class action
[ ] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflict of laws
[ ] none of the above
[ ] do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Plaintiff claims the right to serve this notice of civil claim on the Defendant outside British Columbia on the ground that, among other things, the proceeding:

(a) concerns contractual obligations, and, by its express terms, the contract is governed by the law of British Columbia; and

(b) concerns a business carried on in British Columbia.

This is Exhibit "J"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Execution Version

FIRST LIEN CREDIT AGREEMENT

dated as of

February 3, 2021

among

ARCTIC CANADIAN DIAMOND COMPANY LTD.,
as Borrower,

ARCTIC CANADIAN DIAMOND HOLDING, LLC,
as Parent,

the Lenders Party Hereto,

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent and Collateral Agent

(v) if all or any portion of any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.20(c), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender's LC Exposure is cash collateralized and/or reallocated;

(d) no Issuing Bank shall be required to issue, amend or increase any Letter of Credit unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(c), and participating interests in any such newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and Defaulting Lenders shall not participate therein); and

(e) in the event and on the date that each of the Administrative Agent, the Borrower, and the Issuing Banks agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the other Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.21 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

Section 2.22 Banking Services. Each Lender or Affiliate thereof providing Banking Services for any Loan Party, shall deliver to the Administrative Agent, promptly after entering into such Banking Services, written notice setting forth the aggregate amount of all Banking Services Obligations of such Loan Party to such Lender (whether matured or unmatured, absolute or contingent). In furtherance of that requirement, each such Lender or Affiliate thereof shall furnish the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations. The most recent information provided to the Administrative Agent shall be used in determining which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations will be placed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

On the dates and to the extent required pursuant to Section 4.01 or 4.02, as applicable, Parent and the Borrower hereby represent and warrant to the Lenders that:

Section 3.01 Organization; Powers. Each of Parent and its Subsidiaries (a) is (i) duly organized and validly existing and (ii) in good standing (to the extent such concept exists in the relevant jurisdiction) under the laws of its jurisdiction of organization, (b) has all requisite organizational power and authority to own its properties and assets and carry on its business as now conducted and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where its ownership, lease or operation of its properties or conduct of its business requires such qualification; except, in each case referred to in this Section 3.01 (other than clause (a)(i) with respect to the Borrower) where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The execution, delivery and performance by each Loan Party of each of the Loan Documents to which such Loan Party is a party are within such Loan Party's corporate or other organizational power and have been duly authorized by all necessary organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

Section 3.03 Governmental Approvals; No Conflicts. The execution and delivery of the Loan Documents by each Loan Party party thereto and the performance by such Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) for filings necessary to perfect Liens created pursuant to the Loan Documents, (iii) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which would not be reasonably expected to have a Material Adverse Effect and (iv) the creation of a Belgian law register pledge is subject to a retribution cost of maximum EUR 518 for the registration in the Belgian national pledge register, (b) will not violate any (i) of such Loan Party's Organizational Documents or (ii) Requirements of Law applicable to such Loan Party which, in the case of this clause (b)(ii), would reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any Material Indebtedness to which such Loan Party is a party which, in the case of this clause (c), would reasonably be expected to have a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Effect. (a) The financial statements provided pursuant to Section 4.01(c) present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent and its Subsidiaries on a consolidated basis as of such dates and for such periods in accordance with IFRS, (x) except as otherwise expressly noted therein, (y) subject, in the case of financial statements provided pursuant to Section 4.01(c) to the absence of footnotes and normal year-end audit adjustments and (z) except as may be necessary to reflect any differing entity and/or organizational structure prior to giving effect to the Transactions.

(b) Since the Closing Date, there has been no event, change or condition that has had, or would reasonably be expected to have, a Material Adverse Effect.

Section 3.05 Properties. (a) As of the Closing Date, Schedule 3.05 sets forth the address of each parcel of "fee-owned" Real Estate Asset owned by any Loan Party having a fair market value as of the Closing Date (as determined by the Borrower in good faith after taking into account any liabilities with respect thereto that impact such fair market value) in excess of $1,000,000. Each Loan Party and each Subsidiary has good title to, or valid leasehold interests in, all of its real and personal property, in each case, except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes or (ii) where the failure to have such title or interests, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property ("IP Rights") necessary to its business as currently conducted, and the use thereof by the Loan Parties and their Subsidiaries does not infringe in any material respect upon the rights of any other Person, except in each case where the failure to do so or where such infringement could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.06 Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting Parent, the Borrower or any of their Subsidiaries that (i) would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) neither Parent, the Borrower nor any of their Subsidiaries has received written notice of any Environmental Liability or knows of any basis for any Environmental Liability, and (ii) neither Parent nor any of its Subsidiaries (A) has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license, authorization or other approval required under any Environmental Law or (B) has become subject to any known Environmental Liability.

Section 3.07 Compliance with Laws. Each of Parent and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, it being understood and agreed that this Section 3.07 shall not apply to any law specifically referenced in Section 3.17.

Section 3.08 Investment Company Status. No Loan Party is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.09 Taxes. Each of Parent and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which Parent, the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 ERISA; Canadian Pension Plans. (a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to result in a Material Adverse Effect.

(b) Each Loan Party and its Subsidiaries, to the extent applicable, is in compliance with the requirements of the *Pension Benefits Standards Act, 1985* (Canada) or any other applicable federal or provincial laws with respect to each Canadian Pension Plan, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan. No Pension Event has occurred which has resulted or would reasonably be expected to result in any Loan Party incurring any liability which would reasonably be expected

to have a Material Adverse Effect. Except where failure to comply with the following clauses (i) through (iv) would not reasonably be expected to have a Material Adverse Effect: (i) all contributions required to be made by a Loan Party under the Canadian Union Plans have been made in the amounts and in the manner set forth in the applicable collective agreement, (ii) the minimum contributions to each Canadian Defined Benefit Plan required under the most recent actuarial valuation filed with the applicable Governmental Authority have been contributed to the Canadian Defined Benefit Plan , (iii) all contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable laws and the terms of each Canadian Pension Plan have been made in accordance with all applicable laws and the terms of each Canadian Pension Plan, and (iv) all contributions required to be made by a Loan Party or any of its Subsidiaries under the Canadian Union Plans have been made. No Loan Party is required to make contributions to a Canadian Union Plan, except for contributions in the amounts and in the manner set forth in any applicable collective agreement and any other contributions that, in the aggregate, would not reasonably be expected to have a Materially Adverse Effect.

(c) As of the Closing Date, no Loan Party contributes to, participates in, or otherwise has any liability in respect of any Canadian Defined Benefit Plan, except as set forth on Schedule 3.10. Schedule 3.10 identifies, as of the Closing Date, the amount of any unfunded liability under each Canadian Defined Benefit Plan (including any going concern unfunded liability, solvency deficiency or wind-up deficiency), as set out in the most recent actuarial valuation filed with the applicable Governmental Authority.

Section 3.11 Disclosure.

(a) As of the Closing Date (with respect to the Acquired Business, to the knowledge of the Borrower), all written factual information (other than the Projections, other forward-looking information and information of a general economic or general industry nature and all third party memos or reports furnished to the Initial Lenders) concerning Parent and its Subsidiaries and the Transactions that was prepared by or on behalf of the foregoing or their respective representatives and made available to any Initial Lender or the Administrative Agent on or before the Closing Date (the "Information"), when taken as a whole, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto).

(b) The Projections have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished to the Initial Lenders (it being agreed that (i) such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, (ii) no assurance can be given that any particular financial projections (including the Projections) will be realized, (iii) actual results may differ from projected results and (iv) such differences may be material).

Section 3.12 Federal Reserve Regulations. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U and Regulation X.

Section 3.13 Solvency. As of the Closing Date, after giving effect to the Transactions and the related transactions contemplated by the Loan Documents, Parent and its subsidiaries, when taken as a whole on a consolidated basis, (a) have property with fair value greater than the total amount of their debts and liabilities, contingent, subordinated or otherwise (it being understood that the amount of contingent

liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, can reasonably be expected to become an actual or matured liability), (b) have assets with present fair salable value not less than the amount that will be required to pay their liability on their debts as they become absolute and matured, (c) will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as they become absolute and matured and (d) are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which they have unreasonably small capital.

Section 3.14 Capitalization and Subsidiaries and Surety Bonds. Schedule 3.14(a) sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of each subsidiary of Parent and the ownership interest therein held by Parent or its applicable subsidiary and (b) the type of entity of Parent and each of its subsidiaries. Schedule 3.14(b) sets forth, as of the Closing Date, a correct and complete list of each surety bond issued for the benefit of Parent or any of its Subsidiaries.

Section 3.15 Security Interest in Collateral. Subject to the terms of the last paragraph of Section 4.01, the Legal Reservations, the Perfection Requirements, the provisions, limitations and/or exceptions set forth in this Agreement and/or the other relevant Loan Documents, the Collateral Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of itself and the other Secured Parties, and upon the satisfaction of the applicable Perfection Requirements, such Liens constitute perfected Liens (with the priority such Liens are expressed to have within the relevant Collateral Documents) on the Collateral (to the extent such Liens are required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein. For the avoidance of doubt, notwithstanding anything herein or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty (other than any representation or warranty expressly made in such Loan Document) as to (a) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Capital Stock of any Foreign Subsidiary of Parent, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under foreign Requirements of Law, (b) the enforcement of any security interest, or right or remedy with respect to any Collateral that may be limited or restricted by, or require any consent, authorization approval or license under, any Requirement of Law or (c) on the Closing Date and until required pursuant to Section 5.10 or Section 5.13, as applicable, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent the same is not required on the Closing Date pursuant to the final paragraph of Section 4.01.

Section 3.16 Employment Matters. As of the Closing Date, except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes, lockouts or slowdowns against the Parent or any of its Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (b) the hours worked by and payments made to employees of the Parent and its Subsidiaries have not been in violation of the Fair Labor Standards Act, the *Employee Standards Act* (Ontario) or any other applicable federal, provincial, territorial, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages, vacation pay, and employee health and welfare insurance and other benefits, including with respect to the Canada Pension Plan maintained by the Government of Canada or the Québec Pension Plan maintained by the Government of Québec, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect.

Section 3.17 Anti-Corruption Laws and Sanctions.

(a) Neither Parent nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any director, officer, employee, agent or Affiliate of any of the foregoing is a Sanctioned Person or is located, organized, or is a resident in a Sanctioned Country. Furthermore, neither any Loan Party nor any Subsidiary engages in any dealings or transactions, or is otherwise associated, with a Canadian Blocked Person.

(b) No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will directly, or, to the Borrower's knowledge after due inquiry indirectly violate Anti-Corruption Laws or applicable Sanctions or will fund the activities of or business with any Sanctioned Person.

(c) Each Loan Party is in compliance with Anti-Corruption Laws (including the USA Patriot Act) applicable to the Loan Parties and their Subsidiaries and applicable Sanctions, in each case, in all material respects. In the past 5 years, no Loan Party has committed a violation of the Anti-Corruption Laws applicable to such Loan Party.

Section 3.18 Accounts. As of the Closing Date, no Loan Party has any deposit account, securities account or commodity accounts other than the accounts listed on Schedule 3.18.

Section 3.19 Beneficial Ownership Certification. The information included in any Beneficial Ownership Certification provided to any Lender on or prior to the Closing Date is true and correct in all respects.

ARTICLE IV

CONDITIONS

Section 4.01 Closing Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 8.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from each Loan Party party thereto (i) a counterpart signed by each such Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (a) this Agreement, (b) each Security Agreement, (c) the Guaranty, (d) the Intercreditor Agreement, (e) each Intellectual Property Security Agreement and (f) any promissory note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Borrowing Request as required by Section 2.03.

(b) Legal Opinions. The Administrative Agent (or its counsel) shall have received, on behalf of itself and the Lenders and each Issuing Bank on the Closing Date, a customary written opinion of (i) Torys LLP, in its capacity as U.S., Canadian, Alberta and British Columbia counsel to the Loan Parties and (ii) Field LLP, in its capacity as Northwest Territories counsel for the Loan Parties, in each case, dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements. The Lenders shall have received (i) audited consolidated balance sheets of WDI or DDH, as applicable, and its respective subsidiaries as at the end of, and related consolidated statements of income (loss), comprehensive (loss) income, cash flows and changes in equity of WDI or DDH, as applicable, and its respective subsidiaries for, the three most

SCHEDULE 3.06

Disclosed Matters

1. DDM filed an action, dated June 16, 2020, against Diavik Diamond Mines (2012) Inc. ("DDMI") in the Supreme Court of British Columbia Action No. S206419 with respect to DDMI's breaches of the Diavik Joint Venture Agreement.

This is Exhibit "K"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

KK

COM
Oct 30 2020
J. Eidsvik

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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	**BENCH BRIEF OF CREDIT SUISSE AG** **DDMI APPLICATION FOR REALIZATION PROCEDURE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**OSLER, HOSKIN & HARCOURT LLP** Suite 2500, 450 – 1 Street SW Calgary, AB T2P 5H1 Attention: Marc Wasserman / Michael De Lellis / Emily Paplawski Telephone: 416.862.4908 / 416.862.5997 / 403.260.7071 Facsimile: 403.260.7024 Email: mwasserman@osler.com / mdelellis@osler.com / epaplawski@osler.com Matter: 1210529

PART I - INTRODUCTION

1. This Brief is filed by Credit Suisse AG, Cayman Islands Branch, as agent (the "**Agent**") for the first secured lenders (the "**First Lien Lenders**") to Dominion Diamond Mines ULC (**"Dominion**"), Washington Diamond Investments, LLC and various of their direct and indirect subsidiaries (together, the "**Debtor**") in response to the Application filed by Diavik Diamond Mines (2012) Inc. ("**DDMI**").

2. The Agent opposes the relief sought by DDMI. The "comeback" clause in the Second Amended and Restated Initial Order (the "**SARIO**") is not available to DDMI to assist it in obtaining a "leg up" relative to other creditors in a manner contrary to fundamental CCAA principles. No circumstances have changed that could possibly justify revisiting or otherwise seeking to override paragraph 16 of the SARIO or to expand DDMI's rights beyond those that were granted based on this Court's view of the appropriate balancing of interests in this proceeding. In fact, paragraph 16(e) was designed, based on DDMI's own submissions, to protect it against the "real and material" risk[1] of the very circumstance that has now occurred. Absent "changing circumstances", this Court has no jurisdiction to revisit or vary the SARIO. It is a final, entered, non-appealable order of this Court on which parties are entitled to rely and which, in the words of Justice Morawetz, must "be respected."[2]

3. Contrary to the fundamental purposes of section 11 of the *Companies' Creditors Arrangement Act* ("**CCAA**"),[3] which require a careful balancing of interests among all stakeholders in furtherance of the objectives of the CCAA,[4] DDMI is seeking to obtain an

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[1] Transcript of Proceedings, June 19, 2020 (the "June 19 Transcript") at p. 85:30-34.

[2] *Target Canada Co. (Re)*, 2016 ONSC 316 ("*Target*") at para 81. **[TAB 2]**

[3] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") at s. 11 **[TAB 1]**

[4] *9354-9186 Quebec inc v Callidus Capital Corp*, 2020 SCC 10 ("*Callidus*") at para 49. **[TAB 3]**

advantage purely in its own interests based on its entirely unsubstantiated claims that it might, at some point in the future, be under-secured. This is this contrary to evidence, to CCAA principles, and it fundamentally mischaracterizes the legal rights held by DDMI. Moreover, these CCAA proceedings are ongoing and no other creditors, including the First Lien Lenders, are entitled to enforce on their security, let alone take enforcement steps in relation to security held by another party.

4. This Court is being asked to allow DDMI to realize against Dominion's property (not just property secured in favour of DDMI). This property is subject to a priority security interest in favour of the First Lien Lenders. DDMI proposes a fundamentally flawed realization process designed by DDMI to favour its own interests. DDMI effectively seeks to confer power on itself to appropriate value that rightly belongs to Dominion, the First Lien Lenders, and other stakeholders, while providing no transparency and no accountability to these stakeholders, to their material prejudice.

5. The Agent therefore submits that DDMI's requested relief should be denied. Alternatively, if this Court determines that it is appropriate to approve a realization process to monetize Dominion's share of diamond production (the "**Dominion Products**") held by DDMI as security for the Cover Payments, this Court should not approve the one-sided process proposed by DDMI. Both the Agent and Dominion have proposed alternate realization processes that appropriately balance the rights of all stakeholders.

PART II - FACTS

6. On April 22, 2020, Dominion and various related companies obtained an Initial Order under the CCAA (the "**Initial Order**").[5]

7. At the hearing of Dominion's comeback application, DDMI sought: (a) a modification to the stay of proceedings in the Initial Order to permit DDMI to make Cover Payments on behalf of Dominion; and (b) authorization to hold a portion of Dominion's production from the Divaik mine (the "**Diavik Mine**") to secure Dominion's obligations in respect of the Cover Payments.[6] DDMI requested that a provision be included in the Initial Order providing that:

> … DDMI 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 JVA Cover Payments made by DDMI. The share of production shall be held at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "PSF") and <u>the value of the Dominion Diamond's share of production to held at the PSF shall be determined based on royalty valuations performed from time to time at the PSF by the GNWT</u>. DDMI shall release Dominion Diamond's share of production upon receiving payment of the indebtedness owing to it on account of JVA Cover Payments made by DDMI on or after the Filing Date.[7] [Emphasis added]

8. On May 8, 2020, this Court determined that the relief sought by DDMI was premature and granted an Order providing that Dominion would not call for delivery of any diamonds, and DDMI would maintain possession of all diamonds located at the Diavik Production Splitting Facility ("**PSF**"), "until the Court rendered its decision in respect of DDMI's response to the proposed amended and restated initial order."[8]

9. On May 15, 2020, this Court granted a further order permitting DDMI to hold Dominion's share of production from the Diavik mine scheduled to be delivered on May 20, 2020, and declaring that the Order was "made on a temporary, without prejudice basis pending determination

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[5] Initial Order of the Honourable Madam Justice Eidsvik, granted April 22, 2020.

[6] Bench Brief of Diavik Diamond Mines (2012) Inc., dated May 6, 2020 (the "May DDMI Bench Brief") at para 2.

[7] May DDMI Bench Brief at Tab 1.

[8] Order of the Honourable Madam Justice K. Eidsvik, granted May 8, 2020 at para 3.

by this Court whether the next scheduled deliveries of Dominion Diamond's proportionate share of diamonds produced from the Diavik Mine as set out on the Delivery Schedule are to remain at the PSF or whether they are to be delivered by DDMI to Dominion Diamond."[9]

10. On June 19, 2020 – after three days of hearings and extensive oral argument, the filing of three additional affidavits and two separate bench briefs by DDMI, a bench brief by the Agent, and significant application materials by Dominion – this Honourable Court granted the SARIO. Section 16 of the SARIO provided, among other things, 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 <u>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</u>.[10] [Emphasis added]

11. Section 16(e) of the SARIO provided that upon the happening of certain defined occurrences, DDMI would be entitled to apply to the Court to seek an Order allowing it to exercise rights and remedies as against the Dominion Products. Such triggering events included where no Phase 2 Qualified Bid existed which included Dominion's interest in the Diavik Joint Venture.[11]

12. On October 19, 2020, in accordance with section 16(e) of the SARIO, DDMI filed an application seeking an order permitting it to realize on the Dominion Products. However, in addition to such relief, DDMI also requested a variance of paragraph 16 of the SARIO to eliminate the limitation that permitted DDMI to hold only the Dominion Products sufficient to satisfy the outstanding Cover Payments, as determined on the basis of the DICAN valuation. DDMI now

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[9] Order of the Honourable Madam Justice K. Eidsvik, granted May 15, 2020 at paras 3-4.

[10] Second Amended and Restated Initial Order of the Honourable Madam Justice Eidsvik, granted June 19, 2020 ("SARIO") at para 16.

[11] SARIO at section 16(e).

seeks to withhold the entirety of Dominion's share of the products from the Diavik Mine, and to appoint itself to sell those products under a flawed realization process.

13. In requesting this relief DDMI improperly purports to rely on the "comeback clause" in the SARIO to revisit and vary the otherwise final, non-appealable order of this Court.

PART III - ISSUE

14. There are two issues before this Court for determination:

(a) whether section 16 of the SARIO should be varied to permit DDMI to hold all of Dominion's share of production from the Diavik Mine, including that portion in excess of the value required to secure the outstanding Cover Payments made by DDMI, as determined on the basis of the monthly DICAN valuation; and

(b) whether DDMI's proposed Realization Process should be approved?

PART IV - LAW AND ARGUMENT

A. DDMI is not entitled to Revisit the SARIO

15. DDMI seeks to rely on the "comeback clause" in the SARIO to seek an order revisiting and overriding paragraph 16 of the SARIO requiring DDMI to return the portion of Dominion's 40% share of diamond production from the Diavik Mine that is in excess of the outstanding Cover Payments, as determined based on the valuations performed by DICAN. DDMI seeks to retain all of Dominion's share of production, notwithstanding the terms of the JVA and paragraph 16 of the SARIO, which DDMI itself sought and which other stakeholders, including the Agent, have relied upon. DDMI seeks to do so on the basis "of the material adverse change resulting from the fact

that there is no sale and the challenges associated with the valuation of diamond collateral in the current market."[12]

16. Paragraph 65 of the SARIO (the "**comeback clause**") provides that "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." Recourse through the comeback clause is available when circumstances change.[13] A comeback clause is not intended to give one stakeholder multiple kicks at the same can. As Justice Topolniski recently noted in the CCAA proceedings of the Canada North Group, "[i]n supervising a proceeding under the C.C.A.A. orders are made, and orders are varied as changing circumstances require. Orders depend upon a careful and delicate balancing of a variety of interests and of problems."[14]

17. There are no "changing circumstances" since June 19, 2020 which would permit DDMI to revisit or otherwise seek to override paragraph 16 of the SARIO. Paragraph 16(e) of the SARIO was expressly granted to protect DDMI against the very situation which DDMI now claims constitutes a "material adverse change" – the failure of the SISP to result in any sale of Dominion's 40% interest in the Diavik Joint Venture. In its Bench Brief, filed June 17, 2020 in support of "its request that the entirety of the Dominion Products be held at the PSF", DDMI argued: "Dominion has proposed a Stalking Horse APA that expressly contemplates a circumstance where the Diavik Mine will not be sold; DDMI has significant concern that there will not be a transaction…"[15] At

[12] Bench Brief of Diavik Diamond Mines (2012) Inc., dated October 20, 2020 (the "October DDMI Bench Brief") at para 22.

[13] *Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 at para 50 ("*Canada North*"), aff'd 2019 ABCA 314, leave to appeal granted 2020 CanLII 23629 (SCC). **[TAB 4]**

[14] *Canada North* at para 50, citing *Re Pacific National Lease Holding Corp.* (1992), 15 CBR (3d) 265, 72 BCLR (2d) 368 (CA) at para 30 .**[TAB 4]**

[15] Bench Brief of Diavik Diamond Mines (2012) Inc, dated June 17, 2020 at paras 11 and 31.

the hearing of Dominion's application for the SARIO on June 19, 2020, counsel for DDMI submitted: "what DDMI identifies as difficulties with the stalking horse bid and difficulties in the sense that it creates risk to DDMI that there will not be a purchaser of Diavik, that there will not be cash paid to reimburse it for the cover payments that are being made, those risks are real and material…"[16] [Emphasis added]

18. In response to this risk, paragraph 16(e) was included in the SARIO permitting DDMI to "seek an Order allowing it to exercise rights and remedies as against Dominion Products… (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." While DDMI is entitled to bring an application for a realization process because the triggering event under paragraph 16(e) of the SARIO has materialized, DDMI is not entitled to rely on that very same triggering event as grounds to revisit and override the SARIO's express terms. Circumstances which (a) existed at the time the SARIO was granted and which DDMI described as "real and material", (b) were brought to this Court's attention and argued extensively by DDMI and other parties, and (c) were expressly contemplated and addressed in the SARIO, cannot and do not constitute "changing circumstances".

19. DDMI similarly points to "the challenges associated with the valuation of diamond collateral in the current market" as grounds for revisiting paragraph 16 of the SARIO.[17] DDMI submits that its concerns regarding the DICAN valuation as a proxy for the market value of the Dominion Products has been "materially amplified due to the significant market disruption, depressed sale activity and ongoing uncertainty caused by the COVID-19 pandemic."[18] DDMI

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[16] June 19 Transcript at p. 85:30-34.

[17] October DDMI Bench Brief at para 22.

[18] Affidavit #4 of Thomas Croese, sworn October 19, 2020 (the "Fourth Croese Affidavit") at para 13.

fails to reference even a single market occurrence which was not pre-existing as at the date of the SARIO. This is because no such occurrences or circumstances exist.

20. When the SARIO was granted on June 19, 2020 and when DDMI sought and obtained the paragraph 16 relief in relation to the Dominion Products based on the DICAN valuation methodology, the following circumstances existed, to the knowledge of all parties: (a) global diamond sales had already dramatically fallen when the COVID-19 related lockdown began in China, the impact of which became more acute as lockdown measures were implemented in nearly all parts of the world; (b) the Government of India had ordered a nationwide shutdown, (c) Antwerpsche Diamantkring, Antwerp's rough-diamond exchange, had announced that the city's four Diamond Bourses would shut their trading floors; and (d) Debeers (the world's largest producer of diamonds) had suspended production at most of its mines.[19] DDMI's own evidence cites the June 1, 2020 forecast of WWW Diamond Forecasts Ltd. which noted:

> We can be certain that the diamond jewellery market will be subject to extreme stresses this year and a severe contraction as the global economy slowly recovers. Luxury goods will lag the recovery. The length and size of the market contraction will be highly correlated with the timing of the recoveries in the USA and China respectively.
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> Negative price pressure will persist in the rough and polished markets for the short to medium term. Demand is not expected to recover quickly so producers will need to accept lower prices for rough or accumulate inventory and curtail supply.[20]

21. The only circumstance which has changed since June 19, 2020 is the gradual reopening of international diamond markets.[21] By all accounts, this reopening of diamond markets has been positive. In September, Dominion completed the sales of two tranches of diamonds having a book value of $58 million USD for a combined sales price of $54.7 USD.[22] Recently, Dominion sold a

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[19] Affidavit of Kristal Kaye, sworn April 21, 2020 at paras 12-14; Affidavit of Kristal Kaye, sworn May 6, 2020 ("May 6 Kaye Affidavit") at para 13 and Exhibit A.

[20] Fourth Croese Affidavit, Confidential Exhibit #4 at p. 62.

[21] Affidavit of Kristal Kaye, sworn September 18, 2020 at para 15.

[22] Affidavit of Brendan Bell, sworn October 23, 2020 (the "Third Bell Affidavit") at para 33.

tranche of smaller diamonds having a book value of $15.4 million USD for a sales price of $15.3 million USD.[23] As Mr. Bell notes "[o]verall pricing achieved from these sales was higher than anticipated."[24] Mr Croese acknowledges in his Fourth Affidavit that, "market conditions and demand have improved somewhat in recent weeks".[25]

22. Further, as discussed in Ms. Kaye's recent affidavit, both DICAN and market values build in a premium to the value of Cover Payments made by DDMI.[26] At its most fundamental, this premium is not surprising because, as the Agent has previously noted, it would be commercially absurd for DDMI to continue operating the Diavik Mine unless there was value in doing so. DDMI is over-secured by approximately $8.9 million USD based on the DICAN valuation of the Dominion Products held by DDMI as at September 30, 2020.[27] It remains over-secured notwithstanding that DICAN valuations for 2020 undervalue diamond production because of the point in time at which such valuations were completed (at the height of the COVID-19 pandemic).[28] If all diamonds currently held by DDMI for the production dates up to September 30, 2020 are valued using the most recent DICAN valuation numbers, DDMI is over-secured by approximately $17.5 million USD.[29] Applying the actual pricing obtained by Dominion for its most recent diamond sales in September 2020 results in DDMI being over-secured by $26.0 million USD.[30]

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[23] Third Bell Affidavit at para 33.
[24] Third Bell Affidavit at para 33.
[25] Fourth Croese Affidavit at para 29.
[26] Affidavit of Kristal Kaye, sworn October 28, 2020 (the "October 28 Kaye Affidavit") at paras 19-24.
[27] October 28 Kaye Affidavit at para 21.
[28] October 28 Kaye Affidavit at para 22.
[29] October 28 Kaye Affidavit at para 22.
[30] October 28 Kaye Affidavit at para 23.

23. In light of the foregoing, the position now advanced by DDMI that “changing circumstances” since the SARIO have “materially amplified” its concern regarding the use of DICAN as a valuation precedent is not only unsupported, but completely backwards. It should be Dominion and the Agent – not DDMI - applying for a variance of the SARIO to eliminate the significant differential currently enjoyed by DDMI between the value of the Dominion Products and the quantum of outstanding Cover Payments. That differential is the property of Dominion for the benefit of its stakeholders.

24. DDMI’s current efforts to rely on the “comeback clause” to revisit and override paragraph 16 of the SARIO are nothing more than an attempt to reargue the terms of a Court Order that it sought for its own protection in order to improve its position. Absent “changing circumstances” permitting reliance on the “comeback clause”, this Court has no jurisdiction to revisit or otherwise vary its earlier order. DDMI could have sought leave to appeal paragraph 16 of the SARIO to the Alberta Court of Appeal pursuant to section 13 of the *CCAA*. It did not do so. The SARIO constitutes a final, entered, non-appealable order of this Honourable Court on which interested parties are entitled to rely.

25. The First Lien Lenders have relied on paragraph 16, and particularly the inclusion of DICAN in the SARIO, as an objective valuation methodology which would result in diamonds being delivered to the Agent to collateralize a portion of the current $105 million in outstanding letters of credit posted in respect of the Diavik Mine. Paragraph 16 of the SARIO is critical in providing some element of discipline or control. DDMI is consistently and significantly over the Approved JV Budget in its spending. In the period from April 22, 2020 when Dominion filed for CCAA protection until September 30, 2020, DDMI has issued cash calls and, in turn, made Cover

Payments, exceeding the Approved JV Budget by approximately $13.3 million or 18.9%.[31] Dominion has no ability under the JVA to control or curtail such spending. The inclusion of DICAN at paragraph 16 of the SARIO provides some limited, though crucial, protection to Dominion and its stakeholders.

26. DDMI's application for a variance of the SARIO must be dismissed. As Justice Morawetz recently noted in *Target Canada Co. (Re)*, "The CCAA process is one of building blocks. In these proceedings, a stay has been granted and a plan developed. During these proceedings, this court has made number of orders. It is essential that court orders made during CCAA proceedings be respected."[32]

B. Variance of the SARIO is not in accordance with section 11 of the CCAA

27. In the alternative, even if DDMI is entitled to rely on the "comeback clause" (which is expressly denied), the variance of the SARIO sought by DDMI does not advance the policy objectives underlying the CCAA, is not in accordance with the guiding principles for exercise of a Court's discretion under section 11 of the CCAA, and should not be granted. DDMI seeks to confer on itself rights that go beyond its contractual entitlements, to the material prejudice of the First Lien Lenders.

28. Section 11 of the CCAA provides this Court with broad discretionary power to make any order it considers appropriate in the circumstances, subject to the restrictions set out in the CCAA.[33] However, as the Supreme Court of Canada observed in *Century Services Inc. v. Canada*

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[31] October 28 Kaye Affidavit at para 12.

[32] *Target* at para 81. **[TAB 2]**

[33] CCAA at s. 11 **[TAB 1]**; *Canada North* at para 22. **[TAB 4]**

(Attorney General), there are limits on the exercise of inherent judicial authority in a CCAA restructuring:

> … the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[34]

29. Orders granted pursuant to section 11 of the CCAA "must, in my view, be read as 'may … in furtherance of the purposes of this act, make any order it considers appropriate in the circumstances.'"[35] Section 11 of the CCAA is "is not open-ended and unfettered."[36] As the Supreme Court of Canada recently noted in *9354-9186 Quebec inc v Callidus Capital Corp*, "The discretionary authority conferred by the CCAA, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the CCAA."[37]

30. The CCAA stay of proceedings preserves the status quo as between creditors so that the insolvent company has an opportunity to reorganize itself without any creditor having an advantage over the company or any other creditor.[38] During the proceeding, the CCAA Court must balance multiple interests in order to facilitate a restructuring.[39] An order that confers an unfair advantage on one creditor, to the material prejudice of other creditors and to the detriment of the status quo is patently not a "balance".

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[34] *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 70. **[TAB 5]**

[35] *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 at para 81. **[TAB 6]**

[36] *Re Stelco Inc* (2005), 75 O.R. (3d) 5 (ONCA) at para 44. **[TAB 7]**

[37] *Callidus* at para 49. **[TAB 3]**

[38] *Lightstream Resources Ltd (Re)*, 2016 ABQB 665 ("*Lightstream*") at para 51. **[TAB 8]**

[39] *Canada North* at para 21. **[TAB 4]**

31. DDMI requests that this Court exercise its broad statutory jurisdiction pursuant to section 11 of the CCAA to vary the SARIO to permit it to retain possession of, and realize against, all of Dominion's share of the Diavik production, including diamonds in excess of the gross Cover Payments. On its face, DDMI's request is based entirely on the potential prejudice that it may experience if not permitted to hold the entirety of the Dominion Products (including amounts in excess of the value of the outstanding Cover Payments) to protect against some unsubstantiated fear that it will be under-secured.

32. At the hearing on June 19th, DDMI submitted that "nobody can demonstrate that we're oversecured with respect to the -- the holding of the diamonds" and that "applying any formulaic valuation, at least on the basis of the record before the Court today, could very well prejudice DDMI if DDMI is required to turn diamonds over." DDMI repeats such arguments in its current application, focusing on general industry discussions forecasting continuing uncertainty in the diamond markets as a result of COVID-19, and declining sales experienced by DeBeers and ALROSA in 2020 because of COVID-19 and the closure of international diamond markets. DDMI submits that "restricting DDMI to holding collateral equal to an appraisal of its value (whether it be based on DICAN or alternative metrics) places DDMI at risk of loss."

33. These fears are not a proper foundation for the extraordinary relief DDMI is requesting. First, DDMI's fears are entirely without foundation. The evidence provided by Ms. Kaye confirms that DDMI is over-secured regardless of whether the Dominion Products are valued on the basis of DICAN or recent pricing realized by Dominion in the sale of its diamonds.[40]

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[40] October 28 Kay Affidavit at paras 16-24.

34. Second, prejudice to DDMI – as one stakeholder – is not a sufficient basis for an order under section 11 of the CCAA, particularly where that order will cause material prejudice to the debtor and its other stakeholders. DDMI submitted at the hearing of Dominion's application on June 19th and now again in its application that "a balancing of the prejudice" favours the broadened relief sought by DDMI.[41] However, the interest of one creditor cannot and should not eclipse the general interest of all other stakeholders in the restructuring process, as affirmed by the Honourable Mr. Clement Gascon (as he then was) in *Boutiques San Francisco Inc.*:

> Therefore, as section 11 of the CCAA enacts and these precedents reiterate, in order to allow a debtor company to restructure itself and continue its operations, the stay of proceedings is a basic component of the maintenance of the status quo. Staying the proceedings means to suspend or freeze not only actual or potential litigation, but likewise any type of manoeuvres for positioning amongst creditors. This obviously includes the possibility of creditors seeking to repossess their goods in the hands of the debtor company who, to the contrary, should be allowed to continue operating as a going concern while protected under the CCAA.
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> …
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> Surely, maintaining the status quo involves balancing the interests of all affected parties and avoiding advantages to some over the others. Under the CCAA, the restructuring process and the general interest of all the creditors should always be preferred over the particular interests of individual ones.[42] [Emphasis added]

35. DDMI has failed to demonstrate that it is experiencing any more severe or different prejudice from any other stakeholder in this proceeding. In particular, the requested relief causes material prejudice to the First Lien Lenders, who: (a) have a priority ranking security interest in Dominion's share of the Diavik production, subject only to DDMI's security in respect of the Cover Payments; (b) who posted $105 million in letters of credit to secure Dominion's obligations to DDMI for its proportionate share of abandonment and reclamation obligations at the Diavik

[41] June 19th Transcript at p. 90:30; DDMI Bench Brief at paras 24 – 26.

[42] *Boutiques San Francisco Inc., Re,* [2004] RJQ 986 (SC) at paras 21-23. **[TAB 9]**

Mine on March 11, 2020 – less than 6 weeks before commencement of these CCAA proceedings, and (c) who remain subject to the CCAA stay and unable to enforce their own security.

36. Third, DDMI fails to account for, or make any mention of, the fact that its security interest under the JVA attaches not only to Dominion's share of the Diavik production, but also to Dominion's 40% interest in the entirety of the Diavik mine's real and personal property, including all mining claims, mining leases, equipment, personal property, goods and money.

37. Finally, if DDMI wishes to retain all production from the Diavik Mine, the JVA provides it with a process to do so. Pursuant to section 9.4(e) of the JVA, if Dominion fails to pay one or more outstanding cover payments to DDMI, DDMI may elect to purchase all right, title and interest of Dominion in the Diavik Joint Venture at a purchase price equal to 80% of fair market value. In doing so, it takes both the benefits and burdens of that interest. The relief currently sought by DDMI is a request to achieve this result without also assuming the associated burdens, instead diverting such burdens to be borne by other stakeholders of Dominion and, in particular, the First Lien Lenders.

38. Dominion owns 40% of diamond production from the Diavik mine, subject only to the security interests it has granted. In the normal course, pursuant to the terms of the Diamond Production Splitting Protocol (Version No. 4), DDMI is required to deliver Dominion its proportionate share of all diamond production "at the time of each GNWT valuation" or, for gem quality diamonds, after the final result of the auction at the Antwerp Facility.[43] Paragraph 16 of the SARIO varies this arrangement solely for the purposes of giving effect to DDMI's security by permitting DDMI to "hold an amount of Dominion Diamond's share of production from the Diavik

[43] Supplemental Affidavit of Thomas Croese, sworn May 7, 2020 at Confidential Exhibit 4.

Mine equal to the total value of the JVA Cover Payments made by DDMI (the "Dominion Products") … 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."

39. DDMI now seeks to broaden this relief "just in case" the current uncertainty in the diamond markets result in diamond prices being lower than the DICAN valuations, "just in case" a surplus in supply materializes in the international diamond markets which drives prices down, and "just in case" a second wave of COVID-19 causes a further interruption to international diamond sales. In other words, DDMI seeks to divert value otherwise available to Dominion and its stakeholders to its sole and only benefit on the basis of a contingency, in circumstances where: (a) it already has ample other security over all of Dominion's share of the other Diavik Joint Venture assets and properties, and (b) the evidence establishes that DDMI is not only over-secured based on the value of the Dominion Products currently held, but significantly over-secured. Such relief contradicts at the most fundamental level the scope and purpose of section 11 of the CCAA.

40. Not surprisingly, the Monitor objected in its Fifth Report to the relief sought by DDMI "[a]s a matter of principle".[44] The Monitor submitted that, "DDMI should be entitled to hold Dominion's diamonds in an amount that is sufficient to cover the amount of the cumulative Cover Payments made by DDMI, but not to hold diamonds of a value exceeding the cumulative Cover Payments."[45] At the hearing of Dominion's application on June 19th, counsel for the Agent advised this Court that the First Lien Lenders "were prepared, based on the monitor's recommendations, to live with what the monitor has to say."[46]

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[44] Fifth Report of the Monitor, FTI Consulting Canada Inc., dated June 18, 2020 ("Monitor's Fifth Report") at page 19.

[45] Monitor's Fifth Report at page 19.

[46] June 19th Transcript at p. 116:30-32.

41. To the extent that DDMI's submissions are based on the alleged inadequacy of DICAN as a valuation method for ascertaining the Dominion Products that DDMI is entitled to retain, the portion of paragraph 16 of the SARIO incorporating DICAN as the method of valuing Dominion's production which DDMI now opposes, is the very relief which DDMI sought from this Honourable Court during the initial stages of these proceedings. DDMI's current assertion that such valuation was incorporated at the request of "the Monitor, Dominion Diamond and the stakeholders that supported the process" is false.[47] At the hearing of DDMI's opposition to the terms of the proposed Amended and Restated Initial Order on May 8, 2020, DDMI sought an Order providing, among other things:

> DDMI 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 JVA Cover Payments made by DDMI. The share of production shall be held at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "PSF") and the value of the Dominion Diamond's share of production to held at the PSF shall be determined based on royalty valuations performed from time to time at the PSF by the GNWT.[48] [Emphasis added]

42. DDMI's own evidence establishes that:

(a) DICAN is an independent company wholly separate from both Dominion and DDMI which provides independent resource evaluation and diamond valuation services to the Governments of the Northwest Territories and Ontario;

(b) DICAN values production from the Diavik mine on a monthly basis, At each valuation, DICAN assess the value of production from Diavik, which it then later uses to compare assessed values to royalties, which are paid based on sales price;

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[47] October DDMI Bench Brief at para 2.

[48] May DDMI Bench Brief, dated May 6, 2020 at Tab 1.

(c) for diamonds that are mechanically rifled, DICAN applies the same value to Dominion's share of production as to DDMI's share. For diamonds that are intelligently rifled, value may differ but DDMI expects that values attributed as between Dominion's and DDMI's shares of production are consistent; and

(d) the same sorting process and valuation process for production from Diavik have been in place for years.[49]

43. DDMI further submits that the Dominion Products "would not exist" without DDMI continuing to make Cover Payments, suggesting the existence of a correlation between the Dominion Products it is holding and the Cover Payments which have been made since the date of the Initial Order.[50] There is no such correlation. The amount of a Cover Payment, and the diamonds produced from the Diavik Mine immediately following that Cover Payment, are not connected. The Dominion Products exist because, among other things, Dominion (or its predecessor) have invested in excess of $3 billion in the Diavik Mine over the past 15 years.[51] The Dominion Products exist because Dominion has made cash call payments of approximately $760 million in respect of the Diavik mine over the past three years.[52]

44. DDMI's position essentially requests that the continuing value of the substantial investment made by Dominion in the Diavik Mine should be diverted to DDMI's sole benefit, to the exclusion of every other stakeholder of Dominion, "just in case" any of the contingencies noted above were to materialize. As the Monitor noted in its Fifth Report, and as the Court determined

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[49] Affidavit #3 of Thomas Croese, sworn June 16, 2020 (the "Third Croese Affidavit") at paras 20 – 23; June 19 Transcript at p. 122:33 – 124:16.

[50] October DDMI Bench Brief at para 24.

[51] May 6 Kaye Affidavit at para 9.

[52] May 6 Kaye Affidavit at para 9.

when limiting DDMI's rights to the value of Dominion's share of the Diavik production equal to the quantum of Cover Payments (as determined by the DICAN valuation), DDMI is not entitled to divert this value. It is value owned by Dominion for the benefit of its stakeholders, including the First Lien Lenders who have invested significant funds in Dominion's operations, including during the CCAA.

45. DDMI is seeking extraordinary relief from this Court allowing it to realize against Dominion's property during the pendency of a CCAA proceeding in which Dominion is attempting to restructure for the benefit of all stakeholders and in which no other secured creditor is currently entitled to realize on their security. As noted in Mr. Bell's recent affidavit, Dominion has continued since issuance of the Press Release on October 9, 2020 both to remain focused on finding a restructuring option that will be in the best interest of Dominion and its stakeholders, and to explore alternate scenarios if a going concern transaction fails, including preparation of a liquidation analysis.[53]

46. In the Agent's submission, the relief sought by DDMI not only fails to further the remedial objectives of the CCAA, but gives DDMI an advantage over Dominion and its stakeholders, a result expressly rejected in the jurisprudence as repugnant to the objectives of the CCAA. The Agent submits that the SARIO should not be revisited or overridden.

C. The DDMI Realization Process is not Commercially Reasonable or Transparent

47. In the alternative, if this Court determines to grant the relief requested by DDMI, the Agent submits that this Court should not approve the DDMI Realization Process as currently proposed. The Agent has serious concerns about the DDMI Realization Process on the basis that it is not: (a)

[53] Third Bell Affidavit at paras 29 and 31.

commercially reasonable; (b) transparent with clear and precise information and reporting requirements; or (c) value maximizing in the circumstances.

48. On October 23, 2020, the Agent received a copy of DDMI's proposed Realization Process (the "**DDMI Realization Process**").[54] DDMI's counsel advised that the proposed DDMI Realization Process remained subject to revision or modification based on additional comments received from DDMI. Accordingly, the Agent has not undertaken a detailed analysis of the concerns it has with the proposed DDMI Realization Process in this Bench Brief since the document may change substantially between now and the hearing of DDMI's application on October 30, 2020. For now, the Agent offers the following significant, high level concerns with the DDMI Realization Process:

(a) It is not commercially reasonable as it contains no checks or balances to protect Dominion and its stakeholders (including the First Lien Lenders). DDMI controls both the input (i.e. the quantum of cash calls) and the output (i.e. the realization of the Dominion Products in satisfaction of such cash calls). The unilateral and excessive control which DDMI exercises over cash calls is a central feature of the Notice of Civil Claim filed by Dominion against DDMI in the Supreme Court of British Columbia in which Dominion alleges that DDMI has improperly used its controlling position in the Diavik Joint Venture to prioritize its own interests and the interests of its parent, Rio Tinto, over the interests of its joint venture partner - Dominion. Dominion notes in the Notice of Civil Claim that, "In 2019, costs rose approximately 7% above the stretch plan, while total carats recovered were 8.5%

[54] A prior draft of the Realization Process had been provided by DDMI's counsel to the Agent in September, however the Agent was advised that the proposed Realization Process circulated on October 23, 2020 superseded the earlier draft in all respects.

below plan…in the first quarter of 2020, cash costs were more than 19% above DDMI's stretch plan, while at the same time carats recovered were 13.6% below plan." There is nothing in the proposed DDMI Realization Process that would preclude DDMI from manipulating cash calls to ensure that all Dominion's share of production from the Diavik Mine is retained for its own benefit.

(b) Protections for Dominion and its stakeholders (including the First Lien Lenders) in the DDMI Realization Process are particularly important if DDMI is entitled under the DDMI Realization Process to realize upon a portion of the Diavik production that rightfully belongs to Dominion and that is secured in favour of the First Lien Lenders, as opposed to only that portion to which DDMI's security attaches. The DDMI Realization Process, as drafted, provides little insight, control or protection to Dominion or the Agent in respect of such property, notwithstanding the significant interest of each therein.

(c) DDMI has no motivation under the proposed Realization Process to maximize the value of the Dominion Products above the outstanding Cover Payments. Any failure of DDMI to maximize value is borne directly by Dominion's stakeholders and, in particular, the First Lien Lenders that have posted $105 million in letters of credit in respect of the Diavik Mine and which have a first priority claim to any value realized in excess of the Cover Payments.

(d) The process is not transparent or potentially value-maximizing in the circumstances as it permits DDMI to "sell, transfer and convey the DDMI Collateral to any person on such terms and conditions of sale as DDMI, in its discretion, may deem or consider appropriate." Dominion has no assurances that DDMI is achieving the best

price or is not selling at a discount in exchange for a guaranteed third party sale. Any sale process permitted under the DDMI Realization Process must be public and ensure the highest value possible for Dominion's share of the Diavik production is obtained.

(e) There are no parameters whatsoever regarding the timing for DDMI's sale of the Dominion Products. The proposed DDMI Realization Process provides DDMI complete and sole discretion to "act at once in respect of the DDMI Collateral." There is no obligation on DDMI to sell during periods when market demand for diamonds and pricing is high. DDMI's complete discretion in respect of timing for realizing on the Dominion Products permits DDMI to do indirectly what it cannot do directly under the JVA – retain the full amount of Dominion's share of the Diavik production to secure future, contingent amounts which may become due and owing by Dominion at some later date.

(f) The annual cover payment cycle compared to diamond production at Diavik shifts between DDMI and Dominion over the course of a year. DDMI's evidence is that "the cash calls made of the Participants are highest during the second quarter of each year" and "[t]he total cash calls to the end of July represent approximately 70% of the total cash call obligations for the 2020 calendar year".[55] Based on this cycle, diamond production should meet and exceed outstanding Cover Payments during the Fall each year. The effect of DDMI's proposal is to permit it to retain possession of Dominion's property during the latter part of each year when production has met and exceeded the quantum of outstanding Cover Payments. A

[55] Affidavit of Thomas Croese, sworn April 30, 2020 at para 37.

regular schedule based on the annual cover payment cycle must be established for the benefit of Dominion and its stakeholders including, most importantly, the First Lien Lenders. As the Alberta Court of Appeal has previously noted, "[m]arket participants want certainty" and commercial reasonableness must be judged by "what can reasonably be expected of participants in the market in which the particular transaction took place".[56]

(g) Related to the previous two sub-paragraphs, the DDMI Realization Process is commercially unreasonable because it allows DDMI to hold all of the Dominion Products, regardless of their value as compared to outstanding Cover Payments, until the end of life of the Diavik Mine on the expectation that future amounts may become due and owing by Dominion. Such a result is commercially absurd and a departure from the JVA. DDMI proposes to divert value to itself that is owned by Dominion for the benefit of Dominion's other stakeholders. Such a result significantly and unduly prejudices all Dominion's stakeholders other than DDMI.

(h) The DDMI Realization Process departs significantly in substance from the "key principles" outlined in the Fourth Croese Affidavit upon which DDMI relies in support of its requested relief. For example, in the Croese Affidavit, Mr. Croese alleges that "DDMI Collateral will be treated the same as DDMI product (including using the same pricebooks) and handled in the same way DDMI handles its own 60% share." The proposed DDMI Realization Process in fact provides that "the DDMI Collateral shall, <u>whenever possible</u>, be treated in the same <u>or a substantially similar fashion</u> as the DDMI production from the Diavik Mine." By way of further

[56] *Nothwest Equipment Inc. v. Daewoo Heavy Industries America Corp.*, 2002 ABCA 79 at paras 56-57. **[TAB 10]**

example, Mr. Croese states in the Croese Affidavit that "DDMI Collateral will be … phased into the market over time to avoid a high volume of product being offered at once." Nowhere is this phased approach contained in the proposed DDMI Realization Process which, as noted above, provides DDMI with sole and complete discretion regarding how and when the Dominion Products are sold.

(i) It does not provide any information rights or transparency to the Agent, notwithstanding that the DDMI Realization Process proposes to give DDMI authority to realize upon a portion of the Diavik production that rightfully belongs to Dominion and in which the Agent holds a first priority security interest. This complete lack of transparency with respect to the Agent is particularly problematic since, according to DDMI's own evidence, the Diavik mine is approaching its end of life in 2025. The First Lien Lenders have posted $105 million in letters of credit in respect of the Diavik Mine. The Agent will need to monitor, and work with, DDMI for a significant number of years. For DDMI to submit that the Agent must do so in a vacuum is not tenable.

(j) The DDMI Realization Process completely excludes consideration of the fact that DDMI's security interest under the JVA attaches not only to the Dominion Products, but also to Dominion's 40% interest in the entirety of the Diavik Mine's real and personal property, including all mining claims, mining leases, equipment, personal property, goods and money.

49. In short, the DDMI Realization Process is fatally flawed. All risk associated with DDMI's realization of the Dominion Products is borne by Dominion's stakeholders and, in particular, the First Lien Lenders. The Agent submits that the DDMI Realization Process must be significantly

revised to account for, and ensure protection of, the interests of Dominion's other stakeholders in the Dominion Products. Such balancing of interests goes to the heart of section 11 of the CCAA and must limit the exercise of discretion by this Court under section 11 of the CCAA in considering DDMI's proposed Realization Process.

PART V - SUMMARY

50. The relief sought by DDMI is antithetical to the most fundamental objectives of the CCAA and should not be granted by this Court. It is nothing more than an effort by DDMI to appropriate value from Dominion and its stakeholders to which it is not entitled, while leaving all risk, all loss, and all burdens to be borne by the First Lien Lenders and Dominion's other stakeholders. It seeks to vary a previous, binding Order of this Court which was granted at its request, for its benefit, and on which Dominion's other stakeholders have relied, while not complying with this Court's May 8th Order by retaining diamonds which this Court directed be immediately delivered to Dominion. Such behaviour is materially prejudicial to the First Lien Lenders and Dominion's other stakeholders and should not be countenanced by this Honourable Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF OCTOBER, 2020

OSLER, HOSKIN & HARCOURT LLP

Marc Wasserman / Michael De Lellis / Emily Paplawski
Counsel to Credit Suisse AG

TABLE OF AUTHORITIES

TAB	CASE
1.	*Companies' Creditors Arrangement Act*, RSC 1985, c C-36
2.	*Target Canada Co. (Re)*, 2016 ONSC 316
3.	*9354-9186 Quebec inc v Callidus Capital Corp*, 2020 SCC 10
4.	*Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550
5.	*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60
6.	*U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662
7.	*Re Stelco Inc* (2005), 75 O.R. (3d) 5 (ONCA)
8.	*Lightstream Resources Ltd (Re)*, 2016 ABQB 665
9.	*Boutiques San Francisco Inc., Re,* [2004] RJQ 986 (SC)
10.	*Nothwest Equipment Inc. v. Daewoo Heavy Industries America Corp*., 2002 ABCA 79

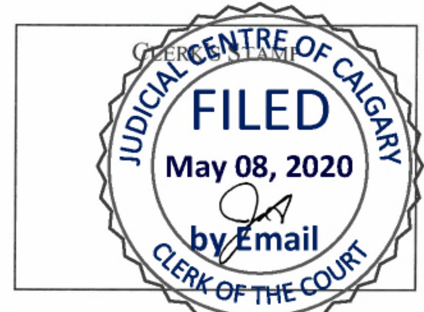
This is Exhibit "L"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta



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	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BLAKE, CASSELS & GRAYDON LLP** Barristers and Solicitors 3500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309 File: 00180245/000013

COM
May 8, 2020
Justice Edisvik

AFFIDAVIT OF KRISTAL KAYE

Sworn on May 6, 2020

I, Kristal Kaye, of Calgary, Alberta, MAKE OATH AND SAY THAT:

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC ("**Dominion Diamond"**) and Dominion Diamond Canada ULC ("**Dominion Canada"**), two of the applicants in these proceedings, as well as a director of Dominion Canada. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true

2. Dominion Diamond and Dominion Canada, together with the other applicants in these proceedings, being Dominion Diamond Delaware Company, LLC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, and Dominion Finco Inc., are collectively referred to in this affidavit as the "**Applicants"**.

3. I swear this affidavit in relation to the court hearing related to the Diavik joint venture and the request by Diavik Diamond Mines (2012) Inc. ("**DDMI"**) to be permitted to make cover payments as set out in the affidavit of Thomas Croese sworn April 30, 2020 (the "**Croese Affidavit**").

The Croese Affidavit

4. At the outset, the Applicants do not agree with much of what is contained in the Croese Affidavit and, in the Applicant's view, the Croese Affidavit paints an incomplete picture of the facts, does not accurately portray the true state of affairs and in certain places is vague on details which creates false impressions. While I do not address all of the concerns the Applicants have with the Croese Affidavit, I do wish to address certain matters.

5. At paragraphs 6 and 7 of the Croese Affidavit, Mr. Croese references the second cash call for the last two weeks of April. Mr. Croese is incorrect in his assertion that Dominion Diamond requested that the payment schedule be altered. Rather, DDMI had incorrectly altered and moved up the payment schedule contrary to a Management Committee resolution. DDMI attempted to issue a cash call invoice on April 9, 2020 when it should have been issued on April 15, 2020. Dominion Diamond wrote to DDMI to question why DDMI had moved up the billing dates and as set out in the emails attached as Exhibit A to the Croese Affidavit, Dominion Diamond asked DDMI to comply with the Management Committee resolution which provided for a cash call invoice dated April 15 and due on April 22. Mr. Croese confirms this Management Committee resolution and the appropriate timing later in his affidavit at paragraph 17.

6. At paragraph 28 of the Croese Affidavit, Mr. Croese references but does not attach an April 27, 2020 letter from Dominion Diamond's counsel to DDMI's counsel. Mr. Croese does state in his affidavit that "DDMI refutes and disagrees with the characterization of the Manager's operation of the Joint Venture and various other accusations set out in the April 27 Correspondence." What is clear from Mr. Croese's statement is that Dominion Diamond has had for some time, and continues to have, concerns with the way in which DDMI has operated and continues to operate the joint venture and the Diavik mine and that as Manager it has breached its obligations to Dominion Diamond. While Mr. Croese may disagree with Dominion Diamond's position and concerns, Dominion Diamond has expressed concerns related, but not limited, to:

(a) The operational and financial performance of the Diavik mine generally and DDMI's repeated failure to meet costs budgets, production (ore processed) plans and diamond recovery budgets, including a significant failure to meet these in the January to March period of this year as against the approved budget, which budget is noted at paragraph 35 of the Croese Affidavit; many of which failures preceded the COVID-19 pandemic;

(b) The mining of the Diavik mine in a manner inconsistent with the annual planned program and appears to be a result of DDMI adopting a high-grade approach, which makes little economic sense and is destructive of value for the joint Venture and its participants;

(c) The operation of the Diavik mine since March in light of the current COVID 19 environment;

(d) The operation of the Diavik mine since March in light of the current status of the diamond industry, including sales channels, diamond prices and current diamond stockpiles;

(e) The operational and financial performance of the Manager in relation to the Diavik mine including the amount of the bi-weekly cash calls;

(f) The inability of the Manager to achieve appropriate cost reductions; and

(g) The lack of appropriate consultation with Dominion Diamond and the failure to properly take into consideration the interests and views of Dominion Diamond.

7. In the view of the Applicant's, the frequency and amount of the cash calls in this particular environment could have a negative impact on the restructuring efforts of the Applicants. All of the above is prejudicial to Dominion Diamond.

8. As noted in my affidavit of April 21, 2020 sworn in support of the initial CCAA application, in the first three months of 2020, Dominion Diamond has made cash call payments in respect of the Diavik joint venture in the amount of $68.9 million. In addition, a further cash call payment was made by Dominion Diamond in early April 2020, for the April 1-15 period, in the amount of $17.2 million.

9. In total, in 2020 Dominion Diamond has made cash call payments totalling approximately $86 million. In just over three years, Dominion Diamond has paid approximately $760 million in cash calls in relation to the Diavik joint venture. Over the last 15 years, in excess of $3 billion has been contributed to the Diavik joint venture by Dominion Diamond or its predecessor as 40% participant.

10. At paragraph 35 of the Croese Affidavit, Mr. Croese states that the applicable program and budget was approved by both DDMI and Dominion Diamond. What is not referenced in paragraph 35 is the fact that the applicable Management Committee Resolution notes the concerns Dominion Diamond had with suggested costs and specifically states that formal collaboration via a face-to-face meeting is required to identify further cost reduction opportunities for 2020. Of course, those cost concerns were months before the onset of COVID 19 and the corresponding global ramifications has made the concerns noted above all the more acute.

11. At paragraph 38 of the Croese Affidavit, DDMI references DDMI's experience with respect to the impact of COVID 19 on the diamond industry and implies that in certain ways it is business as usual. If that is the impression that was created by the DDMI affidavit, that impression is far from accurate. While there are certain sales that undoubtedly have taken place, such as private sales as noted by DDMI, these sales are a fraction of what ordinarily takes place as the significant majority of the regular diamond channels are effectively closed.

12. It is also worthy of note that the Croese Affidavit makes very general statement about DDMI's sales saying that an affiliate of DDMI has achieved "material sales during March and April 2020." There is no evidence or details in the Croese Affidavit of what "material" means, how the volume of such sales compares to sales in the preceding several months and years and what level of discount (or reduced sale price) these sales occurred at as compared to sales in the

preceding several months and years. It is unknown if the discounts were "material", what discounts were offered, and which sales were offered and rejected.

13. In a recent May 3 article by Rapaport News, it was confirmed that while some diamond sales could still take place, Debeers (the world's largest diamond producer) "suspended production at most of its mines" and "Almost all other diamond producers have halted or significantly reduced supply, with some mines unlikely to return to production." The May 3 article also states that "On Friday, India extended its nationwide lockdown by two weeks, raising the question of when diamond manufacturing would revert to normal, especially in the city of Surat, which produces more than 90% of the world's polished goods." Attached as **Exhibit "A"** is the May 3, 2020 article by Rapaport News.

Diavik Joint Venture Documents

14. Attached hereto and marked as **Exhibit "B"** is a copy of an invoice from DDMI to Dominion Diamond dated March 30, 2020 in the amount of $17,200,000. with the description "April Cash Requirement – 1st cash call." Dominion Diamond paid this cash call.

15. As described in my affidavit sworn in these CCAA proceedings on April 21, 2020, Dominion Diamond (as successor to Aber Resources Limited) and DDMI (as successor to Kennecott Canada Inc.) are party to the Diavik Joint Venture Agreement (the "**Diavik JVA**") dated as of March 23, 1995 between Aber Resources Limited and Kennecott Canada Inc., as amended. Attached hereto and collectively marked as **Confidential Exhibit "1"** is a copy of the Diavik JVA, together with (a) a Diavik JVA amending agreement dated December 1, 1995, (b) a Diavik JVA amending agreement (no. 2) dated January 17, 2002, and (c) a Diavik JVA amending agreement (no. 3) dated March 3, 2004.

16. Attached hereto and marked as **Confidential Exhibit "2"** is a copy of an Agreement to Establish a Protocol for Diamond Production Splitting dated January 7, 2003, between Diavik Diamond Mines Inc. (a predecessor entity to DDMI) and Aber Diamond Mines Limited (a predecessor to Dominion Diamond).

17. Attached hereto and marked as **Confidential Exhibit "3"** is a copy of Schedule A – Diamond Production Splitting Protocol (Version No. 4) entered between Dominion Diamond and DDMI.

18. Attached hereto and marked as **Confidential Exhibit "4"** is a copy of an e-mail sent to me by Thomas Croese on April 9, 2020 at 5:29 PM attaching the Diavik Joint Venture Updated 2020 Cash Call Schedule.

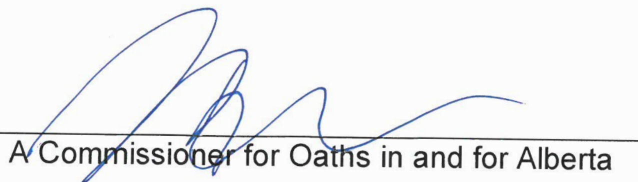
19. Attached hereto and marked as **Confidential Exhibit "5"** is a copy of a redacted e-mail sent by Sean Collins of McCarthy Tetrault LLP, counsel to DDMI to Peter Rubin of Blake, Cassels & Graydon LLP, counsel to the Applicants, dated April 30, 2020. The portions of Confidential Exhibit "5" that have been redacted pertain to without prejudice discussions among Mr. Rubin and Mr. Collins.

20. Confidential Exhibits "1" to "5" contain confidential and commercially sensitive information regarding the Diavik JVA and the business arrangements among Dominion Diamond and DDMI that, if disclosed, could be determinantal to Dominion Diamond's and DDMI's commercial interests and these CCAA proceedings. The Applicants request that Confidential Exhibits "1" to "5" be sealed on the court record. I don't believe that any stakeholder will be prejudiced by this relief.

SWORN BEFORE ME at Calgary, Alberta this 6th day of May, 2020.	
A Commissioner for Oaths in and for the Province of Alberta Morgan Crilly Barrister & Solicitor	**KRISTAL KAYE**

TAB A

This is Exhibit "**A**" referred to in the Affidavit of **KRISTAL KAYE** sworn before me this 6 day of May, 2020.



A Commissioner for Oaths in and for Alberta

Morgan Crilly
Barrister & Solicitor

Rough Markets

Don't Ban Rough Buying, De Beers Urges

Compelling trade members not to purchase is "counterproductive," says CEO Bruce Cleaver.

May 3, 2020 9:37 AM By Rapaport News

RAPAPORT... De Beers CEO Bruce Cleaver has called on the trade to allow rough purchases, assuring manufacturers the company won't require them to buy in the weak market.

"We will only sell [rough] when the demand is such that it can create sustainable value for all of us," the executive wrote in a blog post Friday. "However, just as we are not compelling our clients to purchase, we strongly believe it is counterproductive for any part of the industry to compel them not to purchase."

Cleaver's plea comes after the Gem & Jewellery Export Promotion Council (GJEPC) and other Indian trade organizations called on the nation's diamond sector to pause rough-diamond imports for 30 days, beginning on May 15. The move would improve the Indian industry's liquidity situation and deplete inflated polished inventories, the trade bodies explained.

Without explicitly referencing the Indian trade groups' appeal to their members, Cleaver argued that supply had already been significantly reduced after De Beers suspended production at most of its mines. "Almost all other diamond producers have halted or significantly reduced supply, with some mines unlikely to return to production," he added. De Beers cut its production guidance for 2020 to 25 million to 27 million carats, more than 20% below its initial projection, Cleaver noted.

The company also canceled its March sight and is offering 100% deferrals at sight 4, which begins Monday. Sightholders are likely to defer the vast majority of purchases to later in the year, as weak consumer demand and the shutdown of India's cutting industry have diminished appetite for rough.

On Friday, India extended its nationwide lockdown by two weeks, raising the question of when diamond manufacturing would revert to normal, especially in the city of Surat, which produces more than 90% of the world's polished goods.

Marketing message

Meanwhile, Cleaver urged the industry to capitalize on the diamond's symbolism, as consumers will seek to purchase "fewer, but more meaningful things" as they move out of lockdown. Signs of pent-up demand from delayed weddings, and self-purchases to reward hardships that have been overcome, are starting to show in China as the lockdown there has eased, the CEO commented. People are visiting stores and shopping malls again, he said.

In its communication with consumers over the coming months, De Beers will emphasize the role diamonds play in shaping a better world and in forging meaningful connections, he stressed.

"Just as they have had to find innovative ways to stay connected with loved ones, we will find new ways to connect with them," he said.

"Throughout time, the diamond has served as a powerful symbol of connection and meaning," he wrote. "It has always been attached to life's most precious moments and relationships and represented a store of value, but increasingly we believe a diamond is becoming a store of values."

Image: Bruce Cleaver. (Joe McGorty/De Beers)

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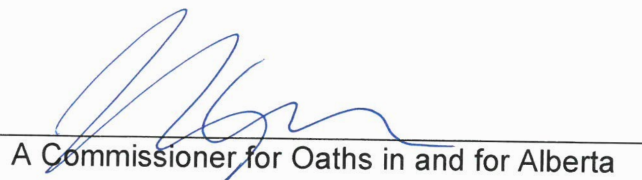
TAB B

This is Exhibit "**B**" referred to in the Affidavit of **KRISTAL KAYE** sworn before me this 6 day of May, 2020.



A Commissioner for Oaths in and for Alberta

Morgan Crilly
Barrister & Solicitor

RioTinto

Diavik Diamond Mines (2012) Inc.
P.O. Box 2498
Suite 300, 5201-50th Avenue
Yellowknife, NT X1A 2P8 Canada
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC
900 – 606 4 Street SW
Calgary, AB T2P 1T1
Canada

Attention: DDC-AP

DATE: **30-MAR-20**

INVOICE: **DDC 04-20A**

DESCRIPTION		AMOUNT
	100%	**40%**
April Cash Requirement – 1st cash call	43,000,000.00	$17,200,000.00
GST Registration # 83952 4048RT		

TOTAL CASH CALL **$17,200,000.00**

(DUE ON April 06, 2020)

CONFIDENTIAL EXHIBIT "1"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "2"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "3"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "4"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "5"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

This is Exhibit "M"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

____

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

pl

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN ~~BANKRUPTCY~~ AND INSOLVENCY 1202357
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	**AFFIDAVIT**
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AFFIDAVIT OF KRISTAL KAYE

Sworn on October 28, 2020

I, Kristal Kaye of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Canada ULC (“**Dominion Canada**”), and Dominion Diamond Delaware Company, LLC (“**Dominion Delaware**”), three of the applicants in these proceedings , a director of Dominion Canada and Dominion Diamond Marketing Corporation (“**Dominion Marketing**”), and I also hold other director and officer positions with certain other non-CCAA applicant entities affiliated with Dominion Diamond. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. I make this affidavit in response to the affidavit of Thomas Croese sworn October 19, 2020 (the “**Croese Affidavit**”) and in opposition to DDMI’s application for:

(a) an amendment to the Second and Amended Restated Initial Order of this Court dated June 19, 2020 (the “**SARIO**”) that would allow DDMI to retain all of Dominion’s share of the Diavik Mine production (as opposed to only the Additional Diamond Collateral, as defined below); and

(b) an order permitting DDMI to implement its proposed realization process (the “**DDMI Sale Proposal**”) for the sale of the diamonds currently held by DDMI (the “**Additional Diamond Collateral**”) as further security for the “**Cover Payments**” made by DDMI pursuant to the SARIO.

3. For the reasons set out below, the Applicants reject DDMI’s assertion that DDMI requires further collateral to secure the Cover Payments and oppose DDMI’s application to vary the SARIO to allow DDMI to hold any more of Dominion’s production from the Diavik Mine beyond the Additional Diamond Collateral.

4. With respect to the DDMI Sale Proposal, the Applicants submit that any process that is implemented to sell the Additional Diamond Collateral must be fair, transparent, and provide for the best realization value available in the circumstances.

5. The Applicants should be permitted to, and are able and prepared to, sell the Additional Diamond Collateral themselves, but if DDMI is to be responsible for the sale, modifications to the DDMI Sale Proposal are required.

(1) Background

6. I have previously sworn several affidavits in these CCAA proceedings, including my affidavit of April 21, 2020 (the "**April Affidavit**") and May 6, 2020 (the "**May Affidavit**"). Background facts relevant to DDMI's application are set out in my April and May Affidavits.

7. If not defined in this affidavit, capitalized terms have the meaning given to them in my April and May Affidavits.

(2) DDMI's Cash Calls

8. As is described in my April Affidavit, one of the significant financial burdens faced by Dominion prior to its filing for CCAA protection were the bi-monthly "**Cash Calls**" issued by DDMI with respect to Dominion's forty percent share of the operating expenses of the Diavik Mine, which DDMI has been running notwithstanding the disruptions to the diamond industry sales channels caused by the COVID-19 pandemic.

9. As is described in both the Affidavit of Mr. Croese sworn April 30, 2020 and my May Affidavit, pursuant to the Joint Venture Agreement that governs Dominion and DDMI's participation in the Diavik Mine joint venture, the operation of the Diavik Mine is conducted in accordance with an approved program and budget (the "**Approved JV Budget**").

10. In the period from April 22, 2020 when the Applicants filed for CCAA protection, until September 30, 2020, DDMI has made the following Cash Calls (which are compared in the table below to the amounts payable under the Approved JV Budget for Dominion's 40% share):

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	Actual	Over/ (Under) Budget	Approved JV Budget	Actual	Over/ (Under) Budget
2nd April Cash Call	17,283,400	16,000,000	(1,283,400)	13,294,923	12,093,726	(1,201,197)
1st May Cash Call	11,283,400	17,600,000	6,316,600	8,679,538	13,303,099	4,623,561
2nd May Cash Call	11,283,400	12,000,000	716,600	8,679,538	9,070,295	390,757
1st June Cash Call	8,483,400	5,600,000	(2,883,400)	6,525,692	4,232,804	(2,292,888)

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	**Actual**	**Over/ (Under) Budget**	**Approved JV Budget**	**Actual**	**Over/ (Under) Budget**
2nd June Cash Call	8,483,400	10,000,000	1,516,600	6,525,692	7,558,579	1,032,887
1st July Cash Call	6,883,400	8,400,000	1,516,600	5,294,923	6,349,206	1,054,283
2nd July Cash Call	6,883,400	8,000,000	1,116,600	5,294,923	6,046,863	751,940
Exploration	-	1,977,282	1,977,282	-	1,494,544	1,494,544
1st Aug Cash Call	5,883,400	8,000,000	2,116,600	4,525,692	6,046,863	1,521,171
2nd Aug Cash Call	5,883,400	6,400,000	516,600	4,525,692	4,837,491	311,799
1st Sept Cash Call	4,283,400	8,800,000	4,516,600	3,294,923	6,651,550	3,356,627
Exploration	-	80,293	80,293	-	60,690	60,690
2nd Sept Cash Call	4,283,400	7,200,000	2,916,600	3,294,923	5,442,177	2,147,254
TOTAL to September 30th	**90,917,400**	**110,057,575**	**19,140,175**	**69,936,462**	**83,187,887**	**13,251,425**

11. Further Cash Calls in the month of October are as follows:

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	**Actual**	**Over/ (Under) Budget**	**Approved JV Budget**	**Actual**	**Over/ (Under) Budget**
1st Oct Cash Call	6,083,400	8,800,000	2,716,600	4,679,538	6,651,550	1,972,012
Exploration	-	664,634	664,634	-	502,369	502,369
2nd Oct Cash Call	6,083,400	4,800,000	(1,283,400)	4,679,538	3,628,118	(1,051,420)
TOTAL	**103,084,200**	**124,322,209**	**21,238,009**	**79,295,538**	**93,969,924**	**14,674,386**

12. As is contemplated by the SARIO, while the exercise of Dominion's creditors' rights and remedies are stayed, DDMI has the ability to make Cover Payments with respect to Dominion's

Cash Call obligations to DDMI. The amount of the above listed Cash Calls is equivalent to the amount that DDMI has paid as Cover Payments as of September 30, 2020. That is to say, as of September 30, DDMI has made Cover Payments in the amount of approximately $83.2 USD million since the Applicants were granted CCAA protection. This amount is over the Approved JV Budget by approximately $13.3 million USD or 18.9%.

13. As I described in my May Affidavit, Dominion Diamond has had for some time, and continues to have, concerns with the way in which DDMI has operated and continues to operate the joint venture and the Diavik Mine. The concerns that Dominion has raised are described in paragraph 6 of my May Affidavit, which include concerns related to the operational and financial performance of the Diavik Mine generally and DDMI's repeated failure to meet cost budgets, including a significant failure to meet the Approved JV Budget (many of which failures preceded the COVID-19 pandemic). Dominion has commenced litigation against DDMI with respect to its operation of the Diavik Mine in the British Columbia Supreme Court.

14. In light of its concerns with respect to the operation of the Diavik Mine, as is also described in my May Affidavit, Dominion has repeatedly asked DDMI to pursue appropriate cost reductions, including months before the onset of the COVID-19 pandemic. Despite these requests, as is clear from the above, DDMI's Cash Calls have continued to be in an amount well in excess of the Approved JV Budget.

15. The Applicants' concerns with respect to DDMI's operation of the Diavik Mine have continued to manifest since filing for CCAA protection. Among others, the Applicants' concerns include the following two issues:

(a) **Cash Account**: DDMI maintains a cash account to fund the operations of the Diavik Mine (the "**JV Cash Account**"), 40% of which is funded by the Applicants in respect of their proportional share of the Diavik Mine obligations. Prior to the Applicants' filing for CCAA protection (with a starting point of January 2017), the average month-end balance in the JV Cash Account has been approximately $5 million CAD. Since the Applicants' filing for CCAA protection in April, the average month-end balance in the JV Cash Account has been approximately $15 million CAD. As of the last financial reporting at September 30, 2020 I understand that the cash balance in the JV Cash Account was approximately $17 million CAD. Yet, in October, DDMI has again made Cash Calls in excess of the Approved JV Budget by approximately $2 million CAD. I am not aware of any reason for DDMI

to maintain such an increased balance in the JV Cash Account, which in effect increases the amount of Dominion's Cash Calls (and therefore the DDMI Cover Payments and the associated interest payable on these Cover Payments).

(b) **CEWS Benefit**: To the best of my knowledge, DDMI has not applied for the Canadian Emergency Wage Subsidy ("**CEWS**") benefit that has been made available to Canadian employers who have seen a drop in revenue due to COVID-19 to cover part of employee wages. A general discussion on CEWS eligibility occurred between Dominion and DDMI at a meeting held on April 20, 2020. At a third-quarter joint venture meeting held on October 21, 2020, Dominion confirmed that DDMI had not applied for the CEWS benefit. Subsequent to that meeting Dominion requested further details from DDMI in order to calculate the potential benefit available to DDMI pursuant to the CEWS. This information has not been provided to Dominion as of the date of this affidavit. If DDMI's operations have been impacted in a similar way as Dominion's by the pandemic, particularly with respect to the ability to conduct significant sales, this could be a significant benefit to DDMI and provide them with additional funds in the tens of millions of dollars, which would again reduce the amount of the Dominion Cash Calls and corresponding Cover Payments. DDMI has advised that it may apply for this subsidy in the coming months but the Dominion Cash Calls should have already been reduced.

(3) DDMI is Over-Secured (not Under-Secured)

16. DDMI's claim that the Cover Payment indebtedness of the Applicants to DDMI exceeds the gross value of the Additional Diamond Collateral is incorrect. If anything, as is set out below, DDMI is over-secured with respect to the Cover Payments on the basis of the most recent pricing information available.

Valuation of the Additional Diamond Collateral

17. Mr. Croese is correct that historically the DICAN (as defined in the Croese Affidavit) valuations have been higher than the realized value of diamonds from the Diavik Mine. However, all of the diamonds that Dominion has sold in 2020 (beginning as early as January, prior to both the COVID-19 pandemic and the Applicants' CCAA filing) have sold at a higher realized value than the DICAN valuation.

18. As noted by Mr. Croese himself at paragraph 13 of his affidavit, DDMI has also sold diamonds in September and early October of this year in excess of the DICAN valuation.

19. Below is a table showing the average price per carat that Dominion has obtained in its sales in 2020 as compared to the DICAN valuation for those same diamonds (being the DICAN valuation conducted several months prior):

Production Date	DICAN value (USD$/carat)	Sales Month	Sale value (USD$/carat)	$/carat Variance	Percentage Difference
November 2019	$90.82	January 2020	$97.56	$6.74	7%
December 2019-January 2020	$80.41/$87.85	February 2020	$93.94	$9.65	11%
February 2020	$86.13	September 2020	$90.52	$4.39	5%

20. If the DICAN values applied at the time the valuation was performed are applied to the Dominion diamonds currently held by DDMI, the total value of these diamonds is approximately $92.1 million USD:

Production Dates	Carats	DICAN USD$/ct	Total DICAN Value (USD)
April 16-May 6	51,578.47	$102.63	$5,293,436.87
May 7 - May 27	242,242.17	$73.13	$17,716,298.61
May 28 - June 17	171,587.14	$71.61	$12,286,998.25
June 18 - July 22	251,599.75	$71.87	$18,081,391.17
July 23 - 26 August	262,052.28	$74.28	$19,465,839.98
27 August-30 September	230,251.02	$83.45	$19,213,928.58
Production up to September 30	**1,209,310.83**	**$76.12**	**$92,057,893.47**

21. As set out above, as of September 30, 2020, the Cover Payments made by DDMI are approximately $83.2 million USD. The value of the Dominion diamonds being held by DDMI for this same period of time using the DICAN pricing is approximately $92.1 million USD. In other words, DDMI is over-secured by approximately $8.9 million USD, based on the DICAN valuations.

22. However, these DICAN valuations for 2020 undervalue the diamonds because of the point in time at which the valuations were done (at the height of the pandemic). If all of the diamonds currently held by DDMI for the production dates up to September 30 are valued using the most recent DICAN valuation number, $83.45 per carat, the total value of the inventory held by DDMI to secure its Cover Payments (both current to September 30) is approximately $100.7 million USD. This results in DDMI being over-secured in an amount of approximately $17.5 million USD.

23. An even more accurate way to value the Additional Diamond Collateral is to use the actual pricing obtained by Dominion in its most recent diamond sales in September of this year. If the Additional Diamond Collateral is valued at the average sales price obtained by Dominion during its September sale, being $90.52 per carat, the total value of the Additional Diamond Collateral (to September 30) is approximately $109.2 million US. DDMI is therefore over-secured by $26.0 million US.

24. In my view, Dominion's recent sales data, or in the alternative the current DICAN valuation, is the best and most accurate way to value the Additional Diamond Collateral. For clarity, Dominion is not asking this Court to revise the terms of SARIO or change the method of valuation used – it is only providing this evidence to illustrate that the position taken by DDMI with respect to the valuation of the Additional Diamond Collateral is incorrect.

Further Inaccuracies in DDMI's valuation

25. In paragraph 16(a) of the Croese Affidavit, Mr. Croese claims that an amount of 13-20% must be deduced from the gross value of the Additional Diamond Collateral to account for sale, marketing, royalty and other fees and expenses associated with selling these diamonds. According to Mr. Croese, the basis of this information is data from a recent sale of diamonds by Dominion that is found in in the Monitor's Sixth Report.

26. Mr. Croese's claim that these expenses will amount to 13-20% of the gross value of the Additional Diamond Collateral is incorrect. An estimation of 20% is too conservative (given, among other things, the fixed cost of sales that does not fluctuate materially with increased volume, except for per-stone sorting costs).

27. The actual amount of these costs for Dominion's share of production from the Diavik Mine is 11%. This accounts for Belgian taxes, GNWT royalties, private royalties and sorting and shipping costs. The estimated 13% expense value derived from the information on diamond

sales from the Monitor's Sixth Report, dated September 22, 2020, was arrived at using diamond sale figures reported on a consolidated basis and included costs associated with both the Ekati and Diavik Mines. Dominion does not own 100% of the Ekati Mine and has to pay the proportionate share of Ekati's net revenues to its JV partner, Mr. Stu Blusson. There are no other deductions or expenses that I am aware of to justify an ask of 13-20%.

28. If DDMI truly estimates that it will have to deduct an amount of 13-20% from the gross value of the Additional Diamond Collateral to account for sale, marketing, royalty and other fees and expenses associated with selling these diamonds, whereas Dominion estimates these costs to be approximately 11%, that is only further evidence that Dominion should be the party responsible for selling the Additional Diamond Collateral.

29. For the sake of accuracy, I also note that in his affidavit Mr. Croese indicates that the diamonds owed to Dominion for May 20, 2020 are in an amount of 49,832.78 carats, but the DICAN report provided to Dominion by GNWT indicates that the correct weight is 50,316.99 carats.

Projections as to Future Diamond Sales

30. I do not disagree with Mr. Croese that there is uncertainty as to how diamond prices may fluctuate in the coming months and year. Even absent the COVID-19 pandemic, diamond pricing is dynamic. However, it is important to recognize that diamond experts hold differing views with respect to what the future holds for the diamond market. For example, Paul Zimnisky Diamond Analytics ("**Zimnisky Analytics**"), a monthly subscription service that is used by financial institutions, management consulting firms, private and public corporations, governments, intergovernmental organizations and universities, takes a more optimistic view in its monthly reports for September (the "**September Zimnisky Report**") and October (the "**October Zimnisky Report**", together the "**Zimnisky Reports**") than the views contained in the secondary market sources relied on in the Croese Affidavit.

31. In the September Zimnisky Report, Zimnisky Analytics stated that:

> "While the impact of the pandemic has led to a continuation of a multi-year down-trend in diamond prices, the situation has also acted as a catalyst to expediate pre-existing supply trends that should be fundamentally supportive of prices going forward."

32. Further, the Zimnisky October Report notes that "in the weeks spanning late-August through early-September, both De Beers and ALROSA held sales in which rough was sold at levels not seen since before the pandemic".

33. Similar to the WWW Forecasts relied on by Mr. Croese in his affidavit, the Zimnisky Reports are not publicly available and have been attached to this Affidavit with the express consent of Zimnisky Analytics on the basis that they will not be disclosed due to the commercially sensitive and proprietary information contained in them. The September Zimnisky Report is attached to this affidavit as "Confidential Exhibit 1" and the October Zimnisky Report is "Confidential Exhibit 2".

34. This more positive view of the future value of diamonds contained in the Zimnisky Reports, for example, aligns with Dominion's recent sales experience. Dominion sold 99.6% of the diamonds it put to market in September at a price per carat that is significantly higher than the DICAN valuation. As noted in the Croese Affidavit, DDMI's recent diamond sales have yielded a similar result.

35. There is no reasonable basis for DDMI to assert that applying the DICAN valuation to the Additional Diamond Collateral results in DDMI being under-secured for the amounts owing to it with respect to the Cover Payments. As is set out above, the evidence demonstrates the opposite - DDMI is over-secured.

(4) DDMI Continues to Hold Diamonds Owing to Dominion

36. As is stated in my May Affidavit, prior to filing for CCAA protection on April 22, Dominion paid DDMI's first Cash Call for the month of April (the "**First April Cash Call**"). The First April Cash Call was in amount of $17,200,000.

37. Following a dispute between DDMI and Dominion as to Dominion's entitlement to the diamonds owing to Dominion by virtue of its payment of the First April Cash Call, being the diamonds with a production start of April 1, 2020 and up to April 15, 2020, in an order of May 8, 2020, this Court required DDMI to provide those diamonds to Dominion. In that order the Court stated that DDMI "shall forthwith make available for delivery" to Dominion Diamond the diamonds referenced in a confidential exhibit to my May Affidavit "for the period with the Production Start of April 1, 2020 and the Cut-Off of April 15, 2020."

38. However, DDMI has only provided Dominion with the smaller stones from that April 1 – April 15 production cycle (8 gr and below). The larger stones (10 gr to +6), approximately 7,275 carats, have not been provided to Dominion. Dominion is entitled to receive all diamonds owing to it from the April 1 – April 15 production cycle, not only these smaller stones.

(5) DDMI's Proposed Process to Monetize the Additional Diamond Collateral

39. I have reviewed the draft DDMI Sale Proposal that was circulated by counsel to DDMI on Friday October 23. This proposal is markedly different from previous proposals circulated by DDMI prior to the delivery of their court materials. The DDMI Sale Proposal eliminates the parameters previously being negotiated between the parties to ensure Dominion and its stakeholders had some assurance that DDMI would maximize the Additional Diamond Collateral. Specifically, the DDMI Sale Proposal is deficient in that:

(a) it does not identify the scope of the Additional Diamond Collateral to be sold by DDMI;

(b) it does not speak to maximizing the value of the Additional Diamond Collateral or establish a procedure which would require it to do so;

(c) it purports to "empower and authorize" DDMI to sell the Additional Diamond Collateral on any terms and conditions as it may deem or consider appropriate;

(d) it does not properly establish the basis on which DDMI would act as Dominion's agent for the purpose of selling the Additional Diamond Collateral; and

(e) it purports to distribute proceeds to Dominion's creditors without a proper adjudication of priorities.

40. In addition, the DDMI Sale Proposal does not provide for sufficient reporting to Dominion to allow it and its stakeholders to review, consider and assess the results of any sales undertaken by DDMI of the Additional Diamond Collateral.

41. Dominion has been working with the First Lien Lenders to prepare an alternative process (the "**Revised Monetization Process**") to the DDMI Sale Proposal served Friday, October 23. The Revised Monetization Process will be a fair and transparent sales process designed to maximize the value received for the Additional Diamond Collateral and provide the appropriate and necessary information to Dominion, the First Lien Lenders and the Monitor, to allow for the

appropriate degree of insight into the monetization process and exchange of information. This Revised Monetization Process will include details as to the monthly reporting that should be provided to Dominion, the Monitor, and the First Lien Lenders.

42. Both Dominion and the First Lien Lenders have provided initial comments on revised sales proposals to DDMI. Dominion is continuing to work with the First Lien Lenders on the Revised Monetization Process.

43. Dominion is prepared to sell the Additional Diamond Collateral and will be prepared to do so on the terms of the Revised Monetization Process, including providing to DDMI the monthly reporting provided for in the Revised Monetization Process.

44. Dominion has all of the infrastructure required to effectively realize value for these assets, including an excellent, secure facility, sorting abilities, quick and secure collection of cash, and the ability for the Court-appointed Monitor to oversee and ensure priority distribution of the cash proceeds to DDMI to reimburse the Cover Payments and associated expenses.

45. However, should this Court conclude that DDMI ought to be permitted to sell the Additional Diamond Collateral, certain safeguards are required to ensure that the sales process is fair and transparent and that the interests of both the Applicants and their other stakeholders are protected.

More Transparency is Required

46. If DDMI is permitted to sell the Additional Diamond Collateral, the process must be transparent. DDMI must provide monthly reporting with sufficient information to allow Dominion and its stakeholders, including the First Lien Lenders, to evaluate the pricing, marketing, and results of the sale of the Additional Diamond Collateral by DDMI. The DDMI Sale Proposal provides none of this.

47. As is set out in my May Affidavit, DDMI's lack of consultation with Dominion and failure to properly take into consideration the interests and views of Dominion was a concern to Dominion prior to the commencement of these CCAA proceedings. As Dominion and other CCAA stakeholders' interests will be directly impacted by any sale of the Additional Diamond Collateral, any realization process approved by this Court must ensure that adequate consultation occurs, including by requiring that the process is structured to maximize value, transparent and designed to give Dominion the information it needs to participate effectively.

48. There is no valid reason for DDMI to resist providing the necessary information to the Applicants and their stakeholders, particularly if sufficient safeguards are put in place to ensure protection of any confidential or commercially sensitive details.

49. The information I reviewed with respect to DDMI's proposed realization process, including Exhibit "A" to the Croese Affidavit (DDMI's Proposed Monthly Reporting Form) indicates that more information must be made available to the Applicants and their stakeholders. A transparent process must, among other things:

(a) require a prescribed level of reporting from DDMI that meets a number of criteria with respect pricing and sorting of diamonds, beyond the level of detail provided for in Exhibit "A" to the Croese Affidavit, in conjunction with copies of all detailed DICAN valuation reports so that the Applicants have some evidence as to a third-party's valuation and can confirm carat recoveries;

(b) prior to each sales cycle, Dominion should receive a report showing each category of diamond parcels and each individual "special" stone, the most recent achieved price per carat in such category and the proposed average reserve price for such category;

(c) following each sales cycle, Dominion should receive a report showing the results of the sale for each category of diamond parcels and each individual special stones, the performance versus the reserve pricing and the amount of goods which remain unsold;

(d) a right to inspect and value the sorted diamond inventory (on notice to DDMI);

(e) a month-end snapshot of current inventory, carats and estimate value (by production cycle if possible); and

(f) an ability to audit information provided by DDMI with respect to the sale of diamonds.

50. In addition to these general transparency requirements, there are further points discussed below that the Applicants view as critical to ensuring a fair process. Given that there are ongoing discussions occurring between DDMI and the Applicants at this stage, I have only provided high level comments on certain aspects of what is required of any potential realization process.

An Auction Process Should be Required

51. As a general statement, diamond evaluation and pricing is a complicated, dynamic, and often confidential process. There are a number of different ways that diamond producers market and sell their diamonds. As is set out in the Croese Affidavit, this can include through supply contracts, auctions, tenders, and negotiated spot sales.

52. As is also set out in the Croese Affidavit, DDMI's Sale Proposal proposes to use new supply agreements (term contracts) and spot auctions to sell the diamonds.

53. Dominion's auction process involves inviting clients to view the diamonds, holding viewing appointments over 6-8 working days (with approximately 50 appointments), using a reserve price to ensure sufficient value is realized for the diamonds, even if a temporary drop in demand occurs, and using an ascending clock auction process where participating clients bid until there is a winner. In the Applicants' view, this process maximizes realization for Dominion's diamonds.

54. It is my understanding that Rio Tinto sells a large portion of its diamonds from the Diavik Mine through long-term supply contracts, as opposed to an auction process similar to the one described above. The Applicants are concerned that DDMI will continue to use its existing long-term contracts (or similar long-term supply contracts) in its sale of the Additional Diamond Collateral. In Dominion's view, there are two primary issues with the use of long-term supply contracts to sell diamonds:

(a) In general, long-term supply contracts may result in a lower price (1 to 5%) being paid for diamonds than auction sales due to the commitment to take future volumes without knowing market demand.

(b) Due to the nature of the ongoing business relationship created by a long-term supply contract, the purchasing counter-parties are often granted certain accommodations that in this case could result in a lower valuing being paid for the Additional Diamond Collateral, including for example cross-subsidizing diamonds from different sources which may be of differing values. This results in a higher price being paid for lower quality diamonds and a lower price being paid for higher quality diamonds.

55. Rio Tinto (DDMI's parent company) is a significant player in the rough diamond market and has access to and sells rough diamonds from its other diamond mines to its customers. Rio Tinto's global marketing and sales strategy may not involve maximizing value for Dominion's share of production from the Diavik Mine. DDMI could sell the Additional Diamond Collateral pursuant to long term supply contracts or through spot sales with existing customers at a discount to then prevailing market rates. DDMI may also be motivated to sell the Additional Diamond Collateral without considering market factors relating to current supply and demand which would achieve the highest pricing for its goods.

56. Dominion has previously requested that DDMI consider profitability when determining its operating costs budgets. However, DDMI will not provide its average diamond pricing information to Dominion or anyone else. As such, there is no way for Dominion to assess the price paid by DDMI's purchasers with respect to its long-term contract sales.

57. In the Applicants' view, an auction process (with a minimum floor price) is the most transparent and effective way to realize value for diamonds. Dominion is prepared to permit DDMI to sell the Additional Diamond Collateral on its behalf through ascending bid auctions with reserve pricing established by DDMI.

58. Selling the Additional Diamond Collateral through an auction at reasonable intervals is the only way to ensure value is maximized. An auction process, which opens the sale up to hundreds of potential buyers (as opposed to a limited number of contract customers), could expose the Additional Diamond Collateral to a higher number of potential purchasers than existing Rio Tinto contract customers. This increased customer exposure creates market tension and can yield a higher price, giving comfort to the Applicants' stakeholders that the best possible price is being achieved for the Additional Diamond Collateral. It is ultimately a fairer and more transparent process.

DDMI's Proposed Fee Is Unreasonable

59. At paragraph 9(f) of the Croese Affidavit, Mr. Croese states that pursuant to DDMI's proposed DDMI Sale Proposal, DDMI will deduct 2.5% from the net sale proceeds of the Additional Diamond Collateral as a handling, sorting, sales and cash collecting fee. Mr. Croese states that this fee is consistent with fees charged by affiliates of Rio (DDMI's parent company) to arm's length third parties for similar services in their commercial profit making arrangements.

60. In my view, this fee is too high. Many of the costs associated with selling diamonds are fixed and should not change in any material way if DDMI sells the Additional Diamond Collateral. Indeed, as Mr. Croese notes in his affidavit, DDMI already has "existing secure and well-established infrastructure" in place to sell DDMI's share of the diamonds from the Diavik Mine, and DDMI's diamond team will handle the Additional Diamond Collateral in the same way it handles its own share of production.

61. If Dominion were to sell the Additional Diamond Collateral, I would expect the fee charged as a handling, sorting, sales and cash collecting fee would be not more than 1%. As stated above, an appropriate alternative solution is to allow Dominion to sell the Additional Diamond Collateral and pay the net proceeds to DDMI on account of the amounts owing for the Cover Payments, particularly given that Dominion anticipates charging a significantly lower fee for these services than DDMI does. As stated earlier, Dominion will be prepared to sell the Additional Diamond Collateral on the terms set out in the Revised Monetization Process and will be able to do so for a 1% fee.

Other Protections Required to Ensure a Fair Process

62. The tax issues that arise in various jurisdictions with respect to the sale of diamonds are complex. Any sales process implemented by DDMI will have to give due consideration to the tax requirements of all relevant jurisdictions, including allocation of tax liability and subsequent reassessment, and ensure that the chain of title to the Additional Diamond Collateral is one that effectively maximizes sale proceeds.

63. Similarly, as is set out in my April Affidavit, there are certain royalties payable on Dominion's share of diamonds from the Diavik Mine. Any sales process implemented by DDMI will have to ensure that liability for these royalties are properly allocated.

(6) Sealing Order

64. In light of the commercially sensitive, proprietary and confidential information contained in Confidential Exhibits 1 and 2, the Applicants ask that these exhibits be sealed on the court record. I do not believe that any stakeholder will be prejudiced by this relief.

SWORN BEFORE ME at Calgary, Alberta, this 28th day of October, 2020.	)))))	
A Commissioner for Oaths in and for the Province of Alberta Morgan E. Crilly Barrister & Solicitor	)))	KRISTAL KAYE

CONFIDENTIAL EXHIBIT "1"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "2"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

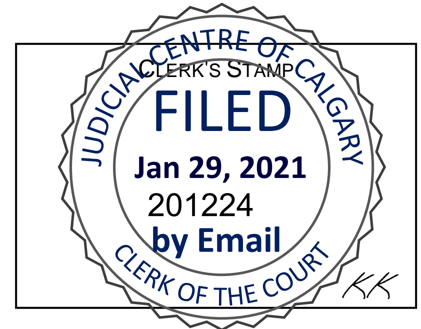
This is Exhibit "N"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

KK



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 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309

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 25, 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 (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: (i) any gross negligence or wilful misconduct on its part; or (ii) liability for any costs award made in connection with any proceeding joined, continued or commenced by the Monitor on behalf of the Applicants or any of them. Save as aforesaid, 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 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.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

CLERK'S STAMP

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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 ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, DOMINION FINCO INC. and DOMINION DIAMOND MARKETING CORPORATION
DOCUMENT	**<u>MONITOR'S DISCHARGE CERTIFICATE</u>**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** 4500, 855 – 2nd Street S.W. Calgary, Alberta T2P 4K7 Attention: Chris Simard / Kelsey Meyer Telephone: (403) 298-4485 / (403) 298-3323 Facsimile: (403) 265-7219 Email: simardc@bennettjones.com / meyerk@bennettjones.com File No. 76142-10
DATE ON WHICH ORDER WAS PRONOUNCED:	**Wednesday, January 27, 2021**

LOCATION OF HEARING:	**Calgary Courts Centre**
NAME OF JUSTICE WHO MADE THIS ORDER:	**The Honourable Madam Justice K. M. Eidsvik**

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice K. M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") granted April 23, 2020 (the **"Initial Order"**), FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") in the *Companies' Creditors Arrangement Act* proceedings 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 (the "**CCAA Proceedings**");

B. Pursuant to Orders of the Honourable Madam Justice K. M. Eidsvik of the Court granted May 1, 2020 (the "**ARIO**") and June 19, 2020 (the "**SARIO**"), the Initial Order was amended;

C. Pursuant to paragraph 11 of an Order of the Honourable Madam Justice K. M. Eidsvik of the Court granted January 27, 2021 (the "**Enhanced Monitor's Powers Order**"), upon providing five (5) business days' written notice to the purchaser nominated by the Contracting Purchasers and to the 1L Agent (as those capitalized terms are defined in the Enhanced Monitor's Powers Order), the Monitor is authorized to resign unilaterally from its role as Monitor, as described in the Enhanced Monitor's Powers Order and in any other Order granted in the CCAA Proceedings, effective upon the filing of a certificate substantially in this form, if the Monitor is not funded to carry out its role;

THE MONITOR CERTIFIES the following:

1. The Monitor is no longer funded to carry out its role, in accordance with the Enhanced Monitor's Powers Order and all other Orders granted in the CCAA Proceedings;

2. The Monitor has provided five (5) business days' written notice to the purchaser nominated by the Contracting Purchasers and to the 1L Agent (as those capitalized terms are defined in the Enhanced Monitor's Powers Order) of its resignation from its role as Monitor;

3. This Certificate was delivered by the Monitor on __________________________, 202_.

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, Dominion Finco Inc. and Dominion Diamond Marketing Corporation

Per:__________________________
Name:
Title:

This is Exhibit "O"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (the "**Agreement**") is dated as of February 3, 2021 by and among Arctic Canadian Diamond Company Ltd. (the "**Purchaser**"), Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), Dominion Diamond Canada ULC ("**DDCU**"), Dominion Finco Inc. ("**Finco**" and together with Dominion Holdings, DDM, DDC, Dominion Marketing and DDCU, "**Dominion**") and Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent (the "**Agent**") for the first lien secured lenders (the "**1L Lenders**") to DDM and various of its affiliates pursuant to the Revolving Credit Agreement dated as of November 1, 2017 (as amended, restated or supplemented from time to time, the "**1L Credit Agreement**").

WHEREAS on April 22, 2020, Dominion obtained an initial order (as amended and restated on June 19, 2020, and as further amended, restated or supplemented from time to time, the "**SARIO**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") from the Alberta Court of Queen's Bench (the "**CCAA Court**") that, among other things, granted an initial stay of proceedings in respect of Dominion and appointed FTI Consulting Canada Inc. as monitor of Dominion (in such capacity, the "**Monitor**").

WHEREAS DDJ Capital Management, LLC, Brigade Capital Management, LP and Dominion are parties to an Asset Purchase Agreement, dated as of December 6, 2020 (the "**Purchase Agreement**"), pursuant to which the Purchaser agreed to purchase Dominion's right, title and interest in and to the Acquired Assets and assume the Assumed Liabilities, all as more fully described therein, which was approved by the CCAA Court pursuant to the Approval & Vesting Order granted on December 11, 2020 (the "**AVO**");

WHEREAS pursuant to the Enhanced Monitor's Powers Order (the "**EMP Order**") granted by the CCAA Court on January 27, 2021, the Monitor has been authorized, among other things, to take any and all actions and steps in the name of and on behalf of Dominion to facilitate the administration of Dominion's Business, Property, operations, affairs and estate, and to execute any agreement in the name of and on behalf of Dominion; provided, however, that the EMP Order shall only take effect upon the delivery of a certificate of the Monitor as set out in paragraph 4 of the AVO (the "**Monitor's Certificate**");

WHEREAS the Monitor's Certificate has been delivered in accordance with the AVO and, as a result, the purchase transaction contemplated in the Purchase Agreement has closed (the "**Closing**") and the EMP Order has taken effect;

WHEREAS the parties hereto (collectively, the "**Parties**" and each a "**Party**") wish to enter into this Agreement to ensure the orderly administration of various post-Closing matters; and

WHEREAS each capitalized term used herein and not otherwise defined shall have the meaning ascribed to thereto in the Purchase Agreement or the SARIO, as applicable.

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth, the Parties hereby agree as follows:

ARTICLE 1
SERVICES

Section 1.01 Provision of Services by the Purchaser

(a) Pursuant to, and subject to the terms of, the Purchase Agreement, the Purchaser acknowledges and agrees that it shall, upon the request of Dominion, use commercially reasonable efforts to execute and deliver such documents and instruments of assumption as Dominion may reasonably request in order to more fully consummate the transactions contemplated by the Purchase Agreement and this Agreement, provided that such reasonable efforts shall not require the Purchaser to make any payments.

(b) The Purchaser agrees to respond in good faith to any reasonable request from Dominion for access to any additional services that are necessary for the wind-down of Dominion's Business, Property, operations, affairs and estate and that are not contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably.

(c) The Purchaser agrees to monetize any diamonds received by Dominion pursuant to the Diavik Joint Venture Agreement and applicable Orders granted by the CCAA Court (the "**Subject Diamonds**") at the direction of the Agent (or the Agent's counsel, on its behalf), subject to the approval of the Monitor and in accordance with the EMP Order, until the letters of credit issued by the 1L Lenders with respect to the Diavik Diamond Mine (the "**Diavik LCs**") have been fully cash collateralized and thereafter at the election of the Purchaser (the "**Monetization Activities**"). The Monetization Activities may include, among other things:

(i) the transportation of the Subject Diamonds;

(ii) the engagement of consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, on terms and conditions that are commercially reasonable and consistent with standard processes and procedures of the Purchaser, to assist with the other Monetization Activities;

(iii) cleaning, sorting, valuing and marketing the Subject Diamonds to, and with the assistance of, any person;

(iv) selling, transferring and conveying the Subject Diamonds to any person in accordance with the terms of this Agreement;

(v) receiving and collecting on behalf of Dominion all monies and accounts now owed or hereafter owing to Dominion in respect of the Subject Diamonds sold by the Purchaser; and

(vi) steps reasonably incidental to carrying out the provisions set forth in this Agreement.

(d) The Purchaser agrees that the terms set forth in Schedule "A" hereof apply to the Monetization Activities. The Purchaser agrees to also provide the Monitor and the Agent with such other information as is reasonably requested from time to time with respect to the Monetization Activities, subject to entering into commercially reasonable confidentiality and restriction on use arrangements where such information is not otherwise subject to confidentiality and use provisions under this Agreement or any other agreement(s) between such Parties.

Section 1.02 Provision of Services by Dominion

(a) Dominion agrees to take all reasonable steps that are necessary or desirable for the full realization and recovery of the Diavik Realization Assets, as determined by the Monitor, acting reasonably, and with the consent of the Agent (or the Agent's counsel) (the "**Realization Activities**"). The Realization Activities may include, among other things:

(i) enforcement of all rights relating to the Diavik Realization Assets, including rights provided for under the Orders granted in the CCAA Proceedings and the Diavik Joint Venture Agreement;

(ii) participation in management committee matters and meetings pursuant to the Diavik Joint Venture Agreement;

(iii) review of reporting and calculations relating to the Diavik Diamond Mine by Diavik Diamond Mines (2012), Inc. ("**DDMI**");

(iv) review of budgets and cash calls pursuant to the Diavik Joint Venture Agreement; and

(v) exercising audit rights under the Diavik Joint Venture Agreement where appropriate.

(b) In addition to all other reporting obligations to the Parties, Dominion agrees to provide such other information as is reasonably requested by the Agent or Purchaser from time to time and monthly written reports with respect to the status of the Realization Activities (including the funds remaining in the Diavik Realization Account and the Wind-Down Account) to the Agent and the Purchaser, subject to entering into commercially reasonable confidentiality and restriction on use arrangements where such information is not otherwise subject to confidentiality and use provisions under this Agreement or any other agreement(s) between such Parties.

(c) Dominion agrees to respond in good faith to any reasonable request from the Purchaser for access to any additional services that are necessary for the transition of the Acquired Assets and the Assumed Liabilities that are not contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably.

ARTICLE 2
COMPENSATION

Section 2.01 Terms of Payment and Related Matters

(a) The reasonable documented costs, fees and expenses incurred by Dominion or the Monitor in completing the Realization Activities, along with the reasonable documented costs incurred by the Agent and the Purchaser with respect to same, shall be funded initially from the Diavik Realization Account, which shall be administered in accordance with the Purchase Agreement and the First Lien Lender MSA. Thereafter, but only with the consent of the Monitor, such costs may be funded from the Wind-Down Account, to the extent available for such costs pursuant to the Purchase Agreement. Thereafter, such costs shall be funded (i) at the cost of the 1L Lenders if they so elect in their sole discretion; or (ii) subject to the consent of the Agent, at the cost of another Party or Parties if they so elect in their sole discretion. If neither the 1L Lenders nor any Party elects to fund the Realization Activities after the use of all available funds in the Diavik Realization Account and, if applicable, the Wind-Down Account in accordance with this Section 2.01(a), neither Dominion nor the Monitor shall be required to take any further steps or incur any further costs to complete Realization Activities. The Purchaser covenants to: (i) take reasonable efforts to not incur costs with respect to the Realization Activities that would be duplicative with the actions (and related costs) taken by Dominion and/or the Agent, to the extent that such activities are known to the Purchaser; and (ii) advise the Agent of any intended material costs that it anticipates incurring with respect to the Realization Activities reasonably in advance of incurring such costs. For the avoidance of doubt, the costs, fees and expenses incurred by the Agent for its analysis of DDMI's reporting, calculations, legal and commercial positions and other actions taken by DDMI with respect to the Diavik Diamond Mine, along with such reasonable actions that are incidental thereto (which may include consideration of possible legal actions that may be taken against DDMI) as determined by the Agent, shall be funded from the Diavik Realization Account and, if applicable, the Wind-Down Account in accordance with this Section 2.01(a).

(b) As compensation for the Monetization Activities, the Purchaser shall be paid a fee (the "**Sale Fee**") equal to 1% of the gross value of any sale of Subject Diamonds by the Purchaser (a "**Sale**") that is completed in accordance with the terms hereof, and reimbursed for all reasonable and documented costs and expenses incurred for the completion of such Sale. The foregoing payments shall be deducted from the proceeds of any Sale by the Purchaser (the "**Proceeds**") prior to such Proceeds being paid to or at the direction of Dominion; provided, however, that the Purchaser shall provide Dominion, the Monitor and the Agent with reasonable documentation evidencing such fees and expenses and the calculation of any Sale Fee no later than five (5) Business Days prior to deducting such amounts from the Proceeds. For the avoidance of doubt, no fees or expenses incurred by the Purchaser in connection with Monetization Activities shall constitute fees or expenses in connection with the Realization Activities and, accordingly, such amounts shall not be paid from the Diavik Realization Account or the Wind-Down Account.

(c) Subject to Section 1.01(b) and Section 1.02(c), no fees shall be payable with respect to the delivery of any services hereunder except as expressly set forth in Section 2.01(a) and Section 2.01(b).

ARTICLE 3
DISTRIBUTION OF PROCEEDS

Section 3.01 Distribution of Proceeds.

(a) The Purchaser agrees to promptly distribute the Proceeds to Dominion following the receipt of same, subject to deductions from Proceeds being made in accordance with Section 2.01(b).

(b) Following the receipt of Proceeds in accordance with Section 3.01(a), Dominion agrees to promptly distribute such Proceeds in accordance with the following:

(i) first, towards any applicable taxes with respect to any Sale, as determined by the Monitor, and to applicable royalty holders in accordance with the Sandstorm and Jennings Royalties Order granted by the CCAA Court on January 27, 2021;

(ii) second, to the Agent until the Diavik LCs have been fully cash collateralized; and

(iii) third, to the Purchaser.

(c) For greater certainty, the distributions contemplated in this Section 3.01 shall be the sole responsibility of Dominion and the Purchaser shall have no liability to any party entitled to receive such distributions.

ARTICLE 4
TERM

Section 4.01 Termination of Agreement. Unless extended by written agreement of the Parties, this Agreement shall terminate on the earlier of: (i) February 3, 2022; or (ii) the date on which the full realization of the Diavik Realization Assets has occurred (as determined by the Parties, acting reasonably) (the "**Termination Date**"), provided, however, that if the Agreement is extended beyond February 3, 2022, any Party may terminate this Agreement prior to the Termination Date by providing ninety (90) days written notice to all other Parties. Nothing in this Section 4.01 shall restrict the Monitor's authorization to resign from its role as Monitor as set out in paragraph 11 of the EMP Order.

Section 4.02 Breach. In the event that a Party (the "**Breaching Party**") has failed to perform any of its material obligations under this Agreement and such failure has continued for a period of seven (7) Business Days after another Party has given the Breaching Party written notice of such breach, the Parties that are not the Breaching Party may agree to terminate this Agreement with

respect to any service, in whole but not in part, at any time upon written notice to the Breaching Party.

Section 4.03 Effect of Termination. Following the Termination Date, all obligations of the parties hereto shall terminate, except for the provisions of Article 5 and Article 7, which shall survive any termination or expiry of this Agreement. Upon termination or expiry of any or all services under this Agreement, or upon the termination of this Agreement in its entirety, the Parties shall have no further obligation to provide the applicable terminated services or to pay any future costs relating to such services (other than for or in respect of services already provided in accordance with the terms of this Agreement and received by the Parties before such termination).

ARTICLE 5
LIMITATION OF LIABILITY

Section 5.01 Limitation of Liability.

(a) In no event shall either of the Parties have any liability under any provision of this Agreement for any punitive, exemplary, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value, or any damages based on any type of multiple, whether based on statute, contract, tort or otherwise.

(b) The Parties agree that all Sales shall be permitted to be completed in one or more transactions, in the Purchaser's sole and absolute discretion, including without limitation, with respect to the timing, process and manner of such Sale, provided that such Sale complies with Section 1.01(d). Other than liabilities that the Purchaser expressly agrees to incur in writing with respect to any Sale, no person shall sue or otherwise take any action against the Purchaser with respect to any Sale or the Monetization Activities, except for claims that the Purchaser: (i) did not comply with the terms of this Agreement or any other written agreement(s) entered into on or after the date hereof with respect to the Monetization Activities, including but not limited to any Sale; or (ii) did not act in good faith and in a commercially reasonable manner.

(c) The Purchaser shall not be acting as, and shall not be deemed to act as an agent for Dominion or the 1L Lenders as a result of carrying out the provisions of this Agreement and shall not become liable for or obligated to perform any liability, indebtedness or obligation of Dominion as a result of carrying out the provisions of this Agreement, completing any Monetization Activities or distributing any proceeds resulting therefrom.

(d) For the avoidance of doubt, the Parties acknowledge that the Purchaser is not assuming any obligations under the Diavik Joint Venture Agreement or the Diavik Joint Venture Interest.

ARTICLE 6
MONITOR ACTING ON BEHALF OF DOMINION

Section 6.01 Monitor Acting on Behalf of Dominion. The Parties acknowledge that the Monitor is executing this Agreement on behalf of Dominion pursuant to its authority under the EMP Order, and that the services and obligations of Dominion set forth herein may be delivered and satisfied by the Monitor on Dominion's behalf, and shall be subject to the protections afforded to the Monitor pursuant to the EMP Order.

ARTICLE 7
MISCELLANEOUS

Section 7.01 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and shall be deemed to have been given: (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service. Such Notice must be sent to each Party at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section):

If to Dominion:

c/o FTI Consulting Canada Inc.
520 5th Ave SW
Calgary AB T2P 3R7
Attention: Deryck Helkaa
E-Mail: deryck.helkaa@fticonsulting.com

with a copy (which shall not constitute notice) to:

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary AB T2P 4K7
Attention: Chris Simard
Email: simardc@bennettjones.com

If to Purchaser:

Arctic Canadian Diamond Company Ltd.
900 – 606 4th Street SW
Calgary, AB T2P 1T1
Attention: Kristal Kaye
Email: Kristal.Kaye@ddcorp.ca

with a copy (which shall not constitute notice) to:

Torys LLP
79 Wellington St. West, 30th Floor

Toronto, Ontario, M5K 1N2
Attention: Tony DeMarinis
Email: tdemarinis@torys.com

If to the Agent:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue, 6th
New York, New York 10010
Attention: Didier S Siffer & Lawrence Park
E-Mail: didier.siffer@credit-suisse.com; lawrence.park@credit-suisse.com

with a copy (which shall not constitute notice) to:

Osler, Hoskin & Harcourt LLP
1 First Canadian Place, Suite 6300
Toronto ON M4X 1B8
Attention: Marc Wasserman & Michael De Lellis
Email: mwasserman@osler.com; mdelellis@osler.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

Section 7.02 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 7.03 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 7.04 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement.

Section 7.05 Successors and Assigns. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Parties. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 7.06 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is

intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 7.07 Amendments and Modifications. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party.

Section 7.08 Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 7.09 Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Any legal action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the courts of the Province of Alberta, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 7.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written.

ARCTIC CANADIAN DIAMOND COMPANY LTD.

By: Patrick Evans
Its: Director

DOMINION DIAMOND HOLDINGS, LLC, DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND MARKETING CORPORATION, DOMINION DIAMOND CANADA ULC AND DOMINION FINCO INC.

BY FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor, and without personal or corporate liability

By: ______________________________
Its: Deryck Helkaa

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, solely in its capacity as administrative agent for the lenders under the 1L Credit Agreement

Didier Siffer

By: Didier Siffer
Title: Authorized Signatory

megan kane

By: Megan Kane
Title: Authorized Signatory

SCHEDULE A

PROCEDURE FOR SALE OF SUBJECT DIAMONDS

Key Principles

Striving for diamond production value optimization by following a number of key principles across all sales:

1. Product must be fully cleaned and sorted in a wide variety of diamond categories (sizes, colours, clarities, shapes) to be able to offer the right products to the right customers. This sorting process needs to be executed in a safe and secure operation.

2. Timing of sales must as much as possible be aligned to market cycles placing the right volume of product aligned with market demand.

3. A professional experienced well-equipped team is required to execute the sales process, optimize the sale proceeds (taking into consideration the existing circumstances facing the diamond market) and collect cash in a fast and cost-efficient manner.

Disclosure to 1L Lenders

The Purchaser and Monitor shall promptly provide the Agent with any and all information, documents and notices in accordance with the Transition Services Agreement. All information, documents and notices received by the Agent from either the Monitor or the Purchaser pursuant to this paragraph shall be subject to the confidentiality provisions in the 1L Credit Agreement. For the avoidance of doubt, the disclosure obligations herein are in addition to, and not in substitution of, all other disclosure obligations of Dominion and the Monitor, including but not limited to those set forth in the Approval of Monetization Process Order of the CCAA Court granted on November 4, 2020. The Parties to the Transition Services Agreement acknowledge and agree that the Monitor will rely upon certain information provided to it by third parties in complying with its obligation to promptly provide the Agent with any and all information, documents and notices in accordance with the Transition Services Agreement, and that the Monitor shall not have any responsibility or liability to the Agent or the 1L Lenders with respect to the accuracy or completeness of the information, documents and notices.

Procedure for Sale of Subject Diamonds

The Purchaser will follow the following process when carrying out the Monetization Activities:

1. The Purchaser or persons who are affiliates of or retained by the Purchaser will handle the Subject Diamonds in a commercially reasonable manner and generally apply the same processes, audits and analysis as such persons utilize with any equivalent diamonds owned by the Purchaser (the "**Purchaser Diamonds**").

2. The Purchaser or persons who are affiliates of or retained by the Purchaser will insure, import, clean, sort, value and sell the Subject Diamonds using their existing secure infrastructure, including existing experienced teams, security systems, diamond stock tracking software, sorting technology and experts, pricing methods, contracts (other than long term contracts providing for pricing which may represent a discount to the prevailing market), auction platform, and industry network.

3. The Subject Diamonds will, to the extent reasonably practical, be sorted and valued using the same sorting product line, Ekati mine samples and pricebook that is applied to any equivalent Purchaser Diamonds.

4. The Purchaser or persons who are affiliates of or retained by the Purchaser will sort and phase the Subject Diamonds over appropriate periods to avoid a high volume of product being offered at once and to help optimize sales proceeds unless, in the Purchaser's reasonable business judgment, market conditions would allow a higher volume of product to be sold without negatively impacting the market.

5. The Purchaser or persons who are affiliates of or retained by the Purchaser will sell all Subject Diamonds using an auction process unless, in the Purchaser's reasonable business judgment, and with the approval of the Monitor and the Agent, a different sales process would yield superior sales results.

Transparent process

The interests of Dominion, the Purchaser and the Agent are fully aligned as all are seeking to optimize returns for sales of the Subject Diamonds.

The Purchaser will work constructively with the parties by providing full transparency into the status of the monetization, subject to regulatory constraints. At a minimum, monthly reporting will be provided by the Purchaser to the Monitor and the Agent with respect to the following items:

- Detailed listing of Subject Diamond inventory offered for sale;
- Subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Agent, diamond sorting results (size and quality analysis);
- Subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Agent, the Purchaser's handling, sales and cash collection fee.

The Purchaser agrees that:

- Unsold inventory will be safely stored in the Purchaser's secure premises and insured by the Purchaser;
- Upon request by the Monitor and/or the Agent, the Purchaser shall permit an independent and internationally recognized accounting firm to audit the records and information identified above, with the cost and expense of any such audit to be paid using funds in the Diavik Realization Account (subject to entering into commercially reasonable confidentiality arrangements with such accounting firm including without limitations confidentiality arrangements with respect to information which such accounting firm may share with any other Person including, without limitation, the Agent and the Monitor);
- The Purchaser will permit the Agent and Monitor to have periodic access to the Subject Diamonds upon reasonable notice for the purpose of verifying and assessing value of the Subject Diamonds, with the cost and expense of any such access to be paid using funds in the Diavik Realization Account. The Agent and Monitor shall accord with the

Purchaser's safety and security policies and procedures when viewing the Subject Diamonds.

- The Purchaser will facilitate quarterly / half-yearly meetings with the Agent and Monitor to review market and sale results and permit on-site (if and when appropriate and safe) or virtual tours and/or meetings to introduce key team members and show key processes and infrastructure.

This is Exhibit "P"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021

Notary Public or Commissioner for Oaths in
and for the Province of Alberta

KK

$500,000
INTERIM FINANCING TERM SHEET

October ■, 2021

WHEREAS FTI Consulting Canada Inc. (the "**Monitor**") was appointed as monitor of Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. (collectively, the "**Dominion Parties**") and Washington Diamond Investments, LLC, (together with the Dominion Parties, the "**Applicants**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") pursuant to an initial order dated April 23, 2020 (as amended, the "**SARIO**");

AND WHEREAS DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Interim Lenders**") were bidders under that certain asset purchase agreement dated as of December 6, 2020, between the Interim Lenders, the Dominion Parties and Dominion Diamond Marketing Corporation (the "**APA**").

AND WHEREAS the Court granted an Approval and Vesting Order dated December 11, 2021 (the "**Approval and Vesting Order**"), pursuant to which the Court approved the APA and vested certain assets of the Applicants thereunder in Arctic Canadian Diamond Company Ltd. ("**ACDC**");

AND WHEREAS pursuant to an order dated January 27, 2021: (a) the powers of the Monitor were expanded to authorize the Monitor to, among other things: (i) cause the Applicants to take any action permitted pursuant to the SARIO or any other order granted in these CCAA proceedings; and (ii) to execute any agreement, document, instrument or writing in the name of and on behalf of the Applicants; and (b) the Monitor was authorized to enter into a transition services agreement dealing with, among other things, conducting, supervising and directing the realization and recovery of the Applicants' remaining property or other assets or interests;

AND WHEREAS ACDC, the Dominion Parties, Dominion Diamond Marketing Corporation and Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent for the First Lien Lenders to DDM entered into a transition services agreement dated February 3, 2021 (the "**TSA**");

AND WHEREAS the Monitor has requested that the Interim Lenders provide financing in accordance with the terms and conditions set forth herein to fund certain of the Applicants' cash requirements related to the Monitor's activities under the TSA during the pendency of the Applicants' proceedings under the CCAA (the "**CCAA Proceedings**");

NOW THEREFORE, the parties, for good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged), agree as follows:

1. BORROWER	FTI Consulting Canada Inc., solely in its capacity as monitor of Dominion Diamond Mines ULC, Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Dominion Diamond Holdings, LLC, Dominion Finco

Inc. and Washington Diamond Investments, LLC (the "**Borrower**").

2. INTERIM LENDERS DDJ Capital Management, LLC and Brigade Capital Management, LP and/or any of their respective affiliates and managed funds or other vehicles.

3. DEFINED TERMS Capitalized terms used in this Interim Financing Term Sheet have the meanings given thereto in Schedule A.

4. PURPOSE The Borrower shall use the proceeds of the Interim Facility solely for the following purposes and in the following order, in each case during and for the purposes of the Borrower's pursuit of the CCAA Proceedings:

(a) To fund professional fees (including fees of the Monitor), and the legal fees of counsel to the Monitor.

(b) To finance operating expenses, restructuring costs in the CCAA Proceedings related to the TSA in accordance with the Agreed Budget.

(c) To fund such other costs and expenses as agreed to in advance by the Interim Lenders, in writing.

(d) To fund a process for the orderly realization of the remaining assets of the Applicants in order to maximize the value available to the Applicants' creditors.

For greater certainty, the Monitor may not use the proceeds of the Interim Facility to pay any pre-filing obligations of the Applicants without the prior written consent of the Interim Lenders; it being agreed by the Interim Lenders that such consent is not required for the Monitor to pay: (i) taxes, accrued payroll and other ordinary course liabilities, provided that such amounts are included in the Agreed Budget or the Interim Lending Order (as defined below); or (ii) any other amounts owing by the Applicants to the extent specifically identified in the Agreed Budget or the Interim Lending Order.

5. INTERIM FACILITY A super-priority, debtor-in-possession interim, non-revolving credit facility (the "**Interim Facility**") up to a maximum principal amount of **[$500,000]** (the "**Interim Facility Commitment**"), excluding for certainty any PIK Interest,

subject to the terms and conditions contained herein. Advances under the Interim Facility shall be deposited into the Deposit Account and utilized by the Monitor in accordance with the terms hereof.

6. CONDITIONS PRECEDENT TO EFFECTIVENESS AND ADVANCES

The effectiveness of this Interim Financing Term Sheet shall be subject to the satisfaction of the following conditions precedent, as determined by the Interim Lenders:

(a) The Interim Lenders shall have had a reasonable opportunity to review advance copies of, and shall be reasonably satisfied with, all materials to be filed in respect of the CCAA Proceedings.

(b) The Court shall have issued an order in the CCAA Proceedings (the "**Interim Lending Order**") on or before October ■, 2021 (the "**Outside Date**"), satisfactory to the Interim Lenders and substantially in the form contained in the draft Interim Lending Order attached hereto as Schedule B, on notice to such parties as are acceptable to the Interim Lenders, which shall: (i) approve this Interim Financing Term Sheet and the Interim Facility; (ii) grant the Interim Lenders a charge (the "**Second Interim Lenders' Charge**") securing all obligations owing by the Borrower to the Interim Lenders under this Interim Financing Term Sheet (collectively, the "**Interim Financing Obligations**"), including, without limitation, all principal amount of the outstanding Advances and interest thereon, which shall have priority over all Liens other than the Permitted Priority Liens (as defined below); and (iii) treat the Interim Lenders as unaffected creditors in the CCAA Proceedings;

(c) The Interim Lenders shall have received the Agreed Budget.

(d) The Interim Lenders shall be satisfied, acting reasonably, that the Applicants and the Monitor have complied with and are continuing to comply in all material respects

with all applicable laws, regulations, policies and licenses applicable to the Applicants' business, other than as may be permitted under a Court Order or as to which any enforcement in respect of non-compliance is stayed by a Court Order, provided the issuance of such Court Order does not result in the occurrence of an Event of Default.

(e) All governmental and third-party consents and approvals necessary or required by the Interim Lenders in connection with the Interim Facility and its effectiveness shall have been obtained and shall remain in full force and effect.

The Interim Facility shall be made by four Advances of **[$125,000]** each, with an initial Advance on or about ■ and subsequent Advances on or about ■, ■ and ■.

Making of each Advance shall be further subject to the satisfaction of the following conditions precedent (collectively, the "**Funding Conditions**"), as determined by the Interim Lenders:

(a) The Interim Lending Order shall not have been stayed, vacated or otherwise caused to be ineffective or materially amended, restated or modified, without the consent of the Interim Lenders.

(b) The Applicants and the Monitor shall be in compliance with the: (i) Interim Lending Order and any amendments thereto; and (ii) all other orders issued in the CCAA proceedings.

(c) The Applicants shall have paid all statutory liens, trust and other government claims including, without limitation, source deductions, except, in each case, for any such amounts that are not yet due and payable or which are in dispute in which case appropriate reserves have been made.

(d) The Monitor shall be in compliance with the TSA.

(e) All of the representations and warranties of the Applicants and the Monitor as set forth herein shall be true and accurate in all material respects.

(f) No Default or Event of Default shall have occurred or, if applicable, shall occur as a result of the requested Advance.

(g) No Material Adverse Change shall have occurred after the date of the issuance of the Interim Lending Order.

(h) There shall be no Liens ranking in priority to the Second Interim Lenders' Charge, other than the Permitted Priority Liens.

(i) The Interim Lenders shall have received a written request for an Advance from the Monitor, substantially in the form attached hereto as Schedule C, which shall be executed by the Monitor, and shall certify, *inter alia*, that: (i) the requested Advance is within the Interim Facility Commitment and is consistent with the Agreed Budget; and (ii) the Borrower is in compliance with this Interim Financing Term Sheet and the Court Orders.

(j) The requested Advance shall not cause the aggregate amount of all outstanding Advances (excluding for the purposes of this calculation, any PIK Interest) to exceed the Interim Facility Commitment or be greater than the amount shown on the Agreed Budget as at the date of such Advance.

(k) The Interim Lenders shall have received a certificate from an officer of the Borrower, in form and substance satisfactory to the Interim Lenders, certifying the conditions set out in clauses (e), (f) and (g) above.

(l) All other conditions precedent to the effectiveness of this Interim Financing Term Sheet shall continue to be satisfied.

For greater certainty, the Interim Lenders shall not be obligated to make any Advance or otherwise make available funds pursuant to this Interim Financing Term Sheet unless and until all the foregoing applicable conditions have been satisfied and all the foregoing applicable documentation and confirmations have been obtained (for certainty, each of the same, as applicable, as a condition precedent to each Advance), each in form and content satisfactory to the Interim Lenders in their sole discretion (unless specified otherwise).

7. INTERIM FACILITY SECURITY AND PRIORITY

All Interim Financing Obligations shall be secured by the Second Interim Lenders' Charge, which shall be a super-priority Lien over all Collateral, including realizations from activities under the TSA, subordinate only to the Permitted Priority Liens. The Second Interim Lenders' Charge shall be approved by the Court on terms and conditions satisfactory to the Interim Lenders.

The Interim Lenders may take such steps from time to time as they deem necessary or appropriate to file, register, record or perfect the Second Interim Lenders' Charge.

All Collateral will be free and clear of all Liens, except for the Permitted Liens.

Notwithstanding the foregoing, and subject to the concluding sentence of this paragraph, no proceeds of any Advance may be used to (a) investigate, object to or challenge in any way any claims of the Interim Lenders against any of the Applicants or the Borrower in respect of the Interim Facility, or (b) investigate, object to or challenge in any way the validity, perfection or enforceability of the Liens created pursuant to the Second Interim Lenders' Charge.

Subject to the Agreed Budget and other limitations set forth herein, the Borrower may only request and apply Advances through the accounts as agreed to with the Interim Lenders.

8. TERM AND MATURITY

The Interim Facility shall be repayable in full on the earlier of: (i) the occurrence of any Event of Default hereunder which is continuing and has not been cured in accordance with the terms hereof; (ii) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (iii) the date that is six (6)

months after the date of this Interim Financing Term Sheet (the earliest of such dates being the "**Maturity Date**").

The commitment in respect of the Interim Facility shall expire on the Maturity Date and all amounts outstanding under the Interim Facility shall be repaid in full no later than the Maturity Date, without the Interim Lenders being required to make demand upon the Monitor or to give notice that the Interim Facility has expired and the obligations are due and payable. The order of the Court sanctioning any Plan shall not discharge or otherwise affect in any way any of the obligations of the Borrower to the Interim Lenders under the Interim Facility, other than after the permanent and indefeasible payment in cash to the Interim Lenders of all obligations under the Interim Facility on or before the date the Plan is implemented.

9. AGREED BUDGET, REVISED BUDGETS, AND OTHER REPORTING

The Monitor has delivered, and the Interim Lenders have accepted, on the date hereof a current weekly line item budget covering the period of at least ■ days following the date of this Interim Financing Term Sheet (together with all updates thereto approved by the Interim Lenders in their sole and absolute discretion, including the Revised Budget, the "**Agreed Budget**"). A summarized version of the Agreed Budget is attached hereto as Schedule D. The Agreed Budget sets forth expected receipts and the expected operating and other expenditures to be made during each calendar week and in the aggregate for the period of time covered by the Agreed Budget.

On ■ of each week by 5:00 p.m. (Toronto time), commencing on the ■ of the calendar week following the Outside Date, the Monitor shall deliver to the Interim Lenders: (a) a report showing actual cash receipts and actual expenditures for each line item in the Agreed Budget covering the previous week and comparing the foregoing amounts with the budgeted cash receipts and budgeted expenditures, respectively, set forth in the Agreed Budget for such line item during such one week period; and (b) a one week roll-forward of the Agreed Budget (the "**Revised Budget**"), which shall reflect the Monitor's good faith projections and be in form and detail consistent with the initial Agreed Budget and subject to the approval of the Interim Lenders in their sole discretion.

10. AVAILABILITY UNDER INTERIM FACILITY	Provided that the Funding Conditions are satisfied, as determined by the Interim Lenders, acting reasonably, each Advance shall be made by the Interim Lenders on or about the dates set out in Section 6, subject to delivery by the Monitor to the Interim Lenders of a written request for an Advance, substantially in the form attached hereto as Schedule C. Advances shall be available to the Borrower in Canadian dollars. All proceeds of Advances shall be deposited into the Deposit Account. The Deposit Account shall be subject to the Second Interim Lenders' Charge.
11. EVIDENCE OF INDEBTEDNESS	The Interim Lenders' accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Interim Lenders pursuant to the Interim Facility.
12. VOLUNTARY PREPAYMENTS	The Borrower may prepay any amounts outstanding or any portion of any amounts outstanding under the Interim Facility at any time prior to the Maturity Date, without any prepayment fee or penalty.
13. INTEREST RATE AND DEFAULT RATE	The Advances shall bear interest at a rate per annum equal to 5.25%. Such interest shall accrue daily and shall be payable monthly in arrears on each Interest Payment Date for each Advance for the period from and including the date upon which the Interim Lenders advance such Advance to the Borrower to and including the day such Advance is repaid or paid, as the case may be, to the Interim Lenders, and shall be calculated on the principal amount of each Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 356 or 366 days, as the case may be. On each Interest Payment Date, the accrued interest shall be capitalized and added to the principal amount of the outstanding Advances (such capitalized interest being the "**PIK Interest**"). Amounts representing PIK Interest that are added to the principal amount of an Advance shall thereafter constitute principal and bear interest in accordance with this Section 13 and otherwise be treated as part of the principal of such Advance for all purposes of this Interim Financing Term Sheet, unless specifically noted herein.

14. CURRENCY

Unless otherwise stated, all monetary denominations in this Interim Financing Term Sheet shall be in Canadian dollars.

15. REPRESENTATIONS AND WARRANTIES

The Monitor represents and warrants to the Interim Lenders, which representations and warranties shall be deemed to be repeated at each request for an Advance, and upon which the Interim Lenders rely on entering into this Interim Financing Term Sheet, that:

(a) Subject to the granting of the Interim Lending Order, the execution, delivery and performance of, and the transactions contemplated by, this Interim Financing Term Sheet:

(i) are within the powers of the Monitor;

(ii) have been duly executed and delivered by or on behalf of each of the Applicants;

(iii) constitute legal, valid and binding obligations of the Monitor and each of the Applicants (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally); and

(iv) do not require the consent or approval of, registration or filing with, or any other action by, any Governmental Authority, other than filings which may be made to register or otherwise record the Second Interim Lenders' Charge.

(b) The Monitor is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is qualified to carry on business in each jurisdiction in which it owns property or assets or carries on business.

(c) The Monitor has taken all corporate and other actions to authorize the execution, delivery and performance of this Interim Financing

Term Sheet and the transactions contemplated hereby.

(d) The activities of the Applicants and the Monitor have been conducted in material compliance with all applicable provincial, state and federal laws, subject to the provisions of the CCAA and any Court Order, and any applicable shareholder's agreement, unless: (i) otherwise ordered by the Court, or (ii) the sanctions for non-compliance are stayed by a Court Order.

(e) The Monitor is in compliance with, and operates the business in compliance with, all applicable laws, in all material respects.

(f) Each of the Applicants has maintained its obligations for payroll, source deductions, goods and services tax and harmonized sales tax, as applicable, and is not in arrears in respect of payment of these obligations.

(g) Each of the Applicants has obtained and maintain in good standing each of the material licenses required from the Governmental Authorities that are necessary to conduct its business.

(h) The Agreed Budget is reasonable and prepared in good faith, and is based on good-faith estimates and assumptions believed by the Monitor to be reasonable at the time made.

(i) No Default or Event of Default has occurred and is continuing.

(j) The Second Interim Lenders' Charge is effective to create, in favour of the Interim Lenders, a legal, valid, binding, and enforceable perfected security interest in the collateral and the proceeds and products noted therein, without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements, or other agreements or documents.

(k) The Applicants have in full force and effect policies of insurance with sound and reputable insurance companies in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses.

16. AFFIRMATIVE COVENANTS

The Monitor, on behalf of the Applicants, covenants and agrees to perform and do each of the following until the Interim Financing Obligations are permanently and indefeasibly repaid in full and the Interim Facility is terminated:

(a) Pay all indebtedness due and payable in connection with the Interim Facility in accordance with the terms hereof.

(b) (i) Allow the Interim Lenders or their respective agents and advisors, on reasonable notice during regular business hours, to enter on and inspect each of the Applicants' assets and properties; (ii) provide the Interim Lenders or their respective agents or advisors, on reasonable notice and during normal business hours, full access to the books and records of the Applicants; and (iii) fully co-operate with the Interim Lenders and their respective agents and advisors, as applicable.

(c) Keep the Interim Lenders apprised on a timely basis of all material developments with respect to the business and affairs of the Applicants, including (without limitation) the development of a Plan or a Restructuring Option.

(d) Deliver to the Interim Lenders the following reporting packages: (i) documents referred to in Section 9 above, on the dates and times specified in Section 9; (ii) copies of all pleadings, motions, applications, judicial or financial information and other documents to be filed by or on behalf of any of the Applicants or the Monitor with the Court, in each case in a reasonable period of time prior to filing such documents with the Court to the extent practicable in the circumstances; (iii)

prompt notice of material events, including, without limitation, defaults, new material litigation or changes in status of ongoing material litigation, regulatory and other filings; (iv) other reasonable information requested by the Interim Lenders from time to time; (v) prompt notice of any event that could reasonably be expected to result in a Material Adverse Change; and (vi) without limiting the foregoing, in a timely manner and prior to effecting or incurring such transaction or expense, the Monitor shall deliver to the Interim Lenders copies of any financial reporting which shows a material transaction or material expense, or a materially adverse financial position of the Applicants, which is not reflected in the Agreed Budget, and shall forthwith provide any reports or commentary received from the Monitor in respect of same.

(e) Use the proceeds of the Interim Facility only for the purposes described in Section 4, and in a manner consistent with the restrictions set out herein.

(f) Comply with the provisions of the court orders made in the CCAA Proceedings applicable to the Applicants or the Monitor (collectively, the "**Court Orders**" and each a "**Court Order**"); provided that if any such Court Order contravenes this Interim Financing Term Sheet so as to materially adversely impact the rights or interests of the Interim Lenders, as determined by the Interim Lenders, the same shall be an Event of Default hereunder.

(g) Preserve, renew and keep in full force and good standing its respective corporate existence and its respective material licenses, permits, approvals, and other authorizations required in respect of its business, properties, assets or any activities or operations carried out therein, unless otherwise agreed by the Interim Lenders.

(h) Conduct all activities in a manner consistent with the Agreed Budget.

(i) Forthwith notify the Interim Lenders of the occurrence of any Default or Event of Default, including an Updated Budget Default.

(j) Provide to the Interim Lenders regular updates on a timely basis regarding the status of the CCAA Proceedings including, without limitation, reports on the progress of any Plan or Restructuring Option and any information which may otherwise be confidential, subject to same being maintained as confidential by the Interim Lenders; provided however, in no event shall any information subject to privilege be required to be provided to the Interim Lenders.

17. NEGATIVE COVENANTS

The Monitor shall, and shall cause each of the Applicants not to do the following, other than with the prior written consent of the Interim Lenders:

(a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking, except for Permitted Dispositions.

(b) Enter into any sale and leaseback agreement.

(c) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than as expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

(d) Make any payments or distributions of any kind, including payments of principal and interest in respect of existing debt or obligation, other than as may be permitted by a Court Order and that does not result in an Event of Default and is provided for in the Agreed Budget.

(e) Create or permit to exist indebtedness (including guarantees thereof or indemnities or other financial assistance in respect thereof) other than (i) existing debt, (ii) debt

contemplated by this Interim Financing Term Sheet, (iii) post-filing trade payables or other post-filing unsecured obligations incurred in the ordinary course of business in accordance with the Agreed Budget and any Court Order, and (iv) obligations or indebtedness expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

(f) Make or give any additional financial assurances, in the form of bonds, letters of credit, guarantees or otherwise, to any person (including, without limitation, any Governmental Authority).

(g) Create, permit to exist or seek or support a motion by another party to provide to any third party a Lien on the Collateral, other than the Permitted Liens.

(h) Change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity.

(i) Cease (or threaten to cease) to carry on their business or activities as currently being conducted or modify or alter in any material manner the nature and type of their operations, business or the manner in which such business is conducted.

(j) Amend, replace or modify the Agreed Budget other than in accordance with the terms of this Interim Financing Term Sheet.

(k) Apply for, or consent to, any Court Orders or any change or amendment to any Court Order which affects the Interim Lenders, without the prior consent of the Interim Lenders.

(l) Commence, continue or seek court approval of any other restructuring transaction that will not repay the Interim Lenders in full without the prior written consent of the Interim Lenders.

(m) Enter into any contract or other agreement which involves potential expenditures in

excess of $■ in any fiscal year without the prior written consent of the Interim Lenders.

18. EVENTS OF DEFAULT

The occurrence of any one or more of the following events without the Interim Lenders' written consent shall constitute an event of default ("**Event of Default**") under this Interim Financing Term Sheet:

(a) the issuance of an order of the Court (including any Court Order) or any other court of competent jurisdiction:

(i) dismissing the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit (A) the enforcement of any Lien against an Applicant, or a material portion of their respective property, assets or undertaking, or (B) the appointment of a receiver and manager, receiver, interim receiver or similar official, or substituting the Monitor or enhancing any monitor's powers, or the making of a bankruptcy order against an Applicant; granting any Lien which is senior to or *pari passu* with the Second Interim Lenders' Charge, other than the Priority Charges; or

(ii) staying, reversing, vacating or otherwise modifying this Interim Financing Term Sheet or any Court Order in a manner materially adverse to the interests of the Interim Lenders, as determined by the Interim Lenders;

(b) the filing of any pleading by any Applicant or the Monitor seeking any of the matters set forth in paragraph (a) above, or failure of any Applicant or the Monitor to diligently oppose any party that brings an application or motion for the relief set out in paragraph (a) above;

(c) failure of any of the Applicants or the Monitor to comply with any of the negative covenants in this Interim Financing Term Sheet and to the extent such Default is capable of being

remedied, such Default shall continue unremedied for a period of ■ (■) Business Days;

(d) any update in the Revised Budget: (i) contemplates or forecasts an adverse change or changes from the then-existing Agreed Budget, and such change(s) constitute a Material Adverse Change; or (ii) contemplates or forecasts a cash flow deficit in excess of $■ prior to the Maturity Date, without the Interim Lenders' approval (each, an "**Updated Budget Default**");

(e) the occurrence of a Material Adverse Change;

(f) any representation or warranty by an Applicant or the Monitor in this Interim Financing Term Sheet is incorrect or misleading in any material respect;

(g) the aggregate amount of the outstanding Advances under the Interim Facility exceeds the Interim Facility Commitment;

(h) any material violation or breach of any Court Order;

(i) any proceeding, motion or application is commenced or filed by any Applicant or the Monitor, or if commenced by another party, supported or otherwise consented to by any Applicant or the Monitor: (i) seeking the invalidation, subordination or other challenging of the terms of the Interim Facility, the Second Interim Lenders' Charge or this Interim Financing Term Sheet; (ii) challenging the validity, priority, perfection or enforceability of the Liens created pursuant to the Second Interim Lenders' Charge; or (iii) unless the Plan or Restructuring Option provides for repayment in full of the Interim Facility, seeking the approval of any Plan or Restructuring Option which does not have the prior written consent of the Interim Lenders;

(j) the priority of the Liens created pursuant to the Second Interim Lenders' Charge is varied without the consent of the Interim Lenders;

(k) the failure of any Applicant to make expenditures or pay damages, fines, claims, costs or expenses to remediate, in respect of any Environmental Liabilities, required by any Governmental Authority, except as set out in the Agreed Budget, or as otherwise agreed to in writing by the Interim Lenders, and such Default shall remain unremedied for a period of ■ (■) Business Days after such amount is due;

(l) failure of the Borrower to pay any principal amount owing under this Interim Financing Term Sheet when due;

(m) failure of the Borrower to pay any interest **[or fees]** or any portion thereof owing under this Interim Financing Term Sheet when due and such Default shall remain unremedied for a period of ■ (■) Business Days after written notice from the Interim Lenders to the Monitor that such amount is overdue; and

(n) failure of any Applicant or the Monitor to perform or comply with any other term or covenant under this Interim Financing Term Sheet and such Default shall continue unremedied for a period of ■ (■) Business Days.

19. REMEDIES

Upon the occurrence of an Event of Default, and subject to the Court Orders, the Interim Lenders may, in their sole and absolute discretion, elect to terminate their commitment to make Advances to the Borrower hereunder and declare the obligations in respect of this Interim Financing Term Sheet to be immediately due and payable and cease making any further Advances. Without limiting the foregoing remedies, upon the occurrence of an Event of Default, the Interim Lenders may, in their sole and absolute discretion, elect to permanently reduce the Interim Facility Commitment. In addition, upon the occurrence of an Event of Default, the

Interim Lenders may, in their sole and absolute discretion, subject to any Court Order:

(a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral to substitute the Monitor and/or enhance any powers of the Monitor, or for the appointment of a trustee in bankruptcy of the Applicants;

(b) subject to obtaining prior approval from the Court, exercise the powers and rights of a secured party under the *Personal Property Security Act* (**[Alberta]**), or any legislation of similar effect; and

(c) subject to obtaining prior approval from the Court, exercise all such other rights and remedies under this Interim Financing Term Sheet, the Court Orders and applicable law.

The rights and remedies of the Interim Lenders under this Interim Financing Term Sheet are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA in the CCAA Proceedings.

20. TAXES, YIELD PROTECTION AND INCREASED COSTS

All repayments and prepayments of the Advances will be made free and clear of any taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"). If any Taxes are required by applicable law to be withheld ("**Withholding Taxes**") from any amount payable to the Interim Lenders under this Interim Financing Term Sheet, the amount so payable to the Interim Lenders shall be increased to the extent necessary to yield to the Interim Lenders, on a net basis after payment of all Withholding Taxes, the amount payable under this Interim Financing Term Sheet at the rate or in the amount specified herein, and the Borrower shall provide evidence satisfactory to the Interim Lenders that the Taxes have been so withheld and remitted.

If the Borrower pays an additional amount to the Interim Lenders to account for any deduction or withholding, the Interim Lenders shall reasonably cooperate with the Borrower to obtain a refund of the amounts so withheld, including filing income tax returns in applicable jurisdictions, claiming a refund of such tax and providing evidence of entitlement to the benefits of any applicable tax treaty. The amount of any refund so received, and interest paid by the tax authority with respect to any refund, shall be paid over by the Interim Lenders to the Borrower promptly. If reasonably requested by the Borrower, the Interim Lenders shall apply to the relevant taxing authority to obtain a waiver from such withholding requirement, and the Interim Lenders shall cooperate with the Borrower and assist the Borrower to minimize the amount of deductions or withholdings required.

The Borrower will reimburse the Interim Lenders for any costs incurred by the Interim Lenders in performing their obligations under this Interim Financing Term Sheet resulting from any change in law, including, without limitation, any reserve or special deposit requirements or any tax or capital requirements or any change in the compliance of the Interim Lenders therewith that has the effect of increasing the cost of funding to the Interim Lenders or reducing their effective rate of return on capital.

21. INTERIM LENDERS' APPROVALS

Any consent, approval, instruction or other expression of the Interim Lenders shall be in the Interim Lenders' sole and absolute discretion, unless otherwise provided in this Interim Financing Term Sheet and shall to be delivered by any written instrument, including by way of electronic mail, by the Interim Lenders, or their counsel, pursuant to the terms of this Interim Financing Term Sheet.

22. TERMINATION BY THE CREDIT PARTIES

At any time following the indefeasible payment in full in immediately available funds of all of the outstanding Interim Financing Obligations, the Borrower shall be entitled to terminate this Interim Financing Term Sheet upon notice to the Interim Lenders.

23. AMENDMENTS, WAIVERS, ETC.

No amendment or waiver of any provisions of this Interim Financing Term Sheet or consent to any departure by the Borrower from any provision thereof is effective unless it is in writing and signed by Interim Lenders holding at least 50.1% of the Interim Facility Commitment (and in the case of amendments, the Monitor). Such amendment, waiver or

	consent shall be effective only in the specific instance and for the specific purpose for which it is given.
24. ASSIGNMENT	The Interim Lenders may assign this Interim Financing Term Sheet and their rights and obligations hereunder, in whole or in part, or grant a participation in their respective rights and obligations hereunder to any person acceptable to the Interim Lenders in their sole and absolute discretion. Neither this Interim Financing Term Sheet or any right or obligation hereunder may be assigned by the Borrower.
25. COUNTERPARTS AND FACSIMILE SIGNATURES	This Interim Financing Term Sheet may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Any party may execute this Interim Financing Term Sheet by signing any counterpart of it.
26. CONFIDENTIALITY	This Interim Financing Term Sheet is delivered on the condition that each of the Applicants and their affiliates and the Monitor shall not disclose such documents or the substance of the financing arrangements proposed therein to any person or entity outside of their respective organizations, except to those professional advisors who are in a confidential relationship with them and as required in connection with any court filing in the CCAA Proceedings.
27. FURTHER ASSURANCES	Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.
28. TIME IS OF THE ESSENCE	Time is of the essence in this Interim Financing Term Sheet.
29. ENTIRE AGREEMENT	This Interim Financing Term Sheet constitutes the entire agreement between the parties hereto pertaining to the matters therein set forth and supersede and replace any prior understandings or arrangements pertaining to the Interim Facility. There are no warranties, representations or agreements between the parties in connection with such matters except as specifically set forth or referred to herein.
30. SEVERABILITY	Each of the provisions contained in this Interim Financing Term Sheet is distinct and severable and a declaration of

invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

31. NO THIRD-PARTY BENEFICIARY	No person, other than the Applicants, the Monitor and the Interim Lenders, is entitled to rely upon this Interim Financing Term Sheet and the parties expressly agree that this Interim Financing Term Sheet does not confer rights upon any other party.
32. NATURE OF OBLIGATIONS	The obligations of each Interim Lender under this Interim Financing Term Sheet are several and not joint and several. Neither Interim Lender will be responsible for the obligations of any other Interim Lender hereunder.
33. NOTICES	Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered by email in accordance with the notice provisions set forth below:

In the case of the Monitor:

■

Attention: ■
Email: ■

With a copy to:

■

Attention: ■
Email: ■

In the case of the Interim Lenders:

■

Attention: ■
Email: ■

with a copy to:

Torys LLP
Suite 3000, 79 Wellington Street W
Box 270, TD Centre
Toronto, ON M5K 1N2

Attention: Scott Bomhof
Email: sbomhof@torys.com

34. GOVERNING LAW	This Interim Financing Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of **[Alberta]** and the federal laws of Canada applicable therein.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

BORROWER:

FTI CONSULTING CANADA INC., solely in its capacity as Monitor of the Applicants and not in its personal capacity

By: ______________________________
Name:
Title:

INTERIM LENDERS:

DDJ CAPITAL MANAGEMENT, LLC

By: ______________________________
Name:
Title:

BRIGADE CAPITAL MANAGEMENT, LP

By: ______________________________
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Administration Charge**" means the administration charge on the Collateral in an aggregate amount not to exceed $500,000.

"**Advances**" means a borrowing by the Borrower under the Loan Facility and any reference relating to the amount of Advances means the sum of the principal amount of all outstanding Advances, and includes any PIK Interest that has been added to the principal of any Advance in accordance with the terms of this Interim Financing Term Sheet.

"**Agreed Budget**" has the meaning given thereto in Section 9.

"**Borrower**" has the meaning given thereto in Section 1.

"**Break-Up Fee and Expense Charge**" has the meaning given thereto in the SARIO.

"**Business Day**" means a day, excluding Saturday and Sunday, on which banks are generally open for business in the Province of **[Alberta]**.

"**CCAA**" has the meaning given thereto in the preamble.

"**CCAA Proceedings**" has the meaning given thereto in the preamble.

"**Collateral**" means all present and future assets and property of the Applicants, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of an Applicant.

"**Court**" means the Court of Queen's Bench of Alberta.

"**Court Order**" and "**Court Orders**" have the meanings given thereto in Section 16(f).

"**DDMI Charge**" means Encumbrances (as such term is defined in the Diavik JVA) under Article 9 of the Diavik JVA.

"**Default**" means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

"**Deposit Account**" means the account(s) maintained by the Monitor to which payments and transfers under the Interim Financing Term Sheet are to be affected, which are specified in writing by the Monitor to the Interim Lenders, or such other account or accounts as the Monitor may from time to time designate by written notice to the Interim Lenders.

"**Diavik JVA**" means the Diavik Joint Venture Agreement dated March 23, 1995, between Kennecott Canada Inc. and Aber Resources Limited, the predecessors in interest to Diavik Diamond Mines (2012) Inc. and Dominion Diamond Mines ULC, respectively.

"**Directors' Charge**" means the directors and officers charge on the Collateral in an aggregate amount not to exceed $4,000,000.

"**Environmental Liabilities**" means all liabilities, obligations, responses, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs and other costs and expenses, including fines, penalties, sanctions and interest incurred as a result of or related to any claim, investigation, proceeding or demand of any Governmental Authority against any of the Applicants including, without limitation, arising under or related to any law relating to the environment or in connection with any substance which is or is deemed under any applicable law to be, alone or in combination, hazardous, hazardous waste, toxic, a pollutant, a contaminant or source of pollution or contamination whether on, at, in, under, from or about or in the vicinity of any real or personal property owned by any of the Applicants, or any real or personal property that was previously owned, leased or occupied by any of the Applicants.

"**Event of Default**" has the meaning given thereto in Section 18.

"**Financial Advisor Charge**" has the meaning given thereto in the SARIO.

"**First Lien Lenders**" means the lenders under the Pre-filing Credit Agreement.

"**First Lien Lenders Charge**" means a charge on the Collateral in the aggregate amount not to exceed $■ for the benefit of the First Lien Lenders in respect of the Pre-filing Credit Agreement.

"**Funding Conditions**" has the meaning given there in Section 6.

"**Governmental Authority**" means any federal, provincial, state, regional, municipal or local government or any department, agency, board, tribunal or authority thereof or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government or the operation thereof.

"**Interim Facility**" has the meaning given thereto in Section 5.

"**Interim Facility Commitment**" has the meaning attributed thereto in Section 5.

"**Interim Financing Obligations**" has the meaning given thereto in Section 6.

"**Interim Lenders**" has the meaning given thereto in the recitals hereof.

"**Interim Lenders' Charge**" has the meaning given thereto in the SARIO.

"**Interim Lending Order**" has the meaning given thereto in Section 6.

"**KERP Charge**" has the meaning given thereto in the SARIO.

"**Liens**" means all mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever

created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

(a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn, returned or transferred only upon fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;

(b) (i) rights of set-off or (ii) any other right of or arrangement of any kind with any creditor, which in any case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing indebtedness, (B) preferring some holders of indebtedness over other holders of indebtedness or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set-off granted or arising in the ordinary course of business); and

(c) absolute assignments of accounts receivable, in each of the foregoing cases, granted by the Applicants or against the Collateral.

"**Material Adverse Change**" means any event, circumstance, occurrence or change which, individually or in the aggregate, results, or which could reasonably be expected to result, in a material adverse change in:

(a) the ability of the Monitor or any Applicant to perform any material obligation under this Interim Financing Term Sheet or any Court Order, or the ability of any Applicant to carry out a Plan or Restructuring Option;

(b) the validity or enforceability of any of the Second Interim Lenders' Charge or the ranking of any of the Liens granted thereby or the material rights or remedies intended or purported to be granted to the Interim Lenders under or pursuant to such Second Interim Lenders' Charge; or

(c) the business, operations, assets, condition (financial or otherwise) or results of operations of the Applicants, on a consolidated basis.

"**Maturity Date**" has the meaning given thereto in Section 8.

"**Monitor**" has the meaning given thereto in the recitals hereof.

"**Outside Date**" has the meaning given thereto in Section 6.

"**Permitted Disposition**" means (i) inventory sold, leased or disposed of in the ordinary course of business, (ii) obsolete equipment which is being replaced with equipment of an equivalent value, (iii) assets sold, leased or disposed of during a fiscal year having an aggregate fair market value not exceeding $■ for such fiscal year, and (iv) any other sale, lease or disposition expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

"**Permitted Liens**" means (i) the Second Interim Lenders' Charge; (ii) any charges created under any order of the Court in the CCAA Proceedings subsequent in priority to the Second Interim Lenders' Charge, the limit and priority of each of which shall be acceptable to the Interim Lenders in their discretion; (iii) valid and perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Outside Date in respect of any accounts payable arising after the Outside Date in the ordinary course of business, provided to pay all such amounts are paid as and when due; and (v) the Permitted Priority Liens.

"**Permitted Priority Liens**" means: (a) the Priority Charges; (b) statutory super-priority Liens for unpaid employee source deductions; (c) Liens for unpaid municipal or county property taxes or utilities to the extent that are given first priority over other Liens by statute; and (d) such other Liens as may be agreed to in writing by the Interim Lenders. For greater certainty, except as expressly set forth herein, Liens arising from the construction, repair, maintenance and/or improvement of real or personal property, shall not be "**Permitted Priority Liens**".

"**PIK Interest**" has the meaning given thereto in Section 13.

"**Plan**" has the meaning given thereto in Section 8.

"**Pre-filing Credit Agreement**" means the revolving credit agreement, dated as of November 1, 2017, as amended and as may be further amended from time to time, among DDM, Washington Diamond Investments, LLC, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"**Priority Charges**" means: (i) the Administration Charge; (ii) the Directors' Charge; (iii) the First Lien Lenders Charge; (iv) the DDMI Charge; (v) the KERP Charge; (vi) the Break-Up Fee and Expense Charge; and (vii) the Financial Advisor Charge.

"**Restructuring Option**" means any transaction involving the refinancing of an Applicant, the sale of all or substantially all of the assets of any Applicant or any other restructuring of the Applicants' businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any of the Applicants.

"**Revised Budget**" has the meaning given thereto in Section 9.

"**SARIO**" has the meaning given thereto in the recitals hereof.

"**Second Interim Lenders' Charge**" has the meaning given thereto in Section 6.

"**Updated Budget Default**" has the meaning given thereto in Section 18(d).

SCHEDULE B

FORM OF INTERIM LENDING ORDER

CLERK'S STAMP

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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	**INTERIM FINANCING ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	■

DATE ON WHICH ORDER WAS PRONOUNCED:	■, 2021
LOCATION OF HEARING:	Calgary
NAME OF JUDGE WHO MADE THIS ORDER:	Madam Justice K.M. Eidsvik

UPON THE APPLICATION by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in these proceedings, for an Order, *inter alia*: ■, was heard this day via video conference in Calgary, Alberta.

AND UPON having read the Application, the Affidavit of ■ and the ■ Report of the Monitor dated October 6, 2021, filed;

AND UPON hearing counsel for the Monitor, counsel for DDJ Capital Management, LLC and Brigade Capital Management, LP (together, the "**Interim Lenders**") 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 Interim Financing Term Sheet dated as of October ■, 2021 (the "**Interim Financing Term Sheet**") among the Monitor and the Interim Lenders, attached hereto as Schedule "A" or the Sixteenth Report of the Monitor dated October 6, 2021.

INTERIM FINANCING AND SECOND INTERIM LENDERS' CHARGE

3. The Monitor is hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Facility**"), pursuant to the Interim Financing Term Sheet, in order to finance the Monitor's efforts to realize on the remaining assets of the Applicants for the benefit of the creditors of the Applicants and other general 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 $500,000 unless permitted by further order of this Court and agreed to by the Interim Lenders.

4. The Interim Facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet, as such Interim Financing Term Sheet may be amended in accordance with its terms.

5. The Monitor and the Interim Lenders 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 Monitor is 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.

6. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the "**Second Interim Lenders' Charge**") on the Collateral to secure all Interim Financing Obligations (as defined in the Interim Financing Term Sheet), which Second Interim Lenders' Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Second Interim Lenders' Charge shall not secure any obligation existing before the date this Order is made. The Second Interim Lenders' Charge shall have the priority set out in paragraphs ■ and ■ hereof.

7. 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 Second Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the Second Interim Lenders' Charge, the Interim Lenders may: (i) immediately cease making advances to the Monitor and set off and/or consolidate any amounts owing by the Interim Lenders to the Monitor against the obligations of the Monitor to the Interim Lenders under the Interim Financing Term Sheet, the Definitive Documents

or the Second Interim Lenders' Charge and make demand, accelerate payment, and give other notices; (ii) upon five (5) days' notice to 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 Collateral under or pursuant to the Interim Financing Term Sheet, Definitive Documents, and Second 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 Collateral.

8. 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.

9. This Order is subject to provisional execution and, if any of the provisions of this Order in connection with the Definitive Documents or the Second 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 Second Interim Lenders' Charge) for all advances so made.

VALIDITY AND PRIORITY OF CHARGES

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

First – Administration Charge (to the maximum amount of $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;

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

Sixth – Second Interim Lenders' Charge.

11. The filing, registration or perfection of the Second Interim Lenders' Charge shall not be required, and the Second Interim Lenders' Charge 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 Second Interim Lenders' Charge coming into existence, notwithstanding any failure to file, register, record, possess, or perfect.

12. The Second Interim Lenders' Charge shall constitute a charge on the Collateral and subject always to section 34(11) of the CCAA the Second Interim Lenders' Charge 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 Second Interim Lenders' Charge and the Financial Advisor Charge shall rank subordinate to any Encumbrances under Article 9 of the Diavik JVA; and

    (b) the Encumbrances of the Existing Credit Facility Agent in respect of the Collateral shall rank senior to the Second Interim Lenders' Charge in respect of the Collateral.

13. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over the Collateral that rank in priority to, or *pari passu* with, the Second Interim Lenders' Charge unless the Applicants also obtain the prior written consent of the Monitor and the Interim Lenders, or further order of this Court.

14. The Second Interim Lenders' Charge, the Interim Financing Term Sheet and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of 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 Second Interim Lenders' Charge 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) the Interim Lenders shall not 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 Second Interim Lenders' Charge, 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 Monitor pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the

granting of the Second Interim Lenders' Charge, 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

15. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Second Interim Lenders' Charge amongst the various assets comprising the Collateral, 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 Collateral in accordance with the Interim Financing Term Sheet.

GENERAL

16. Except as may be necessary to give effect to this Order, the Initial Order 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 and the Initial Order, the terms of this Order shall govern.

17. 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 property of the Applicants or the business of the Applicants.

18. 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.

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

____

Justice of the Court of Queen's Bench of Alberta

SCHEDULE C

REQUEST FOR ADVANCE

<u>REQUEST FOR ADVANCE</u>

TO: DDJ Capital Management, LLC and Brigade Capital Management, LP, as Interim Lenders

DATE: ____________, 2021

Dear Sirs:

The undersigned refers to the interim financing term sheet dated as of October ___, 2021 (the "**Interim Financing Term Sheet**") made among DDJ Capital Management, LLC and Brigade Capital Management, LP, as Interim Lenders, and FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants (in such capacity, the "**Borrower**").

Capitalized terms used in this Request for Advance have the same meanings herein as are ascribed thereto in the Interim Financing Term Sheet.

1. The Borrower hereby gives you notice pursuant to the Interim Financing Term Sheet that the undersigned requests an Advance under the Interim Facility (the "**Interim Facility Advance**") in the Interim Financing Term Sheet be deposited into the Deposit Account as follows:

   (a) Amount of Advance requested: $________________

   (b) Requested funding date: ________________

   (c) Total principal amount currently outstanding (excluding this Interim Facility Advance and any PIK Interest): $________________

   (d) Availability remaining under the Interim Facility (excluding this Interim Facility Advance): $________________

2. The Monitor hereby certifies to you for and on behalf of itself and the Applicants (and not in his or her personal capacity) as follows:

   (a) all of the representations and warranties contained in the Interim Financing Term Sheet are true and correct on and as of the date hereof and will be true and correct as of the date of the requested Interim Facility Advance as though made on and as of such date (unless expressly stated to be made as of a specified date);

   (b) no Default or Event of Default has occurred and is continuing or shall result from the requested Interim Facility Advance;

[Signature Page to Request for Advance]

(c) the Interim Facility Advance shall not cause the aggregate amount of all outstanding Advances to exceed the Interim Facility Commitment or be greater than the amount shown on the Agreed Budget as at the date of such Interim Facility Advance;

(d) the Interim Facility Advance is consistent with the Agreed Budget; and

(e) the Applicants are in compliance with the Interim Financing Term Sheet and the Court Orders.

[Signature Page Follows]

Dated as of the date first written above.

FTI CONSULTING CANADA INC., solely in its capacity as Monitor of the Applicants and not in its personal capacity

By: ______________________________

Name:
Title:

[Signature Page to Request for Advance]

SCHEDULE D

SUMMARY OF AGREED BUDGET

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED** **AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC and DOMINION FINCO INC.**
PARTY FILING THIS DOCUMENT	**ARCTIC CANADIAN DIAMOND COMPANY LTD.**
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Torys LLP** 79 Wellington St W., 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2 Attention: Scott Bomhof Telephone: + 1 416.865.7370 Email: sbomhof@torys.com File No. 2001-05630

AFFIDAVIT OF KRISTAL KAYE

Sworn on October 13, 2021

I, Kristal Kaye, of the City of Calgary, in the Province of Alberta, **SWEAR AND SAY THAT**:

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

2. From May 7, 2018 to February 3, 2021, I was the Chief Financial Officer of Dominion Diamond Mines ULC ("**DDM**"), until I resigned on the closing date of the ACDC Transaction (as defined below), and I was one of the primary affiants for materials filed in these CCAA proceedings on behalf of the Applicants. I was involved in the negotiation of the ACDC APA (as defined below) on behalf of the Applicants. On or about February 3, 2021, I was hired as the Chief Financial Officer of Arctic Canadian Diamond Company Ltd. ("**ACDC**") and have held that role since such date.

3. ACDC is a Calgary, Alberta-based company and the purchaser of substantially all of the assets of the Applicants other than the Diavik Joint Venture Interest pursuant to the ACDC APA (as defined therein). As a result of that transaction, ACDC is a diamond producer with ownership interests in diamond projects in the Northwest Territories that is engaged in the business of mining and selling rough diamonds to the global market.

4. I have reviewed the Application Materials filed by FTI Consulting Canada, Inc., the Court-appointed monitor of the Applicants (the "**Monitor**"), returnable on October 15, 2021, including the Sixteenth Report of the Monitor dated October 6, 2021 (the "**Sixteenth Report**"). Any capitalized term used in this Affidavit that are not otherwise defined shall have the meaning attributed thereto in the Sixteenth Report. All monetary amounts contained in this Affidavit are expressed in Canadian dollars unless otherwise indicated.

5. The Monitor is seeking an Order (the "**Proposed Order**") approving:

   a. the asset purchase agreement between Diavik Diamond Mines (2012) Inc. ("**DDMI**") and DDM (the "**AVO Agreement**") providing for DDMI's purchase, free and clear of all claims and encumbrances, of the Applicants' interest in the Diavik JVA (defined below), share of the products and inventory produced from the Diavik Diamond Mine

and cash collateral held by the Applicants' senior secured first lien lender syndicate (the "**First Lien Lenders**") as security for the letters of credit (the "**LCs**") issued by the First Lien Lenders (the "**AVO Transaction**"); and

b. the term sheet proposed by Washington Diamond Investments Holdings II, LLC ("**Washington**") to the Monitor (the "**RVO Term Sheet**"), whereby Washington will make a payment in exchange for the "cleansing" of liabilities of certain entities within the Applicants' corporate group through a reverse vesting order in order to maximize the Tax Attributes (as defined in the RVO Term Sheet) for the benefit of Washington and its affiliates (the "**RVO Transaction**").

6. The Monitor has not conducted a recent sales and marketing process for the assets that they seek to now sell. The Monitor seeks to rely, in the case of the ACDC Assets, only on the Court-approved SISP (defined below) that concluded over one year ago under dramatically different diamond market conditions. ACDC had expected that such valuations and processes would be pursued in the case of the ACDC Assets with the US$1 million of funds that ACDC provided for precisely that purpose as part of the ACDC Transaction (defined below).

Summary of Relief Sought by ACDC

7. I believe that there may be value remaining in the Diavik Realization Assets (described below), beyond the net amounts which might become owing to the First Lien Lenders for contingent claims under their LCs (defined below). Unfortunately, the AVO Transaction and the RVO Transaction were served on ACDC only six business days before the hearing and ACDC has not had sufficient time to consider the relief sought by the Monitor.

8. This application was served on short notice with no urgency; it should be adjourned. In the alternative, and if this Court decides to hear the application, it should be dismissed.

9. The requested adjournment of the Monitor's application for approval of the AVO Transaction and the application's dismissal are fair and reasonable and will allow ACDC, who will be disproportionately prejudiced should the relief sought by the Monitor be

granted, with an opportunity to consider the merits of the relief sought by the Monitor and ACDC's rights.

10. The RVO Transaction is a related party transaction: Washington and its affiliates are the sole equity owners, either directly or indirectly, of the entities that are subject to the cleansing of liabilities contemplated under the RVO Term Sheet. The RVO Transaction stands to benefit this related party.

ACDC's Correspondence with the Monitor

11. The Monitor served its application record at 4:40 pm (MST) on October 6, 2021. The Sixteenth Report contained a copy of the AVO Agreement, which was negotiated without any knowledge or input from ACDC.

12. On October 8, 2021, our counsel sent a letter to this Court to advise Your Ladyship of ACDC's significant concerns with the relief being sought by the Monitor upon its preliminary review of the served materials, and to advise of ACDC's intention to seek an adjournment of the hearing. A copy of that letter is attached as Exhibit A.

13. On October 11, 2021, our counsel sent a letter to the Monitor setting out ACDC's initial questions with respect to the Sixteenth Report, proposed transactions, and the Monitor's related activities leading to the proposed transactions. A copy of that letter is attached as Exhibit B.

The AVO Transaction

i. Summary of key assets in the ACDC APA and the AVO Agreement

14. The following table provides a side-by-side comparison of assets and claims that were purchased by ACDC under the ACDC APA (defined below) and: (i) assets that the Monitor intends to sell to DDMI pursuant to the AVO Agreement; or (ii) claims the Monitor is required to release as a condition of the AVO Agreement:

Asset Category	Assets acquired by ACDC under the ACDC APA and pursuant to the 2020 Vesting Order	Assets proposed to be acquired by DDMI under the AVO Agreement
Interests in the Diavik Joint Venture	"all of Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik Joint Venture Interest (including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized or realizable by or on behalf of Sellers)" (section 3.1(b))	"[DDM's] legal and beneficial interest in: (a) all Products (as such term is defined in the Diavik Joint Venture Agreement); and (b) other inventory of any kind or nature (including stockpiles and goods), if any, that have been produced from the Diavik Diamond Mine. For the avoidance of doubt, Dominion Production includes Dominion's legal and beneficial interest in any Products that were made available for auction during the Subject Period and not sold as of Closing." (section 1.1)
Cash Collateral	"...all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits." (section 3.1(g))	"all cash and cash equivalents held by the [Agent] as security for any LC issued by and First Lien Lender where the Purchaser is the beneficiary..." (section 1.1)

Claims	"all rights, options, Claims or causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law" (section 3.1(n)) "'Claims' means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise." (section 1.1)	[The following is a condition precedent to the closing of the AVO Agreement:] "The obligations of [DDMI] to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by [DDMI]) of the following conditions precedent on or before the Closing Date. ... 7.5 Closing Deliveries. Each of the deliveries required to be made to [DDMI] pursuant to Section 9.2 shall have been so delivered." (section 7.5) "9.2 Deliveries by [DDM]. At or prior to the Closing, [DDM] shall deliver the following to [DDMI]: ... (e) an executed and fileable discontinuance of the Civil Claim [DDM] filed against [DDMI] in the Supreme Court of British Columbia, Vancouver Registry, No. S206419, which shall be releasable on Closing" (section 9.2 and 9.2(e))

ii. The SISP process resulted in the ACDC Transaction

15. On June 19, 2020, this Court granted a second Amended and Restated Initial Order that, among other things, authorized procedures for a sales and investment solicitation process in respect of some or all of the Applicant's assets (the "**SISP**") and approved a stalking horse agreement entered into between Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), DDM and an affiliate of Washington in respect of same. The June 19, 2020 order is attached as Exhibit C.

16. Between June 19, 2020 and September 15, 2020, the Applicants, in conjunction with a SISP advisor and with the Monitor's input, marketed the Applicants' business and assets in accordance with the SISP.

17. A proposed transaction with Washington could not proceed as a result of the failure to satisfy material conditions precedent to the transaction and, subsequently, DDM,

Dominion Holdings, Dominion Diamond Canada ULC, Dominion Diamond Marketing Corporation, Dominion Diamond Delaware Company and Dominion Finco Inc. (collectively, the "**Sellers**") reached an agreement with DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Bidders**") for the purchase and sale of substantially all of the Sellers' assets other than the Diavik Joint Venture Interests (the "**ACDC Transaction**"), pursuant to an asset purchase agreement dated December 6, 2020 (the "**ACDC APA**"). A copy of the ACDC APA is attached as Exhibit D.

18. The Bidders designated ACDC as the purchaser under the ACDC Transaction and ACDC executed a joinder agreement dated January 31, 2021 (the "**Joinder Agreement**"), pursuant to which ACDC was assigned all of the rights and entitlements of the Bidders under the ACDC APA. A copy of the Joinder Agreement is attached as Exhibit E.

19. On December 11, 2020, this Court granted a sale approval and vesting order (the "**2020 Vesting Order**") approving the ACDC Transaction and vesting the purchased assets in ACDC. The ACDC Transaction closed on February 3, 2021. A copy of the 2020 Vesting Order (without schedules) is attached as Exhibit F.

iii. ACDC acquired the Dominion Production and the Cash Collateral under the ACDC APA

20. Under the AVO Agreement, DDM purports to sell to DDMI "all of DDM's right, title and interest in and to" the following assets (among others):

a. DDM's Participating Interest (as defined in the Diavik Joint Venture Agreement dated March 23, 1995 between Kennecott, Canada Inc. and Aber Resources Limited, the predecessors in interest to DDMI and DDM, respectively (the "**Diavik JVA**")) in the Diavik JVA;

b. the unincorporated joint venture arrangement established pursuant to the Diavik JVA;

c. the Diavik Diamond Mine located approximately 300 kilometers from Yellowknife;

d. the Dominion Production, defined in the AVO Agreement as "[DDM's] legal and beneficial interest in: (a) all Products (as such term is defined in the Diavik Joint Venture Agreement); and (b) other inventory of any kind or nature (including stockpiles and goods), if any, that have been produced from the Diavik Diamond Mine. For the avoidance of doubt, Dominion Production includes Dominion's legal and beneficial interest in any Products that were made available for auction during the Subject Period and not sold as of Closing"; and

e. the Cash Collateral, defined in the AVO Agreement as "all cash and cash equivalents held by the [Agent] as security for any LC issued by and First Lien Lender where the Purchaser is the beneficiary..."

21. Under the ACDC APA, ACDC purchased all of the Sellers' right, title and interest in the Acquired Assets, subject only to Permitted Encumbrances (discussed below). The Acquired Assets expressly include:

a. *Acquired Subsidiaries*. Pursuant to section 3.1(a) of the ACDC APA, the Acquired Assets include "all of the issued and outstanding equity interests held by any Seller in Dominion Diamond (India) Private Limited, Dominion Diamond Marketing N.V., Dominion Diamond (Cyprus) Limited and, if and to the extent elected by the Bidders before Closing, in another Seller."

b. *Diavik Realization Assets*. Pursuant to section 3.1(b) of the ACDC APA, the Acquired Assets include "all of Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik Joint Venture Interest (including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized or realizable by or on behalf of Sellers)" [emphasis added].

c. *Cash and Cash Equivalents*. Pursuant to section 3.1(g) of the ACDC APA, the Acquired Assets include all of the Sellers' Cash and Cash Equivalents, including "all cash collateral and deposits posted by or for the benefit of Sellers as security for any

letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise…" Pursuant to section 1.1 of the ACDC APA, Cash and Cash Equivalents is defined as:

> "Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

d. *Receivables, including post-Effective Date receivables related to the Diavik Joint Venture Interest.* Pursuant to section 3.1(h) of the ACDC APA, the Acquired Assets include "all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller provided, however, that all receivables in respect of the Diavik Joint Venture Interest collected by the Sellers following the Effective Date shall constitute Diavik Realization Assets" [emphasis added].

e. *Claims.* Pursuant to section 3.1(n), the Acquired Assets include "all rights, options, Claims or causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law" [emphasis added].

Claims is defined in section 1.1 of the ACDC APA as:

> "Claims" means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings,

arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

f. *Goodwill, Intangible Assets, Etc.* Pursuant to section 3.1(u) of the ACDC APA, the Acquired Assets include "goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets";

22. ACDC purchased the Acquired Assets <u>free and clear</u> of all claims and encumbrances, except only for "Permitted Encumbrances." The term Permitted Encumbrances is found at section 1.1 of the ACDC APA. There is only one reference to encumbrances of the First Lien Lenders in that defined, found at its subsection (10):

> "Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: … (10) in respect of only the Diavik Realization Assets, Encumbrances that are held by or for the benefit of the First Lien Lenders pursuant to the Pre-filing Credit Agreement …

23. As part of the purchase price for the Acquired Assets, ACDC paid an aggregate value of approximately US$450 million, comprised of the following:

a. *Assumption of Pre-filing Indebtedness*. ACDC assumed US$70 million of outstanding indebtedness under the Pre-filing Credit Agreement (as defined in the ACDC APA), on and subject to the terms and conditions set out in the MSA (as defined below).

b. *Assumption of Bond Indemnities*. ACDC assumed indemnity and related obligations in respect of certain bonds in the face amount of C$279 million issued by certain sureties.

c. *Closing Cure Amount*. ACDC paid US$10.5 million in cash to satisfy cure amounts owing in respect of certain of the Sellers' contracts that were assigned to ACDC.

d. *Assumed Liabilities*. ACDC assumed certain pre-closing liabilities in the approximate amount of US$150 million that included, among other things, all of the Sellers' liabilities owing with respect to the First Lien Lenders' LCs. ACDC's assumption of the LCs was effected by the Assignment and Assumption Agreement and subject to the

terms of the MSA (defined below). ACDC effectively assumed DDM's US$70 million obligation by entering into a new loan agreement with the First Lien Lenders for that amount in consideration of the release of that amount of DDM's funded debt, but ACDC also granted the First Lien Lenders additional consideration of US$18.5 million in ACDC debt, as specifically provided for under a new ACDC loan agreement.

24. As the Monitor noted at para 29 of its Eleventh Report dated December 9, 2020 (the "**Eleventh Report**"), filed in support of the Applicants' motion for the 2020 Vesting Order, the terms of the ACDC APA, and the purchase price that ACDC paid for the Acquired Assets, "represent the highest and best offer in respect of the Acquired Assets and are fair and reasonable in the circumstances." The Eleventh Report (without exhibits) is attached as Exhibit G.

25. On December 11, 2020, this Court granted the 2020 Vesting Order, which approved the ACDC APA "in its entirety" (at paragraph 3). The 2020 Vesting Order vested all of the Sellers' right, title and interest in and to the Acquired Assets absolutely in the name of ACDC free and clear from all claims and encumbrances (excluding the Permitted Encumbrances) (at paragraph 4). The Court further held at paragraph 13 that:

> The Purchasers shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for their own use and benefit without any interference of or by any Person claiming by, through or against the Sellers. [emphasis added]

26. In sum, ACDC acquired the ACDC Assets under the ACDC APA, and those assets were vested in ACDC for its own use and benefit, free and clear of all encumbrances, other than Permitted Encumbrances, by this Court.

iv. The Parties Intended for ACDC to Acquire the ACDC Assets

27. ACDC's ownership interest in the Cash Collateral and the Dominion Production, as opposed to a right to residual proceeds, was reflected in an email dated December 6, 2020 from counsel to the Monitor to counsel for DDMI which stated that each of the Monitor, First Lien Lenders, the Bidders and DDMI understood that the APA conveyed to ACDC all diamond production turned over to the Applicants by DDMI, which excluded diamonds

retained by DDMI for its "cover payments." This email was filed in these proceedings by DDMI in its Affidavit #6 of Thomas Croese sworn December 6, 2020, and a copy of that affidavit and enclosed email are attached as Exhibit H.

28. ACDC purchased all of the Sellers' Claims, which is defined in section 1.1 of the ACDC APA to include "all causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing". DDM, one of the Sellers, is the Plaintiff under the civil claim that DDM filed against DDMI in the Supreme Court of British Columbia, Vancouver Registry, No. S206419 (the "**BC Civil Claim**"). There are no "exclusions" to the defined term "Claims" in the APA and no express exclusion for the BC Civil Claim. Other than the BC Civil Claim, I am not aware of any litigation in which DDM was the plaintiff at the time that the ACDC APA was executed. A copy of the Notice of Civil Claim in respect of the BC Claim is attached as Exhibit I.

29. ACDC and the First Lien Lenders entered into a first lien credit agreement dated February 3, 2021 (the "**First Lien Credit Agreement**"). Pursuant to section 3.06 of the First Lien Credit Agreement, ACDC was required to disclose any material litigation affecting ACDC or its business to the First Lien Lenders. The BC Civil Claim is listed in ACDC's litigation schedule as material litigation of ACDC. The First Lien Lenders have never objected to the BC Civil Claim being treated as material litigation; indeed, they executed the First Lien Credit Agreement with that disclosure. Attached as Exhibit J is an excerpt of the First Lien Credit Agreement requiring ACDC to disclose material litigation to the First Lien Lenders, along with an excerpt from the corresponding disclosure schedule that disclosed the BC Civil Claim as material litigation of ACDC (the balance of the Disclosure Schedule has been redacted as they are not relevant to this application).

30. ACDC does not consent to a release of this claim by the Monitor (nor was it consulted in respect of such a release).

31. In addition, I understand that the AVO Agreement requires that the Applicants grant full and final settlement of all outstanding claims among the Seller, the Monitor, the Purchaser, the Agent and the First Lien Lenders, including releases of all claims the

Seller may have to royalties under the Diavik Joint Venture Agreement. The Monitor has not disclosed which claims are to be released under the AVO Agreement (except for the BC Civil Claim and a specified royalty claim) and, as such, ACDC is not in a position to put forward additional evidence over its ownership of claims to be released.

v. ***The AVO Transaction is prejudicial to ACDC***

32. ACDC paid good and valuable consideration for the Diavik Realization Assets and the Claims after an extensive and transparent process that closely involved the First Lien Lenders and the Monitor and was approved by this Court. The Monitor indicates at paragraph 18 of its Sixteenth Report that the AVO Agreement proposes to transfer the Cash Collateral and Dominion Production to DDMI. ACDC does not consent to the sale or transfer of these assets under the AVO Transaction. I acknowledge that ACDC's ownership of the Cash Collateral and the Dominion Production are subject to the secured claims of the First Lien Lenders until the LCs are fully cash collateralized. According to the Sixteenth Report, the indebtedness owing to the First Lien Lenders under the LCs as at September 30, 2021 is $105 million and the total cash collateral held by either the First Lien Lenders or the Monitor for these obligations is $51.39 million. Accordingly, the First Lien Lenders' theoretical contingent exposure for the LCs is approximately $53.61 million. ACDC was not consulted about the support agreement dated September 16, 2021 (the "**Support Agreement**") or the intent to use ACDC's assets to satisfy any obligations under the AVO Agreement. ACDC is not a party to either agreement.

33. There are significant issues with respect to the actual amount of money owing to DDMI for cash calls and Cover Payments (as such term is defined in the Diavik JVA). The release of these claims is being used to partially fund the purchase price under the AVO Agreement and the ongoing costs associated with disputing these claims is one of the grounds upon which the Monitor has indicated that it supports the AVO Agreement.

34. The Agent to the First Lien Lenders filed a brief with this Court on October 28, 2020, in response to DDMI's application for a monetization order that was granted by this Court on November 4, 2020 (the "**Monetization Order**"), where it described DDMI's conduct with respect to those cash calls. It describes at paragraph 48(a) "unilateral and excessive

control which DDMI exercises over cash calls" as being a central feature of the BC Civil Claim and cites concerns about the potential that DDMI would "manipulate[] cash calls to ensure that all Dominion's share of production from the Diavik Mine is retained for its own benefit." A copy of that brief (without schedules) is attached as Exhibit K.

35. I have been concerned with the way in which DDMI has operated the Diavik joint venture for some time. DDMI, as manager of the Diavik mine, has repeatedly breached its obligations to ACDC (and DDM prior to the ACDC Transaction). It has repeatedly failed to meet cost budgets, production plans and diamond recovery budgets, and has run the Diavik operations in a manner that has been detrimental to ACDC. I provided further context of DDMI's mismanagement in my previous affidavits, sworn in these proceedings on dated May 6, 2020 and October 28, 2020. Those affidavits are attached as Exhibits L and M, respectively.

36. Since the approval of the Monetization Order, despite a high demand for rough diamonds and a bullish market recovery, DDMI has not sold a significant amount of the diamonds they are holding for purposes of collateralization of amounts outstanding under the cash calls. I believe those sales were timed to ensure as few diamonds as possible were sold before July 1, 2021—the date upon which DDMI could exercise its contractual right to demand additional security from ACDC (without providing evidence establishing the quantum of their entitlement reviewed by an independent third party). This ensured that no cash or diamonds held as collateral would be returned to ACDC. A report provided in the data room set up by the Monitor does not provide details to reconcile each production cycle against its DICAN valuation, thereby making it impossible to show whether DDMI was over collateralized at any point in time. The diamond collateral is still being valued at original DICAN values that, based on ACDC's market experience over the past year, could be undervaluing the diamond collateral anywhere from 20% to 50% (depending on when the valuation was actually performed).

37. The transfer of ACDC's assets to DDMI without consultation or compensation is prejudicial to ACDC. ACDC would also be prejudiced by the release of claims.

The RVO Transaction

38. Since the date of closing of the ACDC Transaction, I am not aware of any activity on the part of the Monitor to value or solicit offers to acquire the Tax Attributes. Our counsel was advised of the RVO Term Sheet on or around September 27, 2021. ACDC immediately took steps to seek information from the Monitor about the Tax Attributes to determine the value and prospective value of these assets, entitlement to them or their proceedings and ACDC's potential interest in acquiring the Tax Attributes if it does not have an existing interest in them. On September 28, 2021, our counsel attended a call with the Monitor to discuss the RVO Transaction.

39. In the letter attached as Exhibit B, ACDC has asked the Monitor to confirm that the RVO Agreement does not purport to transfer any interest in the tax attributes of the Acquired Subsidiaries (as defined in the ACDC APA) as the shares in those companies were assigned to ACDC under the ACDC APA. As of the time of this affidavit, the Monitor has not replied to this question.

40. ACDC believes that it would be in the best interests of the Applicants and their creditors if the Monitor pursues a marketing processes for the Tax Attributes.

Serious and Unresolved Issues with the Process

i. The Monitor and the First Lien Lenders have obligations to ACDC with respect to the monetization process

41. ACDC does not believe that a fair and transparent process was run leading up to the AVO Transaction. The fully executed Support Agreement is an agreement between the First Lien Lenders and DDMI. The Monitor is not a party to this Agreement. The unexecuted AVO Agreement is an agreement between DDMI and the Monitor, on behalf of DDM. ACDC is not a party to either of these agreements. ACDC had an expectation that it would be consulted about any sale of the Acquired Assets (as such term is used in the AVO Agreement) including the Cash Collateral and the Dominion Production that are owned by ACDC.

42. The Monitor and each of the First Lien Lenders have entered into contractual obligations with ACDC (and/or the Bidders) regarding the realization of the Acquired Assets (as such term is used in the AVO Agreement).

43. I have been advised by Eric Hoff of DDJ that when the ACDC Transaction closed, DDJ and Brigade agreed to provide future funding for the Dominion estate to fund a realization process for the Applicant's residual assets following the closing of the ACDC APA and supported funding the Diavik Realization Account with US$1 million from Cash and Cash Equivalents that would otherwise have been acquired by the Purchaser. An additional amount of US$250,000 was held back from the Cash and Cash Equivalents to fund the Wind-Down Account.

44. The Agent and the Bidders entered into a mutual support agreement dated December 4, 2020 (the "**MSA**"). A copy of the MSA is attached as Schedule B to the ACDC APA, itself attached as Exhibit D. Under section 6 of the MSA, the Agent and the Bidders agreed to jointly develop a process for the realization and recovery of Diavik Assets (as such term is defined in the MSA):

> Unless otherwise agreed by the Parties, the Transaction shall be implemented pursuant to an asset purchase agreement (the "**APA**") to be executed by DDJ Capital Management, LLC, Brigade Capital Management, LP, and the Company under which a newly created entity or entities ("**NewCo**") shall acquire substantially all of the assets of the Company other than the Company's Diavik mine joint venture agreement interests but including (subject to the 1L Lenders' continuing lien until cash collateralization or cancellation of all Diavik letters of credit issued by the 1L Lenders and the payment of all related fees) all receivables, diamond production, claims, sales proceeds and other rights and assets realized or recovered in respect of such Diavik mine joint venture agreement interests (collectively, the "**Diavik Assets**"). The Parties shall agree to a mechanism for the pursuit of the realization and recovery of the Diavik Assets, which among other things shall provide for a duly authorized independent official to have control and carriage thereof and for the costs thereof to be funded initially by the Company's payment at closing of the Transaction of

> US$1,000,000 from the Transaction proceeds at NewCo's direction to such official and thereafter to be funded at the cost of the 1L Lenders if they so elect in their sole discretion. The APA shall have terms and conditions satisfactory to the Parties and consistent with this Support Agreement including, without limitation, with respect to: (i) the Company's prompt payment and reimbursement, upon and from time to time following court approval of the APA in the Proceedings, of all the 2L AHG's reasonable and documented (with only brief summary descriptions of service) costs and expenses incurred from and after the commencement of the Proceedings; and (ii) the Company's prompt payment of a break fee in the event that the Company APA is terminated or the Transaction is not completed for any reason other than the non-compliance by DDJ Capital Management, LLC or Brigade Capital Management, LP with their obligations under the APA and an alternative transaction is consummated within nine (9) months of the date of the APA for the sale or restructuring of the Company or any material portion of its assets pursuant to which the First Lien Debt is repaid in full in cash. The Parties shall work cooperatively in furtherance of obtaining court approval for the APA on December 11, 2020 or as soon thereafter as is practicable. [emphasis added]

45. Pursuant to section 5(a) of the MSA, the Agent and the First Lien Lenders:

> … covenants and agrees (i) to cooperate and negotiate in good faith, and consistent with this Support Agreement, the definitive documents implementing, achieving and relating to the Transaction and any Court orders relating thereto, and (ii) to the extent it is a party thereto, to execute, deliver and perform its obligations under such documents.

46. The First Lien Lenders did not consult with ACDC before entering into the Support Agreement. I have spoken to Eric Hoff of DDJ and Andrew Petitjean of Brigade, who are the Bidders, and have been advised that the First Lien Lenders did not consult with them before entering into the Support Agreement.

47. On January 27, 2021, this Court granted an order expanding the Monitor's powers (the "**EMP Order**"). Paragraphs 4(f) and 4(k) authorized the Monitor to take further steps to

market and sell the remaining assets of Dominion following the closing of the ACDC Transaction, but such rights are specifically "subject to the terms of the [ACDC] APA". Paragraph 10 of the EMP Order authorized the Monitor to enter into a transition services agreement 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, conducting, supervising and directing the realization and recovery of the Applicants' Property or other assets or interests. The authority provided to the Monitor pursuant to paragraph 10 of the EMP Order is expressly subject to such steps being "in accordance with the applicable terms of the [ACDC] APA". A copy of the EMP Order is attached hereto as Exhibit N.

48. In furtherance of the EMP Order, ACDC, the Agent and the Monitor (on behalf of the Applicants) entered into a transition services agreement dated February 3, 2021 (the "**TSA**"). A copy of the TSA is attached as Exhibit O.

49. Pursuant to section 1.01 of the TSA, ACDC agreed to take various steps to assist in the monetization of the Applicants' Subject Diamonds (as such term is defined in the TSA) for the benefit of the Applicants and their creditors. ACDC has complied (and is continuing to comply) with all of its obligations under the TSA.

50. In section 1.02 of the TSA, Dominion (through the Monitor) agreed to undertake activities related to the full realization and recovery of the Diavik Realization Assets (the "**Realization Activities**"). Section 1.02(b) of the TSA requires Dominion (through the Monitor) to provide information and reports to the Agent and the Purchaser, subject to commercially reasonable confidentially agreements, with respect to the Realization Activities. In section 1.02(c), Dominion (through the Monitor) specifically agreed to respond in good faith to any reasonable request from the Purchaser with respect to the transition of the Acquired Assets (which included the Cash Collateral and Dominion Production, as such terms are used in the AVO Agreement):

> Dominion agrees to respond in good faith to any reasonable request from the Purchaser for access to any additional services that are necessary for the transition of the Acquired Assets and the Assumed Liabilities that are not

contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably.

51. In sum, under the MSA and the APA, the Purchaser agreed to fund the Diavik Realization Account and the Wind-Down Account from Cash and Cash Equivalents that would otherwise have been acquired under the APA in order to fund the Monitor's realization efforts with respect to the remaining assets of the Applicants, including the Diavik JVA. ACDC's right under the ACDC APA in the ongoing realization efforts were preserved in the EMP Order, and ACDC entered into the TSA and performed its obligations thereunder in good faith. ACDC had an expectation: (i) under the MSA and the TSA, that it would be consulted before any agreement was settled regarding the Applicants' residual assets; and (ii) under the 2020 Vesting Order and EMP Order, that it would be a party to any agreement conveying the ACDC Assets or releasing Claims owned by ACDC.

ii. The First Lien Lenders failed to meet their obligations

52. Although the Support Agreement was entered into on September 16, 2021, I am not aware of any efforts being made to make ACDC aware of the negotiations underlying the AVO Transaction or to inform ACDC, in a timely manner, that it had been executed. ACDC has only in very recent days learned of the proposed transactions and has been given no opportunity to become involved and protect its ownership interests.

53. As set out at paragraph 45 of the Sixteenth Report, the Monitor and its counsel held a call with our counsel on September 28, 2021 to discuss ACDC's initial concerns upon first learning about the AVO Transaction (and the RVO Transaction), but this call happened only after the AVO Transaction and RVO Transaction agreements were settled and provided no opportunity for input. The Monitor did not consult with ACDC at any time before September 28, 2021.

54. I am advised by Mr. DeMarinis of Torys LLP and legal counsel to **[ACDC]** that, upon learning of the proposed transactions, he quickly advised counsel to the First Lien Lenders and counsel to the Monitor that: (i) ACDC had significant concerns with the

impact of the Support Agreement on assets and claims that were vested in ACDC by this Court; (ii) ACDC was concerned with the lack of a valuation or marketing process for the Tax Attributes and may be interested in purchasing such assets if there was a fair and transparent marketing process; (iii) additional information was required from the Monitor in order to permit ACDC to analyze and respond to the impending application; and (iv) the October 15th application date was not reasonable in the circumstances.

55. As noted in paragraphs 45 to 49 of the Sixteenth Report, some preliminary information was provided to ACDC, but most of the information we have requested to assess each of the AVO Transaction and RVO Transaction remains outstanding as of the date of this Affidavit.

56. The Monitor informed our counsel that DDMI had concerns about the sensitive nature of the requested information and that it would not provide that information without DDJ, Brigade and ACDC's counsel first executing non-disclosure agreements ("**NDAs**") to DDMI's satisfaction.

57. On September 30, 2021, the Monitor set up a confidential data room and provided access to select members of ACDC, its legal counsel and certain other representatives. The Monitor populated that data room with only one document: a statement that set out the net outstanding cover payment balance that DDMI claims to be owing between it and ACDC as at August 31, 2021. The balance of ACDC's request for information remains outstanding as of the date of this affidavit.

58. ACDC, for the reasons set out above, reasonably expected that it would be consulted on any transaction involving assets which were conveyed to ACDC, including the Diavik Realization Assets. I believe that consultation, at a minimum, should have taken place prior to: (i) the negotiation and execution of the Support Agreement by the First Lien Lenders; and (ii) the negotiation of the AVO Agreement.

Interim Financing

59. ACDC has made arrangements with its principal owners to make up to an additional $500,000 of interim financing available to the Monitor. A draft term sheet setting out the

terms of such interim financing is attached hereto as Exhibit P. The purpose of such interim financing is to give the Monitor additional funding: (i) while the Monitor explores options for the sale of the Diavik Realization Assets in the event that the AVO Transaction is not approved, consistent with the original agreements for the realization of those assets; and (ii) to pursue a Marketing Opportunity (as such term is defined in the RVO Term Sheet). I have been advised by DDJ and Brigade that they are prepared to advance interim financing arrangements on terms substantially similar to the attached Term Sheet promptly.

Request for an Adjournment

60. The relief sought by the Monitor in its application is highly contentious, prejudicial to ACDC and sweeping in its size and scope. ACDC is unable to properly assess and present the many substantive issues raised by the AVO Transaction and the RVO Transaction when those materials were served on us only six business days before the hearing and in advance of the Thanksgiving long weekend. Despite those transactions clearly involving ACDC's assets, the Monitor made no attempt to canvass mutually acceptable dates with ACDC for the hearing. ACDC requires more time to review these transactions and their implications, and the assets that form their subject matter should be properly canvassed in the market.

61. These difficulties are compounded by the process by which the Monitor and the First Lien Lenders chose to negotiate and settle the AVO Transaction and the RVO Transaction. At no point during that process was ACDC's input sought, despite the Monitor's and the First Lien Lenders' above-mentioned obligations to do so. ACDC continues to make good faith efforts to obtain further information in order to allow it to assess the proposed transactions, but those requests are still outstanding.

62. As a result, I believe that because this application was served on short notice with no urgency, it should be adjourned. In the alternative, I believe that if this Court decides to hear the application, it should be dismissed.

63. As noted above, DDJ and Brigade are willing to provide the Monitor with up to an additional $500,000 of funding for these activities, subject to them and the Monitor

executing satisfactory interim lending agreements and this Court granting an interim lending order approving and authorizing same.

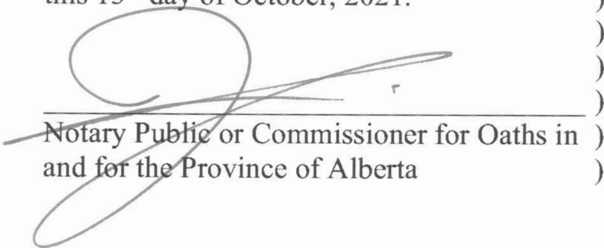
Relief Requested

64. I respectfully ask that this Court either: (i) adjourn the October 15th hearing for the relief requested by the Monitor in its application; or (ii) if the hearing proceeds, dismiss the Monitor's application.

65. I make this Affidavit for no improper purpose.

66. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear in this Affidavit. I, however, was linked by way of video technology to the Notary Public/Commissioner notarizing/commissioning this Affidavit.

SWORN BEFORE ME at Calgary, Alberta,)
this 13th day of October, 2021.)



Notary Public or Commissioner for Oaths in and for the Province of Alberta

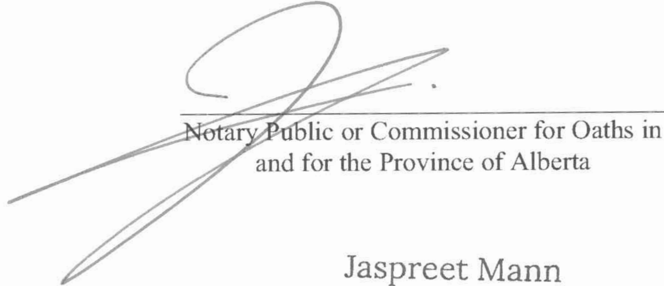
KRISTAL KAYE

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

This is Exhibit "A"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
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October 8, 2021

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Maria.Mancia@albertacourts.ca

Court of Queen's Bench of Alberta
Calgary Courts Centre
24th Floor, 601 - 5th Street SW
Calgary, AB T2P 5P7

Attention: The Honourable Madam Justice K.M. Eidsvik

Dear Madam Justice Eidsvik:

Re: In the Matter of a Plan of Arrangement of Dominion Diamond Mines ULC, et al.
Alberta Court of Queen's Bench Action No. 2001-05630

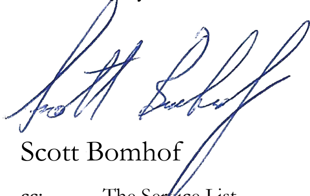
My office acts as counsel for Arctic Canadian Diamond Mines Ltd. ("**ACDC**"), the Purchaser of Dominion assets under a Purchase Agreement dated as of December 6, 2020, which was approved by Your Ladyship in these proceedings on December 11, 2020 and closed in February of this year.

Further to the application being brought by the Monitor and scheduled to be heard by Your Ladyship on Friday, October 15, 2021 at 10:00 a.m. via WebEx videoconference, ACDC will be seeking an adjournment of this hearing. The unfiled Application and the Sixteenth Report of the Monitor were only served on our office and on the Service List by email at 4:40 p.m. (MST) on Wednesday, October 6, 2021, and our client has had no involvement in the negotiation and other actions leading to the proposed transactions described in those materials.

The proposed transactions described in the Monitor's materials fundamentally affect property owned by ACDC under a transaction that was approved by this Court, without consideration to, or approval from, ACDC. Given the seriousness of the relief being sought, the complexity of the subject matter and the Monitor's delay in bringing this application and providing ACDC with its materials—all in advance of a holiday weekend—ACDC will be seeking an adjournment of the matter to properly allow all parties to prepare. This correspondence will also serve to advise that ACDC has provided our office with instructions to oppose the relief that is currently being sought by the Monitor.

We trust that the foregoing is in order, but should you have any questions or concerns, relating to the above or otherwise, please do not hesitate to contact the undersigned to discuss the same.

Yours truly,

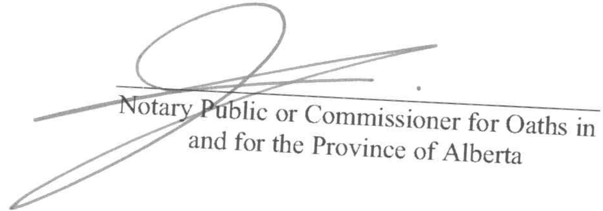


Scott Bomhof

cc: The Service List
Torys LLP, Attention: Kyle Kashuba, Tony DeMarinis and Jeremy Opolsky (via email)
Court of Queen's Bench of Alberta, Attention: Brent DuFault, Commercial List Court Coordinator - Calgary (via email)

33539432

This is Exhibit "B"
to the Affidavit of Kristal Kaye
sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

TORYS LLP

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Scott Bomhof
sbomhof@torys.com
P. 416.865.7370

October 11, 2021

VIA EMAIL
simardc@bennettjones.com
meyerk@bennettjones.com

FTI Consulting Canada Inc.
1610, 520 5th Avenue S.W.
Calgary, AB T2P 3R7

Attention: Deryck Helkaa / Tom Powell

Dear Sirs:

Re: Dominion Diamond Mines ULC et al. – Monitor's Application for Approval and Vesting Order and Reverse Vesting Order, returnable October 15, 2021

Reference is made to the Sixteenth 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, Dominion Finco Inc. and Dominion Diamond Marketing Corporation dated October 16, 2021 (the "**Sixteenth Report**").

Unless indicated otherwise, all capitalized terms used herein have the meaning attributed thereto in the Sixteenth Report.

As you know, we are counsel to Arctic Canadian Diamond Company Ltd. ("**ACDC**"). Pursuant to a Joinder Agreement dated January 31, 2021, ACDC is the purchaser under the purchase agreement dated December 6, 2020 between Dominion Holdings, DDM, DDCU, Dominion Marketing, DDC and Finco (collectively, the "**Sellers**") and DDJ Capital Management, LLC and Brigade Capital Management, LP for the purchase and sale of certain of the Sellers' assets (the "**ACDC APA**").

ACDC has previously notified you of its serious concerns about the AVO Transaction and RVO Transaction. We are writing at this time to seek clarification from the Monitor regarding the questions set out below.

1. SHORT NOTICE

a. We note that the Application for approval of the AVO Transaction and the RVO Transaction was brought on short notice despite our client's request for adequate time to assess the proposed transactions, become informed of the circumstances surrounding their negotiation and prepare its response so that the Court can properly consider these matters and our serious

concerns relating to them. Please advise the reasons for the urgent nature of the application and, more specifically, whether there is any inherent urgency other than what appear to be deadlines artificially imposed by the proposed transactions' beneficiaries.

2. THE AVO TRANSACTION

a. Please advise what role the Monitor had in negotiating and evaluating the AVO Transaction before and after the Support Agreement was signed and whether the Monitor provided any input on the Transaction before the Support Agreement was signed. Please advise of any amendments to the Support Agreement arising from the Monitor's comments thereon.

b. Please advise when the Monitor was: (i) first made aware that the Agent and DDMI were discussing an acquisition of the Acquired Assets by DDMI; and (ii) made aware that Agent and DDMI had reached an agreement with respect to same.

c. Please provide details of all negotiations and discussions that the Monitor had with DDMI independent of the discussions initiated by the First Lien Lenders and in furtherance of its efforts to maximize realization and recovery on the Diavik Realization Assets.

d. Please provide copies of valuations prepared by the Monitor or independent experts with respect to the Diavik Diamond Mine and the Diavik Joint Venture Interest therein.

e. Please provide a detailed summary of all steps taken by the Monitor to market the Diavik interest since the closing of our client's purchase in February, 2021 and pursuant to their $1 million funding for such realization activities. Please include information regarding prospectively interested buyers whom the Monitor has contacted or who may have expressed interest to the Monitor.

f. At paragraph 32 of the Sixteenth Report, the Monitor mentions a dispute with DDMI regarding the Section 4 Diamonds. Please provide details of this dispute and all reports and correspondence with respect thereto, and the analyses and assessments of the Monitor and its counsel regarding the relative merits of the dispute.

g. At paragraph 33 of the Report, the Monitor advises that DDMI has made $229.0 million of cash calls since the date of the EMP Order. Please provide copies of all correspondence from/with/between the Monitor, the Agent and DDMI (including their respective counsel) with respect to all cash calls since the date of the EMP Order. Please also provide any correspondence with or reports provided by the technical experts referenced in paragraph 38 of the Report. Please advise on what steps the Monitor has taken to satisfy itself that the full quantum of the cash calls is a valid and enforceable claim against the Applicants.

h. Please provide all analyses prepared by the Monitor regarding the First Lien Lenders' liability exposure under their LCs net of all current Cash Collateral held by either the First Lien Lenders or the Monitor with respect to such obligations.

i. Please provide detailed information regarding the First Lien Lenders' LCs in respect of the Diavik Diamond Mine that would be cancelled in the proposed transactions. Please include copies of the LCs and the information DDMI has provided with respect to its intention to replace the LCs in furtherance of the proposed transactions.

j. Please provide a detailed accounting of the use of the $1 million fund provided by our client for the Monitor's realization and recovery of the Diavik Realization Assets.

3. THE RVO TRANSACTION

a. Please advise of all marketing efforts made related to the Tax Attributes, including information regarding prospectively interested parties contacted by the Monitor or who may have contacted the Monitor.

b. Please provide information regarding the Monitor's negotiation of the RVO Term Sheet and RVO Transaction and any resulting amendments to the RVO Term Sheet or the RVO Transaction resulting from the Monitor's input.

c. Please advise of any valuations undertaken by the Monitor related to the Tax Attributes.

d. Please provide copies of analyses and assessments conducted by the Monitor or independent tax experts regarding Dominion's tax attributes on an RVO "cleansed" basis.

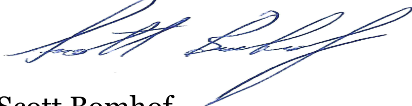
e. Please provide all up-to-date tax filings.

f. Please confirm that the RVO Transaction excludes all tax attributes of the Acquired Subsidiaries (as such term is defined in the ACDC APA).

g. At paragraph 68(d) of the Sixteenth Report, the Monitor indicates that the Diavik JVA and any interest in a joint venture established pursuant to the Diavik Joint Venture is not a Retained Asset and will be transferred to the Creditor Trust. Assuming that the AVO Transaction does not close before the RVO Transaction Closes, please advise how the RVO Transaction will impact ACDC's interest in the Diavik Realization Assets.

h. At paragraph 69(h) of the Sixteenth Report, the Monitor notes that additional funds may be required to run a marketing process for the Tax Attributes. Please advise on the quantum of funding that the Monitor believes is required to run such a process.

Yours truly,



Scott Bomhof

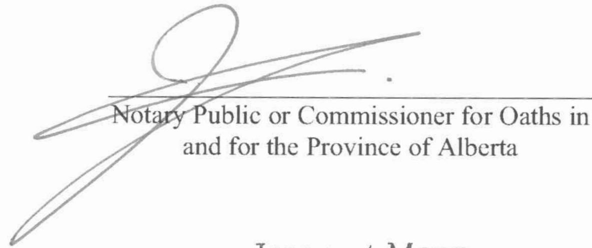
SB

33538321

This is Exhibit "C"

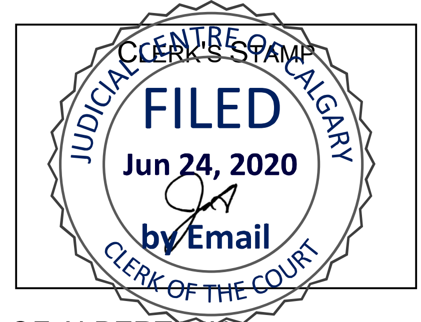
to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta



COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED** **AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND DOMINION FINCO INC.**
DOCUMENT	**SECOND AMENDED AND RESTATED INITIAL ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BLAKE, CASSELS & GRAYDON LLP** Barristers and Solicitors 3500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309 File: 00180245/000013

DATE ON WHICH ORDER WAS PRONOUNCED:	June 19, 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' Amended Notice of Application, filed, the Affidavits of Brendan Bell, sworn May 21, 2020 and June 12, 2020, filed, the Affidavit of Patrick Merrin, sworn May 11, 2020 (the "**Merrin Affidavit**"), filed, the Affidavits of John Startin, sworn May 21, 2020 (the "**Startin May Affidavit**") and June 12, 2020, filed, the Affidavits of Thomas Croese, sworn May 7, 2020, May 28, 2020 and June 16, 2020, respectively, filed, the Affidavit of Eric Hoff, sworn June 17, 2020, filed, the Affidavit of Matthew Quinlan, sworn June 16, 2020, filed; **AND UPON** service having been effected in accordance with the Caselines Service Order of this Court dated May 29, 2020 and 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 the Government of the Northwest Territories, counsel for the Washington Group of Companies, counsel for Credit Suisse AG, counsel for the Public Service Alliance of Canada, counsel for Procon Mining & Tunnelling Ltd., counsel for Dyno Nobel Canada Inc. and Dene Dyno Nobel, counsel for the Ad Hoc Group of Bondholders, counsel for Wilmington Trust, National Association, counsel for Matthew Quinlan, 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**"), the Supplement to the Fourth Report of the Monitor, and the Fifth Report of the Monitor, each filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

    (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

    (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

    (c) prevent the filing of any registration to preserve or perfect a security interest;

    (d) prevent the registration of a claim for lien;

    (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment; or

    (f) prevent DDMI from making Diavik JVA Cover Payments in accordance with the terms of the Diavik JVA.

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

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided however, that DDMI, in its capacity as manager under the Diavik JVA, be and is hereby authorized to hold an amount of Dominion Diamond's share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI (the "**Dominion Products**") at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "**PSF**") and the value of the Dominion Products shall be determined based on royalty valuations performed from time to time at the PSF by the Government of the Northwest Territories. DDMI shall hold the Dominion Products in trust, and subject to the following conditions:

(a) DDMI shall segregate the Dominion Products from DDMI's share of production from the Diavik Mine pursuant to and in accordance with the Agreement to establish a Protocol for Diamond Splitting Production, dated January 7, 2003, as amended, modified, supplemented or restated from time to time;

(b) DDMI shall provide adequate safeguarding of, and insurance coverage for, the Dominion Products;

(c) DDMI shall provide each of Dominion Diamond and the Monitor with reporting and records on the Dominion Products as may be requested by Dominion Diamond or the Monitor;

(d) DDMI shall permit reasonable access to Dominion Diamond and the Monitor to attend at the PSF and audit or inspect the Dominion Products;

(e) on the happening of any of the following dates, events or ocurrences, or with leave of the Court, DDMI shall be entited 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 54 and 56 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

    (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

    (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

    (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;

    (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

    (c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders or DDMI (but with respect to DDMI, only with respect to the Diavik Mine and only to the extent that the Monitor determines will not prejudice the SISP) and their counsel on a periodic basis of financial and other

information as agreed to between the Applicants and the Interim Lenders or DDMI which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders or DDMI;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders or DDMI, which information shall be reviewed with the Monitor and delivered to the Interim Lenders or DDMI and their counsel on a periodic basis or as otherwise agreed to by the Interim Lenders or DDMI;

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

(f) advise the Applicants in their development of the Plan and any amendments to the Plan;

(g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(j) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and each of the Interim Lenders and DDMI with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby

authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $3,500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 54 and 56 hereof.

INTERIM FINANCING AND INTERIM LENDER'S CHARGE

31. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Facility**") pursuant to the Amended and Restated Interim Financing Term Sheet dated as of June 15, 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 54 and 56 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders may (i) immediately cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lenders' Charge and make demand, accelerate payment, and give other notices; (ii) upon five (5) days' notice to the Applicants and the Monitor, apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and (iii) with leave of the Court, exercise any other rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents, and Interim Lenders' Charge; and

(c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. The Interim Lenders shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any Interim Financing Obligations.

37. This Order is subject to provisional execution and, if any of the provisions of this Order in connection with the Definitive Documents or the Interim Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (each, a "**Variation**") whether by subsequent order of this Court or any other court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the Interim Lenders under this Order (as made prior to the Variation) or the Definitive Documents, with respect to any advances made prior to the Interim Lenders being given written notice of the Variation and the Interim Lenders shall be entitled to rely on this Order as issued (including, without limitation, the Interim Lenders' Charge) for all advances so made.

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

38. Capitalized terms utilized in paragraphs 38 to 46 of this Order that are not otherwise defined in this Order shall have the meanings ascribed to them in the Procedures for the Sale and Investment Solicitation Process (the "**SISP Procedures**") in the form attached as **Schedule "B"** hereto.

39. The SISP Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.

40. The Applicants, the Monitor and their respective advisors (including the SISP Advisor) are hereby authorized and directed to carry out the SISP Procedures and to take such steps and execute such documentation as may be necessary or incidental to the SISP Procedures.

41. Each of the Applicants, the SISP Advisor and the Monitor and their respective affiliates,

partners, directors, employees, advisors (including the SISP Advisor), agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP Procedures or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). The Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) and its directors, employees, advisors and agents (solely in connection with the Stalking Horse Bid and the SISP Procedures) shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Stalking Horse Bid, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP Procedures (as determined by this Court). Nothing in this paragraph 41 shall have the effect of releasing any rights, remedies or claims of DDMI under the Diavik JVA.

42. Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and Dominion Diamond Mines ULC, as vendors (collectively, the "**Dominion Vendors**"), are hereby authorized to execute and enter into a definitive stalking horse agreement of purchase and sale among the Dominion Vendors, as sellers, and the Stalking Horse Bidder, as purchaser, which shall be substantially on the terms set out in the stalking horse agreement of purchase and sale attached hereto as **Schedule "C"** (the "**Stalking Horse Bid**"), subject to such amendments, additions and/or deletions as may be negotiated between the Dominion Vendors and the Stalking Horse Bidder and approved by the Monitor. The Stalking Horse Bid submitted by the Stalking Horse Bidder 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 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 Bid is hereby approved.

44. The Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Break-Up Fee and Expense Charge**") on the Property as security for the payment of the Break-Up Fee and Expense Reimbursement by the Dominion Vendors pursuant to and in accordance with the Stalking Horse Bid. The Break-Up Fee and Expense Charge shall have the priority set out in paragraphs 54 and 56 hereof.

45. This Order is granted without prejudice to the rights and remedies of Dominion Diamond and DDMI under the Diavik JVA.

46. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act,* the Applicants, the SISP Advisor and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the SISP Procedures, but only to the extent desirable or required to carry out the SISP Procedures. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Applicants and the Property, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

KERP AND THE KERP CHARGE

47. The Key Employee Retention Plan (the "**KERP**") as described in the Merrin Affidavit, is hereby approved.

48. The Applicants are hereby authorized and directed to enter into the KERP with those employees (the "**Key Employees**") listed in Confidential Exhibit "A" to the Merrin Affidavit (the "**Confidential Merrin Affidavit Exhibit**").

49. The Applicants are hereby authorized and directed to pay a lump sum payment (the "**Incentive Bonus**") to each of the Key Employees in the amount set out in the Confidential Merrin Affidavit Exhibit, to be paid as follows:

    (a) the first one-third of the Incentive Bonus shall be paid to each Key Employee on the earlier of June 6, 2020 and their last day of employment (if the Key Employee is terminated without cause); and

    (b) the remaining two-thirds of the Incentive Bonus shall be paid to each Key Employee on the earlier of November 6, 2020, their last day of employment (if the Key Employee is terminated without cause) and the closing of any restructuring transaction.

50. Payments to Key Employees under the KERP will only be made if, at the date the relevant payment of the Incentive Bonus is due, as described in paragraph 49, the Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.

51. The Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property as security for the amounts payable to the Key Employees pursuant to the KERP, which charge shall not exceed an aggregate amount of $580,000. The KERP Charge shall have the priority set out in paragraphs 54 and 56 hereof.

FINANCIAL ADVISOR AGREEMENT AND FINANCIAL ADVISOR'S CHARGE

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 May Affidavit, pursuant to which the Applicants have engaged the Financial Advisor to provide the services referenced therein is hereby approved, *nunc pro tunc*, including, without limitation, the payment of the Monthly Fee, Restructuring Fee, Liability Management Transaction Fee, Financing Fee, and Minimum Financing Fee contemplated thereby, and the Applicants are authorized to continue the engagement of the Financial Advisor on the terms set out in the Financial Advisor Agreement.

53. 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 54 and 56 hereof.

VALIDITY AND PRIORITY OF CHARGES

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*.

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 prior to or subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record, possess, or perfect.

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

    (a) the KERP Charge, the Break-Up Fee and Expense Charge, the Interim Lenders' Charge and the Financial Advisor Charge shall rank subordinate to any Encumbrances under Article 9 of the Diavik JVA;

    (b) the Encumbrances of the Existing Credit Facility Agent (as defined in the Interim Financing Term Sheet) in respect of the Diavik Collateral (as defined in the Interim Financing Term Sheet) shall rank senior to the Interim Lenders' Charge in respect of the Diavik Collateral;

    (c) the Encumbrances of the Existing Credit Facility Agent in respect of the Interim Financing Priority Collateral (as defined in the Interim Financing Term Sheet) shall be senior to the Interim Lenders' Charge in respect of the Interim Financing Priority Collateral securing any October Advances (as defined in the Interim Financing Term Sheet) and related interest; and

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

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

58. The Charges, the Interim Financing Term Sheet and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees

and/or the Interim Lenders thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA, or any bankruptcy or receivership order made in respect of the Applicants;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, licence, permit or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

  (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Interim Financing Term Sheet and the other Definitive Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

  (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Term Sheet, or the execution, delivery or performance of the Definitive Documents; and

  (iii) the payments made by the Applicants pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

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

SERVICE AND NOTICE

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

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

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.

63. Any party to these proceedings may serve any document in these proceedings, (a) in the case of parties who at the time of service are on the Service List, by uploading such documents to the online filesite established by the Monitor for managing the pleadings and other relevant documents in this Action and hosted on the canada.caselines.com website (the "**CaseLines Filesite**") and all documents uploaded to the CaseLines Filesite shall be deemed as having been properly served on all parties named on the Service List as of the date and time that such documents were uploaded to the CaseLines Filesite; or, (b) in the case of parties who at the time of service are not on the Service List, by emailing

a PDF or other electronic copy of such documents to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Website.

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

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

GENERAL

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

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

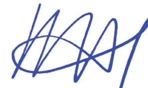
68. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

69. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give

effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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



Justice of the Court of Queen's Bench of Alberta

Schedule "A"

Amended and Restated Interim Financing Term Sheet

Execution Copy

AMENDED AND RESTATED
INTERIM FINANCING TERM SHEET

Dominion Diamond Mines ULC

Dated as of June 15, 2020

WHEREAS the Borrower has requested that the Interim Lenders provide financing to the Borrower during the pendency of the Borrower's proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") commenced before the Court of Queen's Bench of Alberta (the "**Court**") pursuant to an initial order granted on April 22, 2020 (the "**Initial Order**") and in accordance with the terms and conditions set out herein;

AND WHEREAS, parties hereto entered into an interim financing term sheet dated as of May 21, 2020 (the "**Original Term Sheet**") pursuant to which the Interim Lenders agreed to provide financing in order to fund certain obligations of the Credit Parties in order for the Credit Parties to pursue and implement a Permitted Restructuring Transaction pursuant to and in accordance with the SISP;

AND WHEREAS, the parties hereto wish to amend and restate the Original Term Sheet;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Dominion Diamond Mines ULC, an unlimited liability company formed under the laws of British Columbia (the "**Borrower**").

2. **INTERIM LENDERS** Those lenders identified on Schedule "**F**" hereto (the "**Interim Lenders**"). Schedule "**F**" may be amended from time to time with the consent of Washington Diamond in its sole and absolute discretion; it being understood and agreed that each Existing Credit Facility Lender as of the date of this Term Sheet is acceptable to Washington Diamond in its sole and absolute discretion; *provided*, *however*, that, at no time, shall the Commitment (as defined herein) held by the Existing Credit Facility Lenders (or any party other than Washington Diamond) exceed 34% of total Commitments. The amount of total funding Commitments (the "**Commitments**") of each Interim Lender, and such Interim Lender's proportion of the total Commitments are identified on Schedule F hereto. All obligations of the Interim Lenders hereunder and in connection with the Interim Facility are several, and not joint or joint and several.

   If any Interim Lender is a Defaulting Lender, or if any Interim Lender is a Non-Consenting Lender, then Washington Diamond may, at its sole expense and effort, upon notice to such Interim Lender, require such Interim Lender to assign and delegate, without recourse, all its interests, rights and obligations under this Term Sheet to Washington Diamond (if Washington Diamond accepts such assignment) or another Interim Lender acceptable to Washington Diamond in its sole and absolute discretion (if such Interim Lender accepts such assignment), provided that such Defaulting Lender or Non-Consenting Lender shall have received, in connection with such assignment, payment of an amount equal to the outstanding Interim Financing Obligations payable to it hereunder from the

assignee (to the extent of outstanding principal and accrued interest) or the Borrower (in the case of all other outstanding Interim Financing Obligations owing to such Defaulting Lender or Non-Consenting Lender). Upon any such assignment, Schedule "**F**" shall be deemed to be amended as required to reflect such assignment.

3. **GUARANTORS:** Each party that guarantees (collectively, the "**Guarantors**", and together with the Borrower, the "**Credit Parties**") the obligations of the Credit Parties under this Term Sheet (the "**Interim Financing Obligations**"), which parties are set forth on Schedule D hereof.

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

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

5. **INTERIM FACILITY; DRAWDOWNS:** A senior secured, superpriority, debtor-in-possession, interim, non-revolving credit facility (the "**Interim Facility**") up to a maximum principal amount of US$60 million (as such amount may be reduced from time to time pursuant to the terms hereof, the "**Facility Amount**"), subject to the terms and conditions contained herein.

The Interim Facility shall be made available to the Borrower by way of up to six (6) advances (each an, "**Advance**") which, in the aggregate, shall not exceed the Facility Amount. The timing for each Advance shall be determined based on the funding needs of the Borrower as set forth in the DIP Budget and as such draw amounts are agreed to by the Required Interim Lenders and the Credit Parties. Each Advance (other than the final Advance) shall be in a principal amount of not less than US$2,000,000.

Each Advance shall be deposited by the applicable Interim Lenders into the Operating Account within two (2) Business Days of the date on which the Borrower delivers to the Interim Lenders an Advance request certificate in the form of Schedule "**B**" (an "**Advance Request Certificate**"), provided that, in the determination of the Interim Lenders, the Advance Conditions are satisfied as of the date on which such Advance Request Certificate is delivered and remain satisfied on the date of such Advance. Each Interim Lender's obligations are several and not joint or joint and several.

With respect to Advances to be used to make Permitted Payments on account of obligations that accrue prior to September 30, 2020 (the "**Phase 1 and Phase 2 Advances**"), each Interim Lender shall fund solely its pro rata share of each Phase 1 and Phase 2 Advance based on such Interim Lender's share of the total Commitments in respect of Phase 1 and Phase 2 Advances set out in Part I of Schedule "**F**". With respect to Advances to be used to make Permitted Payments on account of obligations that accrue on or after October 1, 2020 through the Outside Date ("**October Advances**"), Washington Diamond, in its capacity as Interim Lender, shall fund any such Advances.

The Advance Request Certificate shall certify that (i) all representations and

warranties of the Credit Parties contained in this Term Sheet remain true and correct in all material respects both before and after giving effect to the use of such proceeds and (ii) no Default or Event of Default then exists and is continuing or would result therefrom.

Each Advance Request Certificate shall be deemed to be acceptable and shall be honoured by the Interim Lenders unless the Required Interim Lenders have objected thereto in writing, providing reasons for the objection, by no later than 1:00 p.m. Eastern Time on the second Business Day following the delivery of such Advance Request Certificate. A copy of each Advance Request Certificate shall be concurrently provided to Interim Lenders and the Monitor.

6. **PURPOSE AND PERMITTED PAYMENTS:**

The Credit Parties shall use proceeds of the Interim Facility solely for the following purposes and in the following order, in each case in accordance with the DIP Budget and for the purpose of advancing and implementing a Permitted Restructuring Transaction pursuant to and in accordance with the SISP:

(a) to pay the reasonable and documented legal and financial advisory fees and expenses of (i) the Credit Parties, subject to the DIP Budget (ii) the Monitor (i.e. the Monitor's fees and those of its legal counsel), subject to the DIP Budget, (iii) the Interim Lenders, subject to the DIP Budget and (iv) the Existing Credit Facility Lenders, subject to the DIP Budget, in each case pursuant to the terms hereof, it being acknowledged by the Credit Parties and the Interim Lenders that those fees and expenses incurred to the date hereof and those provided for in the DIP Budget as of the date hereof are reasonable;

(b) to pay the interest, fees and other amounts owing to the Interim Lenders under this Term Sheet;

(c) to pay any interest accruing under the Existing Credit Facility in the ordinary course; and

(d) to fund, in accordance with the DIP Budget, the Credit Parties' operating expenditures during the Restructuring Proceedings in pursuit of a Permitted Restructuring Transaction pursuant to and in accordance with the SISP, including the working capital and other general corporate funding requirements of the Credit Parties during such period (the amounts set forth in these subsections (a) through (d), collectively, the "**Permitted Payments**").

For greater certainty, the Credit Parties may not use the proceeds of the Interim Facility to pay any obligations of the Credit Parties arising or relating to the period prior to the Filing Date without the prior written consent of (x) the Required Interim Lenders in their sole and absolute discretion and (y) the Existing Credit Facility Agent (such consent not to be unreasonably withheld) unless the payment of such pre-Filing Date obligations are specifically identified in the approved DIP Budget and

authorized pursuant to the Amended Initial Order or any subsequent Court Order.

7. **ADVANCE CONDITIONS**

The Interim Lenders' agreement to make the Facility Amount available to the Borrower and to advance any Advance to the Borrower is subject to the satisfaction, as determined by the Required Interim Lenders, of each of the following conditions precedent (collectively, the "**Advance Conditions**"), each of which is for the benefit of the Interim Lenders and may be waived by the Required Interim Lenders in their sole and absolute discretion:

(a) The Initial Order shall have remained in effect until the issuance of the Amended Initial Order;

(b) The Credit Parties shall have executed and delivered this Term Sheet, the Guarantee and such other Credit Documents as the Required Interim Lenders may reasonably request.

(c) The Credit Parties' cash management system shall continue in the manner approved by the Initial Order, unless otherwise consented to by (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent in each case in their reasonable discretion.

(d) The Court shall have issued an amended and restated version of the Initial Order or a further amended and restated version of the Initial Order (as it may be amended, the "**Amended Initial Order**") in form and substance acceptable to the Required Interim Lenders, in their reasonable discretion; *provided*, *however*, the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (acting reasonably) must be satisfied with any provision of the Amended Initial Order (or any subsequent Court Order) relating to the Interim Facility, the SISP or the Stalking Horse Transaction. The Amended Initial Order shall, without limitation, (i) approve this Term Sheet (subject only to such modifications as may be acceptable to the Supermajority Interim Lenders and the Existing Credit Facility Agent in their sole and absolute discretion), (ii) authorize the Borrower to borrow up to the Facility Amount under the Interim Facility, (iii) grant the Interim Lenders a priority charge (the "**Interim Lenders' Charge**") on the CCAA Applicants' Collateral as security for all Interim Financing Obligations, which Interim Lenders' Charge shall have priority over all Liens on the CCAA Applicants' Collateral other than as set forth in Section 11 hereof, and (iv) approve the SISP on terms acceptable to the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (acting reasonably).

(e) The Credit Parties shall be acting in accordance with the SISP.

(f) The Amended Initial Order and the Recognition Order, if applicable, shall not have been stayed, vacated or otherwise amended, restated or modified in respect of any amendment,

relating to the Interim Facility, the SISP, the Stalking Horse Transaction or any other matter that affects the Interim Lenders, without the written consent of the (x) Required Interim Lenders, in their sole and absolute discretion and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld).

(g) There shall be no Liens ranking (a) in priority to the Interim Lenders' Charge over the CCAA Applicants' Collateral other than the Permitted Priority Liens or (b) *pari passu* with the Interim Lenders' Charge over the CCAA Applicants' Collateral other than the SISP Advisor Charge.

(h) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance.

(i) The Borrower shall have delivered an Advance Request Certificate in respect of such Advance.

(j) The applicable Credit Parties shall have executed an Asset Purchase Agreement with an entity managed by an affiliate of Washington Diamond with respect to the Stalking Horse Transaction, *provided* that this condition shall not apply to the initial Advance if such initial Advance is an amount less than or equal to US$10,000,000.

8. **COSTS AND EXPENSES**

The Borrower shall reimburse the Interim Lenders and the Existing Credit Facility Agent for all reasonable fees and expenses incurred (including reasonable and documented legal, financial advisory and professional fees and expenses on a full indemnity basis) (the "**Interim Lender Expenses**") by the Interim Lenders or any of their affiliates and the Existing Credit Facility Agent in connection with the negotiation, development, and implementation of Interim Facility (including the administration of the Interim Facility). The Interim Lender Expenses shall form part of the Interim Financing Obligations secured by the Interim Lenders' Charge.

All accrued and unpaid Interim Lender Expenses as at the date of any Advance shall be paid in full through deduction from such Advance. All accrued and unpaid Interim Lender Expenses incurred prior to the first Advance (including those incurred prior to the Filing Date) shall be paid in full through deduction from the first Advance.

9. **INTERIM FACILITY SECURITY:**

All Interim Financing Obligations shall be secured by the Interim Lenders' Charge. The Required Interim Lenders may, in their reasonable discretion (i) require the execution, filing or recording of any mortgages, security agreements, pledge agreements, control agreements, financing statements or other documents or instruments, or (ii) take possession or control of any Collateral of the Credit Parties, to the extent it is necessary to do so, to obtain and/or perfect its senior secured, superpriority Lien on such Collateral.

10. **INTER-COMPANY**

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

	ADVANCES:	absolute discretion.
11.	**PERMITTED LIENS AND PRIORITY:**	All of the Credit Parties' Collateral and the property of the Credit Parties' subsidiaries will be free and clear of all Liens except for Permitted Liens. Except as set forth below, the Interim Lenders' Liens and the Interim Lenders' Charge shall have priority over all Liens on the CCAA Applicants' Collateral. (a) The Permitted Priority Liens shall be senior to any Liens of the Interim Lenders or the Existing Credit Facility Agent in any of the Collateral. (b) The Liens of the Existing Credit Facility Agent in the Interim Facility Priority Collateral to secure the Funded First Lien Facility Obligations shall be senior to the Liens of the Interim Lenders in the Interim Facility Priority Collateral to secure any October Advances (and related interest). (c) The Liens of the Interim Lenders in the Interim Facility Priority Collateral to secure any October Advances (and related interest), shall be senior to any Liens of the Existing Credit Facility Agent to secure the First Lien Facility LC Obligations.
12.	**MONITOR:**	The monitor in the CCAA Proceedings shall remain FTI Consulting Canada, Inc. (the "**Monitor**").
13.	**REPAYMENT:**	The Interim Facility and the Interim Financing Obligations shall be due and repayable in full on the earlier of: (i) the occurrence of any Event of Default which is continuing and has not been cured; (ii) the completion of a Restructuring Transaction; (iii) the conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); (iv) the closing of a Successful Bid (as defined in the SISP); (v) the sale of all or substantially all of the CCAA Applicants' collateral; and (vi) the Outside Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrower and with the prior written consent of each Interim Lender for such period and on such terms and conditions as each Interim Lender may agree in its sole and absolute discretion. Without the consent of each Interim Lender in its sole and absolute discretion, no Court Order sanctioning a Plan shall discharge or otherwise affect in any way the Interim Financing Obligations, other than after the permanent and indefeasible payment in cash to the Interim Lenders of all Interim Financing Obligations on or before the date such Plan is implemented.
14.	**DIP BUDGET AND VARIANCE REPORTING:**	Attached hereto as Schedule "**C**" is a copy of the agreed summary DIP Budget (excluding the supporting documentation provided to the Interim Lenders in connection therewith) as in effect on the date hereof (the "**Initial DIP Budget**"), which the Interim Lenders acknowledge and agree is in form and substance satisfactory to the Interim Lenders and the Existing

Credit Facility Agent. Such DIP Budget shall be the DIP Budget referenced in this Term Sheet unless and until such time as a revised DIP Budget has been approved by the Required Interim Lenders and the Existing Credit Facility Agent in accordance with this Section 14.

(A) At the written request of the Required Interim Lenders (including by email), (B) at the election of the Borrower, or (C) upon a material change, or a material change reasonably anticipated by the Borrower, to any item set forth in the DIP Budget, the Borrower shall update and propose a revised 13-week DIP Budget to the Interim Lenders and the Existing Credit Facility Agent (the "**Updated DIP Budget**"). The Required Interim Lenders may make such request up to once every two weeks, and if such request is made, the Borrower shall submit the Updated Budget no later than five (5) Business Days following receipt of the request. Such Updated DIP Budget shall have been reviewed and approved by the Monitor, prior to submission to the Interim Lenders. If (a) the Required Interim Lenders, in their sole and absolute discretion, or (b) the Existing Credit Facility Agent, in its reasonable discretion, determine that the Updated DIP Budget is not acceptable, they shall, within three (3) Business Days of receipt thereof, provide written notice to the Borrower and the Monitor stating that the Updated DIP Budget is not acceptable and setting out the reasons why such Updated DIP Budget is not acceptable, and until the Borrower has delivered a revised Updated DIP Budget acceptable to (a) the Required Interim Lenders in their sole and absolute discretion, and (b) the Existing Credit Facility Agent, in its reasonable discretion, the prior DIP Budget shall remain in effect.

At any time, the Updated DIP Budget is accepted by the Required Interim Lenders and the Existing Credit Facility Agent, such Updated Budget shall be the DIP Budget for the purpose of this Term Sheet.

On or before 3:00 p.m. Eastern Time on the Friday of every second week, (provided that such day is a Business Day and, if not, on the next Business Day) the Borrower shall deliver to the Monitor, the Interim Lenders, the Existing Credit Facility Agent, and their legal and financial advisors a variance calculation (the "**Variance Report**") setting forth actual receipts and disbursements for the preceding two weeks (each a "**Testing Period**") as against the then-current DIP Budget, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report to be promptly discussed with the Interim Lenders, the Existing Credit Facility Agent, and their legal and financial advisors, if so requested. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Testing Period.

15. **EVIDENCE OF INDEBTEDNESS:** The Interim Lenders' accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Interim Lenders pursuant to the Interim Facility. Each Interim Lender may, from time to time, require the Borrower to execute and deliver promissory notes evidencing the Borrower's liability hereunder to each

such Interim Lender.

16. **PREPAYMENTS:** Provided the Monitor (i) is satisfied that the Credit Parties have sufficient cash reserves to satisfy (a) amounts secured by any Permitted Priority Liens (other than those Permitted Priority Liens identified in subsections (vi) and (vii) of the definition of "Permitted Priority Liens") senior to the Interim Lenders' Charge, and (b) obligations set forth in the DIP Budget that the Credit Parties have incurred from and after the Filing Date for which payment has not been made (collectively, the "**Priority Payables Reserve**") and (ii) provides its consent, the Borrower may prepay any amounts outstanding under the Interim Facility at any time prior to the Maturity Date. Any amount repaid may not be reborrowed and shall be paid to the Interim Lenders on a pro rata basis. In the event that less than all of the Interim Facility Obligations are repaid using the proceeds of any debt obligations that are secured in whole or in part by Liens in the Collateral, such Liens shall be junior in all respects to the Liens in the Collateral held by the Interim Lenders to secure any remaining Interim Facility Obligations (including those related to any October Advances).

17. **INTEREST RATE:** Interest shall be payable on the aggregate outstanding amount of the Facility Amount that has been advanced to the Borrower from the date of the funding thereof at a rate equal to 5.25% *per annum*, compounded monthly and payable monthly in arrears in cash on the last Business Day of each month, with the first such payment being made on June 30, 2020. Upon the occurrence and during the continuation of an Event of Default, all overdue amounts shall bear interest at the applicable interest rate plus 2% *per annum* payable on demand in arrears in cash. All interest shall be computed on the basis of a 360-day year of twelve 30-day months, provided that, whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis for such determination.

No structuring or transaction fee shall be payable to the Interim Lenders as part of the Interim Facility.

The parties shall comply with the following provisions to ensure that the receipt by the Interim Lenders of any payments under this Term Sheet does not result in a breach of section 347 of the *Criminal Code* (Canada):

(a) If any provision of this Term Sheet would obligate the Credit Parties to make any payment to the Interim Lenders of an amount that constitutes "interest", as such term is defined in the *Criminal Code* (Canada) and referred to in this section as "**Criminal Code Interest**", during any one-year period after the date of the funding of the Facility Amount in an amount or calculated at a rate which would result in the receipt by the Interim Lenders of Criminal Code Interest at a criminal rate (as defined in the *Criminal Code*

(Canada) and referred to in this section as a "**Criminal Rate**"), then, notwithstanding such provision, that amount or rate during such one-year period shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the Interim Lenders during such one-year period of Criminal Code Interest at a Criminal Rate, and the adjustment shall be effected, to the extent necessary, as follows:

(i) *first*, by reducing the amount or rate of interest required to be paid to the Interim Lenders during such one-year period; and

(ii) *thereafter*, by reducing any other amounts (other than costs and expenses) (if any) required to be paid to the Interim Lenders during such one-year period which would constitute Criminal Code Interest.

(b) Any amount or rate of Criminal Code Interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any portion of the Interim Facility remains outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code Interest shall be *pro-rated* over the period commencing on the date of the advance of the Facility Amount and ending on the relevant Maturity Date (as may be extended by the Interim Lenders from time to time under this Term Sheet) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Interim Lenders shall be conclusive for the purposes of such calculation and determination.

18. **CURRENCY:** Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America and all payments made by the Credit Parties under this Term Sheet shall be in United States dollars. If any payment is received by the Interim Lenders hereunder in a currency other than United States dollars, or, if for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties hereby agree, to the fullest extent permitted by Applicable Law, that the rate of exchange used shall be the rate at which the Interim Lenders are able to purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which such payment is made or final judgment is given.

19. **MANDATORY REPAYMENTS:** Unless otherwise consented to in writing by (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), the Interim Facility shall, subject to retention of the Priority Payables Reserve, be promptly repaid and the Facility Amount shall be permanently reduced upon a sale, realization or disposition of or with respect to any assets or property of the Credit Parties or any of their subsidiaries (including obsolete, excess or worn-out Collateral) (a) out of

the ordinary course of business, including any sale or disposition of working capital assets, equipment, machinery and other operating or fixed assets and realizations of accounts receivable or (b) inventory, including diamond inventory (whether in or out of the ordinary course of business), in each case in an amount equal to the net cash proceeds of such sale, realization or disposition (for greater certainty, net of transaction fees (including, without limitation, shipping expenses and commissions payable in connection with such sale, realization or disposition) and applicable taxes in respect thereof). Any amount repaid may not be reborrowed and shall be paid to the Interim Lenders on a pro rata basis.

20. **REPS AND WARRANTIES:**

Each of the Credit Parties on a joint and several basis, represents and warrants to the Interim Lenders, upon which the Interim Lenders are relying in entering into this Term Sheet and the other Credit Documents, that:

(a) The transactions contemplated by this Term Sheet and the other Credit Documents, upon the granting of the Amended Initial Order:

(i) are within the powers of such Credit Party;

(ii) have been duly executed and delivered by or on behalf of such Credit Party;

(iii) constitute legal, valid and binding obligations of the Credit Parties, enforceable against the Credit Parties in accordance with their terms;

(iv) do not require any material authorization from, the consent or approval of, registration or filing with, or any other action by, any governmental authority or any third party; and

(v) will not violate the charter documents, articles by-laws or other constating documents of such Credit Party or any Applicable Law relating to such Credit Party;

(b) The business operations of the Credit Parties have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the business has been or is carried out;

(c) The Credit Parties own their assets and undertaking free and clear of all Liens other than Permitted Liens;

(d) Each Credit Party has been duly formed and is validly existing under the law of its jurisdiction of incorporation;

(e) All Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms and no Credit Party has any knowledge of any material default that has occurred and is continuing thereunder (other than those defaults arising as a result of the commencement of the Restructuring Proceedings) or are not otherwise stayed by the Amended Initial Order and no proceedings have been commenced or threatened to

revoke or amend any Material Contracts;

(f) The Credit Parties are not aware of any introduction, amendment, repeal or replacement of any law or regulation, not related to the COVID 19 pandemic, being made or proposed which could reasonably be expected to have a material adverse effect on the Credit Parties or their respective businesses;

(g) There are no agreements of any kind between any Credit Party and any other third party or any holder of debt or equity securities of any Credit Party with respect to any Restructuring Transaction (i) as at the date hereof except for (A) this Term Sheet, (B) the agreement in respect of the Stalking Horse Transaction as of the date hereof, (C) any non-disclosure agreement entered into in connection with or in furtherance of a potential Restructuring Transaction, and (ii) as at any subsequent date, except for (A) any agreement effecting a Replacement Stalking Horse Bid, and (B) any agreement effecting a Successful Bid (other than the Stalking Horse Transaction) each as defined in the SISP and disclosed to the Interim Lenders;

(h) No Default or Event of Default has occurred and is continuing;

(i) No Credit Party is required to be registered as an "investment company" under the Investment Company Act of 1940 of the United States;

(j) No part of the proceeds of the Interim Facility will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U and Regulation X of the Board of Governors of the Federal Reserve System of the United States; and

(k) The Credit Parties have disclosed to the Interim Lenders the following with respect to the diamond inventory held by the Credit Parties and/or their subsidiaries (a) the amount and value of such inventory; (b) the location of such inventory; and (c) the amount of insurance coverage for all such inventory, in each case presented in a manner and with detail consistent with the Credit Parties' ordinary course internal accounting practices. The Credit Parties shall maintain at all times the insurance coverage disclosed to the Interim Lenders.

21. **AFFIRMATIVE COVENANTS:** Each Credit Party agrees to do, or cause to be done, with respect to itself and each of its subsidiaries, the following:

(a) (i) Allow representatives or advisors of the Required Interim Lenders and the Existing Credit Facility Agent reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Credit Parties, and (ii) cause management, the financial advisor and/or legal counsel of each Credit Party to

cooperate with reasonable requests for information by the Required Interim Lenders and the Existing Credit Facility Agent and their legal and financial advisors, in each case subject to solicitor-client privilege, all Court Orders and applicable privacy laws, in connection with matters reasonably related to the Interim Facility, the Restructuring Proceedings or compliance of the Credit Parties with their obligations pursuant to this Term Sheet;

(b) Deliver to the Required Interim Lenders and the Existing Credit Facility Agent the reporting and other information from time to time reasonably requested by it and as set out in this Term Sheet including, without limitation, the Variance Reports at the times set out herein;

(c) Use the proceeds of the Interim Facility only in accordance with the restrictions set out in this Term Sheet and pursuant to the DIP Budget and the CCAA Orders;

(d) Comply with the provisions of (i) the Amended Initial Order, the SISP and all other orders of the Court entered in connection with the CCAA Proceedings (each a "**CCAA Order**") and (ii) to the extent applicable, the Recognition Order and all other orders of the Bankruptcy Court entered in connection with the Chapter 15 Proceedings (each a "**Bankruptcy Court Order**");

(e) Preserve, renew and keep in full force its corporate existence;

(f) Conduct its business in accordance with and otherwise comply with the DIP Budget, subject to the Permitted Variance;

(g) Promptly notify the Interim Lenders and the Existing Credit Facility Agent of the occurrence of any Default or Event of Default or any event or circumstance that may materially affect the DIP Budget, including any material change in its contractual arrangements or relationships with third parties;

(h) Comply, in all material respects, with Applicable Law, except to the extent not required to do so pursuant to any Court Order;

(i) Provide the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel draft copies of all motions, applications, proposed Court Orders and other materials or documents that any of Credit Parties intend to file in the Restructuring Proceedings at least three (3) Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible and in any event not less than one (1) day prior to the date on which such motion, application, proposed order or other materials or documents are served on the service list in respect of the applicable Restructuring Proceeding; *provided* that motion materials and similar pleadings that affect the Interim Lenders, the Stalking Horse Transaction or the SISP shall

be reasonably satisfactory to the Required Interim Lenders and the Existing Credit Facility Agent;

(j) Take all actions necessary or available to defend the Court Orders that affect the Interim Lenders, the Stalking Horse Transaction, the Collateral or the SISP from any appeal, reversal, modifications, amendment, stay or vacating, unless expressly agreed to in writing in advance by the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion;

(k) Promptly provide notice to the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract, and of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over the Credit Parties in respect of such Material Contract (other than in each case, routine or administrative materials or correspondence);

(l) Provide the Required Interim Lenders, the Existing Credit Facility Agent and their respective counsel with draft copies of all material letters, submissions, notices, or other materials or correspondence that any of the Credit Parties intend to file with or submit to any regulatory authority having jurisdiction over the Credit Parties relating to any Material Contract (other than in each case, routine or administrative materials or correspondence), at least three (3) Business Days prior to such submission or filing or, where it is not practically possible to do so within such time, as soon as possible;

(m) Execute and deliver, or cause each Credit Party (as applicable) to execute and deliver, loan and collateral security documentation (including any guarantees in respect of the Interim Financing Obligations) including, without limitation, such security agreements, financing statements, discharges, opinions or other documents and information, in form and substance satisfactory to the (x) Required Interim Lenders and their counsel and (y) Existing Credit Facility Agent and its counsel;

(n) Complete all necessary Lien and other searches (other than in the Mining Recorder's Office, Department of Industry, Tourism and Investment of the Government of the Northwest Territories for such time as the same cannot be completed during the COVID-19 pandemic) against the Credit Parties, together with all registrations, filings and recordings wherever the Required Interim Lenders deem appropriate, to satisfy (x) Required Interim Lenders and their counsel and (y) Existing Credit Facility Agent and its counsel that there are no Liens affecting the Credit Parties' Collateral except Permitted Liens;

(o) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the Credit Parties with financially sound and reputable insurers in coverage and scope acceptable to the Required Interim Lenders and cause Washington Diamond to be listed as the loss payee or additional insured (as applicable) on such insurance policies;

(p) Pay all Interim Lender Expenses and expenses of the Existing Credit Facility Agent in accordance with the DIP Budget;

(q) Promptly upon becoming aware thereof, provide details of the following to the Required Interim Lenders and the Existing Credit Facility Agent:

(i) any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against any Credit Party, by or before any court, tribunal, Governmental Authority or regulatory body, which are not stayed by the Amended Initial Order and would be reasonably likely to result, individually or in the aggregate, in a judgment in excess of CDN$500,000, and

(ii) any existing (or threatened in writing) default or dispute with respect to any of the Material Contracts which are not stayed by the Amended Initial Order;

(r) Strictly comply with the terms of the SISP;

(s) Deliver the Budgets and Variance Reports required under Section 14;

(t) In the event that any creditor of any Credit Party or its affiliates or any other party commences or pursues litigation or claims against any Credit Party or any affiliate of any Credit Party in the United States or against property of the Credit Party or its affiliates located in the United States, which the Credit Parties reasonably determine, in consultation with the Required Interim Lenders and the Existing Credit Facility Agent, is not likely to be stayed in the CCAA Proceedings, the applicable Credit Party, in consultation with the Required Interim Lenders and the Existing Credit Facility Agent, shall initiate, or shall cause its affiliate to initiate, proceedings under Chapter 15 of the Bankruptcy Code (the "**Chapter 15 Proceedings**") in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). The Credit Parties shall pursue a final order (the "**Recognition Order**") recognizing the CCAA Proceedings as foreign main proceedings pursuant to the Bankruptcy Code, approving, authorizing and granting the full availability of the Facility Amount and the priority of the Interim Lenders' Charge on the terms of this Term Sheet, and containing such other relief as the Credit Parties, in consultation with the

Required Interim Lenders and the Existing Credit Facility Agent, determine is necessary, which Recognition Order shall be in form and substance satisfactory to the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion;

(u) Take all actions necessary or available to defend the subsidiaries of the Credit Parties and their property from any and all material pending and threatened litigation or claims; and

22. **NEGATIVE COVENANTS:**

The Credit Parties covenant and agree not to do, or cause not to be done, with respect to itself and each of its subsidiaries, the following, other than with the prior written consent of the Required Interim Lenders and the Existing Credit Facility Agent to the extent express consent of the Existing Credit Facility Agent is required below:

(a) Transfer, lease or otherwise dispose of all or any part of their property, assets or undertaking outside of the ordinary course of business, except for the disposition of obsolete or worn out equipment or assets consistent with past practice, or assets of nominal value and in accordance with the Amended Initial Order and this Term Sheet;

(b) Make any payment, including, without limitation, any payment of principal, interest or fees, in respect of pre-filing indebtedness, or in respect of any other pre-filing liabilities, including payments with respect to pre-filing trade or unsecured liabilities of the Credit Parties, other than in accordance with the Amended Initial Order or any subsequent Court Order and the DIP Budget provided that the Credit Parties shall pay the Interim Lender Expenses pursuant to the terms of this Term Sheet.

(c) (i) Create or permit to exist any indebtedness other than (A) the indebtedness existing as of the date of this Term Sheet, (B) the Interim Financing Obligations, (C) post-filing trade payables or other unsecured obligations incurred in the ordinary course of business on or following the Filing Date in accordance with the DIP Budget and the Amended Initial Order, and (D) any obligations (including cash call or reclamation obligations) under any Joint Venture to which any Credit Party is party (ii) make or give any financial assurances, in the form of bonds, letter of credit, financial guarantees or otherwise to any Person or Governmental Authority other than with the prior written consent of (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(d) Make (i) any distribution, dividend, return of capital or other distribution in respect of equity securities (in cash, securities or other property or otherwise); or (ii) a retirement, redemption, purchase or repayment or other acquisition of equity securities or indebtedness (including any payment of principal, interest, fees or any other payments thereon) other than with the prior written

consent of (x) the Required Interim Lenders and (y) the Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(e) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than in accordance with the DIP Budget other than with the prior written consent of the (x) Required Interim Lenders in their sole and absolute discretion and (y) Existing Credit Facility Agent in its reasonable discretion;

(f) Except as may be otherwise ordered by the Court, 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 Court may expressly order unless such fees, expenses or disbursements, as applicable, are reviewed and confirmed in advance by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent in its reasonable discretion; provided however, in all cases, no fees, expenses, or disbursements shall be paid or reimbursed and no retainer shall be established to fund any challenges or objections to the Interim Facility, the Stalking Horse Transaction (including the sale approval hearing), or the SISP or to fund any litigation or pursuit of claims (including diligence or discovery) against any Interim Facility Lender or any of its affiliates in any capacity;

(g) Create or permit to exist any Liens on any of its properties or assets other than the Permitted Liens;

(h) Challenge or fail to support the Liens and claims of the Interim Lenders;

(i) Create or establish any employee retention plan or similar benefit plan for any employees of any of the Credit Parties, except as reflected in the approved DIP Budget;

(j) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Budget, subject to the Permitted Variance;

(k) Terminate any Material Contract or amend any Material Contract in any material manner except with the prior consent of the Required Interim Lenders acting reasonably;

(l) Seek to obtain, or consent to or fail to oppose a motion brought by any other Person for, approval by the Court or the Bankruptcy Court of any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the

(x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(m) Amalgamate, consolidate with or merge into or sell all or substantially all of their assets to another entity, or change their corporate or capital structure (including their organizational documents) or enter into any agreement committing to such actions except pursuant to (i) a Permitted Restructuring Transaction, or (ii) a Restructuring Transaction other than a Permitted Restructuring Transaction with the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion;

(n) Make an announcement in respect of, enter into any agreement or letter of intent with respect to, or attempt to consummate, or support an attempt to consummate by another party, any transaction or agreement outside the ordinary course of business except for a Permitted Restructuring Transaction;

(o) Enter into, extend, renew, waive or otherwise modify in any respect the terms of any existing operational arrangement without the prior approval of the Monitor, provided that, where this Term Sheet otherwise contains express provisions or restrictions with respect to particular operational arrangements or categories of operational arrangements, such express provisions or restrictions shall apply;

(p) Seek, obtain, support, make or permit to be made any Court Order or any change, amendment or modification to any Court Order in respect of any amendment relating to the Interim Facility, the SISP or any other matter that affects the Interim Lenders, except with the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion or as contemplated by the SISP;

(q) Enter into any settlement agreement or agree to any settlement arrangements with any Governmental Authority or regulatory authority in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against any one of them without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), or make any payments or repayments to customers outside the ordinary course of business, other than those set out in the DIP Budget;

(r) Without the approval of the Court or the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion, cease to carry on their business or any material activities as currently being conducted or modify or alter in any material manner the nature and

type of their operations or business;

(s) Seek, or consent to the appointment of, a receiver or licensed insolvency trustee or any similar official in any jurisdiction; or

(t) Use, whether directly or indirectly, and whether immediately, incidentally or ultimately, any proceeds of the Interim Facility for any purpose that results in a violation of the provisions of Regulation U of the Board of Governors of the Federal Reserve System of the United States.

23. **EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events shall constitute an event of default (each an "**Event of Default**") under this Term Sheet:

(a) Failure of the Borrower to pay principal, interest or other amounts when due pursuant to this Term Sheet or any other Credit Documents;

(b) Failure of any Credit Party to perform or comply with any term, condition, covenant or obligation pursuant to this Term Sheet or any other Credit Document and such failure remains unremedied for more than three (3) Business Days, *provided that*, where another provision in this Section 23 provides for a shorter or no cure period in respect of a particular Event of Default, such other provision shall apply;

(c) Any representation or warranty by a Credit Party made or deemed to be made in this Term Sheet or any other Credit Document is or proves to be incorrect or misleading in any material respect as of the date made or deemed to be made;

(d) Issuance of any Court Order (i) dismissing the Restructuring Proceedings or lifting the stay of proceedings therein to permit the enforcement of any security against any Credit Party or their Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receivership order against or in respect of any Credit Party, in each case which order is not stayed pending appeal thereof, and other than in respect of a non-material asset not required for the operations of any Credit Party's business and which is subject to a Permitted Priority Lien; (ii) granting any other Lien in respect of the CCAA Applicants' Collateral that is in priority to or *pari passu* with the Interim Lenders' Charge other than as permitted pursuant to this Term Sheet, (iii) modifying this Term Sheet or any other Credit Document without the prior written consent of the Interim Lenders and the Existing Credit Facility Agent in their sole and absolute discretion; (iv) commencing any proceedings in respect of the Credit Parties pursuant to Chapter 7 or Chapter 11 of the Bankruptcy Code; (v) approving a Restructuring Transaction, other than a Permitted Restructuring Transaction, that has not been previously consented to in writing by the Interim

Lenders and the Existing Credit Facility Agent, (vi) staying, reversing, vacating or otherwise modifying any Court Order relating to the Interim Facility, the SISP or any other matter that affects the Interim Lenders without the prior written consent of the (x) Supermajority Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion (except as contemplated by the SISP itself) or (vii) limiting or conditioning the right of the Interim Lenders to credit bid pursuant to Section 32 hereof;

(e) Unless consented to in writing by the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, the expiry without further extension of the stay of proceedings provided for in the Amended Initial Order;

(f) (i) a Variance Report or Updated DIP Budget is not delivered when due under this Term Sheet or (ii) in respect of any Testing Period, there shall exist a variance in excess of the Permitted Variance for the period for which the Variance Report is prepared;

(g) Unless consented thereto in writing by (x) Required Interim Lenders and (y) Existing Credit Facility Agent (such consent not to be unreasonably withheld), the filing by any of the Credit Parties of any motion or proceeding that (i) is not consistent with any provision of this Term Sheet, the Credit Documents, the Amended Initial Order, the Recognition Order (if applicable), or the SISP, as applicable, (ii) could otherwise be expected to have a material adverse effect on the interests of the Interim Lenders, (iii) seeks to continue the CCAA Proceedings under the jurisdiction of a court other than the Court, (iv) seeks to dismiss or convert the Chapter 15 Proceedings (if any), or (v) seeks to initiate any restructuring or insolvency proceedings other than the Restructuring Proceedings in any court or jurisdiction;

(h) Any proceeding, motion or application shall be commenced or filed by any Credit Party, or if commenced by another party, supported, remain unopposed or otherwise consented to by any Credit Party, seeking approval of any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent;

(i) The making by any Credit Party of a payment of any kind that is not permitted by this Term Sheet or the Credit Documents or is not in accordance with the DIP Budget, subject to the Permitted Variance;

(j) Except as stayed by order of the Court or the Bankruptcy Court or consented to by the Required Interim Lenders, a default under, revocation or cancellation of, any Material Contract;

(k) The denial or repudiation by any Credit Party of the legality, validity, binding nature or enforceability of this Term Sheet or any other Credit Documents;

(l) Except as stayed by order of the Court, the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of CDN$500,000 in the aggregate, against any Collateral, any Credit Party or any Credit Party's subsidiaries or such subsidiaries' property that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy;

(m) The Credit Parties or their affiliates (including any joint ventures in which the Credit Parties or their affiliates hold an interest) resuming mining operations without the consent of Washington Diamond in its sole and absolute discretion; *provided* that no Event of Default shall be deemed to have occurred based on a continuation of operations at the Diavik mine;

(n) The Credit Parties or their affiliates resume sales of diamond inventory to third parties; *provided*, *however*, that no Event of Default will be deemed to have occurred by virtue of a sale of diamond inventory from one Credit Party or an affiliate of a Credit Party to any other Credit Party or an affiliate of a Credit Party; *provided*, *further*, *however*, that no Event of Default shall be deemed to have occurred in the event that the Credit Parties or their affiliates undertake any sales of diamond inventory with the prior written consent of Washington Diamond, such consent not to be unreasonably withheld;

(o) Any Milestone set forth on **Schedule E** hereof shall not be satisfied; or

(p) The use of any proceeds of the Interim Facility to fund any obligations (including cash call or reclamation obligations) under any Joint Venture to which any Credit Party is party, without the prior written consent of the (x) Required Interim Lenders and (y) Existing Credit Facility Agent, in each case in their sole and absolute discretion.

24. **REMEDIES:** Upon the occurrence of an Event of Default, and subject to the Court Orders, Washington Diamond may, and at the direction of the Required Interim Lenders shall, on behalf of itself and each of the Interim Lenders, in its sole and absolute discretion, elect to terminate the commitments hereunder and declare the Interim Financing Obligations to be immediately due and payable and refuse to permit further Advances. In addition, upon the occurrence of an Event of Default, Washington Diamond may, on behalf of itself and each of the Interim Lenders, in its sole and absolute discretion, subject to the Court Orders including any notice provision

contained therein:

(a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the CCAA Applicants or their Collateral, or for the appointment of a trustee in bankruptcy of the Borrower or any of the other Credit Parties;

(b) set-off or combine any amounts then owing by any Interim Lender to any Credit Party against the obligations of any of the Credit Parties to any Interim Lender hereunder;

(c) exercise the powers and rights of a secured party under the Personal Property Security Act (Alberta), or any federal, provincial, territorial or state legislation of similar effect; and

(d) exercise all such other rights and remedies under this Term Sheet, the Court Orders and Applicable Law.

In the event that, following the exercise of remedies set forth in this Section 24 and provided that Washington Diamond has taken possession of and holds, through an exercise of rights and remedies, any Collateral constituting diamonds, then for a period of 60 days (the "**Initial Holding Period**"), Washington Diamond shall hold such diamonds for the benefit of itself, the other Interim Lenders, the Existing Credit Facility Lenders and the Existing Credit Facility Agent. At all times during and after the Initial Holding Period, subject to the terms of this Section 24, (i) Washington Diamond shall have the right, but not the obligation, to purchase (x) from the remaining Interim Lenders, upon at least five (5) days prior written notice from Washington Diamond to the remaining Interim Lenders (which purchase may be made in the sole and absolute discretion of Washington Diamond), all Interim Financing Obligations held by such remaining Interim Lenders, and (y) from the Existing Credit Facility Lenders, upon at least five (5) days written notice from Washington Diamond to the Existing Credit Facility Agent (which purchase may be made in the sole and absolute discretion of Washington Diamond), all Obligations (as defined in the Existing Credit Agreement) and all Liens securing such Obligations held by such Existing Credit Facility Lenders (the right described in this subparagraph (ii), the "**Washington Diamond Call Right**"), and (ii) the Existing Credit Facility Lenders that are participating in the Interim Facility as Interim Lenders (the "**Participating Credit Facility Interim Lenders**") shall, upon at least five (5) days prior written notice from such Participating Credit Facility Interim Lenders to Washington Diamond (which purchase may be made in the sole and absolute discretion of the Participating Credit Facility Interim Lenders), have the right, but not the obligation, to purchase from Washington Diamond all (but not less than all) Interim Financing Obligations held by Washington Diamond (the right described in this subparagraph (ii), the "**Participating Credit Facility Interim Lender Call Right**"). The Participating Credit Facility Interim Lenders shall be prohibited from issuing a notice triggering the Participating Credit Facility Interim Lender Call Right if, at the time of issuing such notice, Washington Diamond has issued a notice triggering the Washington Diamond Call

Right. Washington Diamond shall be prohibited from issuing a notice triggering the Washington Diamond Call Right if, at the time of such notice, the Participating Credit Facility Interim Lenders have issued a notice triggering the Participating Credit Facility Interim Lender Call Right.

In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, the Participating Credit Facility Interim Lenders shall be required to, upon at least five (5) days written notice from Washington Diamond to the Existing Credit Facility Agent (which request may be made in the sole and absolute discretion of Washington Diamond), purchase from Washington Diamond all (but not less than all) Interim Financing Obligations held by Washington Diamond at par *plus* any interest, fees, and expenses incurring during and after the Initial Holding Period (the obligation of the Participating Credit Facility Interim Lenders set forth in this paragraph, the "**Participating Credit Facility Interim Lender Put Obligation**"). Washington Diamond or the Participating Credit Facility Interim Lenders (as applicable) shall close any transactions related to the Washington Diamond Call Right, the Participating Credit Facility Interim Lender Call Right, or the Participating Credit Facility Interim Lender Put Obligation as promptly as possible, but in no event later than 10 days following the issuance of the notice triggering such right or obligation.

If the Participating Credit Facility Interim Lender Call Right or the Participating Credit Facility Interim Lender Put Obligation is exercised, the proceeds resulting from recovery from the sale of the Collateral constituting diamonds shall be distributed: (i) first, to all costs and expenses incurred by or on behalf of the Existing Credit Facility Agent; (ii) second, to the Participating Credit Facility Lenders in respect of their pro-rata contributions to the Interim Facility; (iii) third, to the Participating Credit Facility Lenders in respect of their pro rata contributions to the Existing Credit Facility, and (iv) fourth, to the remaining Existing Credit Facility Lenders who are not Participating Credit Facility Interim Lenders in respect of their pro rata contributions to the Existing Credit Facility. If there are no Participating Credit Facility Interim Lenders, the Participating Credit Facility Interim Lender Put Obligation shall be that of the Existing Credit Facility Agent unless the Existing Credit Facility Agent has issued a Diamonds Sale Request in accordance with the terms hereof.

In addition and subject to the terms of this Section 24, upon the expiration of the Initial Holding Period and at any time thereafter, provided that Washington Diamond has not issued a notice triggering the Participating Credit Facility Interim Lender Put Obligation and the Existing Credit Facility Agent has not issued a Diamonds Sale Request, Washington Diamond shall be permitted to liquidate the diamond inventory, with the proceeds being distributed in priority as among the Interim Facility Lender and the Existing Credit Facility Lenders in accordance with the Lien priority provisions hereof. Subject to the immediately preceding sentence, five (5) days prior to any sale of the diamond inventory set forth in this paragraph, Washington Diamond shall issue a written notice to the Existing Credit Facility Agent of Washington Diamonds' intention to sell such

diamond inventory, during which notice period, the Participating Credit Facility Interim Lenders will be permitted to exercise the Participating Credit Facility Interim Lender Call Right. In the event that the Participating Credit Facility Interim Lender Call Right, to the extent applicable, is not exercised during this five (5) day notice period, such Participating Credit Facility Interim Lender Call Right shall be deemed to have been irrevocably waived.

Notwithstanding the foregoing, during the Initial Holding Period of 60 days, the Existing Credit Facility Agent may issue to Washington Diamond a written notice, requesting Washington Diamond to sell all the diamonds that are Collateral of the Interim Lenders ("**Diamonds Sale Request**").

Upon the issuance of a Diamonds Sale Request:

- The Participating Credit Facility Interim Lender Call Right, any right of purchase of the Interim Facility Obligations and the Participating Credit Facility Interim Lender Put Obligations shall be void and no longer exercisable;

- Any subordination with respect to the October Advance shall be terminated and the October Advance, if advanced in part or in whole, shall rank equal in priority to all other Interim Facility Obligations; and

- Washington Diamond shall have 10 days to respond to such request, pursuant to which it will either accept or reject the Diamonds Sale Request.

Rejection of Diamonds Sale Request:

- Washington Diamond shall have no liability to the Existing Credit Facility Agent or Existing Credit Facility Lenders in connection with a rejection of the Diamonds Sale Request, including, without limitation, the timing of any future disposition of diamonds, but such rejection shall not relieve Washington Diamond of any obligation under Applicable Law with respect to the manner of disposition of Collateral.

Acceptance of Diamonds Sale Request

- Any disposition of diamonds shall be permitted to be sold in one or more transactions, in Washington Diamond's sole and absolute discretion, including without limitation, with respect to the timing, process, and manner of such disposition; and

- Washington Diamond shall have no liability of any kind to the Existing Credit Facility Agent or the Existing Credit Facility Lenders with respect to the disposition of any diamonds, including without limitation the timing, process, and manner of disposition, and the Existing Credit Facility Agent and the Existing Credit

Facility Lenders covenant not to sue or otherwise take any action with respect to such disposition, except for any claims that Washington Diamond's conduct with respect to the process and manner of such disposition(s) constitutes gross negligence or willful misconduct.

The Parties acknowledge and agree that any sale of diamonds by auction, and any direct to customer sale in a manner generally consistent with past practice, shall be deemed by all parties to be commercially reasonable.

25. **RIGHT OF REPURCHASE**

In the event that the purchase agreement governing the Stalking Horse Transaction is terminated, the Existing Credit Facility Lenders shall have the right, but not the obligation, to purchase from the Interim Lenders, upon at least five (5) days prior written notice from the Existing Credit Facility Lenders to Washington Diamond (which request may be made in the sole and absolute discretion of the Existing Credit Facility Lenders) either:

(a) all outstanding Interim Facility Obligations (including, for the avoidance of doubt, any accrued and unpaid interest, expenses and fees as of the date of such purchase); or

(b) a portion of the Advances made by the Interim Lenders, together with a ratable portion of accrued and unpaid interest, expenses and fees associated with such Advances (such purchase, a "**Partial Purchase**").

In the Event of a Partial Purchase, any remaining Interim Facility Obligations shall be senior in priority in all respects relative to any financing used to facilitate such Partial Purchase.

26. **INDEMNITY AND RELEASE:**

The Credit Parties agree, on a joint and several basis, to indemnify and hold harmless each of the Interim Lenders and their respective directors, officers, employees, agents, attorneys, counsel and advisors (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person (collectively, "**Claims**") as a result of or arising out of or in any way related to the Interim Facility or this Term Sheet and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim; *provided*, *however*, the Borrower and other Credit Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence, wilful misconduct or bad faith of the applicable Indemnified Person as finally determined by a court of competent jurisdiction, or (y) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Borrower or the other Credit Parties. None of the Interim Lenders, the

Indemnified Persons, nor the Credit Parties shall be responsible or liable to any other person for consequential or punitive damages.

Notwithstanding anything to the contrary herein, the indemnities granted under this Term Sheet shall survive any termination of the Interim Facility.

27. **TAXES:**

All payments by the Borrower and any other Credit Parties under this Term Sheet to the Interim Lenders, including any payments required to be made from and after the exercise of any remedies available to the Interim Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any Governmental Authority country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes are required by Applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to any Interim Lender under this Term Sheet, the amount so payable to such Interim Lender shall be increased by an amount necessary to yield to such Interim Lender on a net basis after payment of all Withholding Taxes, the amount payable under this Term Sheet at the rate or in the amount specified herein and the Borrower shall provide evidence satisfactory to such Interim Lender that the Taxes have been so withheld and remitted.

If the Credit Parties pay an additional amount to an Interim Lender to account for any deduction or withholding, such Interim Lender shall, at the sole cost and expense of the Credit Parties, reasonably cooperate with the applicable Credit Parties to obtain a refund of the amounts so withheld and paid to the Interim Lender. Any refund of an additional amount so received by such Interim Lender, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund which such Interim Lender determines in its sole discretion will leave it, after such payment, in no better or worse position than it would have been if no additional amounts had been paid to it), net of all out of pocket expenses of such Interim Lender, shall be paid over by such Interim Lender to the applicable Credit Parties promptly. If reasonably requested by the Credit Parties, such Interim Lender shall apply to the relevant Governmental Authority to obtain a waiver from such withholding requirement, and such Interim Lender shall reasonably cooperate, at the sole cost and expense of the Credit Parties, with the applicable Credit Parties and assist such Credit Parties to minimize the amount of deductions or withholdings required. The Credit Parties, upon the request of such Interim Lender, shall repay any portion of the amount repaid by such Interim Lender pursuant to this Section 27 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Interim Lender is required to repay such portion of the refund to such Governmental Authority. This Section 27 shall not be construed to require any of the Interim Lenders to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person. The Interim Lenders shall not by virtue of anything in this

Term Sheet or any other Credit Document be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund on behalf of the Credit Parties.

28. **FURTHER ASSURANCES:** The Credit Parties shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Required Interim Lenders may reasonably request for the purpose of giving effect to this Term Sheet.

29. **ENTIRE AGREEMENT; CONFLICT:** This Term Sheet, including the schedules hereto and any other Credit Documents delivered in connection with this Term Sheet, constitute the entire agreement between the parties relating to the subject matter hereof.

30. **AMENDMENTS, WAIVERS, ETC.:** No waiver or delay on the part of the Interim Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing (including by e-mail) by the Required Interim Lenders, the Supermajority Interim Lenders, Washington Diamond, the Existing Credit Facility Agent, or each Interim Lender (as applicable) and delivered in accordance with the terms of this Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given.

31. **ASSIGNMENT:** Subject to the consent of Washington Diamond (not to unreasonably withheld), any Interim Lender may assign this Term Sheet and its rights and obligations hereunder, in whole or in part, to any affiliate of an Interim Lender in its discretion (subject in all cases to (i) providing the Monitor and the other Interim Lenders with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of such Interim Lender hereunder, and (ii) the assignee providing notice to the Credit Parties to confirm such assignment). Neither this Term Sheet nor any right or obligation hereunder may be assigned by any Credit Party.

32. **CREDIT BIDDING**: In any sale of any Credit Party's Collateral, Washington Diamond, on behalf of itself and each of the other Interim Lenders shall be permitted, in its sole and absolute discretion, to credit bid up to the full amount of the then outstanding Interim Financing Obligations; *provided* that, prior to making any such credit bid, Washington Diamond shall obtain the prior consent of the Existing Credit Facility Agent, such consent not to be unreasonably withheld; *provided further* that such consent shall not be required for any credit bid submitted by any affiliate of Washington Diamond in connection with the Stalking Horse Transaction or any substantially similar transaction, subject to the repayment in full in cash of any Advances (plus accrued interest, expenses, and fees) held by Interim Lenders other than Washington Diamond and its affiliates.

33. **SEVERABILITY:** Any provision in this Term Sheet which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

34. **NO THIRD PARTY BENEFICIARY:** No person, other than the Credit Parties, the Interim Lenders and the Indemnified Persons, is entitled to rely upon this Term Sheet and the parties expressly agree that this Term Sheet does not confer rights upon any other party.

35. **COUNTERPARTS AND SIGNATURES:** This Term Sheet may be executed in any number of counterparts and by electronic transmission including "pdf email", each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

36. **NOTICES:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent email to the such Person at its address set out on its signature page hereof, with a copy to counsel. Any such notice, request or other communication hereunder shall be concurrently sent to the Monitor and its counsel.

    Any such notice shall be deemed to be given and received when received, unless received after 5:00 p.m. Eastern Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

37. **ENGLISH LANGUAGE:** The parties hereto confirm that this Term Sheet and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*

38. **GOVERNING LAW AND JURISDICTION:** This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. Without prejudice to the ability of the Interim Lender to enforce this Term Sheet in any other proper jurisdiction, the Credit Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

39. **JOINT & SEVERAL:** The obligations of the Credit Parties hereunder are joint and several.

40. **CONSENTS AND APPROVALS** No Interim Lender shall have any liability to any other Interim Lender or any other person by virtue of making, providing, or taking or not making, providing, or taking any consent, acceptance, waiver, modification, agreement, determination, election, permission, or action hereunder, or by taking or not taking any other action permitted or contemplated hereby (including, without limitation, any consent, acceptance, waiver, modification, agreement, determination, election, permission, or action taken or not taken in connection with the enforcement by the Interim Lenders of any remedies against the Collateral or the Credit Parties hereunder).

41. **SUPPORT OF TRANSACTION** By executing this Term Sheet, each Interim Lender, each Existing Credit Facility Lender, and the Existing Credit Facility Agent agree that it will:

(a) Cooperate with each other Interim Lender, Existing Credit Facility Lender and the Existing Credit Facility Agent with respect to the SISP, the Stalking Horse Transaction or the implementation thereof, and to use commercially reasonable efforts to pursue and support implementation of the same;

(b) Not vote for, consent to, support or participate in the formulation of any other restructuring, exchange, or settlement of any of the indebtedness of or claims against the Applicants, any transaction other than the Stalking Horse Transaction (except as provided for in the SISP) involving the Applicants, any of their assets or stock, or any plan of arrangement, reorganization or liquidation under any bankruptcy, insolvency or similar laws;

(c) Not directly or indirectly seek, solicit, support, formulate entertain, encourage or engage in any inquiries, or discussions, or enter into any agreements relating to, any transaction other than the Stalking Horse Transaction (except as provided for in the SISP) and/or any restructuring, plan of arrangement or reorganization, receivership, proposal or offer of dissolution, winding up, liquidation, reorganization, merger, transaction, sale, assignment for the benefit of creditors, or restructuring in any manner of any of the Applicants (or any of their assets, liabilities or equity interests;

(d) Not object to the Interim Facility, the SISP, the Stalking Horse Transaction or the implementation thereof or initiate any legal proceedings, that are inconsistent with, or that would delay, prevent, frustrate or impede the approval or consummation of, the Interim Facility, the SISP, the Stalking Horse Transaction or any transactions related thereto, or take any other action that is barred by this Term Sheet; and

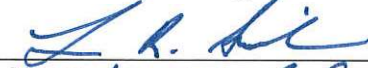
(e) Not solicit, encourage, or direct any Person to undertake any action set forth in subparagraphs (b) through (d) above.

42. **AMENDMENT AND RESTATEMENT** The terms and provisions of the Original Term Sheet shall be and are hereby amended, superseded and restated in their entirety by the terms and provisions of this Term Sheet.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.

Washington Diamond Lending, LLC

Address:
Attention:
Email:

Per: 
Name: Lawrence R. Simkins
Title: President
I have authority to bind the LLC.

Dominion Diamond Mines ULC

Address:
Attention:
Email:

Per: ______________________________
Name:
Title:
I have authority to bind the corporation.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.

Washington Diamond Lending, LLC

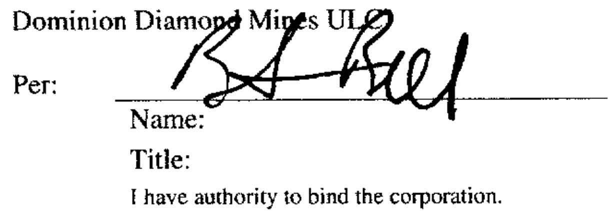
Address:
Attention:
Email:

Per: ______________________________

Name:
Title:
I have authority to bind the LLC.

Dominion Diamond Mines ULC

Address:
Attention:
Email:

Per: 

Name:
Title:
I have authority to bind the corporation.

Credit Suisse AG, Cayman Islands Branch, as Existing Credit Facility Agent and Lender

Address:
Eleven Madison Avenue
New York, NY 10010-3629
Attention: Didier Siffer
Email: didier.siffer@credit-suisse.com

Per:

Name: Didier Siffer
Title: Managing Director

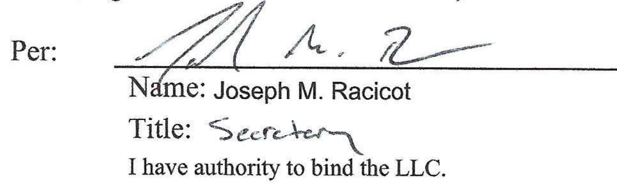
-and-

Name: Megan Kane
Title: Managing Director

We have authority to bind the entity.

Address:
Attention:
Email:

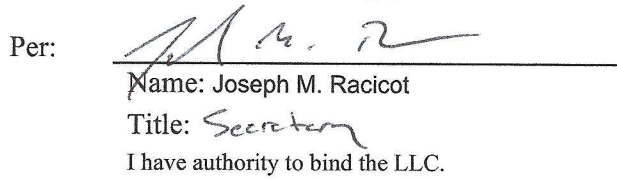
Washington Diamond Investments, LLC

Per: 

Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Address:
Attention:
Email:

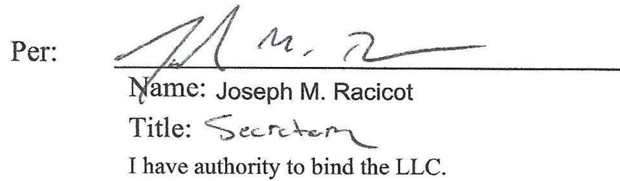
Dominion Diamond Holdings, LLC

Per: 

Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Address:
Attention:
Email:

Dominion Finco Inc.

Per: 

Name: Joseph M. Racicot
Title: Secretary
I have authority to bind the LLC.

Address:
Attention:
Email:

Dominion Diamond Delaware Company LLC

Per: ______________________

Name: Kristal Kaye
Title:
I have authority to bind the LLC.

Address:
Attention:
Email:

Dominion Diamond Canada ULC

Per: ______________________

Name: Kristal Kaye
Title:
I have authority to bind the LLC.

Washington Diamond Investments, LLC

Address:
Attention:
Email:

Per: ______________________________

Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Diamond Holdings, LLC

Address:
Attention:
Email:

Per: ______________________________

Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Finco Inc.

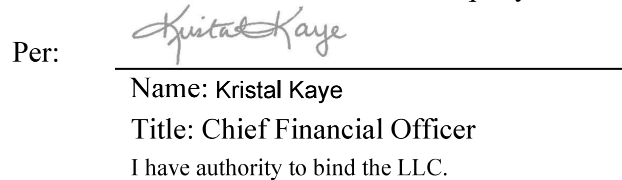
Address:
Attention:
Email:

Per: ______________________________

Name: Joseph M. Racicot
Title:
I have authority to bind the LLC.

Dominion Diamond Delaware Company LLC

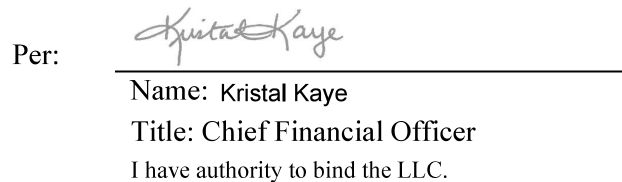
Address:
Attention:
Email:

Per: 

Name: Kristal Kaye
Title: Chief Financial Officer
I have authority to bind the LLC.

Dominion Diamond Canada ULC

Address:
Attention:
Email:

Per: 

Name: Kristal Kaye
Title: Chief Financial Officer
I have authority to bind the LLC.

SCHEDULE "A"
DEFINED TERMS

"**Advance**" means an amount of the Interim Facility advanced to the Borrower pursuant to the terms hereof from time to time.

"**Administration Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Initial Order in an aggregate amount not to exceed CDN$3,500,00 to secure the fees and expenses of (i) the legal and financial advisors of the Credit Parties, (ii) the Monitor and its counsel, in connection with the CCAA Proceedings; and (iii) the monthly fees owing to the SISP Advisor under its engagement letter with the Applicants, but no other fees or expenses provided for therein.

"**Advance Conditions**" has the meaning given thereto in Section 7.

"**Advance Request Certificate**" has the meaning given thereto in Section 5.

"**Amended Initial Order**" has the meaning given thereto in Section 7(d).

"**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Authority having the force of law.

"**Bankruptcy Code**" means title 11 of the *United States Code*.

"**Bankruptcy Court**" has the meaning given thereto in Section 21(t).

"**Bankruptcy Court Order**" has the meaning given thereto in Section 21(d).

"**Borrower**" has the meanings given thereto in Section 1.

"**Business Day**" means any day other than a Saturday, Sunday or any other day on which banks in Calgary, Alberta are not open for business.

"**CCAA**" has the meaning given thereto in the Recitals.

"**CCAA Proceedings**" has the meaning given thereto in the Recitals.

"**Claims**" has the meaning given thereto in Section 26.

"**Collateral**" means, in respect of a Person, all current or future assets, businesses, undertakings and properties of such Person, real and personal, tangible or intangible, including all proceeds thereof, other than Excluded Assets.

"**Court**" has the meaning given thereto in the Recitals.

"**Court Order**" means any CCAA Order or Bankruptcy Court Order and "**Court Orders**" means, collectively, all such orders.

"**Credit Documents**" means this Term Sheet, the Guarantee delivered by the Guarantors, and any other document delivered in connection with or relating to this Term Sheet from time to time.

"**Credit Parties**" means the Borrower and the Guarantors, collectively.

"**Criminal Code Interest**" has meaning given thereto in Section 17(a).

"**Criminal Rate**" has meaning given thereto in Section 17(a).

"**Default**" means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

"**Defaulting Lender**" means any Interim Lender other than Washington Diamond that (a) has failed to fund any portion of the Advances required to be funded by it hereunder within two Business Days of the date required to be funded by it hereunder unless such failure has been cured, (b) has been determined by a court of competent jurisdiction or regulator to be insolvent or is unable to meet its obligations or admits in writing it is unable to pay its debts as they generally become due, (c) is the subject of a bankruptcy or insolvency proceeding, (d) is subject to or is seeking the appointment of an administrator, regulator, conservator, liquidator, receiver, trustee, custodian or other similar official over any material portion of its assets or business, or (e) fails to confirm in writing that it will comply with its obligations hereunder after written request from the Borrower, or an Interim Lender who provides notice in writing, or makes a public statement to the effect, that it does not intend to comply with its funding obligations hereunder.

"**Diavik Collateral**" means (a) the assets owned by the Diavik Joint Venture, (b) the Borrower's interest in the Diavik Joint Venture, and (c) the diamond inventory produced at the Diavik mine and not held by the Credit Parties or their direct or indirect affiliates as of the commencement of these CCAA Cases, and in each case, including all proceeds thereof.

"**Diavik JV Priority Liens**" means any Liens arising under Section 9.4 of the Diavik Joint Venture Agreement.

"**DIP Budget**" means the weekly financial projections prepared by the Credit Parties covering the period commencing on the week ended April 24, 2020, and ending on the week ending October 30, 2020, on a weekly basis, which shall be in form and substance acceptable to the Required Interim Lenders in their sole and absolute discretion and the Existing Credit Facility Agent in its reasonable discretion, which financial projections may be amended from time to time in accordance with Section 14. For greater certainty, for purposes of this Term Sheet, the DIP Budget shall include all supporting documentation provided in respect thereof to the Required Interim Lenders and the Existing Credit Facility Agent .

"**Directors' Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Initial Order in favour of the directors and officers of the CCAA Applicants, in an amount not to exceed CDN$4,000,000.

"**Event of Default**" has the meaning given thereto in Section 23.

"**Excluded Assets**" means voting equity interests in Dominion Diamond (India) Private Limited in excess of 65% of the aggregate voting equity interests of Dominion Diamond (India) Private Limited.

"**Existing Credit Agreement**" means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, and each of the other parties and lenders party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"**Existing Credit Facility**" means the facility governed by the Existing Credit Agreement.

"**Existing Credit Facility Agent**" means Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, under the Existing Credit Agreement.

"**Existing Credit Facility Lenders**" means those lenders under the Existing Credit Agreement.

"**Facility Amount**" has the meaning given thereto in Section 5.

"**Filing Date**" means the date of commencement of the CCAA Proceedings.

"**First Lien Facility LC Obligations**" means those Obligations (as defined in the Existing Credit Agreement) related to or arising from LC Exposure (as defined in the Existing Credit Agreement).

"**Funded First Lien Facility Obligations**" means those Obligations (as defined in the Existing Credit Agreement) related to or arising from Loans (as defined in the Existing Credit Agreement).

"**Governmental Authority**" means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

"**Guarantee**" means a guarantee of the Interim Financing Obligations made by each of the Guarantors in favour of the Interim Lenders, in form and substance satisfactory to the Required Interim Lenders.

"**Guarantors**" has the meaning given thereto in Section 3.

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

"**Initial DIP Budget**" has the meaning given thereto in Section 14.

"**Initial Order**" has the meaning given thereto in the Recitals.

"**Interim Facility**" has the meaning given thereto in Section 5.

"**Interim Facility Priority Collateral**" means all Collateral other than the Diavik Collateral.

"**Interim Financing Obligations**" means, collectively, all obligations owing by the Credit Parties pursuant to this Term Sheet and the other Credit Documents, including, without limitation, all principal, interest, fees, costs, expenses, disbursements and Interim Lender Expenses.

"**Interim Lenders**" has the meaning given thereto in Section 2.

"**Interim Lenders' Charge**" has the meaning given thereto in Section 7**.**

"**Interim Lender Expenses**" has the meaning given thereto in Section 8.

"**KERP Charge**" means the means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Amended Initial Order to secure the obligations of the CCAA Applicants to certain key employees pursuant to the terms of a key employee retention plan in an amount not to exceed CDN$600,000, in the aggregate.

"**Liens**" means (a) all liens, hypothecs, charges, mortgages, deeds of trusts, trusts, deemed trusts (statutory or otherwise), constructive trusts, encumbrances, security interests, and statutory preferences of every kind and nature whatsoever, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Material Contract**" means any contract, licence or agreement: (i) to which any Credit Party is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of any Credit Party; and (iii) which a Credit Party cannot within a commercially reasonable timeframe replace by an alternative and comparable contract with comparable commercial terms.

"**Maturity Date**" has the meaning given thereto in Section 13.

"**Monitor**" has the meaning given thereto in Section 12.

"**Non-Consenting Lender**" means any Interim Lender other than Washington Diamond that has not provided its consent, acceptance, waiver or agreement (including in connection with any proposed amendment or modification to this Term Sheet) where requested to do so by the Borrower or Washington Diamond if such consent, acceptance, waiver or agreement (i) requires the consent of the Supermajority Interim Lenders, and (ii) Interim Lenders whose Commitments at the relevant time aggregate at least 65% of the total Commitments have consented to such consent, acceptance, waiver or agreement.

"**Operating Account**" means a bank account of the Borrower designated by the Borrower to receive Advances.

"**Original Currency**" has the meaning given thereto in Section 18.

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

"**Other Currency**" has the meaning given thereto in Section 18.

"**Outside Date**" means October 31, 2020.

"**Permitted Liens**" means (i) the Interim Lenders' Charge; (ii) any charges created under the Amended Initial Order or other Court Order subsequent in priority to the Interim Lenders' Charge and approved in writing by the Required Interim Lenders and the Existing Credit Facility Agent in their reasonable discretion; (iii) validly perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; (v) the Permitted Priority Liens; and (vi) the SISP Advisor Charge.

"**Permitted Priority Liens**" means (i) the Administration Charge; (ii) the Directors Charge; (iii) the KERP Charge; (iv) any amounts payable by a Credit Party for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in each case solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts has not been subordinated to the Interim Lenders' Charge granted by the Court; (v) any charges created under the Amended Initial Order related to the break fee with respect to the Stalking Horse Transaction; (vi) subject to any order of the CCAA Court and solely to the extent set forth in the Rio Subordination Agreement, the Diavik JV Priority Liens; *provided* that the Diavik JV Priority Liens shall constitute Permitted Priority

Liens solely with respect to the Diavik Collateral and solely to the extent that they constitute Liens over the Diavik Collateral or portions thereof; and (vii) solely with respect to the Diavik Collateral, the Liens of the Existing Credit Facility Agent to secure the Obligations under the Existing Credit Facility Agreement; *provided further* that, for the avoidance of doubt, Permitted Priority Liens shall not include any Liens securing any Credit Party's obligations under (a) the Existing Credit Agreement, (b) the indenture governing the 7.125% Senior Secured Second Lien Secured Notes due 2022 issued by certain of the Credit Parties, as amended, restated, supplemented or otherwise modified from time to time, and (c) any joint venture agreements, as amended, restated, supplemented or otherwise modified from time to time, to which any of the Credit Parties are party.

"**Permitted Restructuring Transaction**" means:

(i) the Stalking Horse Transaction;

(ii) a transaction that (a) provides for the repayment in full in cash of all Interim Financing Obligations outstanding at the time of closing of such Restructuring Transaction and (b) otherwise constitutes a "Successful Bid" as defined in and in accordance with the SISP; or

(iii) a transaction for the Non-Diavik Assets (as defined in the SISP) that (a) provides for repayment in full in cash of all Interim Financing Obligations; (b) otherwise constitutes a "Successful Bid" as defined in and in accordance with the SISP; and (c) maintains all liens and other rights held by the Agent on behalf of the First Lien Lenders securing all obligations under the Existing Credit Facility, to the Diavik Interest including, but not limited to, all diamond production from the Diavik Interest (but excluding in all respects those diamonds (and/or proceeds thereof) delivered to any of the CCAA Applicants or their direct or indirect controlled affiliates prior to the commencement of the CCAA), including the proceeds thereof.

"**Permitted Variance**" means an adverse variance of not more than 20% relative to the aggregate "Total Operating Disbursements" line item in the applicable DIP Budget; *provided*, *however*, that if any adverse variance is reversing a prior positive variance, such adverse timing variance shall not be counted towards the 20% variance threshold.

"**Person**" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"**Plan**" means any plan of compromise, arrangement, reorganization or similar arrangement filed pursuant to the CCAA, the Bankruptcy Code, or any other statute in any jurisdiction, in respect of any of the Credit Parties.

"**Recognition Order**" has the meaning given thereto in Section 21(t).

"**Required Interim Lenders**" means those Interim Lenders holding a majority of the Commitments and any outstanding Advances held by all Interim Lenders; *provided* that Required Interim Lenders must in all cases include Washington Diamond.

"**Restructuring Proceedings**" means, collectively, the CCAA Proceedings and the Chapter 15 Proceedings.

"**Restructuring Transaction**" means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, Plan or other material transaction of, or in respect of, all or any of the Credit Parties or their respective assets and liabilities and includes, without limitation, the Stalking Horse Transaction.

"**Rio Subordination Agreement**" means that certain subordination agreement between, among others, Diavik Diamond Mines (2012) Inc. and the Existing Credit Facility Agent dated November 1, 2017.

"**SISP**" means a Sales and Investment Solicitation Process authorized pursuant to the Amended Initial Order (or other Order of the Court, as the case may be), as amended, but only to the extent such amendment is consented to by the Stalking Horse Bidder.

"**SISP Advisor**" means Evercore Group LLC.

"**SISP Advisor Charge**" means a priority charge over the CCAA Applicants' Collateral granted by the Court pursuant to the Amended Initial Order to secure the Borrowers' obligations to the SISP Advisor under the engagement letter between the SISP Advisor and the Borrower.

"**Stalking Horse Transaction**" means the transaction in respect of certain assets and property of the Credit Parties contemplated by the Letter of Intent signed by Washington Diamond Investments Holdings II, LLC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC and the Borrower and dated May 21, 2020.

"**Supermajority Interim Lenders**" means those Interim Lenders holding at least 68% of the Commitments and outstanding Advances held by all Interim Lenders; *provided* that Supermajority Interim Lenders must in all cases include Washington Diamond.

"**Term Sheet**" means this amended and restated term sheet, as may be amended, modified, supplemented or restated from time to time in accordance with the provisions hereof.

"**Taxes**" has the meaning given thereto in Section 27.

"**Testing Period**" has the meaning given thereto in Section 14.

"**Updated DIP Budget**" has the meaning given thereto in Section 14.

"**Variance Report**" has the meaning given thereto in Section 14.

"**Washington Diamond**" means Washington Diamond Lending, LLC, a Delaware limited liability company.

"**Withholding Taxes**" has the meaning given thereto in Section 27.

SCHEDULE "B"
FORM OF ADVANCE CONFIRMATION CERTIFICATE

TO: The Interim Lenders

FROM: Dominion Diamond Mines ULC

DATE: ●, 2020

1. This certificate is delivered to you, as Interim Lenders, in connection with a request for an Advance pursuant to the Amended and Restated Interim Financing Term Sheet made as of June 15, 2020 between the Borrower and the Interim Lenders, as amended, supplemented, restated or replaced from time to time (the "**Term Sheet**"). All defined terms used, but not otherwise defined in this certificate shall have the respective meanings set forth in the Term Sheet, unless the context requires otherwise.

2. The Borrower hereby requests an Advance as follows in respect of the week commencing on ●, 2020:

Aggregate amount of Advance: US$●

3. All of the representations and warranties of the Credit Parties set forth in the Term Sheet are true and accurate in all material respects as at the date hereof, as though made on and as of the date hereof.

4. All of the covenants of the Credit Parties contained in the Term Sheet and all other terms and conditions contained in the Term Sheet to be complied with by the Credit Parties, not properly waived in writing by the Interim Lenders, have been fully complied with.

7. No Default or Event of Default has occurred nor will any such event occur as a result of the Advance hereby requested.

DOMINION DIAMOND MINES ULC

Per: ______________________________

Name:
Title:

I have authority to bind the corporation.

SCHEDULE “C”
DIP BUDGET

Dominion Diamond Mines
Consolidated Second Cash Flow Statement
For the 28-week period ending October 30, 2020

($ thousands) Week Ending	Notes	Week 1 24-Apr (Initial Stay Period)	Week 2 1-May (Initial Stay Period)	Week 3 8-May	Week 4 15-May	Week 5 22-May	Week 6 29-May	Week 7 5-Jun	Week 8 12-Jun	Week 9 19-Jun	Week 10 26-Jun	Week 11 3-Jul	Week 12 10-Jul	Week 13 17-Jul	Week 14 24-Jul
Operating Receipts															
Sales	[1]	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Operating Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Disbursements															
Payroll and Benefits	[2]	-	400	1,569	-	1,314	605	1,060	10	91	1,733	-	1,540	-	1,479
Consultants and Contractors	[3]	25	85	117	437	28	263	342	382	527	518	493	81	51	18
Rent	[4]	-	98	113	-	0	-	98	-	-	-	98	-	-	-
Equipment Leases		-	-	572	-	-	841	-	371	-	-	631	-	-	-
Underground Mining Costs	[5]	-	-	-	-	-	-	-	-	-	-	882	-	-	-
Travel	[6]	-	-	-	12	-	8	17	50	106	-	156	15	15	15
Insurance	[7]	-	-	-	-	2,418	-	-	-	407	-	-	12	407	-
IT & Software		-	-	73	413	15	62	19	70	149	396	498	-	-	-
IBA Payments	[8]	-	-	-	-	-	-	-	-	-	-	417	-	-	-
Power	[9]	-	-	-	-	-	-	-	-	252	-	126	-	-	-
Site Maintenance & Environment	[10]	-	-	-	-	88	33	42	54	253	298	530	253	237	275
CCAA Professional Fees	[11]	-	-	370	214	-	-	-	490	2,000	11,019	531	590	1,756	250
Critical Vendors Accounts Payable	[12]	-	-	-	1,524	58	-	163	1,085	1,085	1,085	-	-	-	-
Net Taxes	[13]	-	(2,122)	-	1,757	-	-	-	-	-	-	-	-	-	-
Other	[14]	-	-	-	-	-	-	-	433	551	2,040	395	176	416	163
Total Operating Disbursements		25	(1,539)	2,814	4,358	3,922	1,811	1,741	2,945	5,422	17,089	4,757	2,668	2,882	2,201
Startup Disbursements															
Winter road construction		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Diesel purchases / freight		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ramp-up costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Startup Disbursements		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Change in Cash from Operations		(25)	1,539	(2,814)	(4,358)	(3,922)	(1,811)	(1,741)	(2,945)	(5,422)	(17,089)	(4,757)	(2,668)	(2,882)	(2,201)
Financing															
Intercompany Receipts / (Disbursements)	[15]	-	-	-	-	-	(6)	(115)	(1)	(127)	1,689	(110)	(49)	-	(0)
Interest & Bank Charges	[16]	-	(276)	(70)	(195)	-	(191)	-	(153)	(46)	-	(1,248)	(153)	-	-
DIP Facility Interest		-	-	-	-	-	-	-	-	-	(16)	-	-	-	-
Governmernt Support Program		-	-	-	-	-	1,849	-	-	850	-	-	-	680	-
DIP Facility Draw		-	-	-	-	-	-	-	-	-	14,200	14,200	-	-	-
Net Change in Cash from Financing		-	(276)	(70)	(195)	-	1,652	(115)	(153)	677	15,873	12,842	(202)	680	(0)
Net Change in Cash		(25)	1,264	(2,884)	(4,552)	(3,922)	(159)	(1,857)	(3,098)	(4,745)	(1,216)	8,085	(2,870)	(2,202)	(2,201)
Opening Cash		26,823	26,798	28,061	25,177	20,625	16,703	16,543	14,687	11,588	6,843	5,627	13,712	10,842	8,640
Ending Cash		**$ 26,798**	**$ 28,061**	**$ 25,177**	**$ 20,625**	**$ 16,703**	**$ 16,543**	**$ 14,687**	**$ 11,588**	**$ 6,843**	**$ 5,627**	**$ 13,712**	**$ 10,842**	**$ 8,640**	**$ 6,439**

($ thousands) Week Ending	Notes	Week 15 31-Jul	Week 16 7-Aug	Week 17 14-Aug	Week 18 21-Aug	Week 19 28-Aug	Week 20 4-Sep	Week 21 11-Sep	Week 22 18-Sep	Week 23 25-Sep	Week 24 2-Oct	Week 25 9-Oct	Week 26 16-Oct	Week 27 23-Oct	Week 28 30-Oct	Weeks 1 - 28 Total
Operating Receipts																
Sales	[1]	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Operating Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Disbursements																
Payroll and Benefits	[2]	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,914	**20,507**
Consultants and Contractors	[3]	246	524	135	47	170	494	134	41	230	478	87	41	125	125	**6,244**
Rent	[4]	-	98	-	-	-	98	-	-	-	98	-	-	-	-	**701**
Equipment Leases		-	925	-	-	-	925	-	-	-	925	-	-	-	-	**5,191**
Underground Mining Costs	[5]	-	882	-	-	-	441	-	-	-	441	-	-	-	-	**2,646**
Travel	[6]	15	172	15	43	15	172	15	15	54	153	15	15	27	27	**1,152**
Insurance	[7]	-	-	407	-	-	-	407	-	-	-	-	407	-	-	**4,467**
IT & Software		-	368	44	-	-	382	4	-	-	382	69	-	35	35	**3,014**
IBA Payments	[8]	-	458	-	-	-	-	458	-	55	-	458	-	27	27	**1,899**
Power	[9]	-	126	-	-	-	126	-	-	-	126	-	-	-	-	**756**
Site Maintenance & Environment	[10]	219	474	89	40	44	419	53	53	35	419	35	53	17	17	**4,031**
CCAA Professional Fees	[11]	815	250	1,756	250	815	250	1,401	605	531	676	250	2,287	250	7,118	**34,473**
Critical Vendors Accounts Payable	[12]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**5,000**
Net Taxes	[13]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	**(365)**
Other	[14]	1,276	334	40	192	15	226	15	1,686	178	299	15	2,241	139	3,576	**14,406**
Total Operating Disbursements		2,571	6,076	2,487	2,036	1,059	4,999	2,488	2,400	2,547	3,998	2,395	5,044	2,085	12,838	**104,120**
Startup Disbursements																
Winter road construction		-	-	-	-	-	-	-	-	-	-	-	-	1,001	-	**1,001**
Diesel purchases / freight		-	-	-	-	-	-	-	-	-	-	-	-	-	-	**-**
Ramp-up costs		-	-	-	-	-	-	-	-	-	-	-	4,900	-	-	**4,900**
Total Startup Disbursements		-	-	-	-	-	-	-	-	-	-	-	4,900	1,001	-	**5,901**
Net Change in Cash from Operations		(2,571)	(6,076)	(2,487)	(2,036)	(1,059)	(4,999)	(2,488)	(2,400)	(2,547)	(3,998)	(2,395)	(9,944)	(3,086)	(12,838)	**(110,022)**
Financing																
Intercompany Receipts / (Disbursements)	[15]	888	(3,802)	(15)	(0)	(0)	(635)	-	1,666	(0)	(830)	-	2,222	(0)	(0)	**773**
Interest & Bank Charges	[16]	-	(237)	(153)	-	-	(237)	(153)	-	-	(1,248)	(153)	-	-	(686)	**(5,197)**
DIP Facility Interest		(124)	-	-	-	(186)	-	-	-	(249)	-	-	-	-	(348)	**(923)**
Governmernt Support Program		-	-	-	-	-	-	-	-	-	-	-	-	-	-	**3,379**
DIP Facility Draw		-	14,200	-	-	-	14,200	-	-	-	14,200	-	14,200	-	-	**85,200**
Net Change in Cash from Financing		764	10,161	(168)	(0)	(187)	13,328	(153)	1,666	(249)	12,123	(153)	16,422	(0)	(1,034)	**83,233**
Net Change in Cash		(1,807)	4,085	(2,655)	(2,037)	(1,246)	8,329	(2,640)	(734)	(2,795)	8,125	(2,547)	6,477	(3,086)	(13,872)	**(26,789)**
Opening Cash		6,439	4,631	8,717	6,062	4,025	2,779	11,108	8,467	7,734	4,938	13,063	10,515	16,993	13,906	**26,823**
Ending Cash		**$ 4,631**	**$ 8,717**	**$ 6,062**	**$ 4,025**	**$ 2,779**	**$ 11,108**	**$ 8,467**	**$ 7,734**	**$ 4,938**	**$ 13,063**	**$ 10,515**	**$ 16,993**	**$ 13,906**	**$ 34**	**$ 34**

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Kristal Kaye, Chief Financial Officer
Dominion Diamond Mines

Notes:
Management has prepared this Cash Flow Statement solely for the purposes of determining the liquidity requirements of the Company during the CCAA Proceedings.
The Cash Flow Statement is based on the probable and hypothetical assumptions detailed below. Actual results will likely vary from performance projected and such variations may be material.

[1] Receipts are assumed to be nil during the Forecast Period as COVID-19 related business disruptions have resulted in the Applicants being unable to sell diamonds in the normal course.
[2] Payroll and benefits relate to management and employees at Dominion's corporate office as well as two rotating shifts of employees that perform care and maintenance activities at the Ekati mine site.
[3] Consultants and contractors relate primarily to contract camp and catering staff and consultants.
[4] Rent includes lease costs, utilities and property taxes for the Applicants' offices in Calgary and Yellowknife.
[5] Underground mining costs relate to dewatering costs and standby fees for the contractor that operates the underground mine.
[6] Travel relates to airlines that transport employees and contractors to the Ekati mine site.
[7] Insurance relates to a premium financing arrangement for the Applicants' insurance policies including Directors & Officers insurance.
[8] Impact and benefit agreements are assumed to remain current during the forecast period.
[9] Power includes contractors that operate the power plant at the Ekati mine.
[10] Site maintenance and environmental costs are based on Dominion's care and maintenance plan and are assumed to be consistent with current run rates.
[11] CCAA Professional fees includes the Applicants' Canadian legal counsel, United States legal counsel and financial advisor, the Monitor and the Monitor's legal counsel, Canadian and United States legal counsel to the DIP Lender, Canadian and United States legal counsel and financial advisor to the Revolving Facility Lenders.
[12] The Initial Order authorizes the Applicants to pay certain pre-filing amounts owing to critical suppliers of up to $5.0 million, with prior approval of the Monitor.
[13] Net Taxes includes pre-filing fuel tax payments for March and April and refund for certain pre-filing GST payments.
[14] Other operating costs include miscellaneous disbursements and a contingency including payments attendant to and required for closing subject to court approval.
[15] Intercompany accounts relate to cash calls to the joint venture partner in respect of the Ekati Core Zone and cash requirements of DDMC, DDMNV (Belgium) and DDIPL (India) beyond existing cash balances.
[16] Interest and bank fees are comprised of interest and letter of credit fees in respect of the Applicants' Revolving Facility.

Memo - DIP financing assumptions

Wind-down estate	C$000			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,420	

Memo - DIP financing assumptions

Interest	5.25%
Fees	0.00%
Facility Size - US$000	60,000
Exchange rate	1.42
Facility Size - C$000	85,200
Target min liquidity before dr	2,500
Number of Draws	6
First Draw	14,200
Draw size	14,200

DIP Balance																													
Open					-	-	-	-	-	-	14,200	28,400	28,400	28,400	28,400	28,400	42,600	42,600	42,600	42,600	56,800	56,800	56,800	56,800	71,000	71,000	85,200	85,200	
Draw						-	-	-	-	14,200	14,200	-	-	-	-	14,200	-	-	-	14,200	-	-	-	14,200	-	14,200	-	-	
Closing		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 14,200	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 42,600	$ 42,600	$ 42,600	$ 42,600	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 71,000	$ 71,000	$ 85,200	$ 85,200	$ 85,200	
Undrawn Amount	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 85,200	$ 71,000	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 56,800	$ 42,600	$ 42,600	$ 42,600	$ 42,600	$ 28,400	$ 28,400	$ 28,400	$ 28,400	$ 14,200	$ 14,200	$ -	$ -	$ -	
Interest						$ -				$ 16					$ 124				$ 186				$ 249					$ 348	**923**

	Week 1 24-Apr	Week 2 1-May	Week 3 8-May	Week 4 15-May	Week 5 22-May	Week 6 29-May	Week 7 5-Jun			Week 8 12-Jun	Week 9 19-Jun	Week 10 26-Jun	Week 11 3-Jul	Week 12 10-Jul	Week 13 17-Jul	Week 14 24-Jul	Week 15 31-Jul	Week 16 7-Aug	Week 17 14-Aug	Week 18 21-Aug	Week 19 28-Aug	Week 20 4-Sep	Week 21 11-Sep	Week 22 18-Sep	Week 23 25-Sep	Week 24 2-Oct	Week 25 9-Oct	Week 26 16-Oct	Week 27 23-Oct	Week 28 30-Oct	
[2] Employee Payroll, Benefits & Source Deductions																															
Payroll - Ekati	-	400	1,569	-	1,314	605	1,060	5,049	(101)	10	91	1,540	-	1,540	-	1,479	-	1,465	-	1,465	-	1,465	-	-	1,465	-	1,465	-	1,465	1,527	24,874
Payroll - SGA								-	-																						
Retention Bonus	-	-	-	-	-	-	-	-	-	-	-	193	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	387	580
	-	**400**	**1,569**	**-**	**1,314**	**605**	**1,060**	**5,049**	**(101)**	**10**	**91**	**1,733**	**-**	**1,540**	**-**	**1,479**	**-**	**1,465**	**-**	**1,465**	**-**	**1,465**	**-**	**-**	**1,465**	**-**	**1,465**	**-**	**1,465**	**1,914**	**25,454**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[3] Consultants or Contractors																															
Camp and Catering	-	-	-	42				608	(565)	-	-	-	309	-	-	-	-	309	-	-	-	299	-	-	-	299					
Freight	-	-	-	143	28	263	342	197	579	36	36	36	36	18	18	-	-	18	18	-	18	18	18	18	18	-					
Tires	-	-	-	-				122	(122)	122	-	122	-	-	-	-	-	122	-	-	-	122	-	-	-	122					
Exploration Standing Charges	-	-	-	-				12	(12)	-	-	-	4	-	-	-	-	4	-	-	-	4	-	-	4	-					
Point Lake PFS								-	-		65	-	22	22			47	3	3	-	6	3	3	-	9	-					
R&R Work								-	-		-						20														
MUG Resource								-	-		15			8				8													
Lease Reduction Plan								-	-		-	15		5				5													
Alternative Mining - Lynx								-	-			70		18	-	12			20												
Alternative Mining - Sable								-	-			50	20						10				30								
552 Polishing	-	-	-	-				-	-	71	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-					
Washington G&A	-	-	-	-				-	-	-	-	89	-	-	-	-	89	-	-	-	-	-	-	-	-	-					
Exco Consultants (incl. Brendan Bell)	-	70	-	-				115	(46)	23	23	-	23	-	23	-	23	-	23	-	23	-	-	23	-	-					
Audit	-	-	-	45				200	(154)	110	-	-	-	-	-	-	-	-	-	-	-	-	-	-	73	-					
Tax, Legal and other professional consultants	-	-	45					65	(20)	20	10	10	20	10	10	6	-	48	-	41	-	43	-	-	-	41					
HR Consultants	-	-	-	-				6	(6)	-	6	-	6	-	-	-	-	-	-	6	-	-	-	-	-	16					
Other	25	15	72	206				318	-	-	372	126	54	0	-	0	68	7	62	-	123	5	83	-	126	0					
	25	**85**	**117**	**437**	**28**	**263**	**342**	**1,643**	**(346)**	**382**	**527**	**518**	**493**	**81**	**51**	**18**	**246**	**524**	**135**	**47**	**170**	**494**	**134**	**41**	**230**	**478**	**87**	**41**	**125**	**125**	**7,541**
	-	-	-	-	-	-	-			-	-		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[4] Rent																															
Calgary and Yellowknife	-	98	117	-	0	-	98	428	(115)	-	-	-	98	-	-	-	-	98	-	-	-	98	-	-	-	98	-	-	-	-	1,018
	-	**98**	**117**	**-**	**0**	**-**	**98**	**428**	**(115)**	**-**	**-**	**-**	**98**	**-**	**-**	**-**	**-**	**98**	**-**	**-**	**-**	**98**	**-**	**-**	**-**	**98**	**-**	**-**	**-**	**-**	**1,018**
	-	-	3	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Equipment Leases																															
Mining Equipment Leases	-	-	572	-	-	841	-	964	450	-	-		572	-	-	-	-	572	-	-	-	572	-	-	-	572	-	-	-	-	5,114
Yellowknife Fuel Tanks	-	-	-	-				526	(526)	371	-	-	59	-	-	-	-	353	-	-	-	353	-	-	-	353	-	-	-	-	1,490
	-	**-**	**572**	**-**	**-**	**841**	**-**	**1,490**	**(77)**	**371**	**-**	**-**	**631**	**-**	**-**	**-**	**-**	**925**	**-**	**-**	**-**	**925**	**-**	**-**	**-**	**925**	**-**	**-**	**-**	**-**	**6,604**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[5] Underground Mining Costs																															
Underground Mining Costs	-	-	-	-				882	(882)	-	-	-	882	-	-	-	-	882	-	-	-	441	-	-	-	441	-	-	-	-	2,646
	-	**-**	**-**	**-**	**-**	**-**	**-**	**882**	**(882)**	**-**	**-**	**-**	**882**	**-**	**-**	**-**	**-**	**882**	**-**	**-**	**-**	**441**	**-**	**-**	**-**	**441**	**-**	**-**	**-**	**-**	**2,646**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[6] Travel																															
To and From Site	-	-	-	12	-	8	17	313	(275)	50	106	-	156	-	-	-	-	156	-	-	-	156	-	-	-	153	-	-	-	-	854
Executive travel once routes open up	-	-	-	-	-	-	-	-	-	-	-	-	-	15	15	15	15	15	15	15	15	15	15	15	15	-	15	15	15	15	248
Community	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	27	-	-	-	-	38	-	-	-	11	11	88
	-	**-**	**-**	**12**	**-**	**8**	**17**	**313**	**(275)**	**50**	**106**	**-**	**156**	**15**	**15**	**15**	**15**	**172**	**15**	**43**	**15**	**172**	**15**	**15**	**54**	**153**	**15**	**15**	**27**	**27**	**1,189**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[7] Insurance																															
CAFO Insurance Premium Finance (Property)	-	-	-	-	395	-	-	802	(407)	-	407	-	-	12	407	-	-	-	407	-	-	-	407	-	-	-	-	407	-	-	2,839
Corporate	-	-	-	-	2,023	-	-	2,135	(112)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,046
	-	**-**	**-**	**-**	**2,418**	**-**	**-**	**2,937**	**(519)**	**-**	**407**	**-**	**-**	**12**	**407**	**-**	**-**	**-**	**407**	**-**	**-**	**-**	**407**	**-**	**-**	**-**	**-**	**407**	**-**	**-**	**6,885**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
IT & Software																															
Ekati Site Infrastructure	-	-	-	-	15	62	19	315	(219)	70	149	-	315	-	-	-	-	184	-	-	-	199	-	-	-	199	-	-	-	-	1,308
Washington IT Services	-	-	-	327				445	(118)	-	-	118	118	-	-	-	-	118	-	-	-	118	-	-	-	118	-	-	-	-	1,246
Software Licenses	-	-	73	-				212	(139)	-	-	139	-	-	-	-	-	-	44	-	-	-	4	-	-	-	69	-	35	35	472
IT Service Providers	-	-	-	86				225	(139)	-	-	139	65	-	-	-	-	65	-	-	-	65	-	-	-	65	-	-	-	-	570
IT AP	-	-	-	-				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
	-	**-**	**73**	**413**	**15**	**62**	**19**	**1,196**	**(615)**	**70**	**149**	**396**	**498**	**-**	**-**	**-**	**-**	**368**	**44**	**-**	**-**	**382**	**4**	**-**	**-**	**382**	**69**	**-**	**35**	**35**	**3,596**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[8] IBA Payments																															
Heritage Funds and Traditional Knowledge	-	-	-	-	-	-	-	-	-	-	-	-	417	-	-	-	-	458	-	-	-	-	458	-	55	-	458	-	27	27	1,899
	-	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**417**	**-**	**-**	**-**	**-**	**458**	**-**	**-**	**-**	**-**	**458**	**-**	**55**	**-**	**458**	**-**	**27**	**27**	**1,899**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[9] Power																															
Contract labour for on site powerhouse	-	-	-	-	-	-	-	252	(252)	-	252	-	126	-	-	-	-	126	-	-	-	126	-	-	-	126	-	-	-	-	756
	-	**-**	**-**	**-**	**-**	**-**	**-**	**252**	**(252)**	**-**	**252**	**-**	**126**	**-**	**-**	**-**	**-**	**126**	**-**	**-**	**-**	**126**	**-**	**-**	**-**	**126**	**-**	**-**	**-**	**-**	**756**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[10] Site Maintenance & Environment																															
Site Vehicle Maintenance	-	-	-	-	88	33	42	63	101	21	21	21	21	21	21	34	34	34	34	13	13	13	13	13	13	13	13	13	17	17	742
Site Maintenance	-	-	-	-				101	(101)	34	34	34	34	34	34	55	55	55	55	21	21	21	21	21	21	21	21	21	-	-	613
Environmental Licenses and Land Leases	-	-	-	-				157	(157)	-	-	45	-	-	57	60	-	-	-	5	-	-	-	18	-	-	-	18	-	-	204
Environmental Management	-	-	-	-				440	(440)		199	199	397	199	126	126	126	385	-	-	-	385	-	-	-	385	-	-	-	-	2,526
Point Lake Permitting								-	-				18				4				10										32
Lac de Gras JV								-	-				60																		60
Glowworm Lake Project								-	-														18								18
Environmental AP	-	-	-	-				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
	-	**-**	**-**	**-**	**88**	**33**	**42**	**760**	**(596)**	**54**	**253**	**298**	**530**	**253**	**237**	**275**	**219**	**474**	**89**	**40**	**44**	**419**	**53**	**53**	**35**	**419**	**35**	**53**	**17**	**17**	**4,194**
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[11] CCAA Professional Fees																															
Evercore	-	-	-	-	-	-	-	3,121	(3,121)	-	628	2,774	281	-	-	-	281	-	-	-	281	-	-	-	281	-	-	281	-	5,688	10,493
Blake, Cassels & Graydon LLP	-	-	370	214	-	-	-	1,271	(687)	340	690	386	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	500	250	500	7,583
McDermott Will & Emery LLP	-	-	-	-	-	-	-	351	(351)	-	-	702	-	140	351	-	-	-	351	-	-	-	351	-	-	-	-	351	-	175	2,421
FTI Consulting Canada Inc	-	-	-	-	-	-	-	400	(400)	-	533	267	-	150	400	-	-	-	400	-	-	-	400	-	-	-	-	400	-	200	2,750
Bennett Jones LLP	-	-	-	-	-	-	-	250	(250)	-	-	500	-	50	250	-	-	-	250	-	-	-	250	-	-	-	-	250	-	125	1,675
TWC Legal Advisors	-	-	-	-	-	-	-	4,260	(4,260)	-	-	4,615	-	-	-	-	284	-	-	-	284	-	-	-	-	426	-	-	-	355	5,964
1L Legal and Financial Advisors	-	-	-	-	-	-	-	1,420	(1,420)	-	-	1,775	-	-	355	-	-	-	355	-	-	-	-	355	-	-	-	355	-	-	3,195
Non-Company Side Advisors TBU	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0

Other	-	-	-	-	-	-	-	150	(150)	150	150	-	-	-	150	-	-	-	150	-	-	-	150	-	-	-	-	150	-	75	975
	-	-	370	214	-	-	-	11,223	(10,639)	490	2,000	11,019	531	590	1,756	250	815	250	1,756	250	815	250	1,401	605	531	676	250	2,287	250	7,118	35,057
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Critical Vendors																															
DET'ON CHO SUMMIT AVIATION LP				440				440	-																						880
KITNUNA BBE EXPEDITING LTD.				675				675	-																						1,351
TLI CHO DOMCO INC				409				409	-																						
Other					58	-	163	1,159	(937)	1,085	1,085	1,085																			
	-	-	-	1,524	58	-	163	2,683	(937)	1,085	1,085	1,085	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,231
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Net Taxes																															
GST		(2,122)		612				(1,146)	(365)																						(3,021)
Fuel and Carbon Taxes				1,146				1,146	-																						2,291
								-	-																						
								-	-																						
	-	(2,122)	-	1,757	-	-	-	(0)	(365)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(730)
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
[13] Other																															
Various Other		-	-	-	-	-	-	56	(56)	35	38	38	38	19	19	10	9	13	9	38	9	10	9	11	123	36	9	11	58	58	595
Contingency	-	-	-	-	-	-	-	675	(675)	398	513	178	358	158	397	153	378	321	31	154	6	216	6	8	55	263	6	8	81	3,518	7,209
Other Contingency	-	-	-	-	-	-	-	825	(825)	-	-	1,825	-	-	-	-	889	-	-	-	-	-	-	1,667	-	-	-	2,222	-	-	6,602
	-	-	-	-	-	-	-	1,556	(1,556)	433	551	2,040	395	176	416	163	1,276	334	40	192	15	226	15	1,686	178	299	15	2,241	139	3,576	14,406
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Government Programs																															
Estimated Support Received	-	-	-	-	-	1,849	-	1,800	49	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,228
	-	-	-	-	-	1,849	-	1,800	49	-	850	-	-	-	680	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,228
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Intercompany Receipts / (Disbursements)																															
DDMC			0	0	0	(6)	(115)	(111)	(10)	(1)	(127)	(136)	(110)	(49)	0	(0)	(0)	(110)	(15)	(0)	(0)	(110)	0	(0)	(0)	(105)	0	(0)	(0)	(0)	(1,009)
Core Zone JV partner cash calls	0	0	0	0				825	(825)	0	0	1,825	0	0	0	0	889	0	0	0	0	0	0	1,667	0	0	0	2,222	0	0	6,602
DDMNV (Belgium)	0	0	0	0				0	0	0	0	0	0	0	0	0	0	(3,692)	0	0	0	(241)	0	0	0	(284)	0	0	0	0	(4,217)
DDIPL (India)	0	0	0	0				0	0	0	0	0	0	0	0	0	0	0	0	0	0	(284)	0	0	0	(440)	0	0	0	0	(724)
	-	-	-	-	-	(6)	(115)	713	(835)	(1)	(127)	1,689	(110)	(49)	-	(0)	888	(3,802)	(15)	(0)	(0)	(635)	-	1,666	(0)	(830)	-	2,222	(0)	(0)	652
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Interest & Bank Charges																															
Interest		(226)		(138)	-	(191)	-	(600)	46	(149)	-	-	(237)	(149)	-	-	-	(237)	(149)	-	-	(237)	(149)	-	-	(237)	(149)	-	-	(349)	(3,152)
Bank Charges		(50)		(50)	-	-	-	(100)	-	(4)	(46)	-	-	(4)	-	-	-	-	(4)	-	-	-	(4)	-	-	-	(4)	-	-	-	(264)
LC Fees			(70)	(7)	-	-	-	(77)	-	-	-	-	(1,010)	-	-	-	-	-	-	-	-	-	-	-	-	(1,010)	-	-	-	(337)	(2,513)
	-	(276)	(70)	(195)	-	(191)	-	(778)	46	(153)	(46)	-	(1,248)	(153)	-	-	-	(237)	(153)	-	-	(237)	(153)	-	-	(1,248)	(153)	-	-	(686)	(5,928)
	-	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

SCHEDULE “D”
GUARANTORS

Washington Diamond Investments, LLC

Dominion Diamond Holdings, LLC

Dominion Finco Inc.

Dominion Diamond Delaware Company LLC

Dominion Diamond Canada ULC

SCHEDULE "E"
MILESTONES

1. The Court shall have held a hearing to consider the Amended Initial Order, which shall seek approval of the DIP and the SISP (including the Stalking Horse Transaction and the bid protections in respect thereof) no later than June 19, 2020.

2. The Amended Initial Order, which shall have approved the DIP and the SISP (including the Stalking Horse Transaction and the bid protections in respect thereof) shall have been entered no later than June 19, 2020.

3. The Credit Parties shall have complied with the various deadlines established under the SISP, which are incorporated herein by reference.

4. A Permitted Restructuring Transaction shall have closed no later than October 31, 2020.

Notwithstanding the above, a specific Milestone may be (a) extended or waived with the express prior written consent of the Credit Parties and the Required Interim Lenders (except for the Milestone set forth in Item 4 above, which shall also require the consent of the Existing Credit Facility Agent, not to be unreasonably withheld) or (b) extended to the extent necessary to accommodate the Court's calendar.

SCHEDULE "F"
COMMITMENTS

PART I.

COMMITMENTS IN RESPECT OF PHASE 1 AND PHASE 2 ADVANCES

	Interim Lender	Commitments	Share of Total Commitments in Respect of Phase 1 and Phase 2 Advances
1.	Washington Diamond Lending, LLC	$55,000,000	100%

PART II.

COMMITMENTS IN RESPECT OF OCTOBER ADVANCES

	Interim Lender	Commitments	Share of Total Commitments
1.	Washington Diamond Lending, LLC	$5,000,000	100%

Schedule “B”

Procedures for the Sale and Investment Solicitation Process

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 19, 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[1];

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

(b) "**Agent Advisors**" shall mean Osler, Hoskin & Harcourt LLP, Cahill Gordon & Reindel LLP and RPA Advisors, or any one of them;

(c) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in Calgary, Alberta;

(d) "**Cover Payments**" has the same meaning as in the Diavik JVA;

(e) "**CSA**" means the Closure Security Agreement dated December 13 2019 between DDMI and DDM;

(f) "**DIP**" means the Interim Facility provided to Dominion Diamond Mines ULC and certain of its affiliates by Washington Diamond Lending, LLC (the "**Washington Interim Lender**") and the Agent and/or one or more First Lien Lenders (in their capacity as lenders under the DIP, the "**First Lien Interim Lenders**") as approved by the Second Amended and Restated Initial Order;

(g) "**DDMI**" means Diavik Diamond Mines (2012) Inc.;

(h) "**Diavik Diamond Mine**" means the Diavik diamond mine located in Lac de Gras, Northwest Territories;

(i) "**Diavik Interest**" means DDM's Participating Interest (as such term is defined in the Diavik JVA) under and pursuant to the Diavik JVA, including the Dominion Products;

(j) "**Dominion Products**" has the meaning ascribed to it in the Second Amended and Restated Initial Order;

(k) "**Existing Credit Agreement**" means the Revolving Credit Agreement dated as of November 1, 2017 by and among Dominion Diamond Mines ULC, as borrower, Washington Diamond Investments, LLC, a Delaware limited liability company, the Agent, and each of the other parties and lenders party thereto (the "**First Lien Lenders**"), as amended, restated, supplemented or otherwise modified from time to time.

(l) "**Non-Diavik Assets**" means the Applicants' right, title and interest in all Property other than the Diavik Interest (including, for the avoidance of doubt the Applicants' right, title, and interest in the Ekati Diamond Mine located in Lac de Gras, Northwest Territories, which is operated by DDM);

(m) "**SISP Advisor**" means Evercore Group LLC, as retained by the Applicants to conduct the SISP.

Sale and Investment Solicitation Process Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for, (i) a sale or partial sales of (A) all, substantially all, or certain of the assets, property and undertakings (collectively, the "**Property**") of the Applicants and certain of their subsidiaries (together with the Applicants, the "**Dominion Diamond Group**"); (B) the Diavik Interest; or (C) the Non-Diavik Assets or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Dominion Diamond Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property of the Dominion Diamond Group, or a combination thereof (the "**Opportunity**").

3. The Applicants have received a bid from Washington Diamond Investment Holdings II, LLC (the "**Stalking Horse Bidder**") which constitutes a qualified bid for all purposes and at all times under this SISP (the " **Stalking Horse Bid**"), and which Stalking Horse Bid shall serve as the "stalking horse" bid for purposes of this SISP. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal (each as defined below). A copy of the Stalking Horse Bid is available to all Phase 1 Qualified Bidders (as defined below).

4. The SISP set forth herein describes the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Dominion Diamond Group and its Property, including a copy of the Stalking Horse Bid, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below), and the approval thereof by the Court. The Monitor shall oversee the SISP and in particular shall oversee the SISP Advisor in connection therewith. The Applicants are required to assist and support the efforts of the SISP Advisor and the Monitor as provided for herein. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have exclusive jurisdiction to hear and resolve such dispute.

5. Certain bid protections (i.e. break fee and expense reimbursement) have been approved in respect of the Stalking Horse Bid, subject to the conditions set forth therein, by the Court pursuant to the Second Amended and Restated Interim Order. No other bidder may request or receive any form of bid protection as part of any offer made pursuant to the SISP.

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

Event	**Date**
SISP Advisor to distribute Teaser Letter to Potential Bidders	**As soon as practical**
SISP Advisor to prepare and have available to Potential Bidders the CIM and VDR	**As soon as practical**
Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 14 of the SISP)	**By July 20, 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 August 6, 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 31, 2020**
Auction Commencement Date (if needed)	**September 3, 2020**
Deadline for selection of final Successful Bid	**September 7, 2020 or at such later date as the Applicants, in consultation with the SISP Advisor, the Agent Advisors and the Monitor, deem appropriate**
Deadline for completion of definitive documentation in respect of Successful Bid	**September 11, 2020**
Deadline for filing of Approval Motion in respect of Successful Bid	**September 21, 2020**
Anticipated Deadline for closing of the Stalking Horse Bid in the event that no other Phase 1 Successful Bids are received	**September 28, 2020**

Anticipated Deadline for closing of Successful Bid being the Target Closing Date	**October 7, 2020 or such earlier date as is achievable**
Outside Date by which the Successful Bid must close	**October 31, 2020**

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable after the granting of the Second Amended and Restated Initial Order:

   (a) the SISP Advisor shall cause a notice of the SISP and such other relevant information which the SISP Advisor, in consultation with the Applicants and the Monitor, considers appropriate to be published in the *Globe & Mail* and such other publications as the SISP Advisor may consider appropriate; and

   (b) the Dominion Diamond Group shall issue a press release setting out the notice and such other relevant information regarding the Opportunity as it may consider appropriate, with Canada Newswire designating dissemination in Canada.

7. The SISP Advisor shall prepare and distribute a summary describing the Opportunity (a "**Teaser Letter**"), outlining the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP, for distribution to potential bidders as soon as practical.

8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the SISP Advisor to Potential Bidders that have executed the NDA (as defined below). The VDR will be available as soon as practical. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Dominion Diamond Group and the Opportunity. The Applicants may establish separate VDRs (including "clean rooms"), if the Applicants and the SISP Advisor reasonably determine that doing so would further the Dominion Diamond Group and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

9. In order to participate in the SISP, an interested party must deliver to the SISP Advisor at the address specified in **Appendix "A"** hereto (including by email), and prior to the distribution of any confidential information by the SISP Advisor to such interested party (including access to the VDR), an executed non-disclosure agreement in form and substance satisfactory to the Applicants (an "**NDA**"), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by the Successful Bid (as defined below). Pursuant to the terms of the NDA to be signed by a

potential bidder (each potential bidder who has executed an NDA with the Applicants, a "**Potential Bidder**") each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the express written consent of the Applicants. Prior to the Applicants' executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Applicants of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Applicants in the event that it elects to act as a Potential Bidder.

10. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 9, will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the SISP Advisor. For the avoidance of doubt, the Stalking Horse Bidder is a Phase 1 Qualified Bidder.

11. The SISP Advisor, with the assistance of the Applicants, will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") and provide an unredacted copy of the Staking Horse Bid as soon as practicable. The SISP Advisor, the Applicants, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.

12. The SISP Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) and to DDMI (with respect to the Diavik Diamond Mine only) with access to the VDR. The SISP Advisor, the Applicants and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a template letter of intent (the "**Template LOI**") and a proposed Purchase and Sale Agreement, based on the Stalking Horse Bid ("**Template PSA**").

13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**"), to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on July 20, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (the "**Phase 1 Bid Deadline**"). To the extent possible, the Phase 1 Qualified Bid should follow the format as set out in the Template LOI.

14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" by the Applicants, the Monitor and the SISP Advisor, if the LOI complies at a minimum with the following:

    (a) it has been duly executed by all required parties;

    (b) it is received by the Phase 1 Bid Deadline;

    (c) it provides written evidence, satisfactory to the Applicants, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;

    (d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;

    (e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;

    (f) an outline of any additional due diligence required to be conducted in order to submit a binding offer;

    (g) it clearly indicates:

        (i) the Phase 1 Qualified Bidder is seeking to acquire (A) all or substantially all of the Property, (B) the Diavik Interest or (C) the Non-Diavik Assets, whether through an asset purchase, a share purchase or a combination thereof (either one being, a "**Sale Proposal**") or some other portion of the Property (a "**Partial Sale Proposal**"); or

        (ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business (an "**Investment Proposal**"); and

        (iii) that the Sale Proposal or Investment Proposal, as the case may be, will at a minimum and on closing, provide cash proceeds which are equal to the aggregate total of: (A) the amount of cash payable under the Stalking Horse Bid if it does not provide for a credit bid or, if the Stalking Horse Bid does provide for a credit bid, the amount of cash payable thereunder together with the amount of obligations being credit bid thereunder, *plus* (B) the amount of the expense reimbursement and break fee (if any) payable to the Stalking Horse Bidder, *plus* (C) a minimum overbid amount of US$1

million (the amounts set forth in this paragraph 14(g)(iii), the "**Minimum Purchase Price**"); provided, however, the Applicants may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet the Minimum Purchase Price (such bids, "**Aggregated Bids**") (the amount of the Minimum Purchase Price shall be confirmed by the Sale Advisor with Potential Bidders);

(h) it contains such other information as may be reasonably requested by the SISP Advisor, in consultation with the Applicants and the Monitor;

(i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder shall be entitled to any bid protections;

(j) in the case of a Sale Proposal, it identifies or contains the following:

(i) the purchase price or price range in U.S. dollars and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;

(ii) any contemplated purchase price adjustment;

(iii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;

(iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

(v) information sufficient for the SISP Advisor, the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;

(vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(k) in the case of an Investment Proposal, it identifies the following:

(i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Dominion Diamond Group or its business in U.S. dollars;

(iii) the underlying assumptions regarding the *pro forma* capital structure;

(iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

(v) information sufficient for the SISP Advisor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;

(vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

15. The Applicants with the consent of the Monitor, may waive compliance with any one or more of the requirements specified herein and deem any such non-compliant LOI to be a Phase 1 Qualified Bid; *provided* that the SISP Advisor shall consult with the Stalking Horse Bidder in advance and on a no-names basis regarding the general nature of any waiver being contemplated.

Assessment of Phase 1 Qualified Bids and Subsequent Process

16. The SISP Advisor, in consultation with the Monitor and the Applicants, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Successful Bid (as defined below).

17. Following the Phase 1 Bid Deadline, the Applicants shall determine, in accordance with the requirements of paragraph 14, the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a "**Phase 1 Successful Bid(s)**" and which Phase 1 Qualified Bidder(s) shall be deemed a "**Phase 2 Qualified Bidder(s)**".

18. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. The Stalking Horse Bid constitutes a Phase 1 Successful Bid and the Stalking Horse Bidder is a Phase 2 Qualified Bidder for all purposes under the SISP, other than the Auction (as defined below). Notwithstanding any other provision hereof, in order to participate in the Auction, the Stalking Horse Bidder shall have waived, or confirmed satisfaction of, any financing condition contained in the Stalking Horse Bid.

19. The SISP Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Successful Bid within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Applicants, in consultation with the SISP Advisor and the Monitor, deem appropriate.

20. In the event that no Phase 1 Successful Bids are received (other than the Stalking Horse Bid), the Applicants, with the assistance and support of the SISP Advisor and the Monitor,

shall promptly proceed to seek Court approval of the Stalking Horse Bid; *provided*, *however*, that the Applicants may (i) extend the Phase 1 Bid Deadline with the consent of the Monitor, the Stalking Horse Bidder, and the Agent Advisors, or (ii) seek Court approval of an amendment to, or termination of, the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to his/her/its Sale Proposal or Investment Proposal shall submit a binding offer (a "**Binding Offer**") (a) in the case of a Sale Proposal, in the form of the Template PSA provided in the VDR, along with a marked version showing edits to the original form of Template PSA provided in the VDR, or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Applicants and the Monitor (each, such binding offer submitted in accordance with paragraph 25 below, a "**Phase 2 Qualified Bid**") in each case to the SISP Advisor, with a copy to the Monitor, at the addresses specified in **Appendix "A"** hereto (including by email) so as to be received by the SISP Advisor and the Monitor not later than 5:00 p.m. (Mountain Standard Time) on August 31, 2020, or such other date or time as may be agreed by the Applicants with the consent of the Monitor (as maybe extended, the "**Phase 2 Bid Deadline**").

22. A Binding Offer will only be considered as a "**Phase 2 Qualified Bid**" by the Applicants if the binding offer:

    (a) has been received by the Phase 2 Bid Deadline;

    (b) is a Binding Offer (i) to purchase (A) all, substantially all, or a portion of the Property; (B) Diavik Interest; or (C) the Non-Diavik Assets or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Dominion Diamond Group or its business, on terms and conditions reasonably acceptable to the Applicants;

    (c) identifies all executory contracts of the Applicants that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied;

    (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 the 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 October 7, 2020, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than October 31, 2020 (the "**Outside Date**"); and

(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 September 3, 2020, at the Calgary offices of Blakes, Cassels, and Graydon LLP or such other place and time as determined by the Applicants and continue thereafter until completed, subject to such adjournments as the Applicants may consider appropriate; *provided* that if circumstances do not permit the Auction to be held in person, the Applicants shall work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be held via videoconference, teleconference, or such other reasonable means as the Applicants deem appropriate. The Applicants reserve the right to cancel or postpone the Auction.

    (b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Phase 2 Qualified Bidder participating in the Auction.

    (c) Except as otherwise permitted in the Applicants' discretion, only the Applicants, the SISP Advisor, the Monitor, the Agent and the Phase 2 Qualified Bidders, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Phase 2 Qualified Bidder is eligible to participate in the Auction.

    (d) Phase 2 Qualified Bidders shall appear at the Auction, or through a duly authorized representative.

    (e) Except as otherwise set forth herein, the Applicants may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable

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

(f) The Applicants will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction shall designate a single individual to be its spokesperson during the Auction.

(g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Applicants or any other person, without the express written consent of the Applicants, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders.

(h) Prior to the Auction, the Applicants shall identify the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid shall constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than US$1 million cash in excess of the Opening Bid or in such amounts as to be determined by the Applicants, with the consent of the Monitor, prior to, and announced at, the Auction. For the purposes of facilitating bidding the Applicants may ascribe a monetary value to non-cash considerations, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) shall provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Applicants. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Applicants to facilitate bidding by the participants in the Aggregated Bid.

(i) All Phase 2 Qualified Bidders shall have the right to, at any time, request that the Applicants announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Applicants' announcement of the then-current highest and best bid.

(j) Each participating Phase 2 Qualified Bidder shall be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction shall continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder that the Applicants determine has submitted the highest and otherwise best Phase 2 Qualified Bid of the Auction. At such time and upon the conclusion of the bidding, the Auction shall be closed and the final remaining Phase 2 Qualified Bidder shall be the Successful Bidder.

(k) Upon selection of a Successful Bidder, the Applicants shall require the Successful Bidder to deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion (as defined below).

(l) The Applicants shall not consider any bids submitted after the conclusion of the Auction.

28. The Applicants shall have selected the final Successful Bid and the Backup Bid by no later than September 7, 2020 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than September 11, 2020, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Applicants with the consent of the Monitor and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. The Applicants shall not extend or otherwise vary the Outside Date except with the written consent of the Monitor and the Agent. In the case of a Successful Bid and Backup Bid that includes the purchase of the Diavik Interest, the Applicants shall also require the written consent of DDMI to any extension or variation of the Outside Date.

29. Notwithstanding anything in the SISP to the contrary, if an Auction is conducted, the Phase 2 Qualified Bidder with the next highest or otherwise best Phase 2 Qualified Bid at the Auction, as determined by the Applicants, will be designated as the backup bidder (the "**Backup Bidder**"); *provided* that the Stalking Horse Bidder shall not be a Backup Bidder, unless it elects to provide an overbid in the Auction. The Backup Bidder shall be required to keep its initial Phase 2 Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the "**Backup Bid**") open until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date.

Approval of Successful Bid

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

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

Deposits

32. The Deposit(s):

(a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a trust account;

(b) received from the Successful Bidder shall:

(i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of the Approval Order, upon closing of the approved transaction;

(ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Applicants and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable directly to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;

(c) received from the Backup Bidder, unless it is subsequently selected as the Successful Bidder, shall be fully refunded, to the Back-Up Bidder on or before the earlier of (i) two (2) Business Days after the date of the closing to the Successful Bid; or (ii) October 31, 2020;

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

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

“As is, Where is”

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

Free Of Any And All Claims And Interests

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

liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder.

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 bit 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 or any holder or holders or indenture trustee of the Applicants' 7.15% secuered second lien notes shall provide for the indefensible and irrevocable repayment in full in cash on the date of closing of any such transaction of all Interim Financing Obligations (as defined in the DIP), including those Interim Financing Obligations attributable to October Advances (as defined in the DIP). Nothing contained

in this paragraph 38 is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.

Confidentiality

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

Further Orders

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

Additional Terms

41. In addition to any other requirement of this SISP:

(a) The SISP Advisor and the Applicants, in consultation with the Monitor, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by the Applicants' creditors as a high potential bidder.

(b) The exercise of any right or discretion given to the Applicants or the SISP Advisor by the SISP shall, in the case of the Applicants, be exercised on their behalf solely by a special committee of DDM's directors comprised of one or more persons who have confirmed in writing to the Monitor that they do not have any conflict of interest in the subject matter or any material personal or business relationship of any kind with a SISP bidder or a person related to a SISP bidder (including, without limitation, the Stalking Horse Bidder). In addition, the exercise of any right or discretion on the part of the Applicants or the SISP Advisor in respect of any of the following shall require the express consent of the Monitor: the determination of Phase 1 Qualified Bids and Phase 2 Qualified Bids, the selection of Successful Bids, and any discretion afforded by paragraphs 27(e) and 27(h).

(c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation which is no less complete and timely than is granted by the Applicants or the SISP Advisor, or their representatives, to the Stalking Horse Bidder or its representatives, pursuant to the SISP. This shall

include, without limitation, reasonable access to Rio Tinto plc, The Government of the Northwest Territories and sureties on the basis contemplated by the section titled "Commercially Reasonable Efforts" in the Stalking Horse Bid and reasonable access to the Applicants' books, records, financial information, management, advisors and business partners. The SISP Advisor and the Monitor shall review all information and materials provided by the Applicants or their representatives to the DIP lenders or their representatives pursuant to the DIP and, to the extent that the SISP Advisor and the Monitor are of the view that any such information or materials are materially relevant to a Potential Bidder or Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, then such information or materials shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders. Nothing in this paragraph creates binding obligations of third parties, including but not limited to DDMI, the Government of the Northwest Territories, or sureties.

(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 require that a Successful Bid, Backup Bid or any other bid must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP on application of any interested party.

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

Appendix "A"

TO THE SISP ADVISOR:

Evercore
55 East 52nd Street, 42nd floor
New York, NY 10055

Attention: John Startin

Phone: 212-453-5577
E-Mail: John.Startin@evercore.com

WITH A COPY TO:

Attention: Andrew Frame

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

WITH A COPY TO:

Attention: Nicholas Salzman

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

TO THE MONITOR:

FTI Consulting Canada Inc.
520 5th Ave SW
Calgary AB T2P 3R7

Attention: Deryck Helkaa

Phone: 403-454-6031
E-Mail: deryck.helkaa@fticonsulting.com

WITH A COPY TO:

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

Attention: Chris Simard

Phone: 403-298-4485
Email: simardc@bennettjones.com

Schedule “C”

Stalking Horse Agreement of Purchase and Sale

CONFIDENTIAL

DRAFT – JUNE 12, 2020

ASSET PURCHASE AGREEMENT

BY AND AMONG

CANADIAN DIAMOND HOLDINGS, L.P.,

CA CANADIAN DIAMOND MINES ULC,

DOMINION DIAMOND HOLDINGS, LLC,

DOMINION DIAMOND MINES ULC

AND

WASHINGTON DIAMOND INVESTMENTS, LLC

Dated as of June [•], 2020

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e.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of June **[•]**, 2020 (the "Effective Date"), by and among Canadian Diamond Holdings, L.P., a Delaware limited partnership ("Purchaser Holdco"), CA Canadian Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Purchaser Holdco ("Canadian Purchaser" and, together with Purchaser Holdco, "Purchasers"), Dominion Diamond Holdings, LLC, a Delaware limited liability company ("Dominion Holdings"), Dominion Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Dominion Holdings ("DDM", and together with Dominion Holdings, the "Sellers"), and Washington Diamond Investments, LLC, a Delaware limited liability company ("Parent").

WHEREAS, DDM is a diamond producer with ownership interests in diamond projects in the Northwest Territories and Sellers are engaged, directly and indirectly through the Acquired Subsidiaries, in the business of mining and selling rough diamonds to the global market (the "Business");

WHEREAS, on April 22, 2020 (the "Filing Date"), Sellers, Parent, Dominion Finco Inc., 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 "CCAA Court") that, among other things, commenced the CCAA proceedings (the "CCAA Proceedings") and granted an initial stay of proceedings in respect of the Applicants (the "Stay"). On May 1, 2020, the Applicants obtained an amended and restated version of the Initial Order from the CCAA Court (as further amended and restated from time to time, the "Amended and Restated Initial Order") that, among other things, extended the Stay.

WHEREAS, on May 21, 2020, Sellers, Parent and Washington Diamond Investments Holdings II, LLC entered into a non-binding letter of intent (the "LOI") that contemplated, among other things, that such parties would commence negotiations of this Agreement on terms and conditions consistent with those set forth in a stalking horse term sheet appended as Exhibit A to the LOI (the "Stalking Horse Term Sheet");

WHEREAS, the Stalking Horse Term Sheet contemplated that subject to, among other things, following the execution of this Agreement, the Purchasers would act as a "stalking horse bidder" in connection with the sale investor and solicitation process (the "SISP") for the Business and Property (as defined in the Amended and Restated Initial Order), meaning that, in the absence of the Sellers' acceptance of a superior bid made in accordance with the SISP, the Purchasers have agreed to purchase the Sellers' right, title and interest in and to the Acquired Assets (as defined below) and assume the Assumed Liabilities (as defined below) on the terms and subject to the conditions set forth in this Agreement, in accordance with the SISP and subject to obtaining the Sale Order (as defined below) (the "Acquisition");

WHEREAS, the Applicants have sought to obtain approval of the SISP Order from the CCAA Court which will (a) authorize and direct the Sellers, subject to approval of the Monitor (as defined below) to execute this Agreement, which will stand as the Stalking Horse Bid (for the

purposes of the SISP) and (b) approve the Interim Facility and authorize the Applicants to enter into the Interim Facility Credit Agreement;

WHEREAS, concurrently with the execution of this Agreement, and as a condition to the willingness of Sellers to enter into this Agreement, Purchasers have delivered to Sellers a limited guaranty (the "Limited Guaranty") of Washington Liquid Investments, LLC, a Montana limited liability company (the "Guarantor"), dated as of the date hereof, pursuant to which the Guarantor has guaranteed certain obligations of Purchasers; and

WHEREAS, the Parties desire to consummate the Acquisition as promptly as practicable following the satisfaction of the conditions precedent set out herein, including the issuance by the CCAA Court of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 Specific Definitions. Capitalized terms used herein shall have the meanings set forth below:

"Aboriginal Agreements" shall have the meaning ascribed thereto in Section 4.16(a).

"Aboriginal Claims" means any and all claims (whether or not proven) by any Person, pursuant to section 35 of the *Constitution Act, 1982 Schedule B to the Canada Act, 1982 (U.K.)* or otherwise, to or in respect of: (1) rights, title or interests of any Aboriginal Group by virtue of its status as an Aboriginal Group; (2) treaty rights; (3) Métis rights, title or interests; or (4) rights under land claims and agreements; or (5) specific or comprehensive claims being considered by the Government of Canada; and includes any alleged or proven failure of the Crown to have satisfied, prior to the date hereof, any of its duties to any claimant of any of the foregoing.

"Aboriginal Group" means any band (as defined in the *Indian Act* (Canada)), First Nation, Métis community, Inuit group, tribal council, band council or other aboriginal organization in Canada.

"Acquired Assets" shall have the meaning ascribed thereto in Section 2.1.

"Acquired Subsidiaries" shall have the meaning ascribed thereto in Section 2.1(a).

"Acquisition" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Action" means any litigation (in Law or in equity), arbitration, mediation, action, lawsuit, proceeding, written complaint, written charge, written claim, written demand, hearing, investigation or like matter (whether public or private) commenced, brought, conducted, or heard

before or otherwise involving any Governmental Body, whether administrative, judicial or arbitral in nature.

"Advance Ruling Certificate" means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the Competition Act with respect to the transactions contemplated by this Agreement.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, neither of the Purchasers is an Affiliate of Sellers for purposes of this Agreement or otherwise.

"Agreement" means this Asset Purchase Agreement, including all Schedules hereto and the Seller Disclosure Letter, as it may be further amended from time to time in accordance with its terms.

"Allocation" shall have the meaning ascribed thereto in Section 12.13(e).

"Alternate Transaction" shall have the meaning ascribed thereto in Section 11.4(a).

"Amended and Restated Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Ancillary Documents" means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated by this Agreement.

"Antitrust Approvals" means the Competition Act Approval, if required, and each of the other Mandatory Antitrust Approvals (if any).

"Antitrust Laws" means the Competition Act and any competition, merger control and antitrust Law of any other applicable supranational, national, federal, state, provincial or local Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the transactions contemplated by this Agreement.

"Applicants" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Arbitrating Accountant" means an internationally recognized certified public accounting firm jointly selected by Purchasers and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchasers.

"Assigned Contracts" shall have the meaning ascribed thereto in Section 2.1(l).

"Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(b).

"Assignment and Assumption of Leases" shall have the meaning ascribed thereto in Section 10.2(f).

"Assignment Order" means an Order of the CCAA Court made in the CCAA Proceedings, in form and substance acceptable to Parties, acting reasonably, assigning to the applicable Purchasers the rights and obligations of Sellers under an Assigned Contract for which a consent, approval or waiver necessary for the assignment of such Assigned Contract has not been obtained.

"Assumed Liabilities" shall have the meaning ascribed thereto in Section 2.3.

"Assumed Plans" shall have the meaning ascribed thereto in Section 7.2(a).

"Auction" shall have the meaning ascribed to such term by the SISP.

"Authorization" means with respect to any Person, any order, permit, approval, consent, waiver, license, registration, qualification, certification or similar authorization of any Governmental Body having jurisdiction over the Person, and shall include all environmental permits, licenses and other Authorizations, and all surface leases and water or riparian rights.

"Break-Up Fee" shall have the meaning ascribed thereto in Section 11.4(a)(iv).

"Break-Up Fee Charge" means a priority charge in favour of Purchasers over the Property (as defined in the Amended and Restated Initial Order) of the Applicants granted by the CCAA Court pursuant to the SISP Order to secure the payment by Sellers of the Break-Up Fee and the Expense Reimbursement Amount pursuant to this Agreement, which charge shall rank in priority to all Encumbrances in respect of the Property other than the Administration Charge, the Directors Charge, and the KERP Charge (each as defined in the Amended and Restated Initial Order).

"Business" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a statutory holiday in New York City, New York, U.S.A. or Calgary, Alberta, Canada.

"Canadian Assets" means all Acquired Assets other than the Purchaser Holdco Acquired Interests.

"Canadian Purchaser" shall have the meaning ascribed thereto in the Preamble.

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

"Cash Component" shall have the meaning ascribed thereto in Section 3.1(b).

"CCAA" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Court" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Proceedings" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Claims" means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

"Closing" shall have the meaning ascribed thereto in Section 10.1.

"Closing Date" means the date on which the Closing shall occur.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collective Agreement" means any collective agreement, letter of understanding, letter of intent or any other similar Contract with or commitment to any trade union, employee association, labour organization or similar entity.

"Commissioner" means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

"Competition Act" means the *Competition Act* (Canada), as amended.

"Competition Act Approval" means: (i) the issuance of an Advance Ruling Certificate and such Advance Ruling Certificate has not been rescinded prior to Closing; or (ii) the Purchasers and the Sellers have given the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act has expired or has been terminated in accordance with the Competition Act; or (iii) the obligation to give the requisite notice has been waived pursuant to paragraph 113(c) of the Competition Act, and, in the case of (ii) or (iii), the Purchasers have been advised in writing by the Commissioner that, in effect, such person is of the view that sufficient grounds at that time do not exist to initiate proceedings before the Competition Tribunal under section 92 of the Competition Act with respect to the transactions contemplated by this Agreement and therefore the Commissioner, at that time, does not intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement ("no-action letter"), and the form of and any terms and conditions attached to any such advice are acceptable to the Purchasers, acting reasonably, and such advice has not been rescinded prior to Closing.

"Competition Tribunal" means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

"Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"Confidentiality Agreement" shall have the meaning ascribed thereto in Section 6.3.

"Contaminants" means any noise, heat, vibration or Hazardous Materials that can be discharged into or be present in the Environment.

"Contract" means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment, whether express or implied.

"Cure Amount" means (i) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchasers in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Sellers' monetary defaults existing as at the Closing Date under such Assigned Contract (or such other amounts as may be agreed by the Purchasers and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Sellers to the Purchasers (which amount shall be set out on the form of contractual consent agreed to by the Purchasers and the counterparty to such Assigned Contract).

"Cure Funding Amount" means US$20,000,000, less any amount that the Applicants are authorized to pay (and have not paid as of the date of this Agreement) under the DIP Budget and an Order of the CCAA Court in respect of the Cure Amount, which for greater certainty shall include US$2,200,000 available to the Applicants to pay critical suppliers in accordance with paragraph 5(c) of the Amended and Restated Initial Order.

"Data Room" means the material contained in the virtual data room established by Sellers in connection with the SISP as of 5:00 p.m. on June [__], 2020.

"DDM" shall have the meaning ascribed thereto in the Preamble hereof.

"DDMI" means Diavik Diamond Mines (2012), Inc., a company incorporated under the laws of Canada, as the manager of the Diavik Joint Venture.

"Designated Purchaser" shall have the meaning ascribed thereto in Section 12.10.

"Diavik Diamond Mine" means the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Diavik Diamond Mine."

"Diavik Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the Diavik Diamond Mine.

"Diavik Joint Venture Agreement" means the joint venture agreement dated March 23, 1995 between DDM and DDMI originally entered into between Aber Resources Limited and

Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and DDMI.

"Diavik Joint Venture Interest" means the undivided 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik Joint Venture held by DDM pursuant to the Diavik Joint Venture Agreement.

"Diavik Leases" means the surface and mining leases constituting the Diavik Diamond Mine and subject to the Diavik Joint Venture Agreement.

"DIP Budget" shall have the meaning ascribed to it in the Interim Facility Credit Agreement.

"Documents" means all of Sellers' books, records and other information in any form relating to the Business or the Acquired Assets, including accounting books and records, sales and purchase records, lists of suppliers and customers, lists of potential customers, credit and pricing information, personnel and payroll records of Employees, Tax records, business reports, plans and projections, production reports and records, inventory reports and records, business, engineering and consulting reports, marketing and advertising materials, research and development reports and records, maps, all plans, surveys, specifications, and as-built drawings relating to the Mine Properties, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Ekati Diamond Mine, the Diavik Diamond Mine and any other real property interests included in the Acquired Assets, including all such electrical, mechanical and structural drawings related thereto, environmental reports, soil and substratum studies, inspection records, financial records, and all other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Acquired Assets or the Employees, and other similar materials, in each case, whether in electronic, paper or other form, but excluding Sellers' corporate charter, minute and stock record books, and corporate seal.

"Dominion Holdings" shall have the meaning ascribed thereto in the Preamble hereof.

"Effective Date" shall have the meaning ascribed thereto in the Preamble hereof.

"Ekati Buffer Zone" means the property and assets (including products derived from such property) comprising the Ekati Buffer Zone as described in the technical report entitled "Ekati Diamond Mine, Northwest Territories, Canada, NI-43-101 Technical Report" dated July 31, 2016.

"Ekati Buffer Zone Leases" means the surface and mining leases constituting the Ekati Buffer Zone.

"Ekati Core Zone" means the property and assets (including products derived from such property) that are the subject of the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Ekati Core Zone Joint Venture Agreement in relation to the Ekati Core Zone.

"Ekati Core Zone Joint Venture Agreement" means the joint venture agreement titled 'Northwest Territories Diamonds Joint Venture Agreement – Core Zone Property' dated April 17, 1997 originally entered into among BHP Diamonds Inc., Dia Met Minerals Ltd., Charles E. Fipke and Dr. Stewart L. Blusson, as amended from time to time, with the current parties thereto being DDM and 1012986 B.C. Ltd.

"Ekati Core Zone Joint Venture Interest" means an undivided 88.889% beneficial interest in the Ekati Core Zone Joint Venture, held by DDM pursuant to the Ekati Core Zone Joint Venture Agreement

"Ekati Core Zone Leases" means the surface and mining leases constituting the Ekati Core Zone and subject to the Ekati Core Zone Joint Venture Agreement.

"Ekati Diamond Mine" means the diamond mine located approximately 310 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Ekati Diamond Mine."

"Employee" means an individual who, as of the applicable date, is employed by Sellers or their Subsidiaries in connection with the Business.

"Employee Plan" means all employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, vacation pay, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, agreement or arrangement, including post-retirement health and life insurance benefit plans, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Sellers or any of their Subsidiaries for the benefit of the Employees or former Employees and their dependents or beneficiaries by which the Sellers or any of their Subsidiaries are bound or with respect to which the Sellers or any of their Subsidiaries participate or have any actual or potential Liability (excluding, for greater certainty, any statutory benefits plan).

"Encumbrance" means any lien, encumbrance, Claim, right, demand, charge, mortgage, deed, deed of trust, statutory, constructive or deemed trust, lease, option, pledge, security interest or similar interest, title defect, assignment, hypothecation, easement, right of way, restrictive covenant, encroachment, right of first refusal, preemptive right, proxy, voting trust or agreement, transfer restriction under any shareholder agreement or similar agreement, judgment, conditional sale or other title retention agreement or other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever.

"Environment" means the components of the earth, and includes: (a) land, water, and air, including all layers of the atmosphere, (b) all organic and inorganic matter and living organisms, and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

"Environmental Agreement" means the Environmental Agreement, dated as of January 6, 1997 as amended on April 14, 2003, on April 10, 2013 and on November 21, 2018 between Her

Majesty The Queen in Right of Canada and the Government of the Northwest Territories and Dominion Diamond Ekati ULC.

"Environmental Law" means the Environmental Agreement and any Regulation which is related to or which regulates or otherwise imposes obligations, liability or standards of conduct concerning the Environment, health and safety, mineral resources, discharges, Contaminants, reclamation and restoration, Releases or threatened Releases of Contaminants, including Hazardous Materials, into the Environment or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Materials.

"Environmental Liabilities and Obligations" means all Liabilities arising from or relating to the Environment, mineral resources, health or safety, Contaminants, reclamation and restoration or arising under any, or arising from any Environmental Law, including Liabilities related to: (a) the manufacture, processing, handling, generation, treatment, distribution, recycling, transportation, storage, use, cleanup, arrangement for disposal or disposal of, or exposure to, Hazardous Materials and/or Contaminants; (b) the Release of Hazardous Materials and/or Contaminants, including migration onto or from the real property included in the Acquired Assets; (c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (d) any other obligations imposed under Environmental Law including pursuant to any applicable Authorizations issued pursuant to or under any Environmental Law; (e) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports with respect to any Liabilities pursuant to Environmental Law; and (f) all obligations with respect to personal injury, property damage, environmental damage, wrongful death, endangerment to the health or animal life, damage to plant life and other damages and losses arising under applicable Environmental Law.

"Essential Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary which are Material Contracts and specified as "Essential Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.[1]

"Excluded Assets" shall have the meaning ascribed thereto in Section 2.2.

"Excluded Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Excluded Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.

"Excluded Liabilities" shall have the meaning ascribed thereto in Section 2.4.

"Expense Reimbursement Amount" means the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by Purchasers or any Purchaser Related Party (including, for the avoidance of doubt, such costs, expenses and fees incurred by Washington Diamond Investments Holdings II, LLC and its Affiliates) in connection with

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[1] NTD: Subject to receipt from Sellers and review of proposed Schedule F list of Essential Contracts, as well as a list of Material Contracts.

evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the Ancillary Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by or on behalf of Purchasers or any Purchaser Related Party in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the CCAA Proceedings and other judicial and regulatory proceedings related to such transactions, which amount shall be secured by the Break-Up Fee Charge and shall be payable as set forth in Section 11.4.

"Filing Date" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Final Order" means an action taken or order issued by the CCAA Court or other applicable Governmental Body as to which: (i) no request or motion for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request or motion is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition or motion for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Body and the time for filing any such petition or motion is passed; (iii) the Governmental Body does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is not then under judicial review or appeal, there is no notice of leave to appeal, appeal or other motion or application for judicial review pending, and the deadline for filing such notice of appeal or other motion or application for judicial review has passed, including any extensions thereof.

"Financing" shall have the meaning ascribed thereto in Section 6.15(a) hereof.

"Financing Condition" shall have the meaning ascribed thereto in Section 8.13 hereof.

"Glowworm Lake Property" means the mineral leases held by DDM covering an area of 132,560 hectares bordering the eastern side of the Diavik Diamond Mine.

"GNWT" shall have the meaning ascribed thereto in Section 8.9.

"Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, board, commission, tribunal, agency or political subdivision thereof of any nature, whether national, international, multi-national, supra-national, foreign, federal, state, provincial, territorial, Aboriginal or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

"GST" means goods and services tax, including harmonized sales tax, payable under the GST Legislation.

"GST Legislation" means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.

"Guarantee" means any guarantee or other contingent liability, direct or indirect, with respect to any Indebtedness or obligations of another Person, through a Contract or otherwise.

"Guarantor" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Hazardous Material" means any substance, material, emission or waste which is defined, regulated, listed or prohibited by any Governmental Body, including petroleum and its by-products, asbestos, polychlorinated biphenyls and any material, waste or substance which is defined or identified as a "hazardous waste," "hazardous substance," "hazardous material," "restricted hazardous waste," "industrial waste," "solid waste," "contaminant,", "dangerous good", "deleterious substance", "greenhouse gas emission", "pollutant," "toxic waste" or "toxic substance" or words of similar import or otherwise regulated under or subject to any provision of Environmental Law.

"IFRS" means generally accepted accounting principles as set out in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards as applied by the International Accounting Standards Board, at the relevant time, applied on a consistent basis.

"Indebtedness" means, with respect to any Person, (a) all liabilities of such Person for borrowed money, whether secured or unsecured, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment of such borrowed money), (b) all liabilities of such Person evidenced by notes, debentures, bonds or similar instruments, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment thereof), for the payment of which such Person is responsible, (c) all obligations of such Person for the deferred purchase price of property or services (including "earn out" payments), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement; (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction, but excluding any obligations that are fully discharged at the Closing, (e) obligations under any interest rate, currency or other hedging arrangement or derivatives transaction, (f) all obligations of such Person with respect to the posting of collateral and similar obligations or as obligor, guarantor, surety or otherwise, including pursuant to "keep well" agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements, but excluding any such obligations that are fully discharged at the Closing; and (g) any change of control payments or prepayment premiums, penalties, charges or equivalents thereof with respect to any obligations of the type referred to in clauses (a) through (f) that are required to be paid at the time of, or the payment of which would become due and payable solely as a result of, the execution of this Agreement or the consummation of the transactions contemplated hereby.

"Initial Allocation" shall have the meaning ascribed thereto in Section 12.13(e).

"Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Intellectual Property" means all intellectual property and proprietary rights of any kind, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a's or similar filings related thereto, or any variant of any of them,

and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (d) computer software, computer programs, and databases (whether in source code, object code or other form); and (e) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

"Interim Facility" means the interim financing facility evidenced by the Interim Facility Credit Agreement, entered into to provide financing during the pendency of the CCAA Proceedings, as the same may be amended, restated or supplemented from time to time.

"Interim Facility Credit Agreement" means that certain Interim Facility Term Sheet among Washington Diamond, the other Interim Lenders party thereto, DDM, as the Borrower (as defined therein) thereunder, and the Guarantors (as defined therein), evidencing the Interim Facility to be provided by the Interim Lenders to DDM, as Borrower, as the same may be amended, modified or supplemented from time to time.

"Interim Lenders" means Washington Diamond and the other Interim Lenders (as defined in the Interim Facility Credit Agreement), as interim lenders under the Interim Facility Credit Agreement and the Interim Facility and any assignee(s) thereof.

"Inventory" means all diamonds and other inventory of any kind or nature, including stockpiles and goods, maintained, held or stored by or for any Seller, whether or not prepaid, and wherever located or held, including any goods in transit, and any prepaid deposits for any of the same, including all diamonds no longer held by DDMI prior to Closing in respect of the Diavik Joint Venture Interests and whose title has transferred to Sellers.

"Investment Canada Act" means the *Investment Canada Act*, as amended.

"IP Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 10.2(g).

"Joint Venture" means each of the Diavik Joint Venture, the Ekati Core Zone Joint Venture and the Lac de Gras Joint Venture.

"Joint Venture Agreements" means, collectively, the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement and the Lac de Gras Joint Venture Agreement, and "Joint Venture Agreement" means any one of them as applicable.

"Knowledge of Sellers" or "Sellers' Knowledge" means, with respect to any matter, the actual knowledge, after due inquiry, of each of the individuals set forth on Section 1.1(a) of the Seller Disclosure Letter.

"Lac de Gras" means the exploration property and assets (including products derived from such property) that is the subject of the Lac de Gras Joint Venture Agreement.

"Lac de Gras Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Lac de Gras Joint Venture Agreement in relation to Lac de Gras.

"Lac de Gras Joint Venture Agreement" means the joint venture agreement dated June 30, 2015 entered into among Dominion Diamond Holdings Ltd., 6355137 Canada Inc. and North Arrow Minerals Inc.

"Lac de Gras Joint Venture Interest" means an undivided 77.31% beneficial interest in Lac de Gras Joint Venture held by DDM pursuant to the Lac de Gras Joint Venture Agreement.

"Lac de Gras Leases" means the surface and mining leases constituting Lac de Gras.

"Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, treaty, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Liability" means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

"Limited Guaranty" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"LOI" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Mandatory Antitrust Approvals" means each of the approvals or consents of any Governmental Body, or the expiration of the applicable notice or waiting period, in each case required to consummate the Acquisition and the other transactions contemplated by this Agreement under applicable Antitrust Laws, including by means of a decision, in whatever form (including a declaration of lack of jurisdiction or a mere filing or notification, if the Closing can take place, pursuant to the applicable Antitrust Law, without a decision or the expiry of any waiting period) by any Governmental Body under the Antitrust Laws of any of any jurisdiction, authorizing or not objecting to the transactions contemplated by this Agreement, provided that any terms or conditions attached to such decision are acceptable to the Purchasers.

"Material Adverse Effect" means any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the Business, results of operations, condition (financial or otherwise), Acquired Assets or Assumed Liabilities of Sellers and their respective Subsidiaries, taken as a whole; or (b) the ability

of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that, for the purposes of clause (a), a Material Adverse Effect shall not be deemed to include events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy or credit, financial, or securities markets; (ii) any outbreak or escalation of war or any act of terrorism; (iii) changes in applicable Law; (iv) changes in IFRS; (v) Sellers' failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period (but, for the avoidance of doubt, not the underlying cause(s) of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (vi) changes in political conditions; (vii) general conditions in the industry in which Sellers and their respective Subsidiaries operate; (viii) the announcement of the transactions contemplated by this Agreement; or (ix) the commencement or pendency of the CCAA Proceedings; provided further, however, that any event, change, and effect referred to in clauses (i), (ii), (iii), (iv), (vi) and (vii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on Sellers and their respective Subsidiaries, taken as a whole, compared to other participants in the industries in which Sellers and their respective Subsidiaries conduct their businesses.

"Material Contract" means any Contract:

(a) that if terminated or modified or if it ceased to be in effect, would reasonably be expected to have a Material Adverse Effect;

(b) that is a partnership agreement, limited liability company agreement, joint venture agreement or similar agreement or arrangement, including the Joint Venture Agreements, relating to the formation, creation or operation of any partnership, limited liability company or joint venture in which Sellers or any of their Subsidiaries is a partner, member or joint venturer (or other participant) that is material to Sellers, their Subsidiaries or the Business, or the ability of Sellers and their Subsidiaries to develop any of their material projects, but excluding any such partnership, limited liability company or joint venture which is a wholly-owned Subsidiary of Sellers;

(c) under which Indebtedness for borrowed money in excess of $7,500,000 is or may become outstanding or pursuant to which any property or asset of Sellers or their Subsidiaries is mortgaged, pledged or otherwise subject to an Encumbrance securing Indebtedness for borrowed money in excess of $7,500,000 or under which Sellers or any of their Subsidiaries has guaranteed any liabilities or obligations of a third party in excess of $7,500,000, in each case, other than any such Contract between two or more wholly-owned Subsidiaries of Sellers or between Sellers and/or one or more of their wholly-owned Subsidiaries;

(d) under which Sellers or any of its Subsidiaries is obligated to make or expects to receive payments in excess of $7,500,000 over the remaining term;

(e) that creates an exclusive dealing arrangement or right of first offer or refusal;

(f) providing for the purchase, sale or exchange of, or option to purchase, sell or exchange, any property or asset where the purchase or sale price or agreed value or fair market value of such property or asset exceeds $15,000,000;

(g) that is a Collective Agreement;

(h) that limits or restricts in any material respect (a) the ability of Sellers or any of their Subsidiaries to incur Indebtedness, to engage in any line of business or carry on business in any geographic area, to compete with any Person, or to engage in any merger, consolidation or other business combination, or (b) the scope of Persons to whom Sellers or any of their Subsidiaries may sell products;

(i) between Sellers or any of their Subsidiaries, on the one hand, and any director or executive officer of the Sellers or any of their Subsidiaries, on the other hand;

(j) with Aboriginal Groups or Aboriginal business, including a joint venture in which an Aboriginal Group is a joint venture party;

(k) providing for the sale of diamonds representing more than 1% of annual production of Sellers and their Subsidiaries or pursuant to which Sellers and their Subsidiaries received during calendar year 2019 or could reasonably be expected to receive in calendar year 2020 or thereafter revenues in excess of $15,000,000;

(l) providing for indemnification by Sellers or their Subsidiaries of another Person, other than Contracts for goods or services, Contracts with directors or officers of Sellers or their Subsidiaries in their capacity as such or Contracts which provide for indemnification obligations of less than $15,000,000;

(m) providing for a royalty, streaming or similar arrangement or economically equivalent arrangement in respect of any of the Mine Properties; or

(n) that is or would reasonably be expected to be material to Sellers and their Subsidiaries, the Business or the Acquired Assets, taken as a whole.

"Mine Properties" means, collectively, the Diavik Diamond Mine and the Ekati Diamond Mine and "Mine Property" means any one of them as applicable.

"Mineral Rights" has the meaning ascribed thereto in Section 4.13(a).

"Monitor" means FTI Consulting Canada Inc., in its capacity as the CCAA Court-appointed Monitor in connection with the CCAA Proceedings.

"Monitor's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Sale Order, to be delivered by the Monitor to the Sellers and the Purchasers on Closing and thereafter filed by the Monitor with the CCAA Court, certifying that the Monitor has received the Conditions Certificates.

"Objection Notice" shall have the meaning ascribed thereto in Section 12.13(e).

"Order" means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any court or Governmental Body.

"Ordinary Course of Business" means, with respect to any Person, actions that (i) are taken in the ordinary and usual course of operations of the Business consistent with past practice in effect prior to filing of the CCAA Proceedings and prior to the enactment of measures taken in response to the COVID-19 pandemic, (ii) are taken in accordance with all applicable Laws and (iii) do not result from or arise out of and were not caused by, any breach of Contract, breach of warranty, tort, infringement or violation of Law by such Person or any Affiliate of such Person.

"Organizational Documents" means, with respect to a particular entity Person, (a) if a corporation, the articles or certificate of incorporation and bylaws, (b) if a general partnership, the partnership agreement and any statement of partnership, (c) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (d) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (e) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (f) all amendments or supplements to any of the foregoing.

"Other Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Other Contracts" on Schedule F, as may be modified from time to time after the date of this Agreement pursuant to Section 2.6.

"Outside Date" shall have meaning ascribed thereto in Section 11.1(b)(i).

"Parent" shall have the meaning ascribed thereto in the Preamble hereof.

"Parties" means the Purchasers and Sellers collectively and a "Party" refers to any of them.

"Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: (1) any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grant from the Crown or a Governmental Body and any statutory limitations, exceptions, reservations and qualifications to title or Encumbrances imposed by Law; (2) any claim by any Aboriginal Group based on treaty rights, traditional territory, land claims or otherwise; (3) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (4) permits, reservations, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements (including, without in any way limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) in favor of any Governmental Body or utility company in connection with the development, servicing, use or operation of any property; (5) each of the following Encumbrances: (a) permits, reservations, covenants, servitudes, rights of access or user licenses, easements, rights of way and rights in the nature of easements in favor of any Person (other than those in (4) above); (b) any encroachments, title defects or irregularities existing; (c) any instrument, easement, charge, caveat,

lease, agreement or other document registered or recorded against title to any property so long as same have been complied with in all material respects; (d) agreements with any Governmental Body and any public utilities or private suppliers of services; and (e) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (a), (b), (c), (d) and (e), which do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto; (6) Encumbrances granted or arising pursuant to the Joint Venture Agreements included in the Acquired Assets; (7) Encumbrances to which the Purchasers consent in writing; and (8) for purposes of the representations and warranties given by Sellers on the Effective Date under Article IV hereof and Section 6.1(b)(v) only, all "Permitted Encumbrances" as defined in the Interim Credit Agreement.

"Person" means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority or natural person.

"Pre-Closing Period" means the period commencing on the Effective Date and ending on the earlier of the date upon which this Agreement is validly terminated pursuant to Article XI or the Closing Date.

"Pre-Closing Tax Period" means any taxable period (or portion thereof) ending on or before the Closing Date and any portion of any Straddle Period ending on the Closing Date.

"Pre-filing Credit Agreement" means the Revolving Credit Agreement, dated as of November 1, 2017 (as amended by the First Amendment and Waiver to Credit Agreement, dated as of July 30, 2019, the Second Amendment, dated as of March 4, 2020, and as further amended from time to time), among DDM, Parent, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"Pre-filing Indenture" means the Indenture, dated as of October 23, 2017, by and among Northwest Acquisitions ULC, Dominion Finco, Inc. and Wilmington Trust, National Association, as trustee (the "Indenture Trustee"), as supplemented by (i) the First Supplemental Indenture, dated as of November 1, 2017, by and among the Northwest Acquisitions ULC, Dominion Finco, Inc., the guarantors party thereto and the Indenture Trustee, (ii) the Second Supplemental Indenture, dated as of December 21, 2017, by and among Northwest Acquisitions ULC, as successor of Northwest Acquisitions ULC, Dominion Finco, Inc. and the Indenture Trustee, (iii) the Third Supplemental Indenture, dated as of December 21, 2017, by and among DDM, as successor of Northwest Acquisitions ULC, Dominion Finco, Inc. and the Indenture Trustee, (iv) the Fourth Supplemental Indenture, dated as of January 1, 2019, by and among the Indenture Trustee, Dominion Finco, Inc., DDM, and the guarantors party thereto, and (v) the Fifth Supplemental Indenture, dated as of December 13, 2019, by and among DDM, Dominion Finco, Inc., Washington Diamond Investments LLC, Dominion Diamond Holdings, LLC, and the Indenture Trustee.

"Previously Omitted Contract" shall have the meaning ascribed thereto in Section 2.6(b)(i).

"Previously Omitted Contract Designation" shall have the meaning ascribed thereto in Section 2.6(b)(i).

"Previously Omitted Contract Notice" shall have the meaning ascribed thereto in Section 2.6(b)(ii).

"Purchase Price" shall have the meaning ascribed thereto in Section 3.1(a).

"Purchaser Holdco" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchaser Holdco Acquired Interests" means shares of, or other equity interests in, the Acquired Subsidiaries.

"Purchaser Related Party" means any former, current or future direct or indirect director, manager, officer, employee, agent or Affiliate of Purchasers; any former, current or future, direct or indirect holder of any equity interests or securities of Purchasers (whether such holder is a limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of Purchasers; any equity or debt financing source of Purchasers; or any former, current or future director, officer, trustee, beneficiary, employee, agent, Representative, Affiliate, advisor, general or limited partner, manager, member, stockholder, or assignee of any of the foregoing.

"Purchaser Termination Fee" shall have the meaning ascribed thereto in Section 11.3.

"Purchasers" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchasers' Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"Regulation" means any Law, statute, regulation, code, guideline, protocol, policy, ruling, rule or Order of, administered or enforced by or on behalf of any Governmental Body and all judgments, orders, writs, injunctions, decisions and mandate of any Governmental Body which, although not actually having the force of law, are considered by such Governmental Body as requiring compliance as if having the force of law or which establish the interpretative position of the Law by such Governmental Body.

"Release" means any release, spill, deposit, emission, leaking, pumping, escape, emptying, leaching, seeping, disposal, discharge, dispersal or migration into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller as at the Closing Date, including the movement of Contaminants, including Hazardous Materials, through or in the air, soil, ground, surface water, groundwater or property.

"Representatives" means the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of any Person.

"Retained Subsidiaries" shall have the meaning ascribed thereto in Section 2.2(b).

"Rio Condition" shall have the meaning ascribed thereto in Section 8.11.

"Sale Advisor" means Evercore Group LLC.

"Sale Order" means an Order of the CCAA Court, substantially in the form of Schedule F hereto, with such changes as may be agreed by the Purchasers and the Sellers, each acting reasonably, approving the transactions contemplated by this Agreement and vesting the Acquired Assets in the Purchasers, free and clear of all Encumbrances, other than the Permitted Encumbrances.

"Seller Disclosure Letter" means the disclosure letter delivered by Sellers to Purchasers concurrently with the execution and delivery of this Agreement.

"Sellers" shall have the meaning ascribed thereto in the Preamble hereof.

"Sellers' Conditions Certificate" shall have the meaning ascribed thereto in Section 10.4.

"SISP" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"SISP Order" means the Amended and Restated Initial Order or any other Order of the CCAA Court, which shall be in the form attached hereto as Exhibit G, with such changes as may be agreed to by Purchasers in their sole discretion and Sellers in their reasonable discretion and which shall: (a) authorize and approve the SISP, (b) authorize and direct the Sellers, subject to approval of the Monitor to execute this Agreement, which will stand as the Stalking Horse Bid (for the purposes of the SISP), (c) approve this Agreement as the Initial Stalking Horse Bid (as defined in the SISP) pursuant to the SISP, (d) approve the Break-Up Fee and Expense Reimbursement Amount and grant the Break-Up Fee Charge, (e) approve the Interim Facility Credit Agreement and authorize DDM, as Borrower, to borrow amounts under the Interim Facility.

"Stalking Horse Term Sheet" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Stay" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Straddle Period" shall have the meaning ascribed thereto in Section 12.13(b).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, unlimited liability company, public liability company, private limited company, joint venture, partnership or other entity of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

"Successful Bidder" shall mean the successful bidder determined in accordance with the SISP.

"Surety Condition" shall have the meaning ascribed thereto in Section 8.9.

"Tax Act" means the Income Tax Act (Canada) and the regulations promulgated thereunder, as amended from time to time.

"Tax Return" means any report, return, information return, election, agreement, declaration or other document of any nature or kind required to be filed with any applicable Governmental Body in respect of Taxes, including any amendment, schedule, attachment or supplement thereto and whether in tangible or electronic form.

"Taxes" means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, GST, franchise, excise, value added, capital, license, payroll, employment, employer health, unemployment, pension, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer (including land registration or transfer), fuel, excess profits, occupational and interest equalization, windfall profits, severance and withholding and social security taxes imposed by Canada, the United States or any other country or by any state, province, territory, municipality, subdivision or instrumentality of Canada or the United States or of any other country or by any other Governmental Body, and employment or unemployment insurance premiums, Canada Pension Plan or Quebec Pension Plan contributions, together with all applicable penalties and interest, and such term shall include any interest, penalties or additions to tax attributable to such Taxes.

A "third party" means any Person other than any Seller, Purchasers or any of their respective Affiliates.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 12.13(a).

"Transferred Employees" shall have the meaning ascribed thereto in Section 7.1(a).

"Treasury Regulations" means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

"US$" means the currency of the United States, and all references to monetary amounts herein shall be in Dollars unless otherwise specified herein.

"Washington Diamond" means Washington Diamond Lending, LLC and any of its Affiliates or designees as an Interim Lender under the Interim Facility Credit Agreement.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning through this Agreement.

1.3 Other Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement, unless the express context otherwise requires.

(d) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under IFRS consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under IFRS, the definition set forth in this Agreement will control.

(e) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(f) Any provision of this Agreement that requires Purchasers to act reasonably shall not be deemed to require Purchasers to accept, agree or consent to any Order or supplement, amendment or modification thereto, or any other matter that adversely affects Purchasers or is inconsistent with the terms of this Agreement, in each case, other than in any de minimis respect.

(g) Any provision of this Agreement that requires any Party to use commercially reasonable efforts to satisfy conditions to Closing having a sole discretion standard do not require such Party to accept any term or agreement not acceptable to such Party in its sole discretion.

(h) Wherever the word "include," or "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation."

ARTICLE II

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1 Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchasers, and Purchasers shall purchase, acquire and take assignment and delivery of, all of the Sellers' right, title and interest in the assets and properties of Sellers other than the Excluded Assets (the "Acquired Assets") subject to Section 2.6 and Section 2.7, free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances), including the following:

(a) all of the issued and outstanding equity interests held by any Seller in Dominion Diamond Marketing Corporation, Dominion Diamond (India) Private Limited and Dominion Diamond Marketing N.V. (collectively, the "Acquired Subsidiaries");

(b) the Diavik Joint Venture Interest, all rights and interests of any Seller under the Diavik Joint Venture Agreement, and all other rights, title and interests of any Seller in the Diavik Diamond Mine and the Diavik Joint Venture;

(c) the Ekati Core Zone Joint Venture Interest, all rights and interests of any Seller under the Ekati Core Zone Joint Venture Agreement, and all other rights, title and interests

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of any Seller in the Ekati Diamond Mine, the Ekati Core Zone, the Ekati Core Zone Leases and the Ekati Core Zone Joint Venture;

(d) all rights, title and interests of any Seller in the Ekati Buffer Zone and the Ekati Buffer Zone Leases;

(e) the Lac de Gras Joint Venture Interest, all rights and interests of any Seller under the Lac de Gras Joint Venture Agreement, and all other rights, title and interests of any Seller in the Lac de Gras Leases and the Lac de Gras Joint Venture;

(f) all mineral rights held by DDM, including all mineral rights included in the Ekati Core Zone, Ekati Buffer Zone, Lac de Gras and the Glowworm Lake Property;

(g) all of Sellers' Cash and Cash Equivalents (except to the extent of the Cash Component), including all cash collateral and deposits posted by or for the benefit of Sellers as security for any letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise (except for retainers held by any professional in the CCAA Proceedings);

(h) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller;

(i) all prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(j) all equipment and other tangible assets of Sellers, including all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Seller related thereto;

(k) all Inventory;

(l) subject to Section 2.6, all of the Essential Contracts and Other Contracts set forth on Schedule F hereto (the "Assigned Contracts") and all rights thereunder;

(m) all Authorizations and all pending applications therefor, in each case, to the extent such Authorizations and pending applications therefor are transferrable;

(n) all rights, options, Claims or causes of action of any Seller or other Applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law;

(o) all other right, title and interest of any Seller in real property (including and all fixtures, improvements and appurtenances thereto);

(p) all Assumed Plans, together with all funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto), and all rights and obligations thereunder;

(q) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers' expense to the extent required by Law;

(r) any chattel paper owned or held by Sellers;

(s) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(t) the Intellectual Property owned or purported to be owned by any Seller;

(u) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(v) to the extent permitted by Law, Sellers' Documents; provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers' expense to the extent required by Law or as is necessary to wind-down Sellers;

(w) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(x) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or current employees and agents of Sellers or with third parties (including any non-disclosure, confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the CCAA Proceedings or pursuant to the SISP);

(y) telephone, fax numbers (if any) and email addresses, as well as the right to receive mail and other communications addressed to Sellers;

(z) to the extent transferable, any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchasers and will pay such amounts to the Purchasers forthwith following receipt thereof);

(aa) to the extent transferable, all prepaid Taxes and Tax credits of Sellers (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchasers and will pay such amounts to the Purchasers forthwith following receipt thereof);

(bb) all of Sellers' bank accounts (excluding an account established solely for the purpose of receiving payment of the Cash Component and winding-up the affairs of the Sellers therefrom); and

(cc) all other or additional assets, properties, privileges, rights and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement.

2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in DDM or Dominion Holdings;

(b) all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in, Dominion Finco, Inc., Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Dominion Diamond (Cyprus) Limited or Dominion Diamond (Luxembourg) S.a.r.l. (the "Retained Subsidiaries");

(c) all Excluded Contracts;

(d) Sellers' rights under this Agreement, including the right to the Cash Component, and under any Ancillary Documents;

(e) all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto running in favor of any Seller, including all insurance recoveries thereunder and rights to assert Claims with respect to any such insurance recoveries, in each case, as the same may run in favor of any Seller and arising out of actions taking place prior to the Closing Date;

(f) all assets that are removed from the Acquired Assets pursuant to Section 2.6 and Section 2.7; and

(g) Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchasers shall have the right to reasonably request, and Sellers shall reasonably cooperate to provide, copies of any portions of such documents solely as they relate to the Acquired Assets.

2.3 Assumed Liabilities. At the Closing, except as provided in Section 2.2 and/or in Section 2.4 hereof, and subject to Section 2.6, Section 2.7, Purchasers shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the following Liabilities) (collectively, the "Assumed Liabilities"):

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(a) all Liabilities and obligations of any Seller under the Assigned Contracts, including by making available the Cure Funding Amount to satisfy the Cure Amount in connection with the assumption and assignment of the Assigned Contracts, but excluding (i) trade payables arising on or after the Filing Date that are due and payable as of or prior to the Closing in the ordinary course, and (ii) any other Liabilities related to or arising out of a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing;

(b) all trade payables arising on or after the Filing Date that are not yet due and payable as of the Closing in the ordinary course;

(c) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(d) all payroll liabilities with respect to Transferred Employees for the payroll period which includes the Closing Date;

(e) any and all Liabilities relating to Claims, Actions, suits, arbitrations, litigation matters, proceedings, investigations or other Actions (in each case, whether involving private parties, Governmental Bodies, or otherwise) involving, against, or affecting the Acquired Assets or the operation of the Business from and after the Closing, whether commenced, filed, initiated, or threatened before or after the Closing and whether relating to facts, events, or circumstances arising or occurring before or after the Closing, but excluding, for the avoidance of doubt, any such Liabilities (i) arising in the CCAA Proceedings unrelated to the go-forward operations of the Business, (ii) insured under insurance policies that are not transferable to Purchasers; (iii) with respect to Excluded Contracts or any other Excluded Assets, (iv) to Employees or former Employees who are not Transferred Employees, or (v) expressly excluded pursuant to Section 2.4;

(f) solely with respect to the Acquired Assets, and subject to such agreements and arrangements as Purchasers may enter into in satisfaction of the Surety Condition and the Rio Condition, or otherwise in connection with the transactions contemplated hereby, any and all Environmental Liabilities and Obligations; and

(g) all intercompany Indebtedness among Sellers and the Acquired Subsidiaries; and

(h) all Liabilities under Authorizations included in the Acquired Assets, in each case solely in respect of the period commencing at the Closing Date and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing, subject to such agreements and arrangements as Purchasers may enter into in satisfaction of the Surety Condition.

2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchasers are not assuming, and shall not be obligated to pay, perform or otherwise discharge any Liability that is not an Assumed Liability (collectively, the "Excluded Liabilities"), including the following:

(a) any and all Liabilities arising out of, relating to or otherwise in respect of the Acquired Assets and/or Business arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities of any Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of any Retained Subsidiary;

(d) any and all Liabilities of any Seller for Indebtedness, including (i) all Liabilities with respect to the Pre-filing Credit Agreement and the Pre-filing Indenture, (ii) all intercompany Indebtedness between any Seller, on the one hand, and Parent or any Retained Subsidiary, on the other hand, and (iii) all Guarantees by Sellers, but excluding any intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(e) except as set forth in Section 12.13(a), any and all (i) Liabilities of any Seller for any Taxes (including, without limitation, Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to Section 160 of the Tax Act, Treasury Regulation Section 1502-6 (or any similar provision of any other Law) or otherwise and any Taxes owed by any Seller and arising in connection with the consummation of the transactions contemplated by this Agreement) arising or related to any period(s) on or prior to the Closing Date, and (ii) Taxes arising from or in connection with an Excluded Asset;

(f) any and all Liabilities of any Seller in respect of the Excluded Contracts and any other Contracts to which such Seller is party or is otherwise bound that are not Assigned Contracts;

(g) all Liabilities and obligations of any Seller under the Assigned Contracts in respect of (i) a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing, and (ii) trade payables arising on or after the Filing Date that are due and payable as of or prior to the Closing in the ordinary course;

(h) any and all Liabilities arising out of or relating to any business or property formerly owned or operated by any Seller, any Affiliate or predecessor thereof, but not presently owned and operated by such Seller;

(i) any and all Liabilities of any Seller or its predecessors arising out of any Contract, Authorization, franchise or claim that is not transferred to Purchasers as part of the Acquired Assets;

(j) any and all Liability for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the CCAA Proceedings (including the Monitor's fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Sellers or the Monitor, and the fees and expenses of the post-filing lenders or the pre-filing lenders incurred or owed in connection with the administration of the CCAA Proceedings); and (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;

(k) any and all Liabilities in respect of Employees other than the Liabilities relating to Transferred Employees that are expressly assumed under Section 2.3;

(l) any and all Liabilities with respect to change of control or similar arrangements with any officer, employee or contractor of any Seller;

(m) any and all Liabilities arising out of, relating to or otherwise in respect of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assigned Contracts occurring prior to the Closing;

(n) any and all Liabilities of Sellers under this Agreement;

(o) any and all Liabilities to any broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement;

(p) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Business (as currently or formerly conducted) or the ownership of the Acquired Assets for any Pre-Closing Tax Period, including any and all property Taxes with respect to any Pre-Closing Tax Period;

(q) any Liability for any Tax or Taxes of Sellers or their Affiliates for any taxable period, other than Transfer Taxes; and

(r) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement.

2.5 Allocation of Acquired Assets and Assumed Liabilities. Further to Sections 2.1 and 2.3, above, (i) the Canadian Assets shall be conveyed to the Canadian Purchaser from DDM in consideration of the assumption of the Assumed Liabilities and the portion of the Cash Component allocated to the Canadian Assets in accordance with Section 12.13(d); and the Purchaser Holdco Acquired Interests shall be conveyed to Purchaser Holdco from Dominion Holdings in consideration of the remaining portion of the Cash Component so allocated to the Purchaser Holdco Acquired Interests in accordance with Section 12.13(d).

2.6 Assigned Contracts/Previously Omitted Contracts.

(a) Assignment and Assumption at Closing.

(i) Schedule F sets forth, to the Sellers' Knowledge, (A) a list of all Contracts to which any Seller is party, including all Contracts that, to the Sellers' Knowledge, were entered into by a Seller following the Filing Date and, (B) with respect to each Contract listed therein, Sellers' good-faith estimate of the Cure Amount. Purchasers shall, in their sole discretion following consultation with Sellers, determine which Contracts are Assigned Contracts.

(ii) From and after the date hereof until the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, the Purchasers, without any adjustment to the

Cash Component, shall be entitled to make additions, deletions and modifications to the Contracts classified as an "Essential Contract," "Other Contract" or "Excluded Contract" on Schedule F in their sole discretion following consultation with Sellers by delivery of written notice to Sellers. For greater certainty, (A) any Contract designated by Purchasers as an Excluded Contract on Schedule F after the date of this Agreement shall be deemed to no longer be an Assigned Contract and to be an Excluded Contract, (B) any Contract designated by Purchasers as an Essential Contract on Schedule F after the date of this Agreement shall be deemed an Essential Contract for the purposes of this Agreement, and (C) any Contract designated by Purchasers as an Other Contract on Schedule F after the date of this Agreement shall be deemed an Other Contract for the purposes of this Agreement.

(iii) Sellers shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchasers. Purchasers may request, in their reasonable commercial judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assigned Contract, and Sellers shall cooperate with all reasonable requests of Purchasers to seek to obtain such modifications or amendments or to assist Purchasers in obtaining such modifications or amendments; provided that Purchaser shall make available the Cure Funding Amount to satisfy the Cure Amount. If Purchaser and Sellers are unable to obtain such modifications or amendments, Purchasers may, in their sole discretion following consultation with Sellers, designate any Contract as an Excluded Contract. For the avoidance of doubt, the failure to obtain modifications or amendments to an Essential Contract requested by Purchasers shall not result in a failure to satisfy the condition to closing set out in Section 8.7, unless the aggregate Cure Amount exceeds the Cure Funding Amount.

(iv) To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (A) the Sellers' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchasers pursuant to an Assignment Order, (B) the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date, and (C) if an Assignment Order is obtained in respect of such Assigned Contract, the Purchasers shall accept the assignment of such Assigned Contract on such terms.

(v) Unless the Parties otherwise agree, to the extent that any Cure Amount is payable with respect to any Assigned Contract, Sellers shall (A) where such Assigned Contract is assigned pursuant to an Assignment Order, pay such Cure Amount in accordance with such Assignment Order, and (B) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay such Cure Amount in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchasers and such counterparty.

(b) Previously Omitted Contracts.

(i) If prior to Closing, (A) it is discovered that a Contract should have been listed but was not listed on Schedule F, or (B) a Contract is entered into after the

Effective Date that would have been listed on Schedule F if any Seller had entered into such Contract on or before the Effective Date (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof or entry into such Contract (but in no event later than five (5) Business Days thereafter), notify Purchasers in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. Purchasers shall thereafter deliver written notice to Sellers, promptly following notification of such Previously Omitted Contract from Sellers and in any event prior to the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, designating such Previously Omitted Contract as an "Essential Contract", "Other Contract" or "Excluded Contract" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 2.6 as an "Excluded Contract" or with respect to which Purchasers fail to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract. There shall be no adjustment to the Cash Component in respect of any Previously Omitted Contract or any Previously Omitted Contract Designation.

(ii) If a Purchaser designates a Previously Omitted Contract as an "Essential Contract" or "Other Contract" in accordance with Section 2.6, Schedule F shall be amended to include such Previously Omitted Contract and Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amount with respect to such Previously Omitted Contract and Sellers' intention to assign such Previously Omitted Contract in accordance with this Section 2.6. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with seven (7) days to object, in writing to Sellers and the applicable Purchaser, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and the applicable Purchaser are unable to reach a consensual resolution with respect to an objection relating to a Previously Omitted Contract that has been designated as an "Essential Contract" in accordance with Section 2.6, Sellers will seek an expedited hearing before the CCAA Court for an Assignment Order in respect of such Essential Contract.

(c) Disclaimer of Assigned Contracts. Sellers shall not disclaim or seek to disclaim any Assigned Contract in the CCAA Proceedings or any other proceeding following the Effective Date and prior to any termination of this Agreement without the prior written consent of Purchasers, which Purchasers may withhold, condition or delay, in their sole discretion. For greater certainty, (i) all Contracts that have not been designated as "Assigned Contracts" as at the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court shall be deemed to be Excluded Contracts, and (ii) the Sellers shall be entitled, at any time from and after the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, to disclaim or seek to disclaim any Excluded Contracts.

2.7 Circumstances for Exclusion of Diavik Joint Venture Interests. Notwithstanding anything to the contrary set forth in this Agreement, if the Rio Condition is not satisfied on or before July 31, 2020, then the Parties shall proceed with the Acquisition on the terms and subject

to the conditions set forth in this Agreement, except that Purchasers shall not acquire or assume any rights or Liabilities with respect to the Diavik Joint Venture and the terms set forth in this Agreement shall be deemed to be amended on the following basis:

(a) the Cash Component shall remain unchanged (other than adjustments otherwise contemplated by Section 3.1(a));

(b) the Diavik Joint Venture Interest, and any diamonds distributed by the Diavik Joint Venture to DDM after the Filing Date shall become Excluded Assets;

(c) all Liabilities of Sellers with respect to the Diavik Joint Venture Interest, the Diavik Joint Venture Agreement, the Diavik Diamond Mine and the Diavik Joint Venture (including with respect to the Closure and Security Agreement) shall become Excluded Liabilities;

(d) Sellers shall be deemed not to make any representation or warranty with respect to the Diavik Joint Venture Interest, the Diavik Joint Venture Agreement, the Diavik Diamond Mine, the Diavik Joint Venture or DDMI (and, for greater certainty, references to the Business shall be deemed to exclude the operations of the Diavik Joint Venture);

(e) Sellers shall be deemed not to make any covenant or agreement with respect to the Diavik Joint Venture Interest;

(f) Sellers shall be permitted to sell, transfer or otherwise dispose of the Diavik Joint Venture Interest free and clear of any restriction under this Agreement;

(g) the Rio Condition and the condition set forth in Section 8.12 shall be deemed waived as of July 31, 2020 for all purposes hereunder;

(h) the aggregate amount of equity financing required to be committed in order to satisfy the Financing Condition would be reduced to US$70,000,000, less 50% of any debt raised; and

(i) Sellers and Purchasers shall agree in good faith to any other adjustments to the terms of this Agreement as may be necessary to implement the terms set forth in this Section 2.7.

2.8 Assets Held by Parent or Retained Subsidiaries. If it is determined at any time before or after the Closing that Parent or any Retained Subsidiary holds any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller, then Sellers and Parent shall, and shall cause such Retained Subsidiary to transfer and assign such assets to Purchasers or to one or more Designated Purchasers, as directed by Purchasers, subject to the terms of this Agreement. Without limiting the foregoing, Parent shall, and Parent and Sellers shall cause each of the Retained Subsidiaries to transfer and assign to Purchasers or to one ore more Designated Purchasers, as directed by Purchasers, all rights, options, Claims or causes of action of Parent or any such Retained Subsidiary against any party arising out of events occurring prior to the Closing, to the extent permitted under applicable Law. All assets, properties, rights, options, Claims or

causes of action transferred to Purchasers or a Designated Purchaser pursuant to this Section 2.8 shall constitute Acquired Assets for the purposes of this Agreement.

ARTICLE III

PURCHASE PRICE AND PAYMENT

3.1 Purchase Price.

(a) The purchase price for the Acquired Assets shall be the aggregate of the (i) the Cash Component and (ii) the Assumed Liabilities (the "Purchase Price").

(b) The "Cash Component" shall be equal to One Hundred Twenty-Six Million One Hundred Seven Thousand U.S. Dollars (US$126,107,000) (the "Cash Component"),

(i) *minus* the amount (if any) by which the principal and accrued interest on the Interim Facility outstanding at Closing is less than Fifty-Five Million U.S. Dollars (US$55,000,000); or

(ii) *plus*, if the Closing is after September 30, 2020, the amount (if any) by which the principal and accrued interest on the Interim Facility outstanding at Closing with respect to Advances (as defined in the Interim Facility) and accrued and unpaid interest after September 30, 2020 is more than Fifty-Five Million U.S. Dollars (US$55,000,000) up to a maximum of Five Million U.S. Dollars (US$5,000,000).

3.2 Satisfaction of Purchase Price.

(a) The Cash Component shall be satisfied in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Sellers at least two (2) Business Days prior to the Closing Date; provided however, to the extent any of the Cash Component of the Purchase Price will be paid to Washington Diamond in its capacity as Interim Lender under the Interim Facility Credit Agreement, Purchasers may deduct such amount from the Cash Component of the Purchase Price and Washington Diamond agrees the Claims held by Washington Diamond as against the Applicants shall be reduced dollar-for-dollar on account of the amount deducted from the Cash Component. Any dispute relating to the applicable amount of Claims held by Washington Diamond as against the Applicants shall be resolved by the CCAA Court in accordance with Section 12.8.

(b) The Assumed Liabilities will be assumed by the Purchasers pursuant to the Assignment and Assumption Agreement, the Assignment and Assumption of Leases and the IP Assignment and Assumption Agreement.

3.3 Further Assurances. From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchasers shall use commercially reasonable efforts to execute and deliver such documents and instruments of conveyance and transfer as Purchasers may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchasers title to the Acquired Assets transferred hereunder, and (b) Purchasers, upon the request of Sellers, shall use commercially

reasonable efforts to execute and deliver such documents and instruments of assumption as Sellers may reasonably request in order to confirm Purchasers' Liability for the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Seller Disclosure Letter, Sellers represent and warrant to Purchasers as of the Effective Date and the Closing Date, as follows:

4.1 Organization and Power. Dominion Holdings is a limited liability company duly formed under the laws of the State of Delaware, and is in good standing thereunder as of the Effective Date and the Closing. DDM is an unlimited liability company duly formed under the laws of British Columbia. Subject to the CCAA and the Amended and Restated Initial Order, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted. Each Seller has previously delivered to Purchasers true, complete and correct copies of its Organizational Documents, as amended and in effect on the Effective Date. Each Seller is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.2 Authority; No Violation. Subject to the issuance of the Sale Order, each Seller has all requisite limited liability company or unlimited liability company power and authority, as applicable, to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by each Seller shall be duly and validly authorized and approved by all necessary limited liability company or unlimited liability company action, as applicable. Subject to the issuance of the Sale Order by the CCAA Court (and assuming the due authorization, execution and delivery by the other Parties hereto), this Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

4.3 Consents.

(a) Except as set forth on Section 4.3(a) of the Seller Disclosure Letter, the execution, delivery and performance by Sellers of this Agreement or any Ancillary Document to which it is a party and the consummation of the transactions contemplated hereby or thereby in accordance with the Sale Order do not and will not (with or without notice or the passage of time): (i) contravene, violate or conflict with any term or provision of Sellers' Organizational Documents; (ii) violate any material Law applicable to any Seller or any Acquired Subsidiary or by which any property or asset of any Seller or any Acquired Subsidiary is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a

default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of any Seller or any Acquired Subsidiary under any Authorization or Material Contract, except in each case described in this clause (iii) to the extent that any such breach, default, right or requirement arises out of the commencement of the CCAA Proceedings or would be cured and the applicable Authorization or Material Contract would be assignable upon payment of the applicable Cure Amount hereunder.

(b) Except (i) for the issuance of the Sale Order, (ii) for compliance as may be required with the Competition Act or other applicable Antitrust Laws, and (iii) as set forth on Section 4.3(a) of the Seller Disclosure Letter, no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Sellers of this Agreement or the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, the Assumed Liabilities or the Business, in each case taken as a whole.

4.4 Subsidiaries.

(a) Except as would not, individually or in the aggregate, have a Material Adverse Effect, each Acquired Subsidiary is duly incorporated, organized or formed and validly existing under the laws of its jurisdiction of incorporation, organization or formation, and has the requisite power and capacity to own, lease, license and operate its assets and properties and conduct its business as now conducted and is duly registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or operated by it, or the nature of its activities, make such registration necessary.

(b) Section 4.4(b) of the Seller Disclosure Letter sets out, with respect to each Subsidiary of Sellers as of the date hereof: (A) its name; (B) the percentage owned directly or indirectly by any Seller and the percentage owned by registered holders of capital stock or other equity interests if other than Sellers and their Subsidiaries; and (C) its jurisdiction of incorporation, organization or formation.

(c) Dominion Holdings or DDM is, directly or indirectly, the registered and beneficial owner of all of the outstanding common shares or other equity interests as reflected as being owned by Dominion Holdings or DDM, as applicable, in Section 4.4(b) of the Seller Disclosure Letter, directly or indirectly, of each of its Subsidiaries, free and clear of any Encumbrance, other than Permitted Encumbrances, all such shares or other equity interests so owned by Sellers have been validly issued and are fully paid and non-assessable, as the case may be, and no such shares or other equity interests have been issued in violation of any pre-emptive or similar rights. Except for the shares or other equity interests owned by Dominion Holdings or DDM, directly or indirectly, in any Subsidiary, and except as set forth in Section 4.4(b) of the Seller Disclosure Letter neither any Seller nor any Subsidiary owns, beneficially or of record, any equity interests of any kind in any other Person as of the date hereof.

(d) No Acquired Subsidiary has any Indebtedness, other than with respect to the intercompany Indebtedness owed solely to Sellers or other Acquired Subsidiaries (and for the avoidance of doubt, trade payables incurred in the Ordinary Course of Business) and no Acquired Subsidiary has provided any Guarantee.

4.5 Title and Sufficiency of Assets.

(a) Sellers have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Acquired Subsidiaries have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) all assets and property which any such Acquired Subsidiary purports to own, free and clear of all Encumbrances other than Permitted Encumbrances, and there is no agreement, option or other right or privilege outstanding in favor of any Person for the purchase of any material asset from any Acquired Subsidiary outside the Ordinary Course of Business.

(c) The Acquired Assets, together with the assets and properties held by the Acquired Subsidiaries, include all of the properties and assets required to operate the Business in the Ordinary Course of Business.

(d) To the Knowledge of Sellers, neither Parent nor any of the Retained Subsidiaries holds any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller.

4.6 Financial Statements. Sellers have delivered to Purchaser Parent's audited consolidated financial statements as at and for the fiscal year ended December 31, 2019 and unaudited consolidated financial statements as at March 31, 2020 and for the three months ended March 31, 2020 and 2019 (including, in each case, any of the notes or schedules thereto, any report thereon and related management's discussion and analysis), each of which: (i) were prepared in accordance with IFRS; and (ii) present fairly, in all material respects, the assets, liabilities and financial condition of Parent and its Subsidiaries on a consolidated basis as at the respective dates thereof and the revenues, earnings, results of operations, changes in shareholders' equity and cash flow of Parent and its Subsidiaries on a consolidated basis for the periods covered thereby (except as may be indicated in the notes to such financial statements and subject in the case of unaudited financial statements to normal, year-end audit adjustments). Except as set forth in such financial statements, neither any Seller nor any Acquired Subsidiary is party to any off-balance sheet transaction with unconsolidated Persons.

4.7 Compliance with Laws. Sellers and each of the Acquired Subsidiaries are, and since February 1, 2018 have been, in compliance with Law in all material respects. Neither any Seller nor any Acquired Subsidiary is, to the Knowledge of Sellers, under any material investigation with respect to, or has been charged or threatened to be charged with, or has received notice of, any material violation or potential material violation of any Law from any Governmental Body.

4.8 Authorizations. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) each Seller and each Acquired Subsidiary owns, possesses or has obtained all Authorizations that are required by Law (including, for greater certainty, Environmental Law) to be owned, possessed or obtained by Sellers or any of the Acquired Subsidiaries in connection with the operation of the Business or in connection with the ownership, operation or use of the Acquired Assets; (ii) Sellers and the Acquired Subsidiaries, as applicable, lawfully hold, own or use, and have complied with all such Authorizations; (iii) each such Authorization is valid and in full force and effect, and is renewable by its terms or in the Ordinary Course of Business; and (iv) no action, investigation or proceeding is pending, or to the Knowledge of Sellers, threatened, against any Seller or any Acquired Subsidiary in respect of or regarding any such Authorization that could reasonably be expected to result in the suspension, loss or revocation of any such Authorization.

4.9 Material Contracts. Section 4.9 of the Seller Disclosure Letter sets out a complete and accurate list of all Material Contracts in effect or pursuant to which any Seller or any Acquired Subsidiary has surviving obligations as of the date hereof. True and complete copies of the Material Contracts have been disclosed in the Data Room and, other than as set out in the Data Room, no such Material Contract has been modified in any material respect. Each Material Contract is a legal, valid and binding agreement of the applicable Seller or the applicable Acquired Subsidiary, and is in full force and effect. Except as disclosed in Section 4.9 of the Seller Disclosure Letter and other than monetary defaults or such breaches arising out of the commencement of the CCAA Proceedings, neither any Seller nor any Acquired Subsidiary or, to the Knowledge of Seller, any other parties thereto, is in material breach or violation of or in default under (in each case, with or without notice or lapse of time or both) any Material Contract and no Seller or any Acquired Subsidiary has received or given any notice of any material breach or default under any Material Contract which remains uncured, and there exists no state of facts which after notice or lapse of time or both would constitute a material breach of or default under any Material Contract by any Seller or any Acquired Subsidiary or, to the Knowledge of Sellers, any other party thereto.

4.10 Diavik Joint Venture.

(a) DDM owns the Diavik Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Diavik Joint Venture Agreement, no Person has any Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Diavik Joint Venture. Except as specified in the Diavik Joint Venture Agreement, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Diavik Diamond Mine or the Diavik Joint Venture.

(b) A copy of the Diavik Joint Venture Agreement as currently in effect as of the date hereof has been made available to Purchasers in the Data Room.

4.11 Ekati Mine.

(a) DDM owns each of the Ekati Buffer Zone and the Ekati Core Zone Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, no Person has any

Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Ekati Buffer Zone or the Ekati Core Zone Joint Venture. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Ekati Buffer Zone, the Ekati Core Zone or the Ekati Core Zone Joint Venture.

(b) A copy of the Ekati Core Zone Joint Venture Agreement as currently in effect as of the date hereof has been made available to Purchasers in the Data Room.

4.12 Leased Property. With respect to the real property leased or subleased by any Seller or any Acquired Subsidiary, except as would not, individually or in the aggregate, have a Material Adverse Effect: (i) each lease or sublease for such property constitutes a legal, valid and binding obligation of the applicable Seller or the applicable Acquired Subsidiary, as the case may be, enforceable against such Seller or such Acquired Subsidiary, as the case may be, in accordance with its terms and is in full force and effect; (ii) except as disclosed in Section 4.12(ii) of the Seller Disclosure Letter, neither any Seller nor any Acquired Subsidiary, as the case may be, is in breach of or default under any such lease or sublease and no event has occurred which, without the giving of notice or lapse of time, or both, would constitute a breach of or default under any such lease or sublease; and (iii) except as disclosed in Section 4.12(iii) of the Seller Disclosure Letter, to the Knowledge of Sellers, no counterparty to any such lease or sublease is in default thereunder.

4.13 Interests in Properties and Mineral Rights.

(a) The Diavik Leases, the Ekati Buffer Zone Leases and the Ekati Core Zone Leases comprise all of Sellers' and the Acquired Subsidiaries' material real properties and all of Sellers' and the Acquired Subsidiaries' material mineral interests and rights, in each case, either existing under contract, by operation of Law or otherwise (collectively, and where material, the "Mineral Rights"). Neither Sellers nor the Acquired Subsidiaries own or have any interest in any other material real property or any other material mineral interests and rights.

(b) Other than pursuant to the Joint Venture Agreements, no person has any interest in the Mineral Rights or any right to acquire any such interest, and no person has any back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which would affect, in any material respect, DDM's or, to the Knowledge of Sellers, DDMI's interest in any of the Mineral Rights.

4.14 Litigation. Except as disclosed in Section 4.14 of the Seller Disclosure Letter, as of the date hereof, there are no claims, actions, suits, arbitrations, inquiries, investigations or proceedings pending, or, to the Knowledge of Sellers, threatened, against any Seller, any Acquired Subsidiary or, to the Knowledge of Sellers, DDMI, by or before any Governmental Body that, if determined adverse to the interests of any Seller, any Acquired Subsidiary or DDMI, would, individually or in the aggregate, have a Material Adverse Effect, or would be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby, and no Seller or Acquired Subsidiary or, to the Knowledge of Sellers, DDMI or any of the Mine Properties is subject to any outstanding judgment, order, writ, injunction or decree that would reasonably be expected to have a Material Adverse Effect.

4.15 Environmental Matters. Except as would not, individually or in the aggregate, have a Material Adverse Effect, to the Knowledge of Sellers, (i) there exists no fact, condition or occurrence concerning any Seller, any Acquired Subsidiary, DDMI or the operation of Business or Acquired Assets (including the Joint Ventures or the Mine Properties) with respect to any non-compliance with or obligation or liability under Environmental Laws; (ii) no unresolved complaint, notice or violation, citation, summons or order has been issued to any Seller or any Acquired Subsidiary or any of the Joint Ventures or the applicable manager/operator, as the case may be, alleging any violation by or liability of any Seller or any Acquired Subsidiary or any businesses or assets thereof, including the Joint Ventures or the Mine Properties, with respect to any Environmental Law; and (iii) the operation of the Business, including the Joint Ventures and the Mine Properties, is in compliance with Environmental Laws.

4.16 Aboriginal Claims.

(a) Section 4.16 of the Seller Disclosure Letter (to the Knowledge of Sellers, in respect of matters relating to the Diavik Joint Venture) contains a list of the current impact benefit or participation agreements, memoranda of understanding or similar arrangements (the "Aboriginal Agreements") with all Aboriginal Groups with whom any Seller, any Acquired Subsidiary or any of the Joint Ventures has any such dealings and any written notices of an Aboriginal Claim received by any Seller or any Acquired Subsidiary where there is no current Aboriginal Agreement in place with the Aboriginal Group, in each case, as of the date hereof. Copies of the Aboriginal Agreements as in effect as of the date hereof have been made available in the Data Room. Other than as disclosed in the Seller Disclosure Letter (including the Aboriginal Agreements), as of the date hereof, to the Knowledge of Sellers, neither Sellers, any of the Acquired Subsidiaries, the Ekati Buffer Zone, the Ekati Core Zone Joint Venture nor, any of the Diavik Joint Venture or its manager, as the case may be, has received any written notice of an Aboriginal Claim which materially affects Sellers, any of the Acquired Subsidiaries, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(b) The Sellers have not received written notice of any material Claims from any Aboriginal Group with respect to Sellers, any Acquired Subsidiary, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(c) The Sellers have materially complied with all material obligations under the Aboriginal Agreements.

4.17 Employees.

(a) All written contracts in relation to the top five compensated Employees (calculated based on annual base salary plus target cash bonus) have been made available in the Data Room.

(b) The independent contractors of Sellers and the Acquired Subsidiaries are not entitled to any severance or similar payments upon termination of their Contracts that would be material and each of such Contracts can be terminated with no more than 60 days' advance notice.

(c) No Employee has any agreement as to length of notice or severance payment required to terminate his or her employment or is entitled to notice or severance payments other than such as results by Law, nor are there any change of control payments or severance payments or agreements with Employees providing for cash or other compensation or benefits upon the consummation of, or relating to, the transactions contemplated by this Agreement other than the key employee retention plan approved by the CCAA Court in the Amended and Restated Intial Order.

4.18 Collective Agreements. Section 4.18 of the Seller Disclosure Letter sets forth a list of all Collective Agreements as of the date hereof. Except as disclosed in Section 4.18 of the Seller Disclosure Letter (A) there are no collective bargaining or union agreements or employee association agreements or other binding commitments in force with respect to Employees, (B) no Person holds bargaining rights with respect to any Employees and (C) to the Knowledge of Sellers, no Person has applied to be certified as the bargaining agent of any Employees.

4.19 Employee Plans.

(a) Section 4.19(a) of the Seller Disclosure Letter lists all written Employee Plans in effect as of the date hereof. Sellers have made available in the Data Room true, complete and up to date copies of all such material Employee Plans, as amended, together with all related documentation, including all material regulatory filings (including actuarial valuations) required to be filed with a Governmental Body and correspondence with Governmental Bodies with respect to such material regulatory filings (including actuarial valuations) of any Pension Plan (as defined in Section 4.19(a) of the Sellers Disclosure Letter).

(b) Sellers and the Acquired Subsidiaries have made all contributions and paid all premiums in respect of each material Employee Plan in a timely fashion in accordance with Law and in accordance with the terms of the applicable Employee Plan and all Collective Agreements. Except as would not, individually or in the aggregate, have a Material Adverse Effect, all financial liabilities of Sellers and the Acquired Subsidiaries (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and accurately disclosed in accordance with [IAS 19 Employee Benefits] in the financial statements referred to in Section 4.7 as of the dates of such financial statements .

(c) None of the Employee Plans (other than pension, retirement savings or retirement income plans) provide for retiree benefits or for benefits to retired or terminated Employees or to the beneficiaries or dependents of retired or terminated Employees.

(d) The execution of this Agreement and the completion of the transactions contemplated will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of indebtedness, vesting, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee or former Employee or their beneficiaries.

4.20 Taxes.

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(a) DDM is not a non-resident of Canada for the purposes of Section 116 of the Tax Act.

(b) Seller and each of the Acquired Subsidiaries has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Body when required by Law to do so.

(c) The Purchaser Holdco Acquired Interests are not "taxable Canadian property" for the purposes of Section 116 of the Tax Act.

(d) The Canadian Assets include all or substantially all of each Seller's "Canadian Resource Property" for the purposes of sections 66 and 66.7 of the Tax Act.

(e) The Canadian Assets constitute all or substantially all of the assets used in carrying on the Business for the purposes of section 22 of the Tax Act.

(f) For the purposes of the GST Legislation, (i) DDM carries on a business, and (ii) the Canadian Assets constitute all or substantially all of the property necessary for the Canadian Purchaser to be capable of carrying on the business.

(g) DDM is registered for the purposes of the GST Legislation and its registration number is [___________].

(h) the Purchaser Holdco Acquired Interests are "financial instruments" for the purposes of the GST Legislation.

4.21 Brokers and Finders. Other than the Sale Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and Purchasers are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Sellers or their Subsidiaries.

4.22 No Other Representations or Warranties. Except for the representations, warranties and covenants of Sellers expressly contained herein or any certificate delivered hereunder, neither Sellers nor any of their respective Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Sellers, including, without limitation, as to (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Purchasers after the Closing, (b) the probable success or results in connection with the CCAA Court and the Sale Order, or (c) the value, use or condition of the Acquired Assets, which are being conveyed hereby on an "As-Is", "Where-Is" condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASERS

Each Purchaser represents and warrants to Sellers as of the Effective Date as follows:

5.1 Organization and Power. Purchaser Holdco is a limited partnership, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted. Canadian Purchaser is an unlimited liability company, validly existing and in good standing under the laws of British Columbia, with full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

5.2 Purchaser's Authority; No Violation. Purchasers have all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by Purchasers shall be duly and validly authorized and approved by all necessary limited partnership or unlimited liability company action. This Agreement shall constitute the legal and binding obligation of Purchasers, enforceable against Purchasers in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the issuance of the Sale Order by the CCAA Court and subject to compliance with the applicable requirements of the Competition Act, the entering into of this Agreement, and the consummation by Purchaser of the transactions contemplated hereby will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of Purchasers' Organizational Documents, violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of Purchasers under, any Encumbrance, contract, agreement, license, lease, instrument, indenture, Order, arbitration award, judgment, or decree to which any Purchaser are a party or by which it is bound, or to which any property of any Purchaser is subject.

5.3 Consents, Approvals or Authorizations. Except for compliance as may be required by the Competition Act or other applicable Antitrust Laws, no consent, waiver, approval, Order or Authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchasers of this Agreement or the Ancillary Documents to which such Purchaser is a party, the compliance by Purchasers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities or the taking by Purchasers of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchasers' ability to perform their obligations under this Agreement and the Ancillary Documents to which any such Purchaser is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities.

5.4 Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchasers in connection with the transactions contemplated by this Agreement that would obligate Sellers to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchasers.

5.5 GST Registration. The Canadian Purchaser shall be registered for the purposes of the GST Legislation. This registration will have an effective date on or before the Closing Date.

5.6 "As Is, Where Is" Basis. Notwithstanding any other provision of this Agreement, the Purchasers acknowledge, agree and confirm that:

(a) except for the representations and warranties of the Sellers set forth in Article IV, and subject to the other covenants and agreements set forth herein, the Purchasers are entering into this Agreement, acquiring the Acquired Assets and assuming the Assumed Liabilities on an "as is, where is" basis as they exist as at Closing and will accept the Acquired Assets in their state, condition and location as at Closing except as expressly set forth in this Agreement and the sale of the Acquired Assets is made without legal warranty and at the risk of the Purchasers;

(b) except for the representations and warranties of the Sellers set forth in Article IV, neither the Sellers, the Sale Advisor, nor the Monitor or their Representatives have made or are making, and the Purchasers are not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Acquired Assets, the Sellers' right, title or interest in or to the Acquired Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Acquired Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any applicable Law in any jurisdiction, which the Purchasers confirm do not apply to this Agreement and are hereby waived in their entirety by the Purchasers;

(c) except as otherwise expressly provided in this Agreement, the Purchasers hereby unconditionally and irrevocably waive any and all actual or potential rights or Claims the Purchasers might have against the Sellers, Monitor, Sale Advisor and their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Sellers expressly set forth in Article IV. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including Claims regarding defects, whether or not discoverable or latent, product liability Claims, or similar Claims, and all other Claims that may be later created or conceived in strict liability or as strict liability type Claims and rights;

(d) none of the representations and warranties of the Sellers contained in this Agreement shall survive Closing and, subject to Sections 11.1 and 11.4, the Purchasers' sole

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recourse for any breach of representation or warranty of the Sellers in Article IV shall be for the Purchasers not to complete the transactions as contemplated by this Agreement and for greater certainty the Purchasers shall have no recourse or claim of any kind against the Sellers or the proceeds of the transactions contemplated by this Agreement following Closing; and

(e) this Section 5.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

5.7 Investment Canada Act. The Canadian Purchaser is a trade agreement investor or a WTO investor for the purposes of the Investment Canada Act.

5.8 No Other Representations or Warranties. Except for the representations, warranties and covenants of Purchasers expressly contained herein or any certificate delivered hereunder, neither Purchasers nor any of their Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Purchasers.

ARTICLE VI

COVENANTS OF SELLERS AND/OR PURCHASERS

6.1 Conduct of Business of Sellers.

(a) During the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement, the Amended and Restated Initial Order, the Interim Facility Credit Agreement or the SISP or (z) as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall, and shall cause their Subsidiaries to:

(i) continue operations at the Ekati Diamond Mine on care and maintenance only; and

(ii) use commercially reasonable efforts to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, subject to continuation of all furlough arrangements in place as of the Effective Date, (D) maintain and preserve satisfactory relationships with Aboriginal Groups and Governmental Bodies, and (E) comply in all material respects with the budget and other obligations set forth by the Interim Facility.

(b) Without limiting the generality of Section 6.1(a), during the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement or the SISP or (z) as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) re-start operations at the Ekati Diamond Mine;

(ii) end any employee furlough or similar arrangement that is in place as of the Effective Date;

(iii) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any material Acquired Asset, including any diamonds or other Inventory;

(iv) settle or compromise any material litigation or claims relating to the Business or the Acquired Assets or that would impose any restrictions or Liabilities on the Business or Purchaser's use of the Acquired Assets after the Closing;

(v) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances;

(vi) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets;

(vii) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement or employee association agreement with any labor organization affecting any such Persons;

(viii) grant any increase in the compensation or benefits of any employee or former employee or any dependent or other person claiming through an employee or former employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee;

(ix) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract;

(x) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder;

(xi) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that could reasonably be expected to have any adverse effect on the Purchasers or any of their Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or

(xii) agree in writing to do any of the foregoing.

6.2 Consents and Approvals.

(a) Sellers and Purchasers shall each use commercially reasonable efforts (i) to obtain all consents and approvals, as reasonably requested by Purchasers and Sellers, to more effectively consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Contracts and Assumed Liabilities, as applicable, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, if required, the Competition Act Approval and any other Mandatory Antitrust Approvals, (ii) to make, as reasonably requested by Purchasers and Sellers, all filings, applications, statements and reports to all authorities which are required to be made prior to the Closing Date by or on behalf of Purchasers and/or Sellers or any of their respective Affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby, (iii) to obtain, as reasonably requested by Purchasers and Sellers, all required consents and approvals (if any) to assign and transfer the Authorizations to Purchasers at Closing and, to the extent that one or more of the Authorizations are not transferable, to obtain replacements therefor, and (vi) to satisfy the conditions precedent set out in Article VIII and Article IX by such dates as required to achieve the applicable target closing date set out in the SISP.

(b) In furtherance and not in limitation of the foregoing, each of Sellers and Purchasers shall prepare and file: (i) on a timetable to be agreed by the Parties, all filings required and desirable to obtain Competition Act Approval and any other Mandatory Antitrust Approval, in each case if and to the extent required, including pre-merger notification filings in accordance with Part IX of the Competition Act; and (ii) all other necessary documents, registrations, statements, petitions, filings and applications for other Antitrust Approvals and any other consent or approval of any other Governmental Body required to satisfy the conditions set forth in Section 8.2 and Section 9.2.

(c) In furtherance and not in limitation of the foregoing, Purchasers shall use commercially reasonable efforts to negotiate an acceptable agreement with DDMI to satisfy the Rio Condition and to negotiate an acceptable agreement with GNWT and the sureties to satisfy the Surety Condition. Sellers shall cooperate in a timely and commercially reasonable manner with Purchasers in their efforts to satisfy the Rio Condition and the Surety Condition, including providing information, assisting in evaluation and analysis, and facilitating discussions as reasonably requested by Purchasers. Purchasers shall provide Sellers an opportunity to participate with one attendee in any meetings of a substantive nature with DDMI, GNWT and the sureties.

(d) Subject to the provisions of Section 3.3 and this Section 6.2, in the event that certain Authorizations are not transferable or replacements therefor are not obtainable on or before the Closing, but such Authorizations are transferable or replacements therefor are obtainable after the Closing, Purchasers and Sellers shall continue to use such reasonable efforts in cooperation with the other after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Authorizations after Closing and shall do all things reasonably necessary to give Purchasers the benefits which would be obtained under such Authorizations; provided, however, that Sellers' obligations under this Section 6.2(d) shall not restrict Sellers from making any distributions in or terminating the CCAA Proceedings or otherwise winding up their respective affairs or cancelling their existence upon the completion of any such winding up.

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(e) Sellers and Purchasers shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Parties informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Body and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, including providing to the other Parties copies of all such material communications given or received; (iii) provide to the other Party reasonable opportunity to comment on drafts of filings and submissions prior to submitting same to a Governmental Body; and (iv) consult with each other in advance of any meeting or conference (whether in person or by telephone) with any Governmental Body, including in connection with any proceeding by a private party, and provide the other Party an opportunity to participate with at least one attendee in any meetings of a substantive nature with a Governmental Body. The foregoing obligations in this Section 6.2(e) shall be subject to any attorney-client, solicitor-client, work product, or other privilege, and each of the Parties hereto shall coordinate and cooperate fully with the other Parties hereto in exchanging such information and providing such assistance as such other Parties may reasonably request in connection with the foregoing.

(f) If, (i) notwithstanding the applicable provisions of the CCAA, the Sale Order, the Assignment Order (if applicable) and the commercially reasonable efforts of Sellers, any consent to the assignment of an Assigned Contract is not obtained prior to Closing and as a result thereof the Purchasers shall be prevented by a third party from receiving the rights and benefits with respect to an Acquired Asset intended to be transferred hereunder, (ii) any attempted assignment of an Acquired Asset would adversely affect the rights of Sellers thereunder so that the Purchasers would not in fact receive all of the rights and benefits contemplated or (iii) any Acquired Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order, the Assignment Order and the CCAA), then, in each case, Sellers shall, subject to any approval of the CCAA Court that may be required, at the request of the Purchasers and subject to Section 3.3, cooperate with Purchasers in any lawful and commercially reasonable arrangement under which the Purchasers would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Purchasers.

6.3 Confidentiality. Purchasers and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 6.5, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality Agreement, dated **[____]**, 2020, between Washington Diamond Investments Holdings II, LLC and DDM (the "Confidentiality Agreement"). Sellers agree that except as may otherwise be required in connection with the CCAA Proceedings or by Law, they will treat any confidential information provided to or retained by them in accordance with this Agreement as if they were the receiving party under the Confidentiality Agreement and Sellers agree that for purposes of Sellers' confidentiality obligation hereunder, the term contained in Section **[__]** of the Confidentiality Agreement shall be deemed to be three (3) years from the Closing Date. The Parties agree that the provisions regarding confidentiality contained in the Confidentiality Agreement shall survive the termination of this Agreement and the Confidentiality Agreement in accordance with the terms set

forth therein but shall terminate upon the Closing as to Purchasers and their Representative (as defined therein).

6.4 Change of Name. Promptly following the Closing, Sellers shall, and shall cause their respective direct and indirect Subsidiaries to, discontinue the use of the "Dominion Diamonds" name (and any other trade names or "d/b/a" names currently utilized by Sellers or their respective direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Dominion Diamond Mines" or any other similar name or mark confusingly similar thereto without the prior written consent of Purchasers, and Sellers shall, if requested by the Purchasers, to make an application to the CCAA Court requesting the name of Sellers in the title of the CCAA Proceedings to be changed; provided, however, that Sellers and their respective Subsidiaries may continue to use their current names (and any other names or d/b/a's currently utilized by Sellers or their respective Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to seventy-five (75) days solely for purposes of winding down the affairs of Sellers; provided that when utilizing such materials, other than in incidental respects, Sellers and each of their respective direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each).

6.5 Purchasers' Access to Sellers' Records. From and after Sellers' execution and delivery of this Agreement, Sellers shall continue to facilitate the due diligence investigations of Purchasers with respect to the Sellers and the Business in the same manner and scope it provides to Potential Bidders (as defined in the SISP) pursuant to the SISP. At such time as the Purchasers become the Successful Bidder (as defined in the SISP), the Sellers' shall provide Purchasers (or their designated Representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as Purchasers deem appropriate or necessary in order to facilitate Purchasers' efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with Purchasers in this regard.

6.6 Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to Purchasers of (i) any notice or other communication from any Person alleging that the consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents, is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or to the issuance of the Sale Order, and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement other than as may be provided for in the SISP or communications which are confidential, without prejudice or privileged by their nature.

(b) Each Party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event that would or

would reasonably be expected to (i) constitute a breach or inaccuracy of any of the representations and warranties of such Party had such representation or warranty been made at the time of the occurrence or nonoccurrence of such event, (ii) constitute a breach of any covenant of such Party, or (iii) make the satisfaction of any condition to Closing impossible or unlikely to be satisfied; provided that no such notice shall be deemed to amend or modify the representations and warranties made hereunder or the Seller Disclosure Letter for purposes of Section 8.4, Section 9.4 or otherwise, or limit the remedies available to any Party hereunder.

6.7 Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Purchasers agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period commencing on the Effective Date and ending at such date on which an orderly wind-down of Sellers' operations has occurred in the reasonable judgment of Purchasers and Sellers and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, facilitating the continuing administration of the CCAA Proceedings, any insurance Claims by, legal proceedings or Tax audits against or governmental investigations of Sellers or Purchasers or in order to enable Sellers or Purchasers to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or Purchasers, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

6.8 Publicity. Neither Sellers nor Purchasers shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchasers or Sellers, disclosure is otherwise required by such party by applicable Law or by the CCAA Court with respect to filings to be made with the CCAA Court in connection with this Agreement; provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or CCAA Court requirement to consult with the other Party with respect to the text thereof.

6.9 Material Adverse Effect. Sellers shall promptly inform Purchasers in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect or otherwise cause the failure of any of Purchasers' conditions to Closing set forth in Article VIII.

6.10 Sale Free and Clear; No Successor Liability. On the Closing Date, the Acquired Assets shall be transferred to the Purchasers free and clear of all obligations, Liabilities and Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by the CCAA.

6.11 Casualty Loss. If, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall promptly notify Purchasers promptly in writing of such fact, (i) in the case

of condemnation or taking, Sellers shall promptly assign or pay, as the case may be, any proceeds thereof to Purchasers at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchasers at Closing. Notwithstanding the foregoing, the provisions of this Section 6.11 shall not in any way modify Purchasers' other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect or otherwise cause the failure of any of Purchasers' conditions to Closing set forth in Article VIII.

6.12 Debtors-in-Possession. From the commencement of the CCAA Proceedings through the Closing, Sellers shall continue to operate their business pursuant to and in accordance with the CCAA and Orders of the CCAA Court. Sellers shall not convert or seek to convert the CCAA Proceedings into any form of a liquidation proceeding under the CCAA or any other applicable legislation.

6.13 CCAA Court Filings.

(a) Sellers shall use their reasonable best efforts to obtain the approval of the CCAA Court to enter the SISP Order on or prior to [June 19], 2020.

(b) If required under the SISP, Sellers shall conduct the Auction for the Acquired Assets on or prior to September 3, 2020.

(c) If Purchasers are the Successful Bidder pursuant to the SISP, subject to satisfaction of the Financing Condition, Surety Condition and Rio Condition, Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Sale Order on or prior to September 28, 2020.

(d) If Purchasers are the Successful Bidder pursuant to the SISP, Sellers shall serve notices of assumption of the Assigned Contracts, including the designation of Cure Amounts, on all necessary parties on or prior to **[_____]**, 2020.

(e) If requested by Purchasers and provided that the Purchasers are the Successful Bidder pursuant to the SISP, subject to satisfaction of the Financing Condition, Surety Condition and Rio Condition. Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Assignment Order on or prior to date the Sale Order is issued.

(f) Sellers shall use their commercially reasonable efforts to provide Purchasers for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement to be filed with the CCAA Court, including the motions for issuance of the Sale Order and the Assignment Order (if applicable).

(g) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify Purchasers of such appeal or stay request and shall provide Purchasers promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchasers with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and Purchasers agree to use their

reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the Parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been issued and has not been stayed and the Purchasers, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(h) Sellers and the Purchasers acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to CCAA Court approval.

(i) After issuance of the Sale Order, neither the Purchasers nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

6.14 Not a Required Back-Up Bidder. If Purchasers participate in and submit an Overbid at the Auction (each as defined in the SISP), then, if required by the SISP as then in effect and applicable to all other Persons submitting an Overbid, Purchasers shall act as Back-Up Bidder (as defined in the SISP) following the Auction in the event that the Purchasers are not selected as the Successful Bidder (as defined in the SISP). Purchasers shall not be required to act as a Back-Up Bidder under any other circumstances.

6.15 Financing Matters.

(a) Purchasers shall use commercially reasonable efforts to satisfy the Financing Condition and, without limiting the generality of the foregoing, shall use commercially reasonable efforts to (i) obtain financing commitments on terms satisfactory to Purchasers in their sole discretion in amounts sufficient to satisfy the Financing Condition (the financing contemplated by such financing commitments being referred to herein as the "Financing"), (ii) satisfy on a timely basis all conditions applicable to Purchasers in such commitments that are within Purchasers' control, and (iii) consummate the Financing at or prior to the Closing to the extent all of the conditions set forth in each of the financing commitments have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, but subject to those conditions being satisfied at the Closing).

(b) Sellers shall use commercially reasonable efforts to provide, and shall use commercially reasonable efforts to cause their respective Representatives to provide, on a timely basis, such cooperation as is reasonably required or requested in connection with Purchasers' efforts to satisfy the Financing Condition, including the arrangement of the Purchasers' Financing, which cooperation may include using commercially reasonable efforts to: (i) upon reasonable advance notice, participate in a reasonable number of due diligence or other sessions with third parties, and provide reasonable access to documents and other information in connection with due diligence investigations and (ii) reasonably assist with Purchasers' and their Representatives' preparation of definitive documentation and the creation of security interests on the Acquired Assets as part of Purchasers' acquisition financing; and (iii) to the extent required, cooperate as necessary and appropriate with respect to the release of security interests.

6.16 Parent Guaranty. Parent hereby guarantees and covenants and agrees, in favor of the Sellers and the Purchasers, to cause the due, prompt and faithful performance and discharge by, and compliance with, all of the obligations, covenants, agreements, terms, conditions and undertakings of Sellers under this Agreement in accordance with the terms hereof, and hereby covenants and agrees to take all actions contemplated by this Agreement to be taken by Parent (including, without limitation, those set forth in Section 2.8).

6.17 Payment of Cure Amount. Following the Closing, Purchasers will make available the Cure Funding Amount to satisfy the Cure Amount. Following the Closing, Purchasers shall provide to Sellers evidence that the Cure Amount (if any) in respect of each Assigned Contract has been paid by Purchasers in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, or (ii) the consent of the applicable counterparty or as otherwise agreed upon by Purchasers and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order, in each case promptly following such payment.

6.18 GNWT Royalties. Prior to or concurrent with the Closing, Sellers shall pay from the proceeds of the Interim Facility, and/or otherwise obtain releases in full in a form satisfactory to Purchasers of all obligations in respect of any period that are due and payable prior to Closing in respect of royalties or similar payment obligations to GNWT, which shall include (for the avoidance of any doubt) all royalty and similar payments obligations to GNWT in respect of fiscal year 2019.

ARTICLE VII

EMPLOYEE MATTERS

7.1 Covenants of Sellers with respect to Employees.

(a) Purchasers intend to make employment offers to substantially all Employees of Sellers, subject to and consistent with requirements based on the plan for resumption of operations at Sellers' facilities, and in consultation with Sellers' management on terms and conditions that are substantially similar to those under which the Employees are employed at the time of Closing. Sellers shall provide reasonable assistance to facilitate the transfer of all Employees that Purchasers elect to hire, which may be subject to any temporary layoff or reduction in effect at Closing, including, without limitation, providing Purchasers access to such Employees' personnel records and such other information regarding the Employees as Purchasers may reasonably request, consistent with Section 7.2 hereof. All Employees who receive employment offers from Purchasers and who accept such offers of employment are hereinafter referred to as the "Transferred Employees". The Purchasers acknowledge that they are successors under all collective agreements set out in Section 4.18 of the Seller Disclosure Letter.

(b) During the Pre-Closing Period, except as consented to in writing by Purchasers (such consent not to be unreasonably withheld, delayed or conditioned), and without limiting the obligations and restrictions set forth in Section 6.1, Sellers (i) shall satisfy all pre-Closing legal or contractual requirements to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in

connection with the transactions contemplated by this Agreement, and (ii) shall not (A) enter into, establish, adopt, materially amend or terminate any Employee Plan (or any plan or arrangement that would be an Employee Plan if in existence on the date of this Agreement), other than as required by Law, (B) increase the compensation and benefits payable or to become payable to Employees or former Employees or any dependent or other person claiming through an Employee or former Employee, (C) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (D) promote, hire or terminate the employment of (other than for cause) any Employee or (E) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee.

7.2 Covenants of Purchasers with respect to Employees.

(a) Purchasers shall assume the Employee Plans (collectively, the "Assumed Plans"). Purchasers, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause Purchasers to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(b) On and following the Effective Date, Sellers and Purchasers shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.2, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(c) The provisions of this Section 7.2 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a Party to this Agreement, nor shall any provision of this Agreement except solely for the purpose of giving effect to sections 7.2(a) and 7.2(b) be deemed to be the adoption of, or an amendment to, any Employee Plan, or otherwise to limit the right of Purchasers or Sellers to amend, modify or terminate any such Employee Plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any Employee Plan or (ii) prohibit the termination or change in terms of employment of any Employee (including any Transferred Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any Employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

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ARTICLE VIII

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASERS

The obligations of Purchasers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Purchasers) of the following conditions precedent on or before the Closing Date.

8.1 CCAA Court Approvals. The SISP Order, the Sale Order and the Assignment Orders (if applicable) shall have been issued by the CCAA Court and shall have become Final Orders.

8.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

8.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

8.4 Representations and Warranties True as of Both Effective Date and Closing Date. Each of the representations and warranties of Sellers (a) contained herein (other than as set forth in clause (c) below) that are not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all material respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, (b) contained herein (other than as set forth in clause (c) below) that are qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and (c) contained in Section 4.1, Section 4.2, Section 4.4 and Section 4.6 shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

8.5 Compliance with Covenants. Sellers shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

8.6 No Material Adverse Effect. Since the Effective Date, there shall not have been a Material Adverse Effect.

8.7 Essential Contracts; Cure Amount. (i) All consents, approvals or waivers necessary to assign the Essential Contracts to the Purchasers shall have been obtained, or an Assignment Order shall have been granted by the CCAA Court in respect of such Essential Contracts where necessary consents, approvals or waivers have not been obtained; (ii) the Cure Amount payable

with respect to Essential Contracts[2] (other than the Diavik Joint Venture Agreement) shall not exceed the Cure Funding Amount (calculated based on a US$ to Cdn$ exchange rate of [•] with respect to any amounts to be paid in Canadian dollars) and (iii) the Assignment Order shall provide that the Cure Amount with respect to Assigned Contracts subject to the Assignment Order shall not be payable earlier than 30 days following Closing.

8.8 Authorizations. Purchasers (or the applicable Designated Purchaser) shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to Purchasers, either by transfer or re-issuance, all material Authorizations required to operate the Business and Acquired Assets, including those set forth (or required to be set forth) on Section 4.3(a) of the Seller Disclosure Letter, consistent in all material respects with historical operations.

8.9 Surety Condition. Purchasers shall have entered into an agreement, in form and substance satisfactory to Purchasers at their sole discretion, with the issuers of any surety bond supporting the obligations of the Sellers and the Government of the Northwest Territories ("GNWT") with respect to collateralization of reclamation obligations of Purchasers under environmental agreements, Authorizations, licenses and subleases to be transferred (the "Surety Condition").

8.10 Ordinary Course Operations. Purchasers shall not be subject to any mandatory governmental Regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) Purchasers from conducting operations at the Ekati Diamond Mine substantially consistent with the level of operations contemplated by Sellers' business plan in effect prior to COVID-related impacts; or (ii) Purchasers' ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts.

8.11 Diavik Mine. Purchasers shall have reached an agreement acceptable to Purchasers with DDMI and the GNWT, in form and substance satisfactory to Purchasers at their sole discretion, in relation to the timing and quantum of capital calls and reclamation liabilities with respect to the Diavik Joint Venture (the "Rio Condition").

8.12 Diavik Good Standing. Purchasers shall have determined, acting reasonably, that upon payment of any outstanding cash calls with interest and the posting of cash collateral in respect of its portion of the reclamation Liability in accordance with the existing closure security agreement or pursuant to other arrangements to be agreed that: (i) Purchasers will be in full compliance with its obligations under the Diavik Joint Venture Agreement when assigned to Purchasers, (ii) Purchasers shall hold a 40% participating interest in the Diavik Joint Venture free and clear of any Encumbrance other than as imposed by DDMI under the Diavik Joint Venture Agreement and (iii) DDMI shall agree to deliver any diamond inventory which accrued to the account of DDM under the Diavik Joint Venture Agreement which had not yet been delivered.

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[2] NTD: Subject to receipt from Sellers and review of proposed Schedule F list of Essential Contracts and a schedule of Material Contracts.

8.13 Financing. Purchasers shall have obtained third party equity and debt commitments on terms satisfactory to Purchasers in their sole discretion in amounts that, in the aggregate are sufficient to pay the Purchase Price (including satisfaction of the Assumed Liabilities), and the aggregate amount of equity financing committed by parties not affiliated with Washington Diamond Investments Holdings II, LLC or any of its Affiliates shall exceed US$140,000,000 less 50% of any debt raised (the "Financing Condition").

8.14 Delivery of Acquired Assets. Each of the deliveries required to be made to Purchasers pursuant to Section 10.2 shall have been so delivered and at Closing, Sellers shall deliver possession of all Acquired Assets to Purchasers, *in situ,* wherever such Acquired Assets are located at Closing consistent with the terms of this Agreement.

8.15 Corporate Documents. Sellers shall have delivered to Purchasers copies of the resolutions of Sellers' board of directors or similar governing body, as applicable, evidencing the approval of this Agreement and the transactions contemplated hereby.

8.16 Release of Encumbrances. The Sale Order shall provide for the release of any and all Encumbrances on the Acquired Assets other than Permitted Encumbrances, and Purchasers shall have received such documents or instruments as may be required, in Purchasers' reasonable discretion, to demonstrate that, effective as of the Closing Date, the assets of the Acquired Subsidiaries are released from any and all Encumbrances other than Permitted Encumbrances.

8.17 Accounts Payable. Sellers shall have paid all trade payables arising from the provision of goods and services on or after the Filing Date that are due and payable at or before the Closing, other than such amounts which are disputed by the Sellers in good faith for which adequate reserves have been created under the DIP Budget.

8.18 Interim Facility Compliance. Immediately prior to the Closing, there has not been an Event of Default as defined in the Interim Facility Credit Agreement.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) of the following conditions precedent on or before the Closing Date:

9.1 CCAA Court Approvals. The SISP Order, the Sale Order shall have been issued by the CCAA Court and shall have become Final Orders.

9.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

9.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

9.4 Representations and Warranties True as of Both Effective Date and Closing Date. The representations and warranties of each Purchaser (a) contained herein that are not qualified by "materiality" or "material adverse effect" shall be true and correct in all material respects on and as of the Effective Date, and shall also be true in all material respects on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) with the same force and effect as though made by each Purchaser on and as of the Closing Date, and (b) contained herein that are qualified by "materiality" or "material adverse effect" shall be true and correct in all respects on and as of the Effective Date, and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date), in each case, except where the failure of such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on each Purchaser's ability to consummate the transactions contemplated by this Agreement.

9.5 Compliance with Covenants. Purchasers shall have performed or complied in all material respects with all of its covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

9.6 Corporate Documents. Purchasers shall have delivered to Sellers copies of the resolutions of Purchasers' board of managers evidencing the approval of this Agreement and the transactions contemplated hereby.

ARTICLE X

CLOSING

10.1 Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place on the fifth (5th) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VIII and Article IX (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time as the Parties may agree.

10.2 Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver, in addition to the other documents contemplated by this Agreement, the following to Purchasers:

(a) a bill of sale in the form of Schedule A duly executed by Sellers;

(b) an assignment and assumption agreement in the form of Schedule B (the "Assignment and Assumption Agreement") duly executed by Sellers;

(c) duly executed instruments for the sale, transfer, assignment or other conveyance to the Purchasers and relevant Designated Purchasers, of the equity interests in the

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Acquired Subsidiaries, in accordance with the requirements of applicable local Law and this Agreement;

(d) a true copy of the Sale Order and any Assignment Orders (if applicable);

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller certifying that the conditions set forth in Section 8.4 and Section 8.5 have been satisfied;

(f) an instrument of assumption and assignment of the Assigned Contracts regarding leased real property substantially in the form of Schedule C (the "Assignment and Assumption of Leases"), duly executed by each Seller, in form for recordation with the appropriate public land records to the extent the underlying lease is of record;

(g) an Intellectual Property Assignment and Assumption Agreement substantially in the form of Schedule D (the "IP Assignment and Assumption Agreement"), duly executed by each Seller;

(h) possession of all owned real property included in the Acquired Assets, together with duly executed and acknowledged transfer deeds for all such owned real property conveying the owned real property subject only to Permitted Encumbrances, and any existing surveys, legal descriptions and title policies that are in the possession of Sellers;

(i) possession of the Acquired Assets and the Business *in situ,* wherever such Acquired Assets are located at the Closing consistent with the terms of this Agreement;

(j) stock powers or similar instruments of transfer, duly executed by the applicable Seller, transferring all of the capital stock or other equity interests of the Acquired Subsidiaries to Purchasers (it being understood that such instruments shall address the requirements under applicable Law local to the jurisdiction of organization of each such Acquired Subsidiary necessary to effect and make enforceable the transfer to Purchasers of the legal and beneficial title to such capital stock or other equity interests);

(k) all tax elections or designations described in Section 12.13, duly executed by DDM;

(l) a certificate duly executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b)(2)(iv);

(m) a bill of sale and assignment agreement with respect to the conveyance of any Acquired Assets required to be transferred and assigned to Purchasers pursuant to Section 2.8, in form and substance reasonably satisfactory to Purchasers, duly executed by Parent and each of the Retained Subsidiaries; and

(n) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Purchasers, as Purchasers may reasonably request to vest in Purchasers all of

.

Sellers' right, title and interest of Sellers in, to or under any or all the Acquired Assets, including all owned real property included in the Acquired Assets.

10.3 Deliveries by Purchasers. At the Closing, Purchasers will deliver the following:

(a) the Cash Component payable pursuant to and in accordance with Section 3.1;

(b) a confirmation, acknowledgement or other documentation satisfactory to the Sellers to be delivered by Washington Diamond, confirming the quantum of the credit to be applied against the obligations owing by the Sellers to Washington Diamond under the Interim Financing Credit Agreement towards satisfaction of the Cash Component all as contemplated by Section 3.2(a), such confirmation being subject to Monitor approval;

(c) the Assignment and Assumption Agreement duly executed by the applicable Purchaser;

(d) the Assignment and Assumption of Leases duly executed by the applicable Purchaser;

(e) the IP Assignment and Assumption Agreement, executed by applicable Purchaser;

(f) all tax elections or designations described in Section 12.13, duly executed by Canadian Purchaser;

(g) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Purchaser certifying that the conditions set forth in Section 9.4 and Section 9.5 have been satisfied; and

(h) such other documents as Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

10.4 Monitor's Certificate. Upon satisfaction or waiver by the Purchasers of all conditions precedent to Closing under Article VIII and delivery to the Purchasers of all Closing deliverables under Section 10.2, the Purchasers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Purchasers' Conditions Certificate"). Upon satisfaction or waiver by the Sellers of all conditions precedent to Closing under Article IX and delivery to the Sellers of all Closing deliverables under Section 10.3, the Sellers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Sellers' Conditions Certificate" and together with the Purchasers' Conditions Certificate, the "Conditions Certificates"). Upon receipt by the Monitor of each of the Conditions Certificates, the Monitor shall (i) forthwith issue its Monitor's Certificate concurrently to the Sellers and the Purchasers, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Sellers and the

Purchasers). For greater certainty, the Monitor shall be entitled to rely exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

ARTICLE XI

TERMINATION

11.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time on or prior to the Closing Date:

(a) Mutual Consent. By mutual written consent of Purchasers and Sellers.

(b) Termination by Purchasers or Sellers.

(i) by Purchasers or Sellers, if the Closing shall not have occurred on or prior to October 31, 2020 (the "Outside Date"); provided, however, that Sellers and Purchasers shall not be entitled to terminate this Agreement pursuant to this Section 11.1(b)(i) if the failure of the Closing to have occurred by the date specified above is caused by such Party's breach of any of its obligations under this Agreement;

(ii) by Purchasers or Sellers, if the CCAA Court or other court of competent jurisdiction or a governmental, quasi-governmental, regulatory or administrative department, agency, commission or authority shall have issued or enacted an Order or Law restraining, enjoining or otherwise prohibiting the Closing, which is not capable of appeal; provided, however, that Sellers and Purchasers shall not be entitled to terminate this Agreement pursuant to this Section 11.1(b)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement;

(iii) by Purchasers or Sellers, if the Auction has occurred and the Purchasers are not the Successful Bidder; or

(iv) by Purchasers or Sellers, if the CCAA Court issues an Order approving an Alternate Transaction.

(c) Termination by Purchasers.

(i) by Purchasers, if (A) the SISP Order, including approval of the Break-Up Fee and Expense Reimbursement Amount and the granting of the Break-Up Fee Charge, shall not have been entered by the CCAA Court on or prior to June [19], 2020 (B) the SISP Order is amended, supplemented or otherwise modified in any manner adverse to the Purchasers or (C) the SISP Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any manner adverse to the Purchasers (other than in any de minimums respect), in each case without the prior written consent of the Purchasers;

(ii) by Purchasers, if (A) the Sale Order shall not have been issued by the CCAA Court on or prior to September 28, 2020 or if the Sale Order has been issued by

such date but has been amended, supplemented or otherwise modified in any respect without the prior written consent of Purchasers, or (B) following its issuance, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Purchasers, acting reasonably;

(iii) by Purchasers, if there is any unwaived and uncured Event of Default (as defined in the Interim Facility Credit Agreement) under the Interim Facility or if at any time Washington Diamond is not an Interim Lender;

(iv) by Purchasers, if the CCAA Proceedings are terminated or a licensed insolvency trustee or receiver is appointed in respect of the Sellers, and such licensed insolvency trustee or receiver refuses to proceed with the transactions contemplated by this Agreement;

(v) by Purchasers, if a breach of any representation, warranty, covenant or agreement on the part of Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article VIII not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Sellers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period;

(vi) by Purchasers, if either (a) Sellers or their Affiliates request or (b) the CCAA Court approves any amendments or modifications to the SISP that adversely affects the interests of Purchasers, the Interim Lenders, or the transactions contemplated by this Agreement (which, for the avoidance of doubt, include any amendments or modifications to the Minimum Purchase Price or the Outside Date (as defined and established under the SISP), any amendments or modifications to the requirements set out for Phase 1 Qualified Bids in section 15 of the SISP or for Phase 2 Qualified Bids in section 23 of the SISP, and any amendment or modification to the terms and conditions set forth in sections 2, 3, 5, 9, 15, 17, 18, 20, 21, 23, 24-31, 35 and 36-38 of the SISP);

(vii) by Purchasers, acting reasonably, if the CCAA Court enters any Order inconsistent with the SISP Order, the Sale Order or the Acquisition, other than in any de minimus respect;

(viii) by Purchasers, if any creditor of any Seller obtains a final and unstayed Order of the CCAA Court granting relief from the stay to foreclose or exercise enforcement rights on any portion of the Acquired Assets in excess of Cdn$500,000 in the aggregate;

(ix) by Purchasers, if a Material Adverse Effect occurs; or

(x) by Purchasers, if, for any reason (including, without limitation, an Order of the CCAA Court), Purchasers are unable to credit bid up to the full amount of the Liabilities owed to Washington Diamond under the Interim Facility Credit Agreement in satisfaction of all or any portion of the Cash Component.

(d) Termination by Sellers.

(i) by Sellers, if a breach of any representation, warranty, covenant or agreement on the part of Purchasers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article IX not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Purchasers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period; or

(ii) by Sellers, with the consent of Credit Suisse AG, Cayman Islands Branch, as administrative agent under the Pre-filing Credit Agreement, on or before the first Business Day after the Phase 2 Bid Deadline (as defined in the SISP) if Purchasers do not remove or satisfy the Financing Condition on or before July 31, 2020.

11.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 11.1, written notice thereof shall forthwith be given to the other Parties to this Agreement and the Monitor and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Article XI.

11.3 Breach by Purchasers. If this Agreement is terminated solely as a result of a material breach by Purchasers pursuant to Section 11.1(d)(i) hereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of $12,610,700 (the "Purchaser Termination Fee"), which shall be payable by Purchasers by giving the Sellers a credit towards the Indebtedness owed to Washington Diamond under the Interim Facility Credit Agreement or by wire transfer of immediately available funds. The Parties hereby agree that the foregoing dollar amount is a fair and reasonable estimate of the total detriment that Sellers would suffer in the event of Purchasers' default and failure to complete the transaction hereunder. Sellers' receipt or credit of the Purchaser Termination Fee in full pursuant to and in accordance with this Section 11.3 shall be the sole and exclusive remedy of Sellers and their Affiliates, attorneys, accountants, Representatives or agents, and, except for payment or credit of the Purchaser Termination Fee pursuant to and in accordance with this Section 11.3 or pursuant to the Limited Guaranty, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against Purchasers, any Purchaser Related Party, any potential debt or equity financing source and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Representatives or Affiliates, for any Liability suffered with respect to this Agreement and the transactions contemplated by or in connection with this Agreement (including any breach or failure to perform by Purchasers, whether willfully, intentionally, unintentionally or otherwise), the termination of this Agreement, the failure of the transactions contemplated under this Agreement to be consummated for any reason or no reason or any breach of this Agreement by Purchasers, and in no event shall Sellers or any of the other Applicants be entitled to seek or obtain any other damages or other remedy of any kind, at law or in equity, against any such Person, including consequential, special, indirect, exemplary or punitive damages or for diminution in value, lost profits or lost business. Sellers further acknowledge that the Purchaser Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will appropriately compensate Sellers under the circumstances.

11.4 Break-Up Fee and Expense Reimbursement Amount.

(a) In consideration of Purchasers and their Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate the Purchasers as a stalking-horse bidder, if the Financing Condition and the Rio Condition have been satisfied or waived on or before July 31, 2020, and

(i) this Agreement is terminated and (A) a Successful Bid (as defined in the SISP) or (B) any other sale of assets or plan in the CCAA Proceedings that (I) results in a change in control of DDM, (II) provides cash on closing to the Sellers or the Applicants equal to or greater than the Minimum Purchase Price (as defined in the SISP), and (III) did not arise following a termination of this Agreement solely pursuant to Section 11.1(d)(i) due to a material breach of this Agreement by Purchasers, is consummated, or

(ii) this Agreement is terminated and any other transaction is consummated within nine (9) months after termination of the SISP that (A) (i) results in a change in control of DDM, or (ii) provides cash on closing to the Sellers or the Applicants equal to or greater than the Minimum Purchase Price (as defined in the SISP), and (B) did not arise following a termination of this Agreement solely pursuant to Section 11.1(d)(i) due to a material breach of this Agreement by Purchasers,

(in either case, an "Alternate Transaction"), then Sellers shall pay to Purchaser Holdco (or as otherwise directed by Purchaser Holdco) in cash immediately following the closing of such Alternate Transaction:

(iii) the Expense Reimbursement Amount, not to exceed US$2,250,000, and

(iv) an amount equal to US$2,522,140 (the "Break-Up Fee") as consideration for the disposition of Purchaser Holdco's rights under this Agreement.

Sellers' obligation to pay the Break-Up Fee pursuant to this Section 11.4 shall survive termination of this Agreement and shall be secured by the Break-Up Fee Charge granted in favor of the Purchasers pursuant to the SISP Order. No other amounts shall be payable by the Sellers to the Purchasers arising from or in connection with the termination of this Agreement other than as provided for in this Section 11.4.

ARTICLE XII

MISCELLANEOUS

12.1 Expenses. Except as otherwise provided herein (including without limitation Section 11.4) or the SISP Order, each Party hereto shall bear its own expenses with respect to the transactions contemplated hereby.

12.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon

the Closing Date. Except as otherwise provided herein, the Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

12.3 Amendment; Waiver. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided that, notwithstanding the foregoing, the Acquired Assets and Assigned Contracts may be amended in accordance with Section 2.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4 Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service (such as FedEx):

(A) If to Sellers, addressed as follows:

Dominion Diamond Mines
900 – 606 4 Street SW
Calgary, Alberta, Canada
T2P 1T1
Attention: Brendan Bell
Email: brenbellnt@gmail.com

With a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600
Vancouver, BC, Canada
V7X 1L3
Attention: Linc Rogers
Attention: Susan Tomaine
Email: linc.rogers@blakes.com
Email: susan.tomaine@blakes.com

(B) If to Purchasers, addressed as follows:

c/o The Washington Companies
101 International Drive
Missoula, MT 59808
Attention: Larry Simkins
Email: lsimkins@washcorp.com

With a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001-8602
Attention: Stephen F. Arcano
Attention: Marie L. Gibson
Email: Stephen.Arcano@skadden.com
Email: Marie.Gibson@skadden.com

and

Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, Illinois 60606
Attention: Ron E. Meisler
Email: Ron.Meisler@skadden.com

and

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada
Attention: Brendan O'Neill
Attention: Michael Partridge
Email: boneill@goodmans.ca
Email: mpartridge@goodmans.ca

(C) If to the Monitor, addressed as follows

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

With a copy (which shall not constitute notice) to

Bennett Jones LLP
4500 Bankers Hall East

855 - 2nd Street SW
Calgary AB T2P 4K7
Attention: Chris Simard
Email: simardc@bennettjones.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

12.5 Effect of Investigations. Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of Purchasers shall not limit, qualify, modify or amend the representations, warranties and covenants of, and indemnities by, Sellers made or undertaken pursuant to this Agreement, irrespective of the knowledge and information received (or which should have been received) therefrom by Purchasers.

12.6 Counterparts; Electronic Signatures.

(a) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

12.7 Headings. The headings preceding the text of Articles and Sections of this Agreement and the Seller Disclosure Letter are for convenience only and shall not be deemed part of this Agreement.

12.8 Applicable Law and Jurisdiction. Subject to any provision in this Agreement and any Ancillary Document to the contrary, this Agreement (and all documents, instruments, and agreements executed and delivered pursuant to the terms and provisions hereof) shall be governed by and construed and enforced in accordance with the laws of Alberta and the laws of Canada applicable therein. Purchasers and Sellers further agree that the CCAA Court shall have jurisdiction over all disputes and other matters relating to (a) the interpretation and enforcement of this Agreement or any Ancillary Document and/or (b) the Acquired Assets and/or Assumed Liabilities and the Parties expressly consent to and agree not to contest such jurisdiction.

12.9 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, provided that, Purchasers may grant a security interest in its rights and interests hereunder to its third party lender(s). Nothing contained herein, express or implied, is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12.10 Designated Purchasers. In connection with the Closing, notwithstanding Section 12.9 or anything to the contrary contained herein, Purchasers shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchasers to (a) purchase specified Acquired Assets (including specified Assigned Contracts) and pay the corresponding Purchase Price amount, (b) assume specified Assumed Liabilities, (c) employ specified Transferred Employees on and after the Closing Date, (d) perform any of the other covenants and agreements hereunder to be performed by Purchasers and (e) be entitled to the rights and benefits afforded to Purchasers hereunder (any such Subsidiary or Affiliate of Purchasers that shall be designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the corresponding Purchase Price, the specified Assumed Liabilities and employment of the specified Transferred Employees. Any reference to Purchasers made in this Agreement in respect of any right, obligation, purchase, assumption or employment referred to in this paragraph shall be deemed a reference to the appropriate Designated Purchaser, if any, with respect to the applicable obligation or right. All obligations of Purchasers and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchasers nor any other Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by a particular Designated Purchaser at the Closing and any prior obligations of the Purchasers are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect any limitation on Purchasers' obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchasers and any Designated Purchaser(s) hereunder. The above designations shall be made by Purchasers by way of a written notice to be delivered to Sellers in no event later than five (5) Business Days prior to the anticipated Closing Date; provided, however, that no such designation may be made if the timing of such designation would reasonably be expected to delay the Closing; provided, further, that such designation shall not be permitted unless the Sellers' confirm, acting reasonably, that the Designated Purchasers, or any party guaranteeing the obligations of such Designated Purchasers, are sufficiently creditworthy. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchasers are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchasers.

12.11 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective Affiliates and no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, Liability, reimbursement, Claim of Action or other right.

12.12 No Recourse. This Agreement may only be enforced against, and any Claims or causes of Action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as Parties hereto and no Purchaser Related Party (other than the Guarantor to the extent set forth in the Limited Guaranty) shall have any Liability for any obligations or liabilities of the Parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith. Without limiting the rights of Sellers against Purchasers hereunder, in no event shall Sellers or any of their Affiliates, and Sellers agree not to and to cause their Affiliates not to, seek to enforce this Agreement against, make any Claims for breach of this Agreement against, or seek to recover

monetary damages from, any Purchaser Related Party (other than any payment from the Guarantor to the extent set forth in the Limited Guaranty).

12.13 Tax Matters.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or similar fees or other Taxes (other than any Taxes based on income, receipts, profits, or capital), governmental charges and recording charges (including any interest and penalty thereon) which may be applicable to, or resulting from, or payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne by Purchasers as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchasers shall properly file on a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to Sellers evidence of payment of all Transfer Taxes.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a "Straddle Period"), (i) Taxes imposed on the Acquired Assets that are based upon or related to income or receipts or imposed on a transaction basis (including all related items of income, gain, deduction or credit) will be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date, and (ii) any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period and in each of (i) and (ii), such amounts shall be the responsibility of Sellers (and, for the avoidance of doubt, such amounts shall be an Excluded Liability for purposes of clause (ii) of Section 2.4(e)).

(c) Purchasers shall prepare and file (or cause to be prepared and filed) all Tax Returns for any Pre-Closing Tax Period or Straddle Period in respect of the Acquired Subsidiaries that is required to be filed after the Closing Date. Prior to filing any such Tax Returns, Purchasers shall provide a draft thereof to Sellers for Sellers' review, comment and approval (such approval not to be unreasonably withheld or delayed), unless otherwise required by applicable Law. Purchasers shall consider in good faith any comments provided by Sellers to such Tax Returns. To the extent any Taxes reflected on any such Tax Return are an Excluded Liability, Sellers shall pay to Purchasers the amount of such liability within ten (10) days of receiving notice from Purchasers that such Tax Return has been filed or that Purchasers has paid such Liability, except to the extent such Taxes were paid by Sellers to the applicable Governmental Body prior to the filing of such Tax Return.

(d) Cooperation on Tax Matters. Purchasers shall make available to Sellers, and Sellers shall make available to Purchasers, (i) such records, personnel and advisors as any such Party may require for the preparation of any Tax Returns required to be filed by Sellers or Purchasers, as the case may be, and (ii) such records, personnel and advisors as Sellers or Purchasers may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchasers was included. Sellers agree to provide all reasonable cooperation to Purchasers, and shall make available to Purchasers such records,

personnel and advisors as is reasonably necessary for Purchasers, in determining the Tax attributes of Sellers and their Subsidiaries.

(e) Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with their respective fair market values. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Purchasers shall provide Sellers with a draft allocation of the Purchase Price for all purposes, including any liabilities properly included therein among the Acquired Assets and the agreements provided for herein, for all purposes (the "Initial Allocation"). Within forty-five (45) days of the receipt of the Initial Allocation, Sellers shall deliver a written notice (the "Objection Notice") to Purchasers, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes. Sellers may make reasonable inquiries of Purchasers and their accountants and employees relating to the Initial Allocation, and Purchasers shall use reasonable efforts to cause any such accountants and employees to cooperate with, and provide such requested information to, Sellers in a timely manner. If prior to the conclusion of such forty-five (45)-day period, Sellers notify Purchasers in writing that they will not provide any Objection Notice or if Sellers do not deliver an Objection Notice within such forty-five (45)-day period, then Purchasers' proposed Initial Allocation shall be deemed final, conclusive and binding upon each of the Parties hereto. Within thirty (30) days of Sellers' delivery of the Objection Notice, Sellers and Purchasers shall attempt to resolve in good faith any disputed items, and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to an Arbitrating Accountant. The fees and expenses of the Arbitrating Accountant shall be paid 50% by Purchasers and 50% by Sellers, unless the Arbitrating Accountant determines that one party's position was unreasonable in light of the circumstances, in which case such party shall bear 100% of such costs. Such determination by the Arbitrating Accountant shall be (i) in writing, (ii) furnished to Purchasers and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), (iii) made in accordance with the principles set forth in this Section 12.13(e), and (iv) non-appealable and incontestable by Purchasers and Sellers. As used herein, the "Allocation" means the allocation of the Purchase Price, the Assumed Liabilities and other related items among the Acquired Assets and the agreements provided for herein as finally agreed between Purchasers and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 12.13(e). The Allocation shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, local or foreign Law, as appropriate). Purchasers and Sellers shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective U.S. federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation, including in the course of any Tax audit, Tax review or Tax litigation relating thereto, unless otherwise required under applicable Law. Sellers shall provide Purchasers and Purchasers shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

(f) Section 22 Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian Purchaser shall jointly execute and file an election pursuant to section 22 of the Tax Act and the corresponding provisions of any

applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, with respect to the sale of accounts receivable, and shall designate therein the portion of the Purchase Price allocated to the accounts receivable pursuant to paragraph (e) of this Section as consideration paid by Canadian Purchaser for the accounts receivable of Sellers.

(g) Section 20(24) Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian Purchaser shall jointly execute and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, in respect of deferred revenue of the Business or the Canadian Assets for an amount of such deferred revenue that is being so transferred to Canadian Purchaser in consideration for Canadian Purchaser undertaking future obligations in connection with the deferred revenue. In this regard, DDM and Canadian Purchaser acknowledge that if such election is made, a portion of the Canadian Assets having a value equal to the elected amount under subsection 20(24) of the Tax Act is being transferred by DDM to Canadian Purchaser as a payment for the assumption of such future obligations by Canadian Purchaser.

(h) Successor Election. If requested by Canadian Purchaser and in Canadian Purchaser's sole discretion, DDM and Canadian Purchaser shall jointly execute and file an election described in paragraph 66.7(7)(e) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the time limits set out in that section, in respect of the Canadian Resource Property (as that term is defined in subsection 66(15) of the Tax Act) acquired by Canadian Purchaser from DDM under this Agreement, provided that any such filing or filings does not give rise to any Tax Liability to DDM.

(i) Section 167 Election. At the Closing, DDM and the Canadian Purchaser will jointly execute an election pursuant to subsections 167(1) and (1.1) of the GST Legislation so that DDM is not required to collect GST in respect of the transfer of the Canadian Assets. The Canadian Purchaser shall file the election within the time prescribed by the GST Legislation.

(j) Withholding. Purchasers, and any Person acting on their behalf, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchasers are required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment; provided that Purchasers shall consult with the affected Sellers or other Persons in good faith prior to making such withholding or deduction and the Parties hereto shall reasonably cooperate to reduce or eliminate any such amounts. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Sellers or the Person in respect of whom such deductions and withholding was made, as the case may be.

12.14 Construction.

(a) The information contained in the Seller Disclosure Letter is disclosed solely for the purposes of this Agreement and may include items or information not required to be disclosed under this Agreement, and no information contained in any Seller Disclosure Letter shall be deemed to be an admission by any Party hereto to any third Person of any matter whatsoever, including an admission of any violation of any Laws or breach of any agreement. No information

contained in any section of the Seller Disclosure Letter shall be deemed to be material (whether individually or in the aggregate) to the Business, assets, liabilities, financial position, operations, or results of operations of Sellers nor shall it be deemed to give rise to circumstances which may result in a Material Adverse Effect, in each case solely by reason of it being disclosed. Information contained in a section or subsection of the Seller Disclosure Letter (or expressly incorporated therein) shall qualify the representations and warranties made in the identically numbered Section or, if applicable, subsection of this Agreement and all other representations and warranties made in any other section or subsection of the Seller Disclosure Letter to the extent its applicability to such section or subsection of the Seller Disclosure Letter is reasonably apparent on its face. References to agreements in the Seller Disclosure Letter are not intended to be a full description of such agreements, and all such disclosed agreements should be read in their entirety, and nothing disclosed in any section or subsection of the Seller Disclosure Letter is intended to broaden any representation or warranty contained in Article IV or Article V.

(b) References in Article IV or Article V to documents or other materials "provided" or "made available" to Purchasers or similar phrases mean that such documents or other materials were present (and available for viewing by Purchasers and their Representatives) in the Data Room.

12.15 Entire Understanding. This Agreement, together with the Ancillary Documents and the Interim Facility Credit Agreement, set forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement and the Ancillary Documents hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement or in any Ancillary Documents hereto.

12.16 No Presumption Against Drafting Party. Each of the Purchasers and Sellers acknowledge that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule or Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

12.17 No Punitive Damages. The Parties hereto expressly acknowledge and agree that no Party hereto shall have any Liability under any provision of this Agreement for any punitive damages relating to the breach or alleged breach of this Agreement.

12.18 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

12.19 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity,

illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

PURCHASER HOLDCO:

CANADIAN DIAMOND HOLDINGS, L.P.

____
By:
Its:

CANADIAN PURCHASER:

CA CANADIAN DIAMOND MINES ULC

____
By:
Its:

[Signature Page to Asset Purchase Agreement]

SELLERS:

Dominion Diamond Holdings, LLC

____
By:
Its:

Dominion Diamond Mines ULC

____
By:
Its:

PARENT:

Washington Diamond Investments, LLC

____
By:
Its:

[Signature Page to Asset Purchase Agreement]

SCHEDULE A

BILL OF SALE

SCHEDULE B

ASSIGNMENT AND ASSUMPTION AGREEMENT

.

SCHEDULE C

ASSIGNMENT AND ASSUMPTION OF LEASES

SCHEDULE D

IP ASSIGNMENT AND ASSUMPTION AGREEMENT

SCHEDULE E

FORM OF SALE ORDER

SCHEDULE F

ASSIGNED CONTRACTS

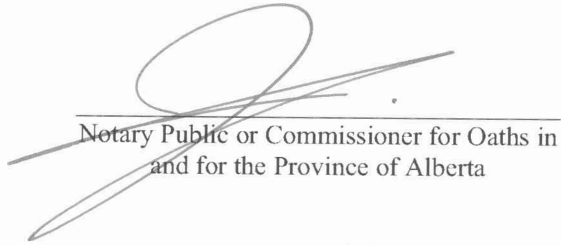
SCHEDULE G

FORM OF SISP ORDER

This is Exhibit "D"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

Execution Version

ASSET PURCHASE AGREEMENT

BY AND AMONG

DDJ CAPITAL MANAGEMENT, LLC,

BRIGADE CAPITAL MANAGEMENT, LP,

DOMINION DIAMOND HOLDINGS, LLC,

DOMINION DIAMOND MINES ULC,

DOMINION DIAMOND DELAWARE COMPANY LLC,

DOMINION DIAMOND MARKETING CORPORATION,

DOMINION DIAMOND CANADA ULC

AND

DOMINION FINCO INC.

Dated as of December 6, 2020

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is dated as of December 6, 2020 (the "Effective Date"), by and among DDJ Capital Management, LLC ("DDJ"), Brigade Capital Management, LP ("Brigade", and together with DDJ, the "Bidders" and each individually, a "Bidder"), Dominion Diamond Holdings, LLC, a Delaware limited liability company ("Dominion Holdings"), Dominion Diamond Mines ULC, a British Columbia unlimited liability company and a wholly owned subsidiary of Dominion Holdings ("DDM"), Dominion Diamond Delaware Company LLC, a Delaware limited liability company and a wholly owned subsidiary of DDM ("DDC"), Dominion Diamond Marketing Corporation, a wholly owned subsidiary of Dominion Holdings ("Dominion Marketing"), Dominion Diamond Canada ULC, a wholly owned subsidiary of DDC ("DDCU"), Dominion Finco Inc. ("Finco" and together with Dominion Holdings, DDM, DDC, Dominion Marketing and DDCU, the "Sellers").

WHEREAS, DDM is a diamond producer with ownership interests in diamond projects in the Northwest Territories and Sellers are engaged, directly and indirectly through the Acquired Subsidiaries (as defined below), in the business of mining and selling rough diamonds to the global market (the "Business");

WHEREAS, on April 22, 2020 (the "Filing Date"), the Sellers obtained an initial order (the "Initial Order") under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Alberta Court of Queen's Bench (the "CCAA Court") that, among other things, commenced the CCAA proceedings (the "CCAA Proceedings") and granted an initial stay of proceedings in respect of the Sellers (the "Stay"). On May 1, 2020, the Sellers obtained an amended and restated version of the Initial Order from the CCAA Court (as further amended and restated from time to time, the "Amended and Restated Initial Order") that, among other things, extended the Stay.

WHEREAS, the Bidders intend and have agreed to constitute one or more special purpose acquisition vehicles (the "Purchaser") to purchase the Sellers' right, title and interest in and to the Acquired Assets (as defined below) and assume the Assumed Liabilities (as defined below) on the terms and subject to the conditions set forth in this Agreement, subject to obtaining the Sale Order (as defined below) (the "Acquisition");

WHEREAS, the Sellers and Bidders have agreed that, pending the constitution of the Purchaser, the Bidders shall have executed this Agreement on behalf of the Purchaser, who shall upon constitution, become a Party to and accept the terms and conditions of this Agreement and undertake to perform all of the obligations of and exercise all of the rights of the Purchaser under this Agreement; and

WHEREAS, the Parties desire to consummate the Acquisition as promptly as practicable following the satisfaction of the conditions precedent set out herein, including the issuance of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1 Specific Definitions. Capitalized terms used herein shall have the meanings set forth below:

"Aboriginal Agreements" shall have the meaning ascribed thereto in Section 5.16(a).

"Aboriginal Claims" means any and all claims (whether or not proven) by any Person, pursuant to section 35 of the *Constitution Act, 1982 Schedule B to the Canada Act, 1982 (U.K.)* or otherwise, to or in respect of: (1) rights, title or interests of any Aboriginal Group by virtue of its status as an Aboriginal Group; (2) treaty rights; (3) Métis rights, title or interests; or (4) rights under land claims and agreements; or (5) specific or comprehensive claims being considered by the Government of Canada; and includes any alleged or proven failure of the Crown to have satisfied, prior to the date hereof, any of its duties to any claimant of any of the foregoing.

"Aboriginal Group" means any band (as defined in the *Indian Act* (Canada)), First Nation, Métis community, Inuit group, tribal council, band council or other aboriginal organization in Canada.

"Acquired Assets" shall have the meaning ascribed thereto in Section 3.1.

"Acquired Subsidiaries" shall have the meaning ascribed thereto in Section 3.1(a).

"Acquisition" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Action" means any litigation (in Law or in equity), arbitration, mediation, action, lawsuit, proceeding, written complaint, written charge, written claim, written demand, hearing, investigation or like matter (whether public or private) commenced, brought, conducted, or heard before or otherwise involving any Governmental Body, whether administrative, judicial or arbitral in nature.

"Advance Ruling Certificate" means an advance ruling certificate issued by the Commissioner pursuant to section 102 of the Competition Act with respect to the transactions contemplated by this Agreement.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, none of the Bidders are, nor will the Purchaser be, an Affiliate of Sellers for purposes of this Agreement or otherwise.

"Agreement" means this Asset Purchase Agreement, including all Schedules hereto and the Seller Disclosure Letter, as it may be further amended from time to time in accordance with its terms.

"Allocation" shall have the meaning ascribed thereto in Section 13.14(e).

"Alternate Transaction" shall have the meaning ascribed thereto in Section 12.4(a).

"Amended and Restated Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Ancillary Documents" means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated by this Agreement.

"Antitrust Approvals" means the Competition Act Approval, if required, and each of the other Mandatory Antitrust Approvals (if any).

"Antitrust Laws" means the Competition Act and any competition, merger control and antitrust Law of any other applicable supranational, national, federal, state, provincial or local Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the transactions contemplated by this Agreement.

"Arbitrating Accountant" means an internationally recognized certified public accounting firm jointly selected by Purchaser and Sellers that is not then engaged to perform accounting, tax or auditing services for Sellers or Purchaser.

"Assigned Contracts" shall have the meaning ascribed thereto in Section 3.1(l).

"Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 11.2(b).

"Assignment and Assumption of Leases" shall have the meaning ascribed thereto in Section 11.2(f).

"Assignment Order" means an Order of the CCAA Court made in the CCAA Proceedings, in form and substance acceptable to Parties, acting reasonably, assigning to the Purchaser the rights and obligations of Sellers under an Assigned Contract for which a consent, approval or waiver necessary for the assignment of such Assigned Contract has not been obtained.

"Assumed Liabilities" shall have the meaning ascribed thereto in Section 3.3.

"Assumed Plans" shall have the meaning ascribed thereto in Section 8.2(a).

"Authorization" means with respect to any Person, any order, permit, approval, consent, waiver, license, registration, qualification, certification or similar authorization of any Governmental Body having jurisdiction over the Person, and shall include all environmental permits, licenses and other Authorizations, and all surface leases and water or riparian rights, and for greater certainty in respect of the Sellers shall include the Environmental Agreement.

"Bidder Advisor" means Houlihan Lokey, Inc.

"Bidder Parties" means the Bidders and the Purchaser, collectively, and a "Bidder Party" refers to any of them.

"Bidder Related Party" means any former, current or future direct or indirect director, manager, officer, employee, agent or Affiliate of any of the Bidder Parties; any former, current or future, direct or indirect holder of any equity interests or securities of any of the Bidder Parties (whether such holder is a limited or general partner, member, stockholder, trust, trust beneficiary or otherwise); any former, current or future assignee of any of the Bidder Parties; any equity or debt financing source of any of the Bidder Parties; any former, current or future direct or indirect funds or accounts managed or advised by any of the Bidder Parties; or any former, current or future director, officer, trustee, beneficiary, employee, agent, Representative, Affiliate, advisor, general or limited partner, manager, member, stockholder, or assignee of any of the foregoing.

"Bidders" shall have the meaning ascribed thereto in the Preamble hereof.

"Break-Up Fee" shall have the meaning ascribed thereto in Section 12.4(a).

"Brigade" shall have the meaning ascribed thereto in the Preamble hereof.

"Budget" shall mean a budget of receipts and expenditures prepared by Sellers and approved by the Bidders on or prior to the Effective Date for the period up to Closing, as it may be amended and updated from time to time with the approval of the Bidders, acting reasonably.

"Business" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a statutory holiday in New York City, New York, U.S.A. or Calgary, Alberta, Canada.

"Canadian Assets" means all Acquired Assets other than the Purchaser Acquired Interests.

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held, and any security, collateral or other deposits.

"CCAA" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Court" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"CCAA Proceedings" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Claims" means any and all claims, charges, lawsuits, demands, directions, Orders, suits, inquires made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulator or otherwise.

"Closing" shall have the meaning ascribed thereto in Section 11.1.

"Closing Cure Amount" means the Cure Amount in respect of Assigned Contracts which is payable on Closing, provided that in no event shall such aggregate amount exceed US$10,500,000.

"Closing Date" means the date on which the Closing shall occur.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collective Agreement" means any collective agreement, letter of understanding, letter of intent or any other similar Contract with or commitment to any trade union, employee association, labour organization or similar entity.

"Commissioner" means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

"Competition Act" means the *Competition Act* (Canada), as amended.

"Competition Act Approval" means: (i) the issuance of an Advance Ruling Certificate and such Advance Ruling Certificate has not been rescinded prior to Closing; or (ii) the Purchaser and the Sellers have given the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act has expired or has been terminated in accordance with the Competition Act; or (iii) the obligation to give the requisite notice has been waived pursuant to paragraph 113(c) of the Competition Act, and, in the case of (ii) or (iii), the Purchaser has been advised in writing by the Commissioner that, in effect, such person is of the view that sufficient grounds at that time do not exist to initiate proceedings before the Competition Tribunal under section 92 of the Competition Act with respect to the transactions contemplated by this Agreement and therefore the Commissioner, at that time, does not intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement ("no-action letter"), and the form of and any terms and conditions attached to any such advice are acceptable to the Purchaser, acting reasonably, and such advice has not been rescinded prior to Closing.

"Competition Tribunal" means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

"Conditions Certificate" shall have the meaning ascribed thereto in Section 11.4.

"Confidentiality Agreement" shall have the meaning ascribed thereto in Section 7.3.

"Contaminants" means any noise, heat, vibration or Hazardous Materials that can be discharged into or be present in the Environment.

"Contract" means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment, whether express or implied.

"Cure Amount" means (i) with respect to any Assigned Contract for which a required consent to assignment has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Sellers' monetary defaults existing as at the Closing Date under such Assigned Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Sellers to the Purchaser (which amount shall be set out on the form of contractual consent agreed to by the Purchaser and the counterparty to such Assigned Contract).

"Cure Funding Amount" means the aggregate of (i) the Closing Cure Amount and (ii) such other amount as may be required to satisfy the Cure Amount, provided that in no event shall the aggregate "Cure Funding Amount" be greater than US$20,500,000.

"Data Room" means the material contained in the virtual data room established by Sellers in connection with the CCAA Proceedings as of 5:00 p.m. (Eastern time) on December 3, 2020.

"DDC" shall have the meaning ascribed thereto in the Preamble hereof.

"DDCU" shall have the meaning ascribed thereto in the Preamble hereof.

"DDJ" shall have the meaning ascribed thereto in the Preamble hereof.

"DDM" shall have the meaning ascribed thereto in the Preamble hereof.

"DDMI" means Diavik Diamond Mines (2012), Inc., a company incorporated under the laws of Canada, as the manager of the Diavik Joint Venture.

"Designated Purchaser" shall have the meaning ascribed thereto in Section 13.11.

"Diavik Diamond Mine" means the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Diavik Diamond Mine."

"Diavik Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the Diavik Diamond Mine.

"Diavik Joint Venture Agreement" means the joint venture agreement dated March 23, 1995 between DDM and DDMI originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and DDMI.

"Diavik Joint Venture Interest" means the undivided 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik Joint Venture held by DDM pursuant to the Diavik Joint Venture Agreement.

"Diavik Leases" means the surface and mining leases constituting the Diavik Diamond Mine and subject to the Diavik Joint Venture Agreement.

"Diavik Realization Account" shall have the meaning ascribed to it in Section 7.1(a)(iv).

"Diavik Realization Assets" shall have the meaning ascribed to it in Section 3.1(b).

"Documents" means all of Sellers' books, records and other information in any form relating to the Business or the Acquired Assets, including accounting books and records, sales and purchase records, lists of suppliers and customers, lists of potential customers, credit and pricing information, personnel and payroll records of Employees, Tax records, business reports, plans and projections, production reports and records, inventory reports and records, business, engineering and consulting reports, marketing and advertising materials, research and development reports and records, maps, all plans, surveys, specifications, and as-built drawings relating to the Mine Properties, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Ekati Diamond Mine, the Diavik Diamond Mine and any other real property interests included in the Acquired Assets, including all such electrical, mechanical and structural drawings related thereto, environmental reports, soil and substratum studies, inspection records, financial records, and all other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Acquired Assets or the Employees, and other similar materials, in each case, whether in electronic, paper or other form, but excluding Sellers' corporate charter, minute and stock record books, and corporate seal.

"Dominion Holdings" shall have the meaning ascribed thereto in the Preamble hereof.

"Dominion Marketing" shall have the meaning ascribed thereto in the Preamble hereof.

"Effective Date" shall have the meaning ascribed thereto in the Preamble hereof.

"Ekati Buffer Zone" means the property and assets (including products derived from such property) comprising the Ekati Buffer Zone as described in the technical report entitled "Ekati Diamond Mine, Northwest Territories, Canada, NI-43-101 Technical Report" dated July 31, 2016.

"Ekati Buffer Zone Leases" means the surface and mining leases constituting the Ekati Buffer Zone.

"Ekati Core Zone" means the property and assets (including products derived from such property) that are the subject of the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Ekati Core Zone Joint Venture Agreement in relation to the Ekati Core Zone.

"Ekati Core Zone Joint Venture Agreement" means the joint venture agreement titled 'Northwest Territories Diamonds Joint Venture Agreement – Core Zone Property' dated April 17, 1997 originally entered into among BHP Diamonds Inc., Dia Met Minerals Ltd., Charles E. Fipke and Dr. Stewart L. Blusson, as amended from time to time, with the current parties thereto being DDM and 1012986 B.C. Ltd.

"Ekati Core Zone Joint Venture Interest" means an undivided 88.889% beneficial interest in the Ekati Core Zone Joint Venture, held by DDM pursuant to the Ekati Core Zone Joint Venture Agreement.

"Ekati Core Zone Leases" means the surface and mining leases constituting the Ekati Core Zone and subject to the Ekati Core Zone Joint Venture Agreement.

"Ekati Diamond Mine" means the diamond mine located approximately 310 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Ekati Diamond Mine."

"Employee" means an individual who, as of the applicable date, is employed by Sellers or their Subsidiaries in connection with the Business.

"Employee Plan" means all employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, vacation pay, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, agreement or arrangement, including post-retirement health and life insurance benefit plans, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Sellers or any of their Subsidiaries for the benefit of the Employees or former Employees and their dependents or beneficiaries by which the Sellers or any of their Subsidiaries are bound or with respect to which the Sellers or any of their Subsidiaries participate or have any actual or potential Liability (excluding, for greater certainty, any statutory benefits plan).

"Encumbrance" means any caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgements, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other Claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

"Environment" means the components of the earth, and includes: (a) land, water, and air, including all layers of the atmosphere, (b) all organic and inorganic matter and living organisms, and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

"Environmental Agreement" means the Environmental Agreement, dated as of January 6, 1997 as amended on April 14, 2003, on April 10, 2013 and on November 21, 2018 between Her Majesty The Queen in Right of Canada and the Government of the Northwest Territories and Dominion Diamond Ekati ULC.

"Environmental Law" means the Environmental Agreement and any Regulation which is related to or which regulates or otherwise imposes obligations, liability or standards of conduct concerning the Environment, health and safety, mineral resources, discharges, Contaminants, reclamation and restoration, Releases or threatened Releases of Contaminants, including Hazardous Materials, into the Environment or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Materials.

"Environmental Liabilities and Obligations" means all Liabilities arising from or relating to the Environment, mineral resources, health or safety, Contaminants, reclamation and restoration or arising under any, or arising from any Environmental Law, including Liabilities related to: (a) the manufacture, processing, handling, generation, treatment, distribution, recycling, transportation, storage, use, cleanup, arrangement for disposal or disposal of, or exposure to, Hazardous Materials and/or Contaminants; (b) the Release of Hazardous Materials and/or Contaminants, including migration onto or from the real property included in the Acquired Assets; (c) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (d) any other obligations imposed under Environmental Law including pursuant to any applicable Authorizations issued pursuant to or under any Environmental Law; (e) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports with respect to any Liabilities pursuant to Environmental Law; and (f) all obligations with respect to personal injury, property damage, environmental damage, wrongful death, endangerment to the health or animal life, damage to plant life and other damages and losses arising under applicable Environmental Law.

"Essential Contracts" means, collectively, (i) the Aboriginal Agreements and related agreements, and (ii) those other Contracts to which a Seller is a party or beneficiary which are Material Contracts and specified as "Essential Contracts" on Schedule A, as may be modified from time to time after the date of this Agreement pursuant to Section 3.6.

"Excluded Assets" shall have the meaning ascribed thereto in Section 3.2.

"Excluded Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Excluded Contracts" on Schedule A, as may be modified from time to time after the date of this Agreement pursuant to Section 3.6.

"Excluded Liabilities" shall have the meaning ascribed thereto in Section 3.4.

"Filing Date" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Final Order" means an action taken or order issued by the CCAA Court or other applicable Governmental Body as to which: (i) no request or motion for stay of the action or order is pending, no such stay is in effect, and, if any deadline for filing any such request or motion is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition or motion for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Body and the time for filing any such petition or motion is passed; (iii) the Governmental Body does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is

not then under judicial review or appeal, there is no notice of leave to appeal, appeal or other motion or application for judicial review pending, and the deadline for filing such notice of appeal or other motion or application for judicial review has passed, including any extensions thereof.

"Finco" shall have the meaning ascribed thereto in the Preamble hereof.

"First Lien Lenders" means the lenders under the Pre-filing Credit Agreement.

"First Lien Lender MSA" means the Mutual Support Agreement dated as of December 4, 2020 between the Bidders, Western Asset Management Company, LLC and the First Lien Lenders and attached hereto as Schedule B.

"Glowworm Lake Property" means the mineral leases held by DDM covering an area of 132,560 hectares bordering the eastern side of the Diavik Diamond Mine.

"GNWT" shall have the Government of the Northwest Territories.

"Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, board, commission, tribunal, agency or political subdivision thereof of any nature, whether national, international, multi-national, supra-national, foreign, federal, state, provincial, territorial, Aboriginal or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

"GST" means goods and services tax, including harmonized sales tax, payable under the GST Legislation.

"GST Legislation" means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.

"Guarantee" means any guarantee or other contingent liability, direct or indirect, with respect to any Indebtedness or obligations of another Person, through a Contract or otherwise.

"Hazardous Material" means any substance, material, emission or waste which is defined, regulated, listed or prohibited by any Governmental Body, including petroleum and its by-products, asbestos, polychlorinated biphenyls and any material, waste or substance which is defined or identified as a "hazardous waste," "hazardous substance," "hazardous material," "restricted hazardous waste," "industrial waste," "solid waste," "contaminant,", "dangerous good", "deleterious substance", "greenhouse gas emission", "pollutant," "toxic waste" or "toxic substance" or words of similar import or otherwise regulated under or subject to any provision of Environmental Law.

"IFRS" means generally accepted accounting principles as set out in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards as applied by the International Accounting Standards Board, at the relevant time, applied on a consistent basis.

"Indebtedness" means, with respect to any Person, (a) all liabilities of such Person for borrowed money, whether secured or unsecured, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment of such borrowed money), (b) all liabilities of such Person evidenced by notes, debentures, bonds or similar instruments, including all outstanding principal, interest, fees and other amounts payable with respect thereto (including, for the avoidance of doubt, any prepayment penalties, make-whole payments or breakage fees associated with the payment thereof), for the payment of which such Person is responsible, (c) all obligations of such Person for the deferred purchase price of property or services (including "earn out" payments), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction, but excluding any obligations that are fully discharged at the Closing, (e) obligations under any interest rate, currency or other hedging arrangement or derivatives transaction, (f) all obligations of such Person with respect to the posting of collateral and similar obligations or as obligor, guarantor, surety or otherwise, including pursuant to "keep well" agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements, but excluding any such obligations that are fully discharged at the Closing, and (g) any change of control payments or prepayment premiums, penalties, charges or equivalents thereof with respect to any obligations of the type referred to in clauses (a) through (f) that are required to be paid at the time of, or the payment of which would become due and payable solely as a result of, the execution of this Agreement or the consummation of the transactions contemplated hereby.

"Indemnity Assumption" shall have the meaning ascribed thereto in Section 4.2(b).

"Initial Allocation" shall have the meaning ascribed thereto in Section 13.14(e).

"Initial Order" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Intellectual Property" means all intellectual property and proprietary rights of any kind, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a's or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b) copyrights and copyrightable subject matter (including works and any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies, in each case whether patentable or not; (d) computer software, computer programs, and databases (whether in source code, object code or other form); (e) patents, industrial designs and inventions, together with all registrations and applications related to the foregoing; and (f) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

"Interim Facility" means the interim financing facility evidenced by the Interim Facility Credit Agreement, entered into to provide financing during the pendency of the CCAA Proceedings, as the same may be amended, restated or supplemented from time to time.

"Interim Facility Credit Agreement" means that certain Amended and Restated Interim Financing Term Sheet dated as of June 15, 2020 among Washington Diamond Lending, LLC, the other Interim Lenders party thereto, DDM, as the Borrower (as defined therein) thereunder, and the Guarantors (as defined therein), evidencing the Interim Facility to be provided by the Interim Lenders to DDM, as Borrower, as the same may be amended, modified or supplemented from time to time.

"Interim Lenders" means Washington Diamond Lending, LLC and the other Interim Lenders (as defined in the Interim Facility Credit Agreement), as interim lenders under the Interim Facility Credit Agreement and the Interim Facility and any assignee(s) thereof.

"Inventory" means all diamonds and other inventory of any kind or nature, including stockpiles and goods, maintained, held or stored by or for any Seller, whether or not prepaid, and wherever located or held, including any goods in transit, and any prepaid deposits for any of the same, including all diamonds no longer held by DDMI prior to Closing in respect of the Diavik Joint Venture Interests and whose title has transferred to Sellers.

"Investment Canada Act" means the *Investment Canada Act*, as amended.

"IP Assignment and Assumption Agreement" shall have the meaning ascribed thereto in Section 11.2(g).

"Joint Venture" means each of the Diavik Joint Venture, the Ekati Core Zone Joint Venture and the Lac de Gras Joint Venture.

"Joint Venture Agreements" means, collectively, the Diavik Joint Venture Agreement, the Ekati Core Zone Joint Venture Agreement and the Lac de Gras Joint Venture Agreement, and "Joint Venture Agreement" means any one of them as applicable.

"Knowledge of Sellers" or "Sellers' Knowledge" means, with respect to any matter, the actual knowledge, after due inquiry, of each of the individuals set forth on Section 1.1(a) of the Seller Disclosure Letter.

"Lac de Gras" means the exploration property and assets (including products derived from such property) that is the subject of the Lac de Gras Joint Venture Agreement.

"Lac de Gras Joint Venture" means the unincorporated joint venture arrangement established pursuant to the Lac de Gras Joint Venture Agreement in relation to Lac de Gras.

"Lac de Gras Joint Venture Agreement" means the joint venture agreement dated June 30, 2015 entered into among Dominion Diamond Holdings Ltd., 6355137 Canada Inc. and North Arrow Minerals Inc.

"Lac de Gras Joint Venture Interest" means an undivided 77.31% beneficial interest in Lac de Gras Joint Venture held by DDM pursuant to the Lac de Gras Joint Venture Agreement.

"Lac de Gras Leases" means the surface and mining leases constituting Lac de Gras.

"Law" means any federal, territorial, state, provincial, local, municipal, foreign or international, multinational or other law, treaty, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Liability" means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

"Mandatory Antitrust Approvals" means each of the approvals or consents of any Governmental Body, or the expiration of the applicable notice or waiting period, in each case required to consummate the Acquisition and the other transactions contemplated by this Agreement under applicable Antitrust Laws, including by means of a decision, in whatever form (including a declaration of lack of jurisdiction or a mere filing or notification, if the Closing can take place, pursuant to the applicable Antitrust Law, without a decision or the expiry of any waiting period) by any Governmental Body under the Antitrust Laws of any of any jurisdiction, authorizing or not objecting to the transactions contemplated by this Agreement, provided that any terms or conditions attached to such decision are acceptable to the Purchaser.

"Material Adverse Effect" means any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the Business (other than in relation to the Diavik Joint Venture Interest), results of operations, condition (financial or otherwise), Acquired Assets or Assumed Liabilities of Sellers and their respective Subsidiaries, taken as a whole; or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that, for the purposes of clause (a), a Material Adverse Effect shall not be deemed to include events, occurrences, facts, conditions or changes arising out of, relating to or resulting from: (i) changes generally affecting the economy or credit, financial, or securities markets; (ii) any outbreak or escalation of war or any act of terrorism; (iii) changes in applicable Law; (iv) changes in IFRS; (v) Sellers' failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period (but, for the avoidance of doubt, not the underlying cause(s) of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect); (vi) changes in political conditions; (vii) general conditions in the industry in which Sellers and their respective Subsidiaries operate; (viii) the announcement of the transactions contemplated by this Agreement; or (ix) the commencement or pendency of the CCAA Proceedings; provided further, however, that any event, change, and effect referred to in clauses (i), (ii), (iii), (iv), (vi) and (vii) immediately above shall be taken into account in determining whether a Material Adverse Effect

has occurred or would reasonably be expected to occur to the extent that such event, change, or effect has a disproportionate effect on Sellers and their respective Subsidiaries, taken as a whole, compared to other participants in the industries in which Sellers and their respective Subsidiaries conduct their businesses.

"Material Contract" means any Contract:

(a) that if terminated or modified or if it ceased to be in effect, would reasonably be expected to have a Material Adverse Effect;

(b) that is a partnership agreement, limited liability company agreement, joint venture agreement or similar agreement or arrangement, including the Joint Venture Agreements, relating to the formation, creation or operation of any partnership, limited liability company or joint venture in which Sellers or any of their Subsidiaries is a partner, member or joint venturer (or other participant) that is material to Sellers, their Subsidiaries or the Business, or the ability of Sellers and their Subsidiaries to develop any of their material projects, but excluding any such partnership, limited liability company or joint venture which is a wholly-owned Subsidiary of Sellers;

(c) under which Indebtedness for borrowed money in excess of $7,500,000 is or may become outstanding or pursuant to which any property or asset of Sellers or their Subsidiaries is mortgaged, pledged or otherwise subject to an Encumbrance securing Indebtedness for borrowed money in excess of $7,500,000 or under which Sellers or any of their Subsidiaries has guaranteed any liabilities or obligations of a third party in excess of $7,500,000, in each case, other than any such Contract between two or more wholly-owned Subsidiaries of Sellers or between Sellers and/or one or more of their wholly-owned Subsidiaries;

(d) under which Sellers or any of its Subsidiaries is obligated to make or expects to receive payments in excess of $7,500,000 over the remaining term;

(e) that creates an exclusive dealing arrangement or right of first offer or refusal;

(f) providing for the purchase, sale or exchange of, or option to purchase, sell or exchange, any property or asset where the purchase or sale price or agreed value or fair market value of such property or asset exceeds $15,000,000;

(g) that is a Collective Agreement;

(h) that limits or restricts in any material respect (a) the ability of Sellers or any of their Subsidiaries to incur Indebtedness, to engage in any line of business or carry on business in any geographic area, to compete with any Person, or to engage in any merger, consolidation or other business combination, or (b) the scope of Persons to whom Sellers or any of their Subsidiaries may sell products;

(i) between Sellers or any of their Subsidiaries, on the one hand, and any director or executive officer of the Sellers or any of their Subsidiaries, on the other hand;

(j) with any Aboriginal Group or Aboriginal business, including a joint venture in which an Aboriginal Group is a joint venture party;

(k) providing for the sale of diamonds representing more than 1% of annual production of Sellers and their Subsidiaries or pursuant to which Sellers and their Subsidiaries received during calendar year 2019 or could reasonably be expected to receive in calendar year 2020 or thereafter revenues in excess of $15,000,000;

(l) providing for indemnification by Sellers or their Subsidiaries of another Person, other than Contracts for goods or services, Contracts with directors or officers of Sellers or their Subsidiaries in their capacity as such or Contracts which provide for indemnification obligations of less than $15,000,000;

(m) providing for a royalty, streaming or similar arrangement or economically equivalent arrangement in respect of any of the Mine Properties; or

(n) that is or would reasonably be expected to be material to Sellers and their Subsidiaries, the Business (other than in relation to the Diavik Joint Venture Interest) or the Acquired Assets, taken as a whole.

"Mine Properties" means, collectively, the Diavik Diamond Mine and the Ekati Diamond Mine and "Mine Property" means any one of them as applicable.

"Mineral Rights" has the meaning ascribed thereto in Section 5.13(a).

"Monitor" means FTI Consulting Canada Inc., in its capacity as the CCAA Court-appointed monitor in connection with the CCAA Proceedings.

"Monitor's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Sale Order, to be delivered by the Monitor to the Sellers and the Bidder Parties on Closing and thereafter filed by the Monitor with the CCAA Court, certifying that the Monitor has received the Conditions Certificates.

"Objection Notice" shall have the meaning ascribed thereto in Section 13.14(e).

"Order" means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any court or Governmental Body.

"Ordinary Course of Business" means, with respect to any Person, actions that (i) are taken in the ordinary and usual course of operations of the Business consistent with past practice in effect prior to filing of the CCAA Proceedings and prior to the enactment of measures taken in response to the COVID-19 pandemic, (ii) are taken in accordance with all applicable Laws and (iii) do not result from or arise out of and were not caused by, any breach of Contract, breach of warranty, tort, infringement or violation of Law by such Person or any Affiliate of such Person.

"Organizational Documents" means, with respect to a particular entity Person, (a) if a corporation, the articles or certificate of incorporation and bylaws, (b) if a general partnership, the partnership agreement and any statement of partnership, (c) if a limited partnership, the limited

partnership agreement and certificate of limited partnership, (d) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (e) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (f) all amendments or supplements to any of the foregoing.

"Other Contracts" means, collectively, those Contracts to which a Seller is a party or beneficiary and specified as "Other Contracts" on Schedule A, as may be modified from time to time after the date of this Agreement pursuant to Section 3.6.

"Outside Date" shall have the meaning ascribed thereto in Section 12.1(b)(i).

"Parent" means Washington Diamond Investments, LLC.

"Parties" means at a given time, the parties to this Agreement, collectively and a "Party" refers to any of them.

"Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: (1) any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grant from the Crown or a Governmental Body and any statutory limitations, exceptions, reservations and qualifications to title or Encumbrances imposed by Law; (2) any claim by any Aboriginal Group based on treaty rights, traditional territory, land claims or otherwise; (3) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (4) permits, reservations, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements (including, without in any way limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) in favor of any Governmental Body or utility company in connection with the development, servicing, use or operation of any property which (y) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (z) have been complied with to date in all material respects; (5) each of the following Encumbrances: (a) permits, reservations, covenants, servitudes, rights of access or user licenses, easements, rights of way and rights in the nature of easements in favor of any Person (other than those in (4) above); (b) any encroachments, title defects or irregularities existing; (c) any instrument, easement, charge, caveat, lease, agreement or other document registered or recorded against title to any property so long as same have been complied with in all material respects; (d) agreements with any Governmental Body and any public utilities or private suppliers of services; and (e) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (a), (b), (c), (d) and (e), which (I) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (II) have been complied with to date in all material respects; (6) Encumbrances granted or arising pursuant to the Joint Venture Agreements included in the Acquired Assets; (7) Encumbrances in respect of all equipment and other tangible assets of Sellers (including all vehicles) which are subject to any true lease, financing lease, conditional

sales contract, or similar agreement that is an Assigned Contract; (8) miner's liens and associated certificates of pending litigation filed by trade creditors party to Assigned Contracts who have agreed that certain Cure Amounts owed to them will be paid after the Closing Date; (9) Encumbrances to which the Purchaser consents in writing; (10) in respect of only the Diavik Realization Assets, Encumbrances that are held by or for the benefit of the First Lien Lenders pursuant to the Pre-filing Credit Agreement; and (11) Encumbrances set out in the schedules to the Sale Order.

"Person" means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority or natural person.

"Pre-Closing Period" means the period commencing on the Effective Date and ending on the earlier of the date upon which this Agreement is validly terminated pursuant to Article XII or the Closing Date.

"Pre-Closing Tax Period" means any taxable period (or portion thereof) ending on or before the Closing Date and any portion of any Straddle Period ending on the Closing Date.

"Pre-filing Credit Agreement" means the Revolving Credit Agreement, dated as of November 1, 2017 (as amended by the First Amendment and Waiver to Credit Agreement, dated as of July 30, 2019, the Second Amendment, dated as of March 4, 2020, and as further amended from time to time), among DDM, Parent, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"Pre-filing Indebtedness Assumption" shall have the meaning ascribed thereto in Section 4.2(a).

"Pre-filing Indenture" means the Indenture, dated as of October 23, 2017, by and among Northwest Acquisitions ULC, Finco and Wilmington Trust, National Association, as trustee (the "Indenture Trustee"), as supplemented by (i) the First Supplemental Indenture, dated as of November 1, 2017, by and among the Northwest Acquisitions ULC, Finco, the guarantors party thereto and the Indenture Trustee, (ii) the Second Supplemental Indenture, dated as of December 21, 2017, by and among Northwest Acquisitions ULC, as successor of Northwest Acquisitions ULC, Finco and the Indenture Trustee, (iii) the Third Supplemental Indenture, dated as of December 21, 2017, by and among DDM, as successor of Northwest Acquisitions ULC, Finco and the Indenture Trustee, (iv) the Fourth Supplemental Indenture, dated as of January 1, 2019, by and among the Indenture Trustee, Finco, DDM, and the guarantors party thereto, and (v) the Fifth Supplemental Indenture, dated as of December 13, 2019, by and among DDM, Finco, Parent, Dominion Diamond Holdings, LLC, and the Indenture Trustee.

"Previously Omitted Contract" shall have the meaning ascribed thereto in Section 3.6(b)(i).

"Previously Omitted Contract Designation" shall have the meaning ascribed thereto in Section 3.6(b)(i).

"Previously Omitted Contract Notice" shall have the meaning ascribed thereto in Section 3.6(b)(ii).

"Purchase Price" shall have the meaning ascribed thereto in Section 4.1.

"Purchaser" shall have the meaning ascribed thereto in the Preamble to this Agreement.

"Purchaser Acquired Interests" means shares of, or other equity interests in, the Acquired Subsidiaries.

"Purchaser's Conditions Certificate" shall have the meaning ascribed thereto in Section 11.4.

"Regulation" means any Law, statute, regulation, code, guideline, protocol, policy, ruling, rule or Order of, administered or enforced by or on behalf of any Governmental Body and all judgments, orders, writs, injunctions, decisions and mandate of any Governmental Body which, although not actually having the force of law, are considered by such Governmental Body as requiring compliance as if having the force of law or which establish the interpretative position of the Law by such Governmental Body.

"Release" means any release, spill, deposit, emission, leaking, pumping, escape, emptying, leaching, seeping, disposal, discharge, dispersal or migration into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by any Seller as at the Closing Date, including the movement of Contaminants, including Hazardous Materials, through or in the air, soil, ground, surface water, groundwater or property.

"Representatives" means the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of any Person.

"Retained Subsidiaries" shall have the meaning ascribed thereto in Section 3.2(b).

"Sale Advisor" means Evercore Group LLC.

"Sale Order" means an Order of the CCAA Court in form and content satisfactory to the Sellers and the Bidders, acting reasonably, approving the transactions contemplated by this Agreement, vesting the Acquired Assets in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances and containing such other provisions as the Sellers or the Bidders may reasonably require.

"Second Lien Notes" means the secured second lien notes issued under and pursuant to the Pre-filing Indenture.

"Seller Disclosure Letter" means the disclosure letter delivered by Sellers to Purchaser on or prior to December 11, 2020 in form and content satisfactory to the Bidders, acting reasonably.

"Sellers" shall have the meaning ascribed thereto in the Preamble hereof.

"Sellers' Conditions Certificate" shall have the meaning ascribed thereto in Section 11.4.

"Stay" shall have the meaning ascribed thereto in the Recitals of this Agreement.

"Straddle Period" shall have the meaning ascribed thereto in Section 13.14(b).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, unlimited liability company, public liability company, private limited company, joint venture, partnership or other entity of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

"Sureties" means those parties defined as Sureties in the Sureties Support Confirmations.

"Sureties Support Confirmations" means the confirmations of support from the Sureties to the Bidders dated December 4, 2020 and delivered confidentially to Sellers.

"Tax Act" means the Income Tax Act (Canada) and the regulations promulgated thereunder, as amended from time to time.

"Tax Return" means any report, return, information return, election, agreement, declaration, designation, filing or other document of any nature or kind required to be filed with any applicable Governmental Body in respect of Taxes, including any amendment, schedule, attachment or supplement thereto and whether in tangible or electronic form.

"Taxes" means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added (including GST), capital, license, payroll, employment, employer health, unemployment, pension, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer (including land registration or transfer), fuel, excess profits, occupational and interest equalization, windfall profits, severance and withholding and social security taxes imposed by Canada, the United States or any other country or by any state, province, territory, municipality, subdivision or instrumentality of Canada or the United States or of any other country or by any other Governmental Body, and employment or unemployment insurance premiums, Canada Pension Plan or Quebec Pension Plan contributions, together with all applicable penalties and interest, and such term shall include any interest, penalties or additions to tax attributable to such Taxes.

A "third party" means any Person other than any Seller, Bidder Party or any of their respective Affiliates.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 13.14(a).

"Transferred Employees" shall have the meaning ascribed thereto in Section 8.1(a).

"Treasury Regulations" means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

"US$" means the currency of the United States, and all references to monetary amounts herein shall be in Dollars unless otherwise specified herein.

"Wind-Down Account" shall have the meaning ascribed thereto in Section 7.1(a)(iii).

"Working Capital Financing" shall have the meaning ascribed thereto in Section 4.3.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning through this Agreement.

1.3 Other Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement, unless the express context otherwise requires.

(d) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under IFRS consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under IFRS, the definition set forth in this Agreement will control.

(e) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(f) Any provision of this Agreement that requires the Bidder Parties to act reasonably shall not be deemed to require the Bidder Parties to accept, agree or consent to any Order or supplement, amendment or modification thereto, or any other matter that adversely affects such Bidder Parties or is inconsistent with the terms of this Agreement, in each case, other than in any de minimis respect.

(g) Any provision of this Agreement that requires any Party to use commercially reasonable efforts to satisfy conditions to Closing having a sole discretion standard do not require such Party to accept any term or agreement not acceptable to such Party in its sole discretion.

(h) Wherever the word "include," or "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation."

ARTICLE II

FORMATION OF PURCHASER; BIDDERS' COVENANT

2.1 Formation. The Bidders shall use commercially reasonable efforts to take all steps, deliver all documents and comply with all requirements, as soon as reasonably practicable, to ensure that Purchaser is formed in accordance with applicable Law and pursuant to the terms and conditions of this Agreement. The Bidders shall cause the Purchaser to enter into and accept the terms and conditions under this Agreement.

2.2 Purpose of Purchaser. Purchaser shall be formed with the purpose and objects as would facilitate the due exercise and performance by Purchaser of the rights and obligations under this Agreement set out in respect of the "Purchaser" and for undertaking such other activities as are necessary for or incidental to the transactions contemplated by this Agreement.

2.3 Bidders' Covenant. The Bidders shall, or shall cause the Purchaser to, purchase the Acquired Assets, satisfy the Purchase Price (including, to the extent necessary, funding all or a portion of the Closing Cure Amount from the Working Capital Financing) and provide the Working Capital Financing and otherwise consummate the transactions contemplated hereby, subject to the terms and conditions of this Agreement.

2.4 First Lien Lender MSA. The Bidders shall comply with their obligations pursuant to the First Lien Lender MSA. The Bidders shall use reasonable best efforts to have executed and delivered the definitive documentation, in form and content satisfactory to the First Lien Lenders and the Bidders, regarding the transactions between such parties contemplated by the First Lien Lender MSA prior to the Outside Date in satisfaction of the condition set out in Section 9.15.

2.5 Sureties Support Confirmations. The Bidders shall use reasonable best efforts to have executed and delivered the definitive documentation, in form and content satisfactory to the Sureties and the Bidders, regarding the transactions contemplated by the Sureties Support Confirmations prior to the Outside Date in satisfaction of Section 9.9.

ARTICLE III

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

3.1 Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, all of the Sellers' right, title and interest in the assets and properties of Sellers other than the Excluded Assets (the "Acquired Assets") subject to Section 3.6, free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances), including the following:

(a) all of the issued and outstanding equity interests held by any Seller in Dominion Diamond (India) Private Limited, Dominion Diamond Marketing N.V., Dominion Diamond (Cyprus) Limited and, if and to the extent elected by the Bidders before Closing, in another Seller (collectively, the "Acquired Subsidiaries");

(b) assignment of all of Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik Joint Venture Interest (including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized or realizable by or on behalf of Sellers) (collectively, the "Diavik Realization Assets"), which shall be assigned to Purchaser subject only to the continuing liens and charges of the First Lien Lenders pursuant to the Pre-filing Credit Agreement until such time as all letters of credit issued by the First Lien Lenders in respect of the Diavik Diamond Mine shall have been cash collateralized or cancelled and all related fees shall have been paid;

(c) the Ekati Core Zone Joint Venture Interest, all rights and interests of any Seller under the Ekati Core Zone Joint Venture Agreement, and all other rights, title and interests of any Seller in the Ekati Diamond Mine, the Ekati Core Zone, the Ekati Core Zone Leases and the Ekati Core Zone Joint Venture;

(d) all rights, title and interests of any Seller in the Ekati Buffer Zone and the Ekati Buffer Zone Leases;

(e) the Lac de Gras Joint Venture Interest, all rights and interests of any Seller under the Lac de Gras Joint Venture Agreement, and all other rights, title and interests of any Seller in the Lac de Gras Leases and the Lac de Gras Joint Venture;

(f) all mineral rights held by DDM, including all mineral rights included in the Ekati Core Zone, the Ekati Buffer Zone, Lac de Gras and the Glowworm Lake Property;

(g) all of Sellers' Cash and Cash Equivalents, including all cash collateral and deposits posted by or for the benefit of Sellers as security for any letter of credit, surety or other bond, rent, utilities, contractual obligations or otherwise (except for retainers held by any professional in the CCAA Proceedings);

(h) all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Sellers, including all intercompany receivables, notes, rights and claims from any Acquired Subsidiary and payable or in favor of a Seller provided, however, that all receivables in respect of the Diavik Joint Venture Interest collected by the Sellers following the Effective Date shall constitute Diavik Realization Assets;

(i) all prepaid charges and expenses, including all prepaid rent and all prepaid charges, expenses and rent under any personal property leases;

(j) all equipment and other tangible assets of Sellers, including all vehicles, tools, parts and supplies, fuel, machinery, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case, with any transferable warranty and service rights of any Seller related thereto;

(k) all Inventory;

(l) subject to Section 3.6, all of the Essential Contracts and Other Contracts set forth on Schedule A hereto (the "Assigned Contracts") and all rights thereunder;

(m) all Authorizations and all pending applications therefor, in each case, to the extent such Authorizations and pending applications therefor are transferrable;

(n) all rights, options, Claims or causes of action of any Seller or other applicant against any party arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Filing Date, and including (i) any rights under or pursuant to any and all warranties, representations and Guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Sellers, and (ii) any and all causes of action under applicable Law;

(o) all other right, title and interest of any Seller in real property (including and all fixtures, improvements and appurtenances thereto);

(p) all Assumed Plans, together with all funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto), and all rights and obligations thereunder;

(q) all personnel files for Transferred Employees except as prohibited by Law; provided, however, that Sellers have the right to retain copies at Sellers' expense to the extent required by Law;

(r) any chattel paper owned or held by Sellers;

(s) any lock boxes to which account debtors of any Seller remit payment relating to the Business, the Assumed Liabilities or the Acquired Assets;

(t) the Intellectual Property owned or purported to be owned by any Seller;

(u) all goodwill, payment intangibles and general intangible assets and rights of Sellers to the extent associated with the Business, the Assumed Liabilities or the Acquired Assets;

(v) to the extent permitted by Law, Sellers' Documents; provided, however, that Sellers have the right to retain copies of all of the foregoing at Sellers' expense to the extent required by Law or as is necessary to wind-down Sellers;

(w) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Acquired Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Seller, with respect to cancelled policies);

(x) all rights and obligations under non-disclosure, confidentiality, non-competition, non-solicitation and similar arrangements with (or for the benefit of) former or current employees and agents of Sellers or with third parties (including any non-disclosure,

confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the CCAA Proceedings);

(y) telephone, fax numbers (if any) and email addresses, as well as the right to receive mail and other communications addressed to Sellers;

(z) any claim, right or interest of Sellers in or to any refund, rebate, credit, abatement or recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchaser and will pay such amounts to the Purchaser forthwith following receipt thereof);

(aa) all prepaid Taxes and Tax credits of Sellers (to the extent that any such refund, rebate, credit, abatement or recovery for Taxes is received by the Sellers in the form of payment, Sellers agree that they will hold all such amounts in trust for the Purchaser and will pay such amounts to the Purchaser forthwith following receipt thereof);

(bb) all of Sellers' bank accounts (excluding the Diavik Realization Account and the Wind-Down Account); and

(cc) all other or additional assets, properties, privileges, rights and interests of Sellers relating to the Business, the Assumed Liabilities or the Acquired Assets (other than any Excluded Assets) of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement.

3.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) the Diavik Joint Venture Agreement;

(b) subject to Section 3.1(a), all shares of capital stock or other equity interests in, or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests in, Dominion Finco Inc., Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC and Dominion Diamond (Cyprus) Limited (the "Retained Subsidiaries");

(c) all Excluded Contracts;

(d) Sellers' rights under this Agreement, and under any Ancillary Documents;

(e) all current and prior director and officer insurance policies of Sellers and all rights of any nature with respect thereto running in favor of any Seller, including all insurance recoveries thereunder and rights to assert Claims with respect to any such insurance recoveries, in each case, as the same may run in favor of any Seller and arising out of actions taking place prior to the Closing Date;

(f) all equipment and other tangible assets of Sellers (including all vehicles) which are subject to any financing lease, true lease, conditional sales contract or similar agreement that is not an Assigned Contract;

(g) all assets that are removed from the Acquired Assets pursuant to Section 3.6 or by designation of Bidders or Purchaser prior to Closing; and

(h) Sellers' Organizational Documents, corporate charter, minute and stock record books, income tax returns and corporate seal; provided that Purchaser shall have the right to reasonably request, and Sellers shall reasonably cooperate to provide, copies of any portions of such documents solely as they relate to the Acquired Assets.

3.3 Assumed Liabilities. At the Closing, except as provided in Section 3.2 and/or in Section 3.4 hereof, and subject to Section 3.6, Purchaser shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Sellers (and only the following Liabilities) (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of any Seller under the Assigned Contracts, including by making available the Closing Cure Amount (to the extent necessary, from the Working Capital Financing) at Closing in connection with the assumption and assignment of the Assigned Contracts, but excluding (i) trade payables arising on or after the Filing Date that are overdue for payment as of Closing, and (ii) any other Liabilities related to or arising out of a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing;

(b) all trade payables arising on or after the Filing Date for which the permitted payment period has not yet expired as of the Closing in the ordinary course and which the Sellers have not yet paid but has reserved for in the Budget;

(c) the Liabilities with respect to Transferred Employees under the terms of Assumed Plans to the extent arising following the Closing;

(d) all payroll liabilities with respect to Transferred Employees for the payroll period which includes the Closing Date;

(e) any and all Liabilities relating to Claims, Actions, suits, arbitrations, litigation matters, proceedings, investigations or other Actions (in each case, whether involving private parties, Governmental Bodies, or otherwise) arising from the operation of the Business as it relates to the Ekati Diamond Mine and the Acquired Assets from and after the Closing but excluding, for the avoidance of doubt, any such Liabilities (i) arising in the CCAA Proceedings unrelated to the go-forward operations of the Business as it relates to the Ekati Diamond Mine, (ii) insured under insurance policies that are not transferable to Purchaser; (iii) with respect to Excluded Contracts or any other Excluded Assets, (iv) to Employees or former Employees who are not Transferred Employees, or (v) expressly excluded pursuant to Section 3.4;

(f) solely with respect to the Acquired Assets, and subject to such agreements and arrangements as Purchaser may enter into in satisfaction of the Sureties Support

Confirmations, or otherwise in connection with the transactions contemplated hereby, any and all Environmental Liabilities and Obligations;

(g) all intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(h) all Liabilities under Authorizations included in the Acquired Assets, in each case solely in respect of the period commencing at the Closing Date and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing, subject to such agreements and arrangements as Purchaser may enter into in connection with the Sureties Support Confirmations; and

(i) all Liabilities with respect to letters of credit issued pursuant to the Pre-filing Credit Agreement with respect to Ekati Diamond Mine, subject to such Liabilities being assumed in the manner contemplated by the First Lien Lender MSA.

3.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchaser is not assuming, and shall not be obligated to pay, perform or otherwise discharge any Liability that is not an Assumed Liability (collectively, the "Excluded Liabilities"), including the following:

(a) any and all Liabilities arising out of, relating to or otherwise in respect of the Acquired Assets and/or Business arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities of any Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of the Retained Subsidiaries;

(d) any and all Liabilities of any Seller for Indebtedness, including (i) all Liabilities with respect to the Pre-filing Credit Agreement (other than pursuant to the Pre-filing Indebtedness Assumption), the Pre-filing Indenture and the Interim Facility, (ii) all intercompany Indebtedness between any Seller, on the one hand, and the Retained Subsidiaries, on the other hand, and (iii) all Guarantees by Sellers, but excluding any intercompany Indebtedness among Sellers and the Acquired Subsidiaries;

(e) except as set forth in Section 13.14(a), any and all (i) Liabilities of any Seller for any Taxes (including, without limitation, Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to section 160 of the Tax Act, Treasury Regulation section 1.1502-6 (or any similar provision of any other Law) or otherwise and any Taxes owed by any Seller and arising in connection with the consummation of the transactions contemplated by this Agreement) arising or related to any period(s) on or prior to the Closing Date, and (ii) Taxes arising from or in connection with an Excluded Asset;

(f) any and all Liabilities of any Seller in respect of the Excluded Contracts and any other Contracts to which such Seller is party or is otherwise bound that are not Assigned Contracts;

(g) any and all Liabilities of any Seller in respect of the Diavik Joint Venture Agreement, the Diavik Joint Venture, the Diavik Joint Venture Interest, the Diavik Diamond Mine and the Diavik Realization Assets;

(h) all Liabilities and obligations of any Seller under the Assigned Contracts in respect of (i) a breach, non-monetary default, violation or non-compliance by any Seller or any Affiliate thereof prior to the Closing, and (ii) trade payables arising on or after the Filing Date that are overdue for payment as of Closing;

(i) any and all Liabilities arising out of or relating to any business or property formerly owned or operated by any Seller, any Affiliate or predecessor thereof, but not owned and operated by such Seller immediately prior to Closing;

(j) any and all Liabilities of any Seller or its predecessors arising out of any Contract, Authorization, franchise or claim that is not transferred to Purchaser as part of the Acquired Assets;

(k) any and all Liability for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the CCAA Proceedings (including the Monitor's fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by Sellers or the Monitor, and the fees and expenses of the post-filing lenders or the pre-filing lenders incurred or owed in connection with the administration of the CCAA Proceedings); (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement; and (iii) all other Sellers' legal, financial, advisory, consulting or similar costs and expenses incurred or arising prior to the Closing;

(l) any and all Liabilities in respect of Employees other than the Liabilities relating to Transferred Employees that are expressly assumed under Section 3.3;

(m) any and all Liabilities with respect to change of control, severance, termination or similar arrangements with any officer, employee or contractor of any Seller;

(n) any and all Liabilities arising out of, relating to or otherwise in respect of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assigned Contracts occurring prior to the Closing;

(o) any and all Liabilities of Sellers under this Agreement;

(p) any and all Liabilities to any broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement or otherwise;

(q) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Business (as currently or formerly conducted) or the ownership of the Acquired Assets for any Pre-Closing Tax Period, including any and all property Taxes with respect to any Pre-Closing Tax Period;

(r) any Liability for any Tax or Taxes of Sellers or their Affiliates (other than the Acquired Subsidiaries) for any taxable period; and

(s) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement.

3.5 Conveyance and Consideration. Further to Section 3.1 and Section 3.3, above, (i) the Acquired Assets shall be conveyed to Purchaser from Sellers in consideration of the Purchase Price, which shall be allocated to the Acquired Assets in accordance with Section 13.14(e).

3.6 Assigned Contracts/Previously Omitted Contracts.

(a) Assignment and Assumption at Closing.

(i) Schedule A sets forth, to the Sellers' Knowledge, (A) a list of all Contracts to which any Seller is party, including all Contracts that, to the Sellers' Knowledge, were entered into by a Seller following the Filing Date and, (B) with respect to each Contract listed therein, Sellers' good-faith estimate of the Cure Amount if such Contract were an Assigned Contract. The "Assigned Contracts" shall be the Essential Contracts and Other Contracts designated on such Schedule A.

(ii) From and after the date hereof until the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, Bidders shall be entitled to make additions, deletions and modifications to the Contracts classified as an "Essential Contract," "Other Contract" or "Excluded Contract" on Schedule A in their sole discretion following consultation with Sellers by delivery of written notice to Sellers. For greater certainty, (A) any Contract designated by Bidders as an Excluded Contract on Schedule A after the date of this Agreement shall be deemed to no longer be an Assigned Contract and to be an Excluded Contract, (B) any Contract designated by Bidders as an Essential Contract on Schedule A after the date of this Agreement shall be deemed an Essential Contract for the purposes of this Agreement, and (C) any Contract designated by Bidders as an Other Contract on Schedule A after the date of this Agreement shall be deemed an Other Contract for the purposes of this Agreement.

(iii) Sellers shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchaser. The Bidder Parties may request, in their reasonable commercial judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assigned Contract, and Sellers shall cooperate with all reasonable requests of the Bidder Parties to seek to obtain such modifications or amendments or to assist the Bidder Parties in obtaining such modifications or amendments; provided that Purchaser shall make available the Cure Funding Amount to satisfy the Cure Amount. If the Bidder Parties and Sellers are unable to obtain such modifications or amendments, the Bidder Parties may, in their sole discretion following consultation with Sellers, designate any Contract as an Excluded Contract. For the avoidance of doubt, the failure to obtain modifications or amendments to an Essential

Contract requested by the Bidder Parties shall not result in a failure to satisfy the condition to closing set out in Section 9.7.

(iv) To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (A) the Sellers' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order, (B) the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date, and (C) if an Assignment Order is obtained in respect of such Assigned Contract, the Purchaser shall accept the assignment of such Assigned Contract on such terms.

(v) Unless the Parties otherwise agree, to the extent that any Cure Amount is payable with respect to any Assigned Contract, Sellers shall (A) where such Assigned Contract is assigned pursuant to an Assignment Order, pay such Cure Amount in accordance with such Assignment Order, including paying the Closing Cure Amount at Closing, and (B) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay such Cure Amount in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty, including paying the Closing Cure Amount at Closing.

(b) Previously Omitted Contracts.

(i) If prior to Closing, (A) it is discovered that a Contract should have been listed but was not listed on Schedule A, or (B) a Contract is entered into after the Effective Date that would have been listed on Schedule A if any Seller had entered into such Contract on or before the Effective Date (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof or entry into such Contract (but in no event later than five (5) Business Days thereafter), notify the Bidder Parties in writing of such Previously Omitted Contract and any Cure Amount for such Previously Omitted Contract. The Bidder Parties shall thereafter deliver written notice to Sellers, promptly following notification of such Previously Omitted Contract from Sellers and in any event prior to the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, designating such Previously Omitted Contract as an "Essential Contract", "Other Contract" or "Excluded Contract" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 3.6 as an "Excluded Contract" or with respect to which the Bidder Parties fail to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract.

(ii) If the Bidder Parties designate a Previously Omitted Contract as an "Essential Contract" or "Other Contract" in accordance with Section 3.6, Schedule A shall be amended to include such Previously Omitted Contract and Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amount with respect to such Previously Omitted Contract and Sellers' intention to assign such Previously Omitted Contract in accordance with this Section 3.6. The Previously Omitted Contract Notice shall

provide the counterparties to such Previously Omitted Contract with seven (7) days to object, in writing to Sellers and the Bidder Parties, to the Cure Amount or the assumption of its Contract. If the counterparties, Sellers and the Bidder Parties are unable to reach a consensual resolution with respect to an objection relating to a Previously Omitted Contract that has been designated as an "Essential Contract" in accordance with Section 3.6, Sellers will seek an expedited hearing before the CCAA Court for an Assignment Order in respect of such Essential Contract.

(c) Disclaimer of Assigned Contracts. Sellers shall not disclaim or seek to disclaim any Assigned Contract in the CCAA Proceedings or any other proceeding following the Effective Date and prior to any termination of this Agreement without the prior written consent of the Bidder Parties, which the Bidder Parties may withhold, condition or delay, in their sole discretion. For greater certainty, (i) all Contracts that have not been designated as "Assigned Contracts" as at the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court shall be deemed to be Excluded Contracts, and (ii) the Sellers shall be entitled, at any time from and after the date that is five (5) Business Days prior to the date upon which the motion for the granting of the Assignment Order is scheduled to be heard by the CCAA Court, to disclaim or seek to disclaim any Excluded Contracts.

3.7 Assets Held by the Retained Subsidiaries. If it is determined at any time before or after the Closing that the Retained Subsidiaries hold any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller, then Sellers shall, and shall cause the Retained Subsidiaries to transfer and assign such assets to Purchaser or to one or more Designated Purchasers, as directed by Purchaser, subject to the terms of this Agreement. Without limiting the foregoing, Sellers shall cause the Retained Subsidiaries to transfer and assign to Purchaser or to one or more Designated Purchasers, as directed by Purchaser, all rights, options, Claims or causes of action of the Retained Subsidiaries against any party arising out of events occurring prior to the Closing, to the extent permitted under applicable Law. All assets, properties, rights, options, Claims or causes of action transferred to Purchaser or a Designated Purchaser pursuant to this Section 3.7 shall constitute Acquired Assets for the purposes of this Agreement.

ARTICLE IV

PURCHASE PRICE AND PAYMENT

4.1 Purchase Price. The purchase price for the Acquired Assets shall be the aggregate of:

(a) the amount of the Pre-filing Indebtedness Assumption;

(b) the amount of the Indemnity Assumption; and

(c) the amount of the Assumed Liabilities,

(the aggregate of the foregoing being collectively referred to herein as the "Purchase Price")

4.2 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied by the Purchaser as follows:

(a) the assumption by Purchaser on Closing (or, at Purchaser's option and if permitted under the First Lien Lender MSA, the repayment on Closing) of US$70,000,000 of outstanding Indebtedness under the Pre-filing Credit Agreement, on and subject to the terms and conditions set out in the First Lien Lender MSA and the definitive documents to be delivered pursuant thereto (the "Pre-filing Indebtedness Assumption");

(b) the assumption by Purchaser on Closing of indemnity and related obligations in respect of certain bonds in the face amount of $278,970,785 Canadian dollars issued by the Sureties for the benefit of the Sellers, on and subject to the terms and conditions set out in the Sureties Support Confirmations and the definitive documents to be delivered pursuant thereto (the "Indemnity Assumption");

(c) The cash payment on Closing of the Closing Cure Amount (to be paid, to the extent necessary, from the Working Capital Financing) and the assumption by the Purchaser of the obligation to pay the balance of the Cure Funding Amount;

(d) the assumption by Purchaser on Closing of the Assumed Liabilities (other than any amounts addressed in Section 4.2(a) through Section 4.2(c)), by execution and delivery of the Assignment and Assumption Agreement.

4.3 Additional Consideration/Capitalization. At Closing, the Bidders shall provide to and make available to the Purchaser new financing (the "Working Capital Financing") of US$70,000,000 to fund Purchaser's post-Closing satisfaction of Assumed Liabilities, operations at the Ekati Diamond Mine and general working capital, all on and subject to the terms and conditions set out in the First Lien Lender MSA and the definitive documents to be delivered pursuant thereto.

4.4 Further Assurances. From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchaser, shall use commercially reasonable efforts to execute and deliver such documents and instruments of conveyance and transfer as Purchaser may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchaser title to the Acquired Assets transferred hereunder, and (b) Purchaser, upon the request of Sellers, shall use commercially reasonable efforts to execute and deliver such documents and instruments of assumption as Sellers may reasonably request in order to confirm Purchaser's Liability for the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Seller Disclosure Letter, Sellers represent and warrant to the Bidder Parties as of the Effective Date and the Closing Date, as follows:

5.1 Organization and Power. Each Seller is duly formed and validly existing under its jurisdiction of formation and is validly existing in good standing thereunder. Subject to the CCAA and the Amended and Restated Initial Order, each Seller has full power and authority to own, use and lease its properties and to conduct its Business as such properties are owned, used or leased and as such Business is currently conducted. Each Seller has previously delivered to the Bidder Parties true, complete and correct copies of its Organizational Documents, as amended and in effect on the Effective Date. Each Seller is duly qualified to do business and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.2 Authority; No Violation. Subject to the issuance of the Sale Order, each Seller has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by each Seller shall be duly and validly authorized and approved by all necessary company action. Subject to the issuance of the Sale Order (and assuming the due authorization, execution and delivery by the other Parties hereto), this Agreement shall constitute the legal and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, except that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

5.3 Consents.

(a) Except as set forth on Section 5.3(a) of the Seller Disclosure Letter, the execution, delivery and performance by Sellers of this Agreement or any Ancillary Document to which it is a party and the consummation of the transactions contemplated hereby or thereby in accordance with the Sale Order do not and will not (with or without notice or the passage of time): (i) contravene, violate or conflict with any term or provision of Sellers' Organizational Documents; (ii) violate any material Law applicable to any Seller or any Acquired Subsidiary or by which any property or asset of any Seller or any Acquired Subsidiary is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of any Seller or any Acquired Subsidiary under any Authorization or Material Contract, except in each case described in this clause (iii) to the extent that any such breach, default, right or requirement arises out of the commencement of the CCAA Proceedings or would be cured and the applicable Authorization or Material Contract would be assignable upon payment of the applicable Closing Cure Amount hereunder.

(b) Except (i) for the issuance of the Sale Order, (ii) for compliance as may be required with the Competition Act or other applicable Antitrust Laws, and (iii) as set forth on Section 5.3(a) of the Seller Disclosure Letter, no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Sellers of this Agreement or the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be

expected to be material to the Acquired Assets, the Assumed Liabilities or the Business (other than in relation to the Diavik Joint Venture Interest), in each case taken as a whole.

5.4 Subsidiaries.

(a) Except as would not, individually or in the aggregate, have a Material Adverse Effect, each Acquired Subsidiary is duly incorporated, organized or formed and validly existing under the laws of its jurisdiction of incorporation, organization or formation, and has the requisite power and capacity to own, lease, license and operate its assets and properties and conduct its business as now conducted and is duly registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or operated by it, or the nature of its activities, make such registration necessary.

(b) Section 5.4(b) of the Seller Disclosure Letter sets out, with respect to each Subsidiary of Sellers as of the date hereof: (A) its name; (B) the percentage owned directly or indirectly by any Seller and the percentage owned by registered holders of capital stock or other equity interests if other than Sellers and their Subsidiaries; and (C) its jurisdiction of incorporation, organization or formation.

(c) Dominion Holdings or DDM is, directly or indirectly, the registered and beneficial owner of all of the outstanding common shares or other equity interests as reflected as being owned by Dominion Holdings or DDM, as applicable, in Section 5.4(b) of the Seller Disclosure Letter, directly or indirectly, of each of its Subsidiaries, free and clear of any Encumbrance, other than Permitted Encumbrances, all such shares or other equity interests so owned by Sellers have been validly issued and are fully paid and non-assessable, as the case may be, and no such shares or other equity interests have been issued in violation of any pre-emptive or similar rights. Except for the shares or other equity interests owned by Dominion Holdings or DDM, directly or indirectly, in any Subsidiary, and except as set forth in Section 5.4(b) of the Seller Disclosure Letter neither any Seller nor any Subsidiary owns, beneficially or of record, any equity interests of any kind in any other Person as of the date hereof.

(d) No Acquired Subsidiary has any Indebtedness, other than with respect to the intercompany Indebtedness owed solely to Sellers or other Acquired Subsidiaries (and for the avoidance of doubt, trade payables incurred in the Ordinary Course of Business) and no Acquired Subsidiary has provided any Guarantee.

5.5 Title and Sufficiency of Assets.

(a) Sellers have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Acquired Subsidiaries have good and valid title to (or with respect to leased property included in the Acquired Assets, valid leasehold interests in) all assets and property which any such Acquired Subsidiary purports to own, free and clear of all Encumbrances other than Permitted Encumbrances, and there is no agreement, option or other right or privilege outstanding in favor of any Person for the purchase of any material asset from any Acquired Subsidiary outside the Ordinary Course of Business.

(c) The Acquired Assets, together with the assets and properties held by the Acquired Subsidiaries, include all of the properties and assets required to operate the Business (other than in relation to the Diavik Joint Venture Interest) in the Ordinary Course of Business.

(d) To the Knowledge of Sellers, neither Parent nor the Retained Subsidiaries hold any right, title or interest in or to any assets or properties that are used or useful in connection with the Business or that would otherwise constitute Acquired Assets if held by any Seller.

5.6 Financial Statements. Sellers have delivered to the Bidder Parties Parent's audited consolidated financial statements as at and for the fiscal year ended December 31, 2019 and unaudited consolidated financial statements as at March 31, 2020 and for the three months ended March 31, 2020 and 2019 (including, in each case, any of the notes or schedules thereto, any report thereon and related management's discussion and analysis), each of which: (i) were prepared in accordance with IFRS; and (ii) present fairly, in all material respects, the assets, liabilities and financial condition of Parent and its Subsidiaries on a consolidated basis as at the respective dates thereof and the revenues, earnings, results of operations, changes in shareholders' equity and cash flow of Parent and its Subsidiaries on a consolidated basis for the periods covered thereby (except as may be indicated in the notes to such financial statements and subject in the case of unaudited financial statements to normal, year-end audit adjustments). Except as set forth in such financial statements, neither any Seller nor any Acquired Subsidiary is party to any off-balance sheet transaction with unconsolidated Persons.

5.7 Compliance with Laws. Sellers and each of the Acquired Subsidiaries are, and since February 1, 2018 have been, in compliance with Law in all material respects. Neither any Seller nor any Acquired Subsidiary is, to the Knowledge of Sellers, under any material investigation with respect to, or has been charged or threatened to be charged with, or has received notice of, any material violation or potential material violation of any Law from any Governmental Body.

5.8 Authorizations. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) each Seller and each Acquired Subsidiary owns, possesses or has obtained all Authorizations that are required by Law (including, for greater certainty, Environmental Law) to be owned, possessed or obtained by Sellers or any of the Acquired Subsidiaries in connection with the operation of the Business (other than in relation to the Diavik Joint Venture Interest) or in connection with the ownership, operation or use of the Acquired Assets; (ii) Sellers and the Acquired Subsidiaries, as applicable, lawfully hold, own or use, and have complied with all such Authorizations; (iii) each such Authorization is valid and in full force and effect, and is renewable by its terms or in the Ordinary Course of Business; and (iv) no action, investigation or proceeding is pending, or to the Knowledge of Sellers, threatened, against any Seller or any Acquired Subsidiary in respect of or regarding any such Authorization that could reasonably be expected to result in the suspension, loss or revocation of any such Authorization.

5.9 Material Contracts. Section 5.9 of the Seller Disclosure Letter sets out a complete and accurate list of all Material Contracts in effect or pursuant to which any Seller or any Acquired Subsidiary has surviving obligations as of the date hereof. True and complete copies of the Material Contracts have been disclosed in the Data Room and, other than as set out in the Data Room, no such Material Contract has been modified in any material respect. Each Material Contract is a

legal, valid and binding agreement of the applicable Seller or the applicable Acquired Subsidiary, and is in full force and effect. Except as disclosed in Section 5.9 of the Seller Disclosure Letter and other than monetary defaults or such breaches arising out of the commencement of the CCAA Proceedings, neither any Seller nor any Acquired Subsidiary or, to the Knowledge of Seller, any other parties thereto, is in material breach or violation of or in default under (in each case, with or without notice or lapse of time or both) any Material Contract and no Seller or any Acquired Subsidiary has received or given any notice of any material breach or default under any Material Contract which remains uncured, and there exists no state of facts which after notice or lapse of time or both would constitute a material breach of or default under any Material Contract by any Seller or any Acquired Subsidiary or, to the Knowledge of Sellers, any other party thereto.

5.10 Intentionally Deleted.

5.11 Ekati Mine.

(a) DDM owns each of the Ekati Buffer Zone and the Ekati Core Zone Joint Venture Interest free and clear of any Encumbrance other than Permitted Encumbrances. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, no Person has any Contract, or any right or privilege capable of becoming such, for the purchase from DDM of any of its interest in the Ekati Buffer Zone or the Ekati Core Zone Joint Venture. Except as specified in the Ekati Core Zone Joint Venture Agreement, as applicable, there are no back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which affect DDM's interest in the Ekati Buffer Zone, the Ekati Core Zone or the Ekati Core Zone Joint Venture.

(b) A copy of the Ekati Core Zone Joint Venture Agreement as currently in effect as of the date hereof has been made available to the Bidder Parties in the Data Room.

5.12 Leased Property. With respect to the real property leased or subleased by any Seller or any Acquired Subsidiary: (i) each lease or sublease for such property constitutes a legal, valid and binding obligation of the applicable Seller or the applicable Acquired Subsidiary, as the case may be, enforceable against such Seller or such Acquired Subsidiary, as the case may be, in accordance with its terms and is in full force and effect; (ii) except as disclosed in Section 5.12 (ii) of the Seller Disclosure Letter, neither any Seller nor any Acquired Subsidiary, as the case may be, is in breach of or default under any such lease or sublease and no event has occurred which, without the giving of notice or lapse of time, or both, would constitute a breach of or default under any such lease or sublease; and (iii) except as disclosed in Section 5.12 (iii) of the Seller Disclosure Letter, to the Knowledge of Sellers, no counterparty to any such lease or sublease is in default thereunder. Each Seller and each Acquired Subsidiary, as applicable, has good and valid leasehold title to the leased premises demised by such lease or sublease, free and clear of all Encumbrances, except for Permitted Encumbrances. Except as disclosed in Section 5.12 of the Seller Disclosure Letter, no third-party consent is required to be obtained by the Seller or the Acquired Subsidiary, nor is any notice required to be given by the Seller or the Acquired Subsidiary under any such lease or sublease in connection with the completion of the transactions contemplated herein. Except as disclosed in Section 5.12 of the Seller Disclosure Letter, neither the Seller nor any Acquired Subsidiary is a party to any written or oral subleases, licences or other contracts granting any Person the right to use, occupy, possess, lease or enjoy any leased premises nor has the Seller

or any Acquired Subsidiary collaterally assigned or granted any other security interest in any of the leased premises or any interest therein.

5.13 Interests in Properties and Mineral Rights.

(a) The Diavik Leases, the Ekati Buffer Zone Leases and the Ekati Core Zone Leases comprise all of Sellers' and the Acquired Subsidiaries' material real properties and all of Sellers' and the Acquired Subsidiaries' material mineral interests and rights, in each case, either existing under contract, by operation of Law or otherwise (collectively, and where material, the "Mineral Rights"). Neither Sellers nor the Acquired Subsidiaries own or have any interest in any other material real property or any other material mineral interests and rights.

(b) Other than pursuant to the Joint Venture Agreements, no Person has any interest in the Mineral Rights or any right to acquire any such interest, and no Person has any back-in rights, earn-in rights, rights of first refusal, pre-emptive rights or similar provisions or rights which would affect, in any material respect, DDM or, to the Knowledge of Sellers, DDMI's interest in any of the Mineral Rights.

5.14 Litigation. Except as disclosed in Section 5.14 of the Seller Disclosure Letter, as of the date hereof, there are no claims, actions, suits, arbitrations, inquiries, investigations or proceedings pending, or, to the Knowledge of Sellers, threatened, against any Seller, any Acquired Subsidiary or, to the Knowledge of Sellers, DDMI, by or before any Governmental Body that, if determined adverse to the interests of any Seller, any Acquired Subsidiary or DDMI, would, individually or in the aggregate, have a Material Adverse Effect, or would be reasonably expected to prevent or materially delay the consummation of the transactions contemplated hereby, and no Seller or Acquired Subsidiary or, to the Knowledge of Sellers, DDMI or any of the Mine Properties is subject to any outstanding judgment, order, writ, injunction or decree that would reasonably be expected to have a Material Adverse Effect.

5.15 Environmental Matters. Except as would not, individually or in the aggregate, have a Material Adverse Effect, to the Knowledge of Sellers, (i) there exists no fact, condition or occurrence concerning any Seller, any Acquired Subsidiary, DDMI or the operation of the Business or Acquired Assets (including the Joint Ventures or the Mine Properties) with respect to any non-compliance with or obligation or liability under Environmental Laws; (ii) no unresolved complaint, notice or violation, citation, summons or order has been issued to any Seller or any Acquired Subsidiary or any of the Joint Ventures or the applicable manager/operator, as the case may be, alleging any violation by or liability of any Seller or any Acquired Subsidiary or any businesses or assets thereof, including the Joint Ventures or the Mine Properties, with respect to any Environmental Law; and (iii) the operation of the Business, including the Joint Ventures and the Mine Properties, is in compliance with Environmental Laws.

5.16 Aboriginal Claims.

(a) Section 5.16 of the Seller Disclosure Letter (to the Knowledge of Sellers, in respect of matters relating to the Diavik Joint Venture) contains a list of the current impact benefit or participation agreements, memoranda of understanding or similar arrangements (the "Aboriginal Agreements") with all Aboriginal Groups with whom any Seller, any Acquired

Subsidiary or any of the Joint Ventures has any such dealings and any written notices of an Aboriginal Claim received by any Seller or any Acquired Subsidiary where there is no current Aboriginal Agreement in place with the Aboriginal Group, in each case, as of the date hereof. Copies of the Aboriginal Agreements as in effect as of the date hereof have been made available in the Data Room. Other than as disclosed in the Seller Disclosure Letter (including the Aboriginal Agreements), as of the date hereof, to the Knowledge of Sellers, neither Sellers, any of the Acquired Subsidiaries, the Ekati Buffer Zone, the Ekati Core Zone Joint Venture, nor any of the Diavik Joint Venture or its manager, as the case may be, has received any written notice of an Aboriginal Claim which materially affects Sellers, any of the Acquired Subsidiaries, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(b) The Sellers have not received written notice of any material Claims from any Aboriginal Group with respect to Sellers, any Acquired Subsidiary, the Business, the Acquired Assets, the Joint Ventures or the Mine Properties.

(c) The Sellers have materially complied with all material obligations under the Aboriginal Agreements.

5.17 Employees.

(a) All material written contracts in relation to Employees (calculated based on annual base salary plus target cash bonus) have been made available in the Data Room.

(b) The independent contractors of Sellers and the Acquired Subsidiaries are not entitled to any severance or similar payments upon termination of their Contracts that would be material and each of such Contracts can be terminated with no more than 60 days' advance notice.

(c) Other than as disclosed in Section 5.17 of the Seller Disclosure Letter, no Employee has any agreement as to length of notice or severance payment required to terminate his or her employment or is entitled to notice or severance payments other than such as results by Law, nor are there any change of control payments or severance payments or agreements with Employees providing for cash or other compensation or benefits upon the consummation of, or relating to, the transactions contemplated by this Agreement other than the key employee retention plan approved by the CCAA Court in the Amended and Restated Initial Order.

5.18 Collective Agreements. Section 5.18 of the Seller Disclosure Letter sets forth a list of all Collective Agreements as of the date hereof. Except as disclosed in Section 5.18 of the Seller Disclosure Letter (A) there are no collective bargaining or union agreements or employee association agreements or other binding commitments in force with respect to Employees, (B) no Person holds bargaining rights with respect to any Employees and (C) to the Knowledge of Sellers, no Person has applied to be certified as the bargaining agent of any Employees.

5.19 Employee Plans.

(a) Section 5.19(a) of the Seller Disclosure Letter lists all written Employee Plans in effect as of the date hereof. Sellers have made available in the Data Room true, complete and up to date copies of all such material Employee Plans, as amended, together with all related

documentation, including all material regulatory filings (including actuarial valuations) required to be filed with a Governmental Body and correspondence with Governmental Bodies with respect to such material regulatory filings (including actuarial valuations) of any Pension Plan (as defined in Section 5.19(a) of the Sellers Disclosure Letter).

(b) Sellers and the Acquired Subsidiaries have made all contributions and paid all premiums in respect of each material Employee Plan in a timely fashion in accordance with Law and in accordance with the terms of the applicable Employee Plan and all Collective Agreements. Except as would not, individually or in the aggregate, have a Material Adverse Effect, all financial liabilities of Sellers and the Acquired Subsidiaries (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and accurately disclosed in accordance with IAS 19 Employee Benefits in the financial statements referred to in Section 5.6 as of the dates of such financial statements.

(c) None of the Employee Plans (other than pension, retirement savings or retirement income plans) provide for retiree benefits or for benefits to retired or terminated Employees or to the beneficiaries or dependents of retired or terminated Employees.

(d) The execution of this Agreement and the completion of the transactions contemplated will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of Indebtedness, vesting, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee or former Employee or their beneficiaries.

5.20 Taxes.

(a) Each of the Sellers and the Acquired Subsidiaries has duly and timely filed all material Tax Returns and such Tax Returns are true, complete and correct in all material respects.

(b) Each of the Sellers and the Acquired Subsidiaries has paid all Taxes, including all installments on account thereof, that are due and payable by it.

(c) Each Seller: (i) is not a non-resident of Canada for purposes of section 116 of the Tax Act; or (ii) is not disposing of Acquired Assets which are considered to be "taxable Canadian property" of the Seller for purposes of section 116 of the Tax Act.

(d) Each of the Sellers and the Acquired Subsidiaries has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Body when required by Law to do so.

(e) The Canadian Assets include all or substantially all of each Seller's "Canadian resource property" for the purposes of sections 66 and 66.7 of the Tax Act.

(f) Each of DDM, DDCU and Dominion Marketing is registered for purposes of the GST Legislation. Each of DDM, DDCU and Dominion Marketing's GST registration numbers are set out in Section 5.20(f) of the Seller Disclosure Letter.

(g) The Purchaser Acquired Interests are “financial instruments” for the purposes of the GST Legislation.

(h) DDC is, and at all times has been, classified as an entity disregarded from its owner for U.S. federal tax purposes.

5.21 Brokers and Finders. Other than the Sale Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and the Bidder Parties are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Sellers or their Subsidiaries.

5.22 No Other Representations or Warranties. Except for the representations, warranties and covenants of Sellers expressly contained herein or any certificate delivered hereunder, neither Sellers nor any of their respective Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Sellers, including, without limitation, as to (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Purchaser after the Closing, (b) the probable success or results in connection with the CCAA Court and the Sale Order, or (c) the value, use or condition of the Acquired Assets, which are being conveyed hereby on an “As-Is”, “Where-Is” condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE BIDDERS

Each Bidder hereby represents and warrants, on a several and not joint basis, to Sellers as of the Effective Date as follows:

6.1 Organization and Power. Such Bidder Party is duly formed and validly existing under its jurisdiction of formation and is validly existing in good standing thereunder. Such Bidder has full power and authority to own, use or lease its properties and to conduct its business as such properties are owned, used or leased and as such business is currently conducted.

6.2 Purchaser’s Authority; No Violation. Such Bidder has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and the execution, delivery and performance of this Agreement by such Bidder shall be duly and validly authorized and approved by all necessary company action. This Agreement shall constitute the legal and binding obligation of such Bidder, enforceable against such Bidder in accordance with its terms, except that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors’ rights generally and that equitable remedies and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought. Subject to the issuance of the Sale Order and subject to compliance with the

applicable requirements of the Competition Act, the entering into of this Agreement, and the consummation by such Bidder of the transactions contemplated hereby will not (a) violate the provisions of any applicable federal, state or local Laws or (b) violate any provision of such Bidder's Organizational Documents, violate any provision of, or result in a default or acceleration of any obligation under, or result in any change in the rights or obligations of such Bidder under, any Encumbrance, contract, agreement, license, lease, instrument, indenture, Order, arbitration award, judgment, or decree to which such Bidder is a party or by which it is bound, or to which any property of such Bidder is subject.

6.3 Consents, Approvals or Authorizations. Except for compliance as may be required by the Competition Act or other applicable Antitrust Laws, no consent, waiver, approval, Order or Authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by such Bidder of this Agreement or the Ancillary Documents to which such Bidder is a party, the compliance by such Bidder with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities by Purchaser or the taking by such Bidder of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on such Bidder's ability to perform its obligations under this Agreement and the Ancillary Documents to which such Bidder is a party, or to consummate the transactions contemplated hereby or thereby, including the assumption of the Assumed Liabilities by Purchaser.

6.4 Brokers. Other than the Bidder Advisor, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for such Bidder in connection with the transactions contemplated by this Agreement that would obligate Sellers to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of such Bidder.

6.5 GST Registration. By or before the Closing Date, the Purchaser shall be registered for the purposes of the GST Legislation. This registration will have an effective date on or before the Closing Date.

6.6 "As Is, Where Is" Basis. Notwithstanding any other provision of this Agreement, each Bidder acknowledges, agrees and confirms that:

(a) except for the representations and warranties of the Sellers set forth in Article V, and subject to the other covenants and agreements set forth herein, such Bidder is entering into this Agreement and the Purchaser will acquire the Acquired Assets and assume the Assumed Liabilities on an "as is, where is" basis as they exist as at Closing and will accept the Acquired Assets in their state, condition and location as at Closing except as expressly set forth in this Agreement and the sale of the Acquired Assets is made without legal warranty and at the risk of the Purchaser;

(b) except for the representations and warranties of the Sellers set forth in Article V, neither the Sellers, the Sale Advisor, nor the Monitor or their Representatives have made

or are making, and such Bidder is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Acquired Assets, the Sellers' right, title or interest in or to the Acquired Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Acquired Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any applicable Law in any jurisdiction, which such Bidder confirms does not apply to this Agreement and are hereby waived in their entirety by such Bidder;

(c) except as otherwise expressly provided in this Agreement, such Bidder hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims such Bidder might have against the Sellers, Monitor, Sale Advisor and their Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Sellers expressly set forth in Article V. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including Claims regarding defects, whether or not discoverable or latent, product liability Claims, or similar Claims, and all other Claims that may be later created or conceived in strict liability or as strict liability type Claims and rights;

(d) none of the representations and warranties of the Sellers contained in this Agreement shall survive Closing and, subject to Section 12.1, the Bidders' sole recourse for any breach of representation or warranty of the Sellers in Article V shall be for the Bidders not to complete the transactions as contemplated by this Agreement pursuant to the rights set forth in Article XII and for greater certainty the Bidders shall have no recourse or claim of any kind against the Sellers or the proceeds of the transactions contemplated by this Agreement following Closing; and

(e) this Section 6.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

6.7 Investment Canada Act. As of the Closing Date, the Purchaser shall be a trade agreement investor or a WTO investor for the purposes of the Investment Canada Act.

6.8 Financial Capability. The Bidders have and will have on the Closing Date access without condition to the requisite financial resources to, or to cause the Purchaser to, purchase the Acquired Assets, satisfy the Purchase Price, provide the Working Capital Financing and otherwise consummate the transactions contemplated hereby, subject to the terms and conditions set out herein. The performance of any obligation by the Bidders under this Agreement is not conditioned on any third party financing commitments or arrangements.

6.9 No Other Representations or Warranties. Except for the representations, warranties and covenants of the Bidders expressly contained herein or any certificate delivered hereunder,

none of the Bidders nor any of their Representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of the Bidders.

6.10 Joint and Several. Without limiting the generality of Section 13.4, the representations and warranties of each Bidder to Sellers under this Agreement are several, and not joint and not joint and several.

ARTICLE VII

COVENANTS OF SELLERS AND/OR PURCHASER

7.1 Conduct of Business of Sellers.

(a) During the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement, the Amended and Restated Initial Order or (z) as consented to in writing by the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall, and shall cause their Subsidiaries to:

(i) take all actions reasonably necessary or appropriate in furtherance of re-starting operations at the Ekati Diamond Mine as soon as possible, and shall in any case ensure that such operations are re-started by no later than January 29, 2021, all in accordance with the re-start plan shown to and approved by the Bidders including, without limitation, by procuring all necessary or desirable supplies, equipment, contractors and employees and taking such other actions as may be reasonably requested by the Bidders in furtherance of satisfying the requirements of this Section 7.1, provided, however, that the foregoing shall be subject to the terms of the First Lien Lender MSA;

(ii) use commercially reasonable efforts to (A) preserve intact its business organizations, (B) maintain the Business and the Acquired Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, subject to continuation of all temporary employee layoffs in place as of the Effective Date except as may be otherwise required by Section 7.1(a)(i) of this Agreement, (D) minimize discretionary expenditures, and (E) maintain and preserve satisfactory relationships with Aboriginal Groups and Governmental Bodies;

(iii) from cash on hand, fund a designated bank account (which may be a bank account in the name of the Monitor) with a sufficient amount to cover the costs to facilitate the wind-down of the Sellers' estates including the administration of the Diavik Realization Assets both before and after the Closing, such amount not to exceed US$250,000 (the "Wind-Down Account");

(iv) from cash on hand, fund a designated bank account (which may be a bank account in the name of the Monitor) with a sufficient amount to cover the costs to administer the Diavik Realization Assets both before and after the Closing, in the amount of US$1,000,000 (the "Diavik Realization Account");

(v) immediately prior to Closing, pay in full, net of any retainers, all unpaid obligations secured by priority charges ordered by the Court in the CCAA Proceedings and all professional fees and expenses of the legal and financial advisors to the Sellers and the Monitor due and payable at Closing; and

(vi) immediately prior to Closing, pay in full all professional fees and expenses of the legal and financial advisors to the First Lien Lenders due and payable at Closing.

(b) Without limiting the generality of Section 7.1(a), during the Pre-Closing Period, except (x) as required by Law, (y) as expressly required or authorized by this Agreement or contemplated in the First Lien Lender MSA or (z) as consented to in writing by the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not:

(i) end any temporary employee layoff or similar arrangement that is in place as of the Effective Date, except as may be required under Section 7.1(a)(i), or terminate the employment of any employee of the Sellers;

(ii) sell, lease, exchange, transfer or otherwise dispose of, or agree to sell, lease, exchange, transfer or otherwise dispose of, any material Acquired Asset, other than the sale of Inventory in accordance with the Budget, with reasonable prior notice delivered to the Monitor and the Bidders;

(iii) settle or compromise any material litigation or claims relating to the Business or the Acquired Assets or that would impose any restrictions or Liabilities on the Business or Purchaser's use of the Acquired Assets after the Closing;

(iv) permit, allow or suffer any assets that would be Acquired Assets to be subjected to any Encumbrance other than Permitted Encumbrances and, if required, any DIP loan in the manner contemplated by the First Lien Lender MSA;

(v) cancel or compromise any material debt or claim that would be included in the Acquired Assets or waive or release any material right of Sellers that would be included in the Acquired Assets;

(vi) recognize any labor organization as a collective bargaining representative of any Persons employed by Sellers or their Subsidiaries, or enter into a collective bargaining agreement or employee association agreement with any labor organization affecting any such Persons;

(vii) grant any increase in the compensation or benefits of any employee or former employee or any dependent or other person claiming through an employee or former employee, including the grant, increase or acceleration in any severance, change in control, termination or similar compensation or benefits payable to any employee;

(viii) enter into any Material Contract or terminate, amend, restate, supplement, extend or waive (partially or completely) any rights under any Material Contract;

(ix) take any action that would reasonably be expected to prevent or significantly impede or materially delay the completion of the transactions contemplated hereunder;

(x) make, revoke or change any election relating to Taxes, file any amended Tax Return, request, enter into or obtain any Tax ruling with or from a Governmental Body, or execute or file, or agree to execute or file, with any Governmental Body any agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes, in each case, that may reasonably be expected to have any adverse effect on the Purchaser or any of its Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date; or

(xi) agree in writing to do any of the foregoing.

7.2 Consents and Approvals.

(a) Sellers and the Bidders shall each use commercially reasonable efforts (i) to obtain all consents and approvals, as reasonably requested by the Bidder Parties and Sellers, to more effectively consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Contracts and Assumed Liabilities, as applicable, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, if required, the Competition Act Approval and any other Mandatory Antitrust Approvals, (ii) to make, as reasonably requested by the Bidder Parties and Sellers, all filings, applications, statements and reports to all authorities which are required to be made prior to the Closing Date by or on behalf of the Bidder Parties and/or Sellers or any of their respective Affiliates pursuant to any applicable Regulation in connection with this Agreement and the transactions contemplated hereby, (iii) to obtain, as reasonably requested by the Bidder Parties and Sellers, all required consents and approvals (if any) to assign and transfer the Authorizations to Purchaser at Closing and, to the extent that one or more of the Authorizations are not transferable, to obtain replacements therefor, and (iv) to satisfy the conditions precedent set out in Article IX and Article X by such dates as required to achieve the Closing on or prior to the Outside Date.

(b) In furtherance and not in limitation of the foregoing, each of Sellers and the Bidder Parties shall prepare and file: (i) within 10 Business Days after the date of the Sale Order or on such other timetable as may be agreed to by the Parties, all filings required and desirable to obtain Competition Act Approval and, to the extent required, including pre-merger notification filings in accordance with Part IX of the Competition Act, (ii) as soon as reasonably practicable after the date of this Agreement, all filings required and desirable to obtain any other Mandatory Antitrust Approvals, and (iii) all other necessary documents, registrations, statements, petitions, filings and applications for other Antitrust Approvals and any other consent or approval of any other Governmental Body required to satisfy the conditions set forth in Section 9.2 and Section 10.2.

(c) Subject to the provisions of Section 4.4 and this Section 7.2, in the event that certain Authorizations are not transferable or replacements therefor are not obtainable on or before the Closing, but such Authorizations are transferable or replacements therefor are obtainable after the Closing, the Bidder Parties and Sellers shall continue to use such reasonable

efforts in cooperation with the other after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Authorizations after Closing and shall do all things reasonably necessary to give Purchaser the benefits which would be obtained under such Authorizations; provided, however, that Sellers' obligations under this Section 7.2(c) shall not restrict Sellers from making any distributions in or terminating the CCAA Proceedings or otherwise winding up their respective affairs or cancelling their existence upon the completion of any such winding up.

(d) Sellers and the Bidder Parties shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Parties informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Body and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, including providing to the other Parties copies of all such material communications given or received; (iii) provide to the other Party reasonable opportunity to comment on drafts of filings and submissions prior to submitting same to a Governmental Body; and (iv) consult with each other in advance of any meeting or conference (whether in person or by telephone) with any Governmental Body, including in connection with any proceeding by a private party, and provide the other Party an opportunity to participate with at least one attendee in any meetings of a substantive nature with a Governmental Body. The foregoing obligations in this Section 7.2(d) shall be subject to any attorney-client, solicitor-client, work product, or other privilege, and each of the Parties hereto shall coordinate and cooperate fully with the other Parties hereto in exchanging such information and providing such assistance as such other Parties may reasonably request in connection with the foregoing.

(e) If, (i) notwithstanding the applicable provisions of the CCAA, the Sale Order, the Assignment Order (if applicable) and the commercially reasonable efforts of Sellers, any consent to the assignment of an Assigned Contract is not obtained prior to Closing and as a result thereof the Purchaser shall be prevented by a third party from receiving the rights and benefits with respect to an Acquired Asset intended to be transferred hereunder, (ii) any attempted assignment of an Acquired Asset would adversely affect the rights of Sellers thereunder so that the Purchaser would not in fact receive all of the rights and benefits contemplated or (iii) any Acquired Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order, the Assignment Order and the CCAA), then, in each case, Sellers shall, subject to any approval of the CCAA Court that may be required, at the request of the Bidders and subject to Section 4.4, cooperate with the Bidders in any lawful and commercially reasonable arrangement under which the Purchaser would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Purchaser.

(f) Notwithstanding any other provision of this Agreement, the Bidders shall control and lead all communications and strategy relating to the Competition Act Approval and any other Mandatory Antitrust Approvals, and the final determination as to any appropriate courses of action shall be made by the Bidders.

7.3 Confidentiality. The Bidders and the Sellers acknowledge that the confidential information provided to them in connection with this Agreement, including under Section 7.5, and the consummation of the transactions contemplated hereby, is subject to the Confidentiality Agreements dated June 8, 2020 between each of the Bidders and DDM (the "Confidentiality Agreement"). Sellers agree that except as may otherwise be required in connection with the CCAA Proceedings or by Law, they will treat any confidential information provided to or retained by them in accordance with this Agreement as if they were the receiving party under the Confidentiality Agreement and Sellers agree that for purposes of Sellers' confidentiality obligation hereunder, the term contained in the fourteenth paragraph of the Confidentiality Agreement shall be deemed to be three (3) years from the Closing Date. The Parties agree that the provisions regarding confidentiality contained in the Confidentiality Agreement shall survive the termination of this Agreement and the Confidentiality Agreement in accordance with the terms set forth therein but shall terminate upon the Closing as to the Bidder Parties and their Representatives (as defined therein).

7.4 Change of Name. Promptly following the Closing, Sellers shall, and shall cause their respective direct and indirect Subsidiaries to, discontinue the use of the "Dominion Diamonds" name (and any other trade names or "d/b/a" names currently utilized by Sellers or their respective direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Dominion Diamond Mines" or any other similar name or mark confusingly similar thereto without the prior written consent of Purchaser, and Sellers shall, if requested by the Purchaser, make an application to the CCAA Court requesting the name of Sellers in the title of the CCAA Proceedings to be changed; provided, however, that Sellers and their respective Subsidiaries may continue to use their current names (and any other names or d/b/a's currently utilized by Sellers or their respective Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to seventy-five (75) days solely for purposes of winding down the affairs of Sellers; provided that when utilizing such materials, other than in incidental respects, Sellers and each of their respective direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each).

7.5 Bidder Parties' Access to Sellers' Records. The Sellers' shall provide the Bidder Parties (or their designated Representatives) reasonable access, upon reasonable advance notice to Sellers, to Sellers' Employees, books and records, corporate offices and other facilities for the purpose of conducting such additional due diligence as the Bidder Parties deem appropriate or necessary in order to facilitate the Bidder Parties' efforts to consummate the transaction provided for herein. Sellers hereby covenant and agree to reasonably cooperate with the Bidder Parties in this regard.

7.6 Notification of Certain Matters.

(a) As promptly as reasonably practicable, Sellers shall give notice to the Bidder Parties of (i) any notice or other communication from any Person alleging that the consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents, is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or to the

issuance of the Sale Order, and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement other than communications which are confidential, without prejudice or privileged by their nature.

(b) Each Party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event that would or would reasonably be expected to (i) constitute a breach or inaccuracy of any of the representations and warranties of such Party had such representation or warranty been made at the time of the occurrence or nonoccurrence of such event, (ii) constitute a breach of any covenant of such Party, or (iii) make the satisfaction of any condition to Closing impossible or unlikely to be satisfied; provided that no such notice shall be deemed to amend or modify the representations and warranties made hereunder or the Seller Disclosure Letter for purposes of Section 9.4, Section 10.4 or otherwise, or limit the remedies available to any Party hereunder.

7.7 Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) agree and the Purchaser shall agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period commencing on the Effective Date and ending at such date on which an orderly wind-down of Sellers' operations has occurred in the reasonable judgment of the Bidder Parties and Sellers and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, facilitating the continuing administration of the CCAA Proceedings, any insurance Claims by, legal proceedings or Tax audits against or governmental investigations of Sellers or the Bidder Parties or in order to enable Sellers or the Bidder Parties to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or the Bidder Parties, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

7.8 Publicity. Neither Sellers nor the Bidder Parties shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of the Bidder Parties or Sellers, disclosure is otherwise required by such party by applicable Law or by the CCAA Court with respect to filings to be made with the CCAA Court in connection with this Agreement; provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or the CCAA Court requirement to consult with the other Party with respect to the text thereof.

7.9 Material Adverse Effect. Sellers shall promptly inform the Bidder Parties in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse

Effect or otherwise cause the failure of any of the Bidder Parties' conditions to Closing set forth in Article IX.

7.10 Sale Free and Clear; No Successor Liability. On the Closing Date, the Acquired Assets shall be transferred to the Purchaser free and clear of all obligations, Liabilities and Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by the CCAA.

7.11 Casualty Loss. If, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall promptly notify the Bidder Parties promptly in writing of such fact, (i) in the case of condemnation or taking, Sellers shall promptly assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall promptly assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 7.11 shall not in any way modify the Bidder Parties' other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect or otherwise cause the failure of any of the Bidder Parties' conditions to Closing set forth in Article IX.

7.12 Debtors-in-Possession. From the commencement of the CCAA Proceedings through the Closing, Sellers shall continue to operate their business pursuant to and in accordance with the CCAA and Orders of the CCAA Court. Sellers shall not convert or seek to convert the CCAA Proceedings into any form of a liquidation proceeding under the CCAA or any other applicable legislation.

7.13 CCAA Court Filings.

(a) Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Sale Order on or prior to December 11, 2020.

(b) Sellers shall serve notices of assumption of the Assigned Contracts, including the designation of Cure Amounts, on all necessary parties on or prior to the date which is not less than five (5) Business Days prior to the date designated by the Bidders to appear before the CCAA Court to request the Assignment Order, or such other date as may be agreed to by the Parties.

(c) Sellers shall use their reasonable best efforts to cause the CCAA Court to issue the Assignment Order on or prior to such date as may be designated by the Bidders, acting reasonably.

(d) Sellers shall use their commercially reasonable efforts to provide the Bidder Parties for review reasonably in advance of filing drafts of such material motions, pleadings or other filings relating to the process of consummating the transactions contemplated by this Agreement to be filed with the CCAA Court, including the motions for issuance of the Sale Order and the Assignment Order (if applicable).

(e) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall promptly notify the Bidder Parties of such appeal or stay request and

shall provide the Bidder Parties promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide the Bidder Parties with written notice of any motion or application filed in connection with any appeal from such orders. Sellers agree to take all action as may be reasonable and appropriate to defend against such appeal or stay request and Sellers and the Bidder Parties agree to use their reasonable best efforts to obtain an expedited resolution of such appeal or stay request, provided that nothing herein shall preclude the Parties hereto from consummating the transactions contemplated hereby, if the Sale Order shall have been issued and has not been stayed and the Bidder Parties, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(f) Sellers and the Bidder Parties acknowledge that this Agreement and the sale of the Acquired Assets and the assumption of the Assumed Liabilities are subject to approval by the CCAA Court.

(g) After issuance of the Sale Order, neither the Bidder Parties nor Sellers shall take any action which is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

7.14 Payment of Cure Amount. The Closing Cure Amount shall be paid in accordance with Section 4.2(c). Any Cure Amounts other than the Closing Cure Amount shall be paid by the Purchaser following Closing pursuant to the terms and conditions set out in settlement agreements entered into by the Sellers and which are in respect of or constitute the Assigned Contracts. Following the Closing, Purchaser shall provide to Sellers, if requested, evidence that the Closing Cure Amount, and subsequent payments of the Cure Amount (if any) in respect of each Assigned Contract has been paid by Purchaser in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, or (ii) the consent of the applicable counterparty or as otherwise agreed upon by Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order, in each case promptly following such payment.

7.15 GNWT Royalties. Prior to or concurrent with the Closing, Sellers shall pay and/or otherwise obtain releases in full in a form satisfactory to the Bidder Parties of all obligations in respect of any period that are due and payable prior to Closing in respect of royalties or similar payment obligations to GNWT, which shall include (for the avoidance of any doubt) all royalty and similar payments obligations to GNWT in respect of fiscal year 2019.

7.16 Permitted Encumbrances/Assigned Contracts. For greater certainty, Purchaser shall not be required at Closing to assume any Encumbrance or agreement other than Permitted Encumbrances and Assigned Contracts. If the Sale Order designates any Permitted Encumbrances that prior to Closing are determined to relate to agreements which are not Assigned Contracts, Sellers shall give prompt written notice thereof to the beneficiaries of such Encumbrances. Upon Sellers giving such written notice, which shall be given not less than 10 days prior to Closing, the effect of the Sale Order shall be to vest title in the Acquired Assets in Purchaser free and clear of all such Encumbrances at Closing without need for further order of the Court and notwithstanding their original inclusion in the Sale Order's list of Permitted Encumbrances.

ARTICLE VIII

EMPLOYEE MATTERS

8.1 Covenants of Sellers with respect to Employees.

(a) Purchaser shall make employment offers to substantially all Employees of Sellers, subject to and consistent with requirements based on the plan for resumption of operations at Sellers' facilities, and in consultation with Sellers' management on terms and conditions that are substantially similar to those under which the Employees are employed at the time of Closing. Sellers shall provide reasonable assistance to facilitate the transfer of all Employees that Purchaser elects to hire, which may be subject to any temporary layoff or reduction in effect at Closing, including, without limitation, providing Purchaser access to such Employees' personnel records and such other information regarding the Employees as Purchaser may reasonably request, consistent with Section 8.2 hereof. All Employees who receive employment offers from Purchaser and who accept such offers of employment are hereinafter referred to as the "Transferred Employees". The Purchaser shall acknowledge that it is successor under all collective agreements set out in Section 5.18 of the Seller Disclosure Letter.

(b) During the Pre-Closing Period, except as consented to in writing by the Bidders (such consent not to be unreasonably withheld, delayed or conditioned), and without limiting the obligations and restrictions set forth in Section 7.1, Sellers (i) shall satisfy all pre-Closing legal or contractual requirements to provide notice to, or to enter into any consultation procedure with, any labor union or organization, which is representing any Employee, in connection with the transactions contemplated by this Agreement, and (ii) shall not (A) enter into, establish, adopt, materially amend or terminate any Employee Plan (or any plan or arrangement that would be an Employee Plan if in existence on the date of this Agreement), other than as required by Law, (B) increase the compensation and benefits payable or to become payable to Employees or former Employees or any dependent or other person claiming through an Employee or former Employee, (C) grant any extraordinary bonuses, benefits or other forms of directors' or consultants' compensation, (D) promote, hire or terminate the employment of (other than for cause) any Employee or (E) transfer the employment of any individual such that such individual becomes an Employee or transfer the employment of any Employee such that such individual no longer qualifies as an Employee.

8.2 Covenants of Purchaser with respect to Employees.

(a) Purchaser shall assume the Employee Plans (collectively, the "Assumed Plans"). Purchaser, on the one hand, and Sellers, on the other, shall take such actions as are necessary and reasonably requested by any Party to cause Purchaser to assume sponsorship of and responsibility for administration and operation of such Employee Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing.

(b) On and following the Effective Date, Sellers and the Bidder Parties shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated

by this Section 8.2, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(c) The provisions of this Section 8.2 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a Party to this Agreement, nor shall any provision of this Agreement except solely for the purpose of giving effect to Section 8.2(a) and Section 8.2(b) hereof be deemed to be the adoption of, or an amendment to, any Employee Plan, or otherwise to limit the right of Purchaser or Sellers to amend, modify or terminate any such Employee Plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any Employee Plan or (ii) prohibit the termination or change in terms of employment of any Employee (including any Transferred Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any Employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of the Purchaser, and of the Bidders to cause Purchaser, to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by the Bidders) of the following conditions precedent on or before the Closing Date.

9.1 CCAA Court Approvals. The Sale Order and the Assignment Orders (if applicable) shall have been issued by the CCAA Court and shall have become a Final Order.

9.2 Antitrust Approvals. All Antitrust Approvals and other necessary regulatory approvals shall have been obtained.

9.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

9.4 Representations and Warranties True as of Both Effective Date and Closing Date. Each of the representations and warranties of Sellers (a) contained herein (other than as set forth in clause (c) below) that are not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all material respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, (b) contained herein (other than as set forth in clause (c) below) that are qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects on and as of the Effective Date (except for such

representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and (c) contained in Section 5.1, Section 5.2, Section 5.4 and Section 5.6 shall be true and correct in all respects on and as of the Effective Date (except for such representations and warranties that specifically relate to an earlier date, which shall be true and correct in all respects as of such earlier date) and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

9.5 Compliance with Covenants. Sellers shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

9.6 No Material Adverse Effect. Since the Effective Date, there shall not have been a Material Adverse Effect.

9.7 Essential Contracts; Cure Amount. (i) All consents, approvals or waivers necessary to assign the Essential Contracts to the Purchaser shall have been obtained, or an Assignment Order shall have been granted by the CCAA Court in respect of such Essential Contracts where necessary consents, approvals or waivers have not been obtained, provided for clarity that any consent in respect of the Aboriginal Agreements and related agreements shall be in form and substance satisfactory to the Bidder Parties; (ii) the Cure Amount shall not exceed the Cure Funding Amount (calculated based on an exchange rate of US$1 to Cdn$1.32 with respect to any amounts to be paid in Canadian dollars) and (iii) the Assignment Order shall provide that the Cure Amount with respect to Assigned Contracts subject to the Assignment Order shall not be payable earlier than 30 days following Closing.

9.8 Authorizations. Purchaser (or the applicable Designated Purchaser) shall have received (and there shall be in full force and effect), in each case in form and substance satisfactory to the Bidder Parties, either by transfer or re-issuance, all material Authorizations required to operate the Business and Acquired Assets, including the Environmental Agreement and Aboriginal Agreements and related agreements and those other Authorizations set forth (or required to be set forth) on Section 5.3(a) of the Seller Disclosure Letter, consistent in all material respects with historical operations.

9.9 Sureties Support Confirmations. The Sureties shall have taken all steps contemplated by the Sureties Support Confirmations.

9.10 Ordinary Course Operations. Purchaser shall not be subject to any mandatory governmental Regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) Purchaser from taking actions and conducting operations at the Ekati Diamond Mine substantially consistent with the re-start plan shown to and approved by Bidders; or (ii) Purchaser's ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts.

9.11 Delivery of Acquired Assets. Each of the deliveries required to be made to Purchaser pursuant to Section 11.2 shall have been so delivered and, at Closing, Sellers shall

deliver possession of all Acquired Assets to Purchaser, *in situ,* wherever such Acquired Assets are located at Closing consistent with the terms of this Agreement.

9.12 Corporate Documents. Sellers shall have delivered to Purchaser copies of the resolutions of Sellers' board of directors or similar governing body, as applicable, evidencing the approval of this Agreement and the transactions contemplated hereby.

9.13 Release of Encumbrances. The Sale Order shall provide for the release of any and all Encumbrances on the Acquired Assets other than Permitted Encumbrances, and Purchaser shall have received such documents or instruments as may be required, in Purchaser's reasonable discretion, to demonstrate that, effective as of the Closing Date, the assets of the Acquired Subsidiaries are released from any and all Encumbrances other than Permitted Encumbrances.

9.14 Accounts Payable. Sellers shall have paid all trade payables arising from the provision of goods and services on or after the Filing Date for which the permitted payment period has not yet expired as of Closing, other than such amounts which are disputed by the Sellers in good faith for which adequate reserves have been created under the Budget.

9.15 First Lien Lender MSA Documents. The First Lien Lenders shall have executed and delivered the definitive documentation, in form and content satisfactory to the First Lien Lenders and the Bidder Parties, acting reasonably, regarding the transactions between such parties contemplated by the First Lien Lender MSA.

ARTICLE X

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) of the following conditions precedent on or before the Closing Date:

10.1 CCAA Court Approvals. The Sale Order shall have been issued by the CCAA Court and shall have become Final Orders.

10.2 Antitrust Approvals. All Antitrust Approvals shall have been obtained.

10.3 No Court Orders. No court or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Law or Order that has not been vacated, withdrawn or overturned restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

10.4 Representations and Warranties True as of Both Effective Date and Closing Date. The representations and warranties of the Bidder Parties (a) contained herein that are not qualified by "materiality" or "material adverse effect" shall be true and correct in all material respects on and as of the Effective Date, and shall also be true in all material respects on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date) with the same force and effect as though made by the Bidder Parties on and as of the Closing Date, and (b) contained herein

that are qualified by "materiality" or "material adverse effect" shall be true and correct in all respects on and as of the Effective Date, and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (except for representations and warranties which specifically relate to an earlier date, which shall be true and correct in all material respects as of such earlier date), in each case, except where the failure of such representations and warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Bidder Parties' ability to consummate the transactions contemplated by this Agreement.

10.5 Compliance with Covenants. The Bidders shall have performed or complied in all material respects with all of their covenants and obligations hereunder which are required to be performed or complied with at or prior to Closing.

10.6 Corporate Documents. Purchaser shall have delivered to Sellers copies of the resolutions of Purchaser's board of directors or other governing body evidencing the approval of this Agreement and the transactions contemplated hereby.

ARTICLE XI

CLOSING

11.1 Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place on the fifth (5th) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article IX and Article X (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time as the Parties may agree.

11.2 Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver, in addition to the other documents contemplated by this Agreement, the following to Purchaser:

(a) a bill of sale in form and content satisfactory to Sellers and Bidders, acting reasonably, duly executed by Sellers;

(b) an assignment and assumption agreement in form and content satisfactory to Sellers and Bidders, acting reasonably (the "Assignment and Assumption Agreement"), duly executed by Sellers;

(c) duly executed instruments for the sale, transfer, assignment or other conveyance to Purchaser or relevant Designated Purchasers, of the equity interests in the Acquired Subsidiaries, in accordance with the requirements of applicable local Law and this Agreement;

(d) a true copy of the Sale Order and any Assignment Orders (if applicable);

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of each Seller certifying that the conditions set forth in Section 9.4 and Section 9.5 have been satisfied;

(f) an instrument of assumption and assignment of the Assigned Contracts regarding leased real property in form and content satisfactory to Sellers and Bidders, acting reasonably (the "Assignment and Assumption of Leases"), duly executed by each Seller, in form for recordation with the appropriate public land records to the extent the underlying lease is of record;

(g) an Intellectual Property Assignment and Assumption Agreement in form and content satisfactory to Sellers and Bidders, acting reasonably (the "IP Assignment and Assumption Agreement"), duly executed by each Seller;

(h) possession of all owned real property included in the Acquired Assets, together with duly executed and acknowledged transfer deeds for all such owned real property conveying the owned real property subject only to Permitted Encumbrances, and any existing surveys, legal descriptions and title policies that are in the possession of Sellers;

(i) possession of the Acquired Assets and the Business *in situ,* wherever such Acquired Assets are located at the Closing consistent with the terms of this Agreement;

(j) stock powers or similar instruments of transfer, duly executed by the applicable Seller, transferring all of the capital stock or other equity interests of the Acquired Subsidiaries to Purchaser (it being understood that such instruments shall address the requirements under applicable Law local to the jurisdiction of organization of each such Acquired Subsidiary necessary to effect and make enforceable the transfer to Purchaser of the legal and beneficial title to such capital stock or other equity interests);

(k) all tax elections or designations described in Section 13.14;

(l) a certificate duly executed by each Seller, in the form prescribed under Treasury Regulation section 1.1445-2(c);

(m) a bill of sale and assignment agreement with respect to the conveyance of any Acquired Assets required to be transferred and assigned to Purchaser pursuant to Section 3.7, in form and substance reasonably satisfactory to Purchaser, duly executed by Parent and the Retained Subsidiaries; and

(n) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to the Bidder Parties, as the Bidder Parties may reasonably request to vest in Purchaser all of Sellers' right, title and interest in, to or under any or all the Acquired Assets, including all owned real property included in the Acquired Assets.

11.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver the following:

(a) the Assignment and Assumption Agreement duly executed by the Purchaser;

(b) the Assignment and Assumption of Leases duly executed by the Purchaser;

(c) the IP Assignment and Assumption Agreement, executed by the Purchaser;

(d) all tax elections or designations described in Section 13.14, duly executed by Purchaser;

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of the Purchaser certifying that the conditions set forth in Section 10.4 and Section 10.5 have been satisfied; and

(f) definitive documentation executed by the Bidders to provide the Working Capital Financing;

(g) to the extent necessary and from the Working Capital Facility, the portion of the Cure Funding Amount required to satisfy the Closing Cure Amount;

(h) such other documents as Sellers may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

11.4 Monitor's Certificate. Upon satisfaction or waiver by the Purchaser of all conditions precedent to Closing under Article IX and delivery to the Purchaser of all Closing deliverables under Section 11.2, the Purchaser shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Purchaser's Conditions Certificate"). Upon satisfaction or waiver by the Sellers of all conditions precedent to Closing under Article X and delivery to the Sellers of all Closing deliverables under Section 11.3, the Sellers shall deliver to the Monitor a certificate, dated as of the Closing Date, confirming the satisfaction or waiver of such conditions precedent and delivery of such Closing deliverables (the "Sellers' Conditions Certificate" and together with the Purchaser's Conditions Certificate, the "Conditions Certificates"). Upon receipt by the Monitor of each of the Conditions Certificates, the Monitor shall (i) forthwith issue its Monitor's Certificate concurrently to the Sellers and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to the Sellers and the Purchaser). For greater certainty, the Monitor shall be entitled to rely exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

ARTICLE XII

TERMINATION

12.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time on or prior to the Closing Date:

(a) Mutual Consent. By mutual written consent of the Bidders and Sellers.

(b) Termination by the Bidder Parties or Sellers.

(i) by the Bidders or Sellers, if the Closing shall not have occurred on or prior to February 1, 2021 or such later date as may be designated by the Bidders (the "Outside Date"); provided that neither the Bidders nor the Sellers shall be entitled to terminate this Agreement pursuant to this Section 12.1(b)(i) if the failure of the Closing to have occurred by the date specified above is caused by such Party's breach of any of its obligations under this Agreement; provided, however, that either the Bidders or the Sellers may, on the day that is not less two (2) Business Days immediately prior to the then Outside Date, elect to extend the Outside Date by delivering a written notice to the other Party stating that, if, on the Outside Date, the required approvals from any Governmental Body to transfer or reissue any material Authorization required to operate the Business and the Acquired Assets, including any of those set forth (or required to be set forth) on Section 5.3(a) of the Seller Disclosure Letter, has not been obtained, then the Outside Date shall extend by seven (7) days; provided, further, that there shall be no more than four of such seven (7) day extensions; or

(ii) by the Bidders or Sellers, if the CCAA Court or other court of competent jurisdiction or a governmental, quasi-governmental, regulatory or administrative department, agency, commission or authority shall have issued or enacted an Order or Law restraining, enjoining or otherwise prohibiting the Closing, which is not capable of appeal; provided, however, that Sellers and the Bidders shall not be entitled to terminate this Agreement pursuant to this Section 12.1(b)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement.

(c) Termination by the Bidders.

(i) by the Bidders, if (A) the Sale Order shall not have been issued on or prior to December 11, 2020 or if the Sale Order has been issued by such date but has been amended, supplemented or otherwise modified in any respect without the prior written consent of the Bidders, or (B) following its issuance, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of the Bidders, acting reasonably;

(ii) by the Bidders, if the CCAA Proceedings are terminated or a licensed insolvency trustee or receiver is appointed in respect of the Sellers, and such licensed insolvency trustee or receiver refuses to proceed with the transactions contemplated by this Agreement;

(iii) by the Bidders, if a breach of any representation, warranty, covenant or agreement on the part of Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article IX not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Sellers have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period;

(iv) by the Bidders, if either (a) Sellers or their Affiliates request or (b) the CCAA Court approves any amendment or modification to the Amended and Restated Initial Order that adversely affects the interests of the Bidder Parties;

(v) by the Bidders, acting reasonably, if the CCAA Court enters any Order inconsistent with the Sale Order or the Acquisition (including, without limitation, any provisions of this Agreement), other than in any de minimis respect;

(vi) by the Bidders, if any creditor of any Seller obtains a final and unstayed Order of the CCAA Court granting relief from the stay to foreclose or exercise enforcement rights on any portion of the Acquired Assets in excess of Cdn$500,000 in the aggregate; or

(vii) by the Bidders, if a Material Adverse Effect occurs.

(d) Termination by Sellers.

(i) by Sellers, if a breach of any representation, warranty, covenant or agreement on the part of Bidders set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Article X not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, Bidders have failed to cure such breach within thirty (30) days of receipt of written notification thereof or which by its nature or timing cannot be cured within such time period.

12.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 12.1, written notice thereof shall forthwith be given to the other Parties to this Agreement and the Monitor and all further obligations of the Parties under this Agreement shall terminate; provided, however, that the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Article XII.

12.3 Breach by Bidder. If this Agreement is terminated solely as a result of a material breach by any Bidder pursuant to Section 12.1(d) hereof, Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of US$7,000,000 (the "Purchaser Termination Fee"), which shall be payable by the breaching Bidder or Bidders by wire transfer of immediately available funds. Liability for the Purchaser Termination Fee shall be several, and not joint, and shall be the sole responsibility of the breaching Bidder or Bidders. In the event that there is more than one breaching Bidder, liability for payment of the Purchaser Termination Fee shall be split among all breaching Bidders on a pro rata basis relative to their respective holdings of Second Lien Notes on the Effective Date and Sellers shall in no event be entitled to recover in the aggregate more than the amount of the Purchaser Termination Fee. The Parties hereby agree that the foregoing dollar amount of the Purchaser Termination Fee is a fair and reasonable estimate of the

total detriment that Sellers would suffer in the event of any Bidder's default and failure to complete the transaction hereunder. Sellers' receipt of the Purchaser Termination Fee in full pursuant to and in accordance with this Section 12.3 shall be the sole and exclusive remedy of Sellers and their Affiliates, attorneys, accountants, Representatives or agents, and, except for payment of the Purchaser Termination Fee pursuant to and in accordance with this Section 12.3, in no event shall any of the foregoing Persons be entitled to seek or obtain any recovery or judgment against the Bidder Parties, any Bidder Related Party, any potential debt or equity financing source and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Representatives or Affiliates, for any Liability suffered with respect to this Agreement and the transactions contemplated by or in connection with this Agreement (including any breach or failure to perform by Bidder Parties, whether willfully, intentionally, unintentionally or otherwise), the termination of this Agreement, the failure of the transactions contemplated under this Agreement to be consummated for any reason or no reason or any breach of this Agreement by Bidders, and in no event shall Sellers or any of the other applicants be entitled to seek or obtain any other damages or other remedy of any kind, at law or in equity, against any such Person, including consequential, special, indirect, exemplary or punitive damages or for diminution in value, lost profits or lost business. Sellers further acknowledged that the Purchaser Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will appropriately compensate Sellers under the circumstances.

12.4 Break-up Fee

(a) In consideration of the Bidders having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, if: (i) this Agreement is terminated or the transaction contemplated herein is not completed for any reason other than the Bidders' non-compliance with their obligations under this Agreement; and (ii) an alternative transaction is consummated within nine (9) months of the date of this Agreement for the sale or restructuring of the Sellers or any material portion of their assets and pursuant to which Indebtedness under the Pre-filing Credit Agreement is repaid in full in cash ("Alternate Transaction"); then in such event (and in addition to such other amounts to which the Bidder Parties may be entitled pursuant to Section 13.1 hereof and otherwise) Sellers shall pay to Bidders immediately following the closing of such Alternate Transaction an amount equal to US$2,522,140 (the "Break-Up Fee") as consideration for the disposition of Bidders' rights under this Agreement.

(b) Sellers' obligation to pay the Break-Up Fee pursuant to this Section 12.4 shall survive termination of this Agreement and shall be secured by a charge against all of the Sellers' properties and assets to be included in the Sale Order, which charge shall rank subsequent to: (i) other priority charges ordered by the Court in the CCAA Proceedings prior to the date of this Agreement; and (ii) charges in respect of Indebtedness under the Pre-filing Credit Agreement.

ARTICLE XIII

MISCELLANEOUS

13.1 Expenses. Sellers shall, immediately upon issuance of the Sale Order and from time to time thereafter, promptly pay and reimburse all costs and expenses incurred and to be incurred

by Bidder Parties and the ad hoc group of holders of Second Lien Notes in the CCAA Proceedings in respect of this Agreement, the transactions contemplated hereby, and participation or representation in the CCAA Proceedings including, without limitation: (i) any and all professional fees and expenses of legal and financial advisors; and (ii) a maximum of US$150,000 in respect of any and all fees or expense reimbursements or other amounts of any kind payable to actual or prospective sources of debt or equity financing incurred on or prior to the Effective Date. In addition to the foregoing, Sellers shall on Closing pay and reimburse all legal fees and expenses incurred by the trustee under the Pre-filing Indenture in respect of its participation or representation in the CCAA Proceedings up to an aggregate maximum amount satisfactory to the Bidders.

13.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. Except as otherwise provided herein, the Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

13.3 Amendment; Waiver. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided that, notwithstanding the foregoing, the Acquired Assets and Assigned Contracts may be amended in accordance with Section 3.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

13.4 Bidders.

(a) Any right given to, or election or decision to be made by, Bidders in this Agreement or any Ancillary Documents may be exercised by a majority in number of all Bidders who control, at the relevant time, a majority in principal amount of the aggregate Second Lien Notes held by all Bidders in their managed or advisory funds and accounts. Bidders agree to cooperate with each other reasonably and in good faith with respect to all matters relating to this Agreement and the transaction contemplated herein. The representations, warranties, covenants, agreements, obligations and commitments of Bidders to Sellers or any other Person under this Agreement or any Ancillary Document are several, and not joint. The Parties acknowledge and agree that Bidders and Purchaser are separate Persons and that any obligations, liabilities or commitments of Purchaser, under this Agreement or otherwise, are not obligations, liabilities or commitments of Bidders. Sellers acknowledge that Bidders are financial management and advisory companies and are entering into this Agreement on behalf of certain managed or advisory funds and accounts. No such managed or advisory funds and accounts shall under any

circumstance whatsoever assume or incur any obligation, liability or commitment whatsoever to Sellers in respect of this Agreement, the Ancillary Documents or the transaction contemplated therein. Any obligation or commitment of Bidders herein to cause Purchaser to take any action or omit to take any action shall be limited to the commercially reasonable efforts of each such Bidder.

(b) The Parties hereto acknowledge that all representations, warranties, covenants and other agreements made by any Bidder that is an investment manager on behalf of a separately managed account managed by such Bidder are being made only with respect to the assets managed by such Bidder on behalf of such separately managed account, and shall not apply to (or be deemed to be made in relation to) any assets or interests that may be beneficially owned by such separately managed account that are not held through accounts managed by such Bidder.

13.5 Notices. Any notice, request, instruction or other document to be given hereunder by a Party hereto shall be in writing and shall be deemed to have been given (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service (such as FedEx):

(A) If to Sellers, addressed as follows:

Dominion Diamond Mines
900 – 606 4 Street SW
Calgary, Alberta, Canada
T2P 1T1
Attention: Brendan Bell
Email: brenbellnt@gmail.com

With a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600
Vancouver, BC, Canada
V7X 1L3
Attention: Susan Tomaine
Email: susan.tomaine@blakes.com

(B) If to the Bidder Parties, to each Bidder Party, addressed as follows:

to DDJ:

DDJ Capital Management, LLC
130 Turner Street
Building 3, Suite 600
Waltham, MA 02453
Attention: Beth Duggan and Eric Hoff
Email: legal@ddjcap.com

to Brigade:

Brigade Capital Management, LP
399 Park Avenue, 16th Floor
New York, NY 10022
Attention: Andy Petitjean
Attention: Chris Chaice
Email: apetitjean@brigadecapital.com
Email: cchaice@brigadecapital.com

With a copy (which shall not constitute notice) to

Torys LLP
79 Wellington St. West, 30th Floor
Toronto, Ontario, M5K1N2
Attention: Tony DeMarinis
Email: tdemarinis@torys.com

(C) If to the Monitor, addressed as follows

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

With a copy (which shall not constitute notice) to

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary AB T2P 4K7
Attention: Chris Simard
Email: simardc@bennettjones.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

13.6 Effect of Investigations. Any due diligence review, audit or other investigation or inquiry undertaken or performed by or on behalf of the Bidder Parties shall not limit, qualify, modify or amend the representations, warranties and covenants of, and indemnities by, Sellers made or undertaken pursuant to this Agreement, irrespective of the knowledge and information received (or which should have been received) therefrom by the Bidder Parties.

13.7 Counterparts; Electronic Signatures.

(a) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

13.8 Headings. The headings preceding the text of Articles and Sections of this Agreement and the Seller Disclosure Letter are for convenience only and shall not be deemed part of this Agreement.

13.9 Applicable Law and Jurisdiction. Subject to any provision in this Agreement and any Ancillary Document to the contrary, this Agreement (and all documents, instruments, and agreements executed and delivered pursuant to the terms and provisions hereof) shall be governed by and construed and enforced in accordance with the laws of Alberta and the laws of Canada applicable therein. Bidders and Sellers further agree that the CCAA Court shall have jurisdiction over all disputes and other matters relating to (a) the interpretation and enforcement of this Agreement or any Ancillary Document and/or (b) the Acquired Assets and/or Assumed Liabilities and the Parties expressly consent to and agree not to contest such jurisdiction.

13.10 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the Parties hereto without prior written consent of the other Parties, provided that, the Bidder Parties may grant a security interest in their rights and interests hereunder to their third party lender(s). Nothing contained herein, express or implied, is intended to confer on any Person other than the Parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.11 Designated Purchasers. In connection with the Closing, notwithstanding Section 13.10 or anything to the contrary contained herein, the Bidders and the Purchaser shall be entitled to designate, in accordance with the terms of this paragraph, one or more Subsidiaries or Affiliates of Purchaser to (a) purchase specified Acquired Assets (including specified Assigned Contracts) and pay the corresponding Purchase Price amount, (b) assume specified Assumed Liabilities, (c) employ specified Transferred Employees on and after the Closing Date, (d) perform any of the other covenants and agreements hereunder to be performed by Purchaser, and (e) be entitled to the rights and benefits afforded to Purchaser hereunder (any such Subsidiary or Affiliate of Purchaser that shall be designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the corresponding Purchase Price (if any), the specified Assumed Liabilities and employment of the specified Transferred Employees. Any reference to Purchaser

or Bidder Party made in this Agreement in respect of any right, obligation, purchase, assumption or employment referred to in this paragraph shall be deemed a reference to the appropriate Designated Purchaser, if any, with respect to the applicable obligation or right. All obligations of Purchaser and any Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained herein, neither Purchaser nor any other Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by a particular Designated Purchaser at the Closing and any prior obligations of Purchaser are novated and released. For the avoidance of doubt, no designation of a Designated Purchaser hereunder shall expand or otherwise affect any limitation on Purchaser's obligations hereunder, it being understood that such limitations shall apply to the aggregate Liabilities of Purchaser and any Designated Purchaser(s) hereunder. The above designations shall be made by the Bidder Parties by way of a written notice to be delivered to Sellers in no event later than five (5) Business Days prior to the anticipated Closing Date; provided, however, that no such designation may be made if the timing of such designation would reasonably be expected to delay the Closing; provided, further, that such designation shall not be permitted unless Sellers confirm, acting reasonably, that the Designated Purchaser(s), or any party guaranteeing the obligations of such Designated Purchaser(s), are sufficiently creditworthy. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing designation. Any Designated Purchaser(s) are intended third party beneficiaries of this Agreement, and this Agreement may be enforced by such Designated Purchaser(s).

13.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective Affiliates and, other than with respect to the Purchaser or Designated Purchasers, no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, Liability, reimbursement, Claim of Action or other right.

13.13 No Recourse. This Agreement may only be enforced against, and any Claims or causes of Action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as Parties hereto and no Bidder Related Party shall have any Liability for any obligations or liabilities of the Parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith. Without limiting the rights of Sellers against the Bidder Parties hereunder, in no event shall Sellers or any of their Affiliates, and Sellers agree not to and to cause their Affiliates not to, seek to enforce this Agreement against, make any Claims for breach of this Agreement against, or seek to recover monetary damages from, any Bidder Related Party.

13.14 Tax Matters.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or similar fees or Taxes (other than any Taxes based on income, receipts, profits, or capital), governmental charges and recording charges (including any interest and penalty thereon) which may be applicable to, or resulting from, or payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne by Purchaser as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchaser shall properly file on

a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to Sellers evidence of payment of applicable Transfer Taxes.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a "Straddle Period"), (i) Taxes imposed on the Acquired Assets that are based upon or related to income or receipts or imposed on a transaction basis (including all related items of income, gain, deduction or credit) will be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date, and (ii) any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period and in each of (i) and (ii), such amounts shall be the responsibility of Sellers (and, for the avoidance of doubt, such amounts shall be an Excluded Liability for purposes of clause (ii) of Section 3.4(e)).

(c) Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns for any Pre-Closing Tax Period or Straddle Period in respect of the Acquired Subsidiaries that is required to be filed after the Closing Date. Prior to filing any such Tax Returns, Purchaser shall provide a draft thereof to Sellers for Sellers' review, comment and approval (such approval not to be unreasonably withheld or delayed), unless otherwise required by applicable Law. Purchaser shall consider in good faith any comments provided by Sellers to such Tax Returns. To the extent any Taxes reflected on any such Tax Return are an Excluded Liability, Sellers shall pay to Purchaser the amount of such liability within ten (10) days of receiving notice from Purchaser that such Tax Return has been filed or that Purchaser has paid such Liability, except to the extent such Taxes were paid by Sellers to the applicable Governmental Body prior to the filing of such Tax Return.

(d) Cooperation on Tax Matters. Purchaser shall make available to Sellers, and Sellers shall make available to Purchaser such records, personnel and advisors (i) as any such Party may require for the preparation of any Tax Returns required to be filed by Sellers or Purchaser, as the case may be, and (ii) as Sellers or Purchaser may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return in which Sellers or Purchaser was included. Sellers agree to provide all reasonable cooperation to Purchaser, and shall make available to Purchaser such records, personnel and advisors as is reasonably necessary for Purchaser, in determining the Tax attributes of Sellers and their Subsidiaries.

(e) Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with their respective fair market values. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Purchaser shall provide Sellers with a draft allocation of the Purchase Price for all purposes, including any liabilities properly included therein among the Acquired Assets and the agreements provided for herein, for all purposes (the "Initial Allocation"). Sellers may make reasonable inquiries of Purchaser and their accountants and employees relating to the Initial Allocation, and Purchaser shall use reasonable efforts to cause any such accountants and employees to cooperate with, and provide such requested information to, Sellers in a timely manner. Within forty-five (45) days of the receipt of the Initial Allocation, Sellers shall either (i) deliver a written notice (the "Objection

Notice") to Purchaser, setting forth in reasonable detail those items in the Initial Allocation that Sellers disputes or (ii) notify Purchaser in writing that they will not provide any Objection Notice (or if Sellers do not deliver an Objection Notice within such forty-five (45)-day period) in which case the Purchaser's proposed Initial Allocation shall be deemed final, conclusive and binding upon each of the Parties hereto. Within thirty (30) days of Sellers' delivery of the Objection Notice, Sellers and Purchaser shall attempt to resolve in good faith any disputed items, and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to an Arbitrating Accountant. The fees and expenses of the Arbitrating Accountant shall be paid 50% by Purchaser and 50% by Sellers, unless the Arbitrating Accountant determines that one party's position was unreasonable in light of the circumstances, in which case such party shall bear 100% of such costs. Such determination by the Arbitrating Accountant shall be (i) in writing, (ii) furnished to Purchaser and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), (iii) made in accordance with the principles set forth in this Section 13.14(e), and (iv) non-appealable and incontestable by Purchaser and Sellers. As used herein, the "Allocation" means the allocation of the Purchase Price, the Assumed Liabilities and other related items among the Acquired Assets and the agreements provided for herein as finally agreed between Purchaser and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 13.14(e). The Allocation shall be prepared in accordance with section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, provincial, territorial, local or foreign Law, as appropriate). Purchaser and Sellers shall each report the federal, state provincial, territorial and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective U.S. federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation, including in the course of any Tax audit, Tax review or Tax litigation relating thereto, unless otherwise required under applicable Law. Sellers shall provide Purchaser and Purchaser shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under section 1060 of the Code.

(f) Section 22 Election. To the extent available and if requested by Purchaser, in Purchaser's sole discretion, one or more of DDM, DDCU and Dominion Marketing and Purchaser shall jointly execute and file an election pursuant to section 22 of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, with respect to the sale of accounts receivable, and shall designate therein the portion of the Purchase Price allocated to the accounts receivable pursuant to Section 13.14(e) hereof as consideration paid by Purchaser for the accounts receivable of Sellers.

(g) Subsection 20(24) Election. One or more of DDM, DDCU and Dominion Marketing and Purchaser shall, if applicable, jointly execute and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the prescribed time limits, as to such amount paid by Sellers to Purchaser for assuming future obligations of the Business or relating to the Canadian Assets. In this regard, DDM, DDCU and Dominion Marketing, as applicable, and Purchaser acknowledge that if such election is made, a portion of the Canadian

Assets having a value equal to the elected amount under subsection 20(24) of the Tax Act is being transferred by DDM, DDCU and Dominion Marketing, as applicable, to Purchaser as a payment for the assumption of such future obligations by Purchaser.

(h) Successor Election and Designation. If requested by Purchaser, in Purchaser's sole discretion, (i) one or more of DDM and DDCU and Purchaser shall jointly execute and file an election described in paragraph 66.7(7)(e) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the time limits set out in that section, in respect of the "Canadian resource property" (as that term is defined in subsection 66(15) of the Tax Act) acquired by Purchaser from DDM or DDCU, as applicable, under this Agreement and (ii) DDM or DDCU, as applicable, shall execute and file the designation contemplated by subsection 66.7(12.1) of the Tax Act (within the time and in the manner prescribed therefor by the Tax Act) so as to designate in favour of Purchaser the maximum amount of successored pools reasonably available pursuant to the Tax Act, provided that any such filings would not give rise to any Tax Liability to DDM or DDCU, as applicable.

(i) Section 167 Election. At the Closing, each of DDM, DDCU and Dominion Marketing and the Purchaser will, if applicable, jointly execute an election pursuant to subsections 167(1) and (1.1) of the GST Legislation so that it is not required to collect GST in respect of the transfer of the Canadian Assets. The Purchaser shall file the election within the time prescribed by the GST Legislation.

(j) Withholding. Purchaser, and any Person acting on its behalf, shall be entitled to deduct or withhold from the consideration otherwise payable pursuant to this Agreement to any Seller or any other Person such amounts as Purchaser is required to deduct or withhold under the Code, the Tax Act or any Tax Law, with respect to the making of such payment; provided that Purchaser shall consult with the affected Sellers or other Persons in good faith prior to making such withholding or deduction and the Parties hereto shall reasonably cooperate to reduce or eliminate any such amounts. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to Sellers or the Person in respect of whom such deductions or withholding was made, as the case may be.

13.15 Construction.

(a) The information contained in the Seller Disclosure Letter is disclosed solely for the purposes of this Agreement and may include items or information not required to be disclosed under this Agreement, and no information contained in any Seller Disclosure Letter shall be deemed to be an admission by any Party hereto to any third Person of any matter whatsoever, including an admission of any violation of any Laws or breach of any agreement. No information contained in any section of the Seller Disclosure Letter shall be deemed to be material (whether individually or in the aggregate) to the Business, assets, liabilities, financial position, operations, or results of operations of Sellers nor shall it be deemed to give rise to circumstances which may result in a Material Adverse Effect, in each case solely by reason of it being disclosed. Information contained in a section or subsection of the Seller Disclosure Letter (or expressly incorporated therein) shall qualify the representations and warranties made in the identically numbered Section or, if applicable, Subsection of this Agreement and all other representations and warranties made

in any other section or subsection of the Seller Disclosure Letter to the extent its applicability to such section or subsection of the Seller Disclosure Letter is reasonably apparent on its face. References to agreements in the Seller Disclosure Letter are not intended to be a full description of such agreements, and all such disclosed agreements should be read in their entirety, and nothing disclosed in any section or subsection of the Seller Disclosure Letter is intended to broaden any representation or warranty contained in Article V or Article VI.

(b) References in Article V or Article VI to documents or other materials "provided" or "made available" to the Bidder Parties or similar phrases mean that such documents or other materials were present (and available for viewing by the Bidder Parties and its Representatives) in the Data Room.

13.16 Entire Understanding. This Agreement, together with the Ancillary Documents, set forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement and the Ancillary Documents hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement or in any Ancillary Documents hereto.

13.17 No Presumption Against Drafting Party. Each of the Bidders and Sellers acknowledge that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule or Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

13.18 No Punitive Damages. The Parties hereto expressly acknowledge and agree that no Party hereto shall have any Liability under any provision of this Agreement for any punitive damages relating to the breach or alleged breach of this Agreement.

13.19 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

13.20 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

BIDDERS:

DDJ Capital Management, LLC,
acting in its capacity as investment manager on behalf of certain funds and accounts it manages and/or advises that are beneficial owners of Second Lien Notes

By: David J. Breazzano
Its: President

Brigade Capital Management, LP,
on behalf of certain funds and accounts that it manages and/or advises

____
By:
Its:

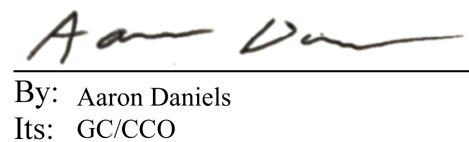
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

BIDDERS:

DDJ Capital Management, LLC, acting in its capacity as investment manager on behalf of certain funds and accounts it manages and/or advises that are beneficial owners of Second Lien Notes

____
By:
Its:

Brigade Capital Management, LP, on behalf of certain funds and accounts that it manages and/or advises



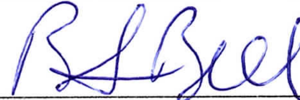
By: Aaron Daniels
Its: GC/CCO

SELLERS:

Dominion Diamond Holdings, LLC

By: Brendan Bell
Its: Authorized Signatory

Dominion Diamond Mines ULC



By: Brendan Bell
Its: Director

Dominion Diamond Delaware Company LLC

____

By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Marketing Corporation

____

By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Canada ULC

____

By: Kristal Kaye
Its: Chief Financial Officer

SELLERS:

Dominion Diamond Holdings, LLC

____
By: Brendan Bell
Its: Authorized Signatory

Dominion Diamond Mines ULC

____
By: Brendan Bell
Its: Director

Dominion Diamond Delaware Company LLC

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Marketing Corporation

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Diamond Canada ULC

____
By: Kristal Kaye
Its: Chief Financial Officer

Dominion Finco Inc.

By: Brendan Bell
Its: Authorized Signatory

[Signature Page to Asset Purchase Agreement]

SCHEDULE A

ASSIGNED AND EXCLUDED CONTRACTS

[*To be finalized pursuant to Section 3.6.*]

SCHEDULE B

FIRST LIEN LENDER MSA

MUTUAL SUPPORT AGREEMENT

WHEREAS, this mutual support agreement (the "**Support Agreement**"), dated as of December 6, 2020, sets out the agreement among (i) the undersigned first lien secured lenders (collectively, the "**1L Lenders**") to Dominion Diamond Mines ULC (the "**Company**") and various of its affiliates pursuant to a Revolving Credit Agreement dated as of November 1, 2017 (the revolving facility draws outstanding thereunder and interest accrued thereon being the "**First Lien Debt**"); and (ii) the undersigned holders of the 7.125% secured second lien notes of the Company (the "**Second Lien Notes**") (collectively, the "**2L AHG**") regarding an acquisition transaction in respect of the Company (the "**Transaction**"), as further described in the term sheet attached as Schedule A (the "**Term Sheet**", with the terms of the Transaction set out therein and herein being, collectively, the "**Transaction Terms**"), which Transaction Terms are to form the basis of the Transaction to be implemented within the Company's ongoing proceedings under the *Companies' Creditors Arrangement Act* (the "**Proceedings**").

NOW THEREFORE, the 1L Lenders and the 2L AHG (collectively the "**Parties**" and each a "**Party**") hereby agree as follows:

1. Transaction

The Transaction Terms as agreed among the Parties are set forth in this Support Agreement and in the Term Sheet, which Term Sheet is incorporated herein and made a part of this Support Agreement. In the case of a conflict between the provisions contained in the main body of this Support Agreement and the Term Sheet, the provisions of the main body of this Support Agreement shall govern.

2. Subject Debt Purchase

(a) Each member of the 2L AHG irrevocably and unconditionally agrees, on a several basis in accordance with its respective amount set forth on its signature page to this Support Agreement, to purchase the Subject Debt (as defined below) from the 1L Lenders on the earlier of the closing of the Transaction and January 29, 2021 (the "**Subject Debt Purchase**"). The Parties shall enter into assignment agreements in respect of their applicable portion of the Subject Debt Purchase substantially in the form of The Loan Syndication and Trading Association ("**LSTA**") form attached as Schedule B.

(b) For the purposes of this Support Agreement, "**Subject Debt**" shall mean (i) in the event that the Transaction is not completed prior to January 29, 2021, an aggregate principal amount of US$15 million of the funded portion of the First Lien Debt; or (ii) in the event of the completion of the Transaction prior to January 29, 2021, an aggregate principal amount of US$15 million of the term loan debt to be received by the 1L Lenders under the Transaction as contemplated hereby. For greater certainty, Subject Debt shall not include any debts or liabilities relating to letters of credit issued by the 1L Lenders for the benefit of the Company.

(c) The aggregate purchase price for the Subject Debt shall be US$15 million.

(d) The 2L AHG shall have no voting rights with respect to the Subject Debt other than with respect to changes to any of the following terms of the Subject Debt, which shall require approval of all Subject Debt holders: (i) principal amount; (ii) term or maturity date; (iii) interest rate or fees; (iv) payment dates; (v) security interests, charges or guarantees; (vi) pro rata sharing rights among lenders; (vii) agent and agent's powers; (viii) rights of transfer, sale and assignment by lenders; (ix) information, disclosure, reporting, Company representations and warranties, and notice rights; and (x) the voting and approval rights provided for in this Section 2(d).

(e) For the avoidance of doubt, the Subject Debt Purchase shall not be subject to any conditions precedent to completion, including but not limited to completion of the Transaction, but shall be conditional on satisfaction and compliance by the 1L Lenders of their obligations and commitments under this Support Agreement.

3. Representations and Warranties

Each Party, severally and not jointly, hereby represents and warrants to the other Parties that as of the date hereof:

(a) it is the sole beneficial owner of First Lien Debt and Second Lien Notes (collectively, "**Debt**"), as applicable, in the principal amount(s) set forth on its signature page to this Support Agreement (together with all obligations owing in respect thereof, including accrued and unpaid interest and any other amount that such Party is entitled to claim in respect thereof, its "**Relevant Debt**"), and no other Debt.

(b) it (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Support Agreement; (ii) has conducted its own analysis and made its own decision to enter into this Support Agreement; (iii) has obtained such independent advice in this regard as it deemed appropriate; and (iv) has not relied in such analysis or decision on any person other than its own independent advisors;

(c) this Support Agreement has been duly authorized, executed and delivered by it, and, assuming the due authorization, execution and delivery by the other Parties, this Support Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to laws of general application and bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity;

(d) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all approvals necessary to execute and deliver this Support Agreement and to perform its obligations hereunder; and

(e) it has not deposited any of its Relevant Debt into a voting trust, or granted (or permitted to be granted) any proxies or powers of attorney or attorney in fact, or entered into a voting agreement, understanding or arrangement with respect to its Relevant Debt that would reasonably be expected to restrict in any material manner the ability of such Party to comply with its obligations under this Support Agreement, including the obligations in Section 4.

4. Parties' Covenants and Agreements

Each Party hereby acknowledges, covenants and agrees:

(a) to the Transaction and the Transaction Terms and the implementation of same within the Proceedings;

(b) not to, directly or indirectly, from the date hereof to the date this Support Agreement is terminated, sell, assign, lend, pledge, hypothecate, dispose or otherwise transfer any of its Relevant Debt or any rights or interests therein (or permit any of the foregoing with respect to any of its Relevant Debt) or enter into any agreement, arrangement or understanding in connection therewith except with the prior written consent of the other Parties, provided that each Party may transfer some or all of its Relevant Debt to any other Party or to a transferee that has executed a joinder agreement in form and substance satisfactory to the other Parties, acting reasonably, whereby such transferee is bound by the terms of this Support Agreement in respect of such transferred Relevant Debt and in which event the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Support Agreement in respect of such Relevant Debt;

(c) not to take any action, or omit to take any action, that is inconsistent with its obligations under this Support Agreement or that would frustrate, hinder or delay the consummation of the Transaction;

(d) not to propose, file, solicit, or otherwise support any alternative transaction, offer, restructuring, liquidation, workout or plan of compromise or arrangement or reorganization of, for or in respect of the Company that is inconsistent with the Transaction;

(e) to the extent applicable, to vote (or cause to be voted) all of its Relevant Debt in favour of the approval, consent ratification and adoption of the Transaction (and any actions required in furtherance thereof) and against the approval, consent, ratification and adoption of any matter or transaction that, if approved, consented to, ratified or adopted could reasonably be expected to delay, challenge, frustrate or hinder the consummation of the Transaction;

(f) to disclose this Agreement to the Company and its representatives and to allow the Company to disclose the existence and essential terms of this Agreement in any public disclosure including, without limitation, in any press releases and court materials relating to the approval and implementation of the Transaction;

(g) that the Company shall be permitted to make the expenditures set out in the attached Schedule C for the restart of the Ekati mine prior to obtaining court approval of the APA (as defined below) in the Proceedings, which is anticipated to occur by December 11, 2020, and only such other expenditures for the restart of the Ekati mine as may be expressly consented to by the Parties (such consent not to be unreasonably withheld);

(h) in the event that approval of the APA in the Proceedings has not been obtained by December 18, 2020, the Parties shall preserve their rights to oppose or support expenditures by the Company to restart the Ekati mine prior to obtaining approval of the APA in the Proceedings;

(i) following approval of the APA in the Proceedings and provided that there shall not exist or have occurred any material adverse change that would have a materially adverse effect on or prevent or materially delay the consummation of the Transaction, to support the making of the expenditures set out in the Company's Ekati mine restart budget attached as Schedule D and to support the taking of other reasonable Company actions that have been determined by the Company in consultation with the Parties in furtherance of the re-start of full operations at the Ekati mine as soon as possible; and

(j) for the avoidance of doubt, the Schedules hereto cannot be modified in any manner whatsoever without the express consent of each of the Parties hereto, in their sole discretion.

5. Negotiation of Documents and Transaction Terms

(a) Each Party hereby covenants and agrees (i) to cooperate and negotiate in good faith, and consistent with this Support Agreement, the definitive documents implementing, achieving and relating to the Transaction and any Court orders relating thereto, and (ii) to the extent it is a party thereto, to execute, deliver and perform its obligations under such documents.

(b) The Parties shall cooperate with each other and shall coordinate their activities in respect of (i) the timely satisfaction of conditions with respect to the effectiveness of the Transaction, (ii) all matters concerning the implementation of the Transaction, and (iii) the pursuit and support of the Transaction, subject to the terms hereof, and each of the Parties shall take such actions as may be reasonably necessary to carry out the purposes and intent of this Support Agreement.

(c) The Parties acknowledge and agree that the Transaction Terms set out in this Agreement are intended to be indicative and not exhaustive or definitive with respect to the proposed Transaction. Any obligations and commitments of the Parties to complete the Transaction (including, without limitation, with respect to the 2L AHG's obligations regarding the New Money Commitment set out in the Term Sheet) are subject to and conditional on the negotiation, settlement and execution of: (i) a definitive APA (as defined below) satisfactory to the Parties;

and (ii) other definitive Transaction documents satisfactory to the 2L AHG; in each case containing additional terms and conditions not specified in this Agreement. Nothing herein shall be interpreted as restricting the discretion of: (x) the Parties with respect to the negotiation and settlement of such definitive APA; and (y) the 2L AHG with respect to the negotiation and settlement of such other definitive Transaction documents; in each case in a manner consistent with Sections 5(a) and (b) hereof.

6. Transaction Process/Structure

Unless otherwise agreed by the Parties, the Transaction shall be implemented pursuant to an asset purchase agreement (the "**APA**") to be executed by DDJ Capital Management, LLC, Brigade Capital Management, LP, and the Company under which a newly created entity or entities ("**NewCo**") shall acquire substantially all of the assets of the Company other than the Company's Diavik mine joint venture agreement interests but including (subject to the 1L Lenders' continuing lien until cash collateralization or cancellation of all Diavik letters of credit issued by the 1L Lenders and the payment of all related fees) all receivables, diamond production, claims, sales proceeds and other rights and assets realized or recovered in respect of such Diavik mine joint venture agreement interests (collectively, the "**Diavik Assets**"). The Parties shall agree to a mechanism for the pursuit of the realization and recovery of the Diavik Assets, which among other things shall provide for a duly authorized independent official to have control and carriage thereof and for the costs thereof to be funded initially by the Company's payment at closing of the Transaction of US$1,000,000 from the Transaction proceeds at NewCo's direction to such official and thereafter to be funded at the cost of the 1L Lenders if they so elect in their sole discretion. The APA shall have terms and conditions satisfactory to the Parties and consistent with this Support Agreement including, without limitation, with respect to: (i) the Company's prompt payment and reimbursement, upon and from time to time following court approval of the APA in the Proceedings, of all the 2L AHG's reasonable and documented (with only brief summary descriptions of service) costs and expenses incurred from and after the commencement of the Proceedings; and (ii) the Company's prompt payment of a break fee in the event that the Company APA is terminated or the Transaction is not completed for any reason other than the non-compliance by DDJ Capital Management, LLC or Brigade Capital Management, LP with their obligations under the APA and an alternative transaction is consummated within nine (9) months of the date of the APA for the sale or restructuring of the Company or any material portion of its assets pursuant to which the First Lien Debt is repaid in full in cash. The Parties shall work cooperatively in furtherance of obtaining court approval for the APA on December 11, 2020 or as soon thereafter as is practicable.

7. Termination

(a) 1L Lenders holding in aggregate not less than half (50%) of the aggregate principal amount of the First Lien Debt may terminate this agreement, in their sole discretion, by providing written notice to the 2L AHG in accordance with Section 11(l) hereof: (i) upon the breach of any representation, warranty, covenant or acknowledgement of a Party within the 2L AHG made in this Support

Agreement that could reasonably be expected to have a material adverse impact on the Transaction and that remains uncured within five (5) business days after the receipt by the 2L AHG of written notice of such breach (unless the event giving rise to the termination right is caused by the 1L Lender(s)); or (ii) if the Transaction has not been completed by January 29, 2021 or such other date as the Parties may agree in writing (the "**Outside Date**").

(b) Members of the 2L AHG holding in aggregate not less than half (50%) of the aggregate principal amount of Second Lien Notes held by the 2L AHG may terminate this agreement, in their sole discretion, by providing written notice to the 1L Lenders in accordance with Section 11(l) hereof: (i) upon the breach of any representation, warranty, covenant or acknowledgement of the 1L Lenders made in this Support Agreement that could reasonably be expected to have a material adverse impact on the Transaction and that remains uncured within five (5) business days after the receipt by the 1L Lenders of written notice of such breach (unless the event giving rise to the termination right is caused by a Party or Parties within the 2L AHG); or (ii) if the Transaction has not been completed by the Outside Date.

8. Effect of Termination

(a) Subject to paragraphs 8(b) and 8(c) below, this Support Agreement, upon its termination, shall be of no further force and effect, and each Party hereto shall be automatically and simultaneously released from its commitments, undertakings, covenants, and agreements under or directly related to this Support Agreement.

(b) Each Party shall be responsible and shall remain liable for any breach of this Support Agreement by such Party occurring prior to the termination of this Support Agreement.

(c) Notwithstanding the termination of this Support Agreement pursuant to Section 8, the agreements and obligations of the Parties in Sections 2 and 11 hereof shall survive such termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof.

9. Further Assurances

Each Party shall take all such actions as are commercially reasonable, deliver to the other Parties such further information and documents and execute and deliver to the other Parties such further instruments and agreements as another Party shall reasonably request to consummate or confirm the transactions provided for in this Support Agreement, to accomplish the purpose of this Support Agreement or to assure to the other Party the benefits of this Support Agreement, including, the consummation of the Transaction.

10. Public Announcements

All public announcements made in respect of this Support Agreement shall be in form and substance acceptable to the Parties, each acting reasonably. Notwithstanding the

foregoing, nothing herein shall prevent a Party from making public disclosure in respect of the Transaction to the extent required by applicable law.

11. Miscellaneous

(a) The headings in this Support Agreement are for reference only and shall not affect the meaning or interpretation of this Support Agreement.

(b) Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.

(c) This Support Agreement (including the Term Sheet), as it may be modified, amended and supplemented pursuant to Section 11(d) hereof, constitutes the entire agreement and supersedes all prior agreements and understandings, both oral and written, among the Parties with respect to the subject matter hereof.

(d) This Support Agreement may be modified, amended or supplemented as to any matter in writing (which may include e-mail) by the Parties.

(e) Any person signing this Support Agreement in a representative capacity (i) represents and warrants that he/she is authorized to sign this Support Agreement on behalf of the Party he/she represents and that his/her signature upon this Support Agreement will bind the represented Party to the terms hereof, and (ii) acknowledges that the other Parties hereto have relied upon such representation and warranty.

(f) Any provision of this Support Agreement may be waived if, and only if, such waiver is in writing (which may include e-mail) by the Party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise.

(g) Any date, time or period referred to in this Support Agreement shall be of the essence except to the extent to which the Parties agree in writing to vary any date, time or period, in which event the varied date, time or period shall be of the essence.

(h) This Support Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction) and all actions or proceedings arising out of or relating to this Support Agreement shall be heard and determined exclusively in the courts of the Province of Ontario.

(i) It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Support Agreement and each non-breaching Party shall be entitled, in addition to any other remedy that may be

available under applicable law, to specific performance and injunctive or other equitable relief as a remedy of any such breach, including an order by a court of competent jurisdiction requiring any Party to comply promptly with any of such obligations.

(j) Unless expressly stated otherwise herein, this Support Agreement is intended to solely bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators and representatives. No other person or entity shall be a third party beneficiary hereof.

(k) Except as is otherwise contemplated herein, no Party may assign, delegate or otherwise transfer any of its rights, interests or obligations under this Support Agreement without the prior written consent of the other Parties hereto.

(l) All notices, requests, consents and other communications hereunder to any Party shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by internationally-recognized overnight courier or e-mail. All notices required or permitted hereunder shall be deemed effectively given: (i) upon personal delivery to the Party to be notified, (ii) when sent by email if sent during normal business hours of the recipient and, if not, then on the next business day of the recipient; or (iii) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All deliveries required or permitted hereunder shall be deemed effectively made: (A) upon personal delivery to the Party receiving the delivery; (B) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt; or (C) upon receipt of delivery in accordance with instructions given by the Party receiving the delivery. Any Party may change the address to which notice should be given to such Party by providing written notice to the other Parties hereto of such change. The address and email for each of the Parties shall be as follows:

(i) If to one or more of the 1L Lenders at:

The address set forth for each applicable 1L Lender on its signature page to this Support Agreement, with a required copy (which shall not be deemed notice) to:

Osler, Hoskin & Harcourt LLP
100 King Street West, Suite 6200
Toronto, Ontario
M5X 1B8

Attention: Marc Wasserman & Michael De Lellis
Email: mwasserman@osler.com;
mdelellis@osler.com

-and-

Cahill Gordon & Reindel LLP
32 Old Slip, New York,
NY 10005

Attention: Joel H. Levitin
Email: jlevitin@cahill.com

(ii) If to the 2L AHG at:

The address set forth on the applicable signature pages to this Support Agreement, with a required copy (which shall not be deemed notice) to:

Torys LLP
79 Wellington St., 30th Floor
Toronto, Ontario
M5K 1N2

Attention: Tony DeMarinis
Email: tdemarinis@torys.com

(m) The Parties acknowledge that each member of the 2L AHG is an investment manager (a "**Manager**") who holds Second Lien Notes in its managed and advisory accounts. All representations, warranties, covenants and other agreements made by a Manager herein are being made: (i) on behalf of holders of Second Lien Notes that are separately managed or advisory accounts of the Manager; and (ii) only with respect to the assets managed by such Manager on behalf of such holders of Second Lien Notes, and shall not apply to (or be deemed to be made in relation to) any assets or interests that may be beneficially owned by such holders of Second Lien Notes that are not held through accounts managed by such Manager.

(n) If any term, provision, covenant or restriction of this Support Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions, including terms, covenants and restrictions, of this Support Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated and the Parties shall negotiate in good faith to modify this Support Agreement so as to effect the original intent of the Parties as closely as possible in a reasonably acceptable manner so that the transactions contemplated herein are consummated as originally contemplated to the greatest extent possible.

(o) This Support Agreement may be executed by electronic means and in one or more counterparts, all of which shall be considered one and the same agreement.

[Remainder of Page Intentionally Left Blank]

LEGAL_1:63815535.14

IN WITNESS WHEREOF, the undersigned has caused this Support Agreement to be duly executed and delivered by its proper and duly authorized officer as of the date first written above.

Name of Party: ______________________________

By: ______________________________
Name:
Title:

____

____

____

____

____

Debt	**Principal Amount**
First Lien Debt	
Second Lien Notes	
Amount of Subject Debt Purchase	

SCHEDULE A

TERM SHEET[1]

New Money Commitment:

- US$70 million New 2L Bond funded by the 2L AHG (and by other Second Lien Noteholders if the APA or applicable court orders provide for their participation in such funding, in which case the 2L AHG shall fully backstop the funding), with the following terms:
  - Interest Rate: 5.0% cash / 12.5% PIK (compounded)
  - Maturity Date: 12/31/2027
  - Security: Second Lien on Ekati and other assets of NewCo (or the restructured Company, if applicable in an alternative transaction process)
  - Backstop Fees: To be determined by the parties, acting reasonably
  - Other: Stapled to 100% of the equity of NewCo (or the restructured Company, if applicable in an alternative transaction process), or such other agreed structure
  - Other: No priority baskets available
- US$25 million DIP loan to be provided by 2L AHG if necessary for the purposes of funding Company operations in the Proceedings and to execute on completing the Transaction;
- DIP loan will rank pari passu to the funded portion of the First Lien Debt (the "**RCF**") and will be converted into New 2L Bond debt on completion of Transaction.

RCF Lenders Receive:

- A $70 million Term Loan (plus approximately C$6 million of pre-filing LCs to secure the Ekati operating licenses and permits) with the following terms:
  - Interest Rate:
    - Year 1: L + 500 (1.00% LIBOR floor)
    - Year 2: L + 600 (1.00% LIBOR floor)
    - Year 3: L + 800 (1.00% LIBOR floor)
    - Year 4: L + 1000 (1.00% LIBOR floor)
  - Amortization Rate: 7.5% / year (on initial principal amount)
  - Maturity Date: 12/31/2024
  - Security: First Lien on Ekati and other assets of NewCo (or the restructured

[1] All amounts in US$ millions, unless otherwise noted. This is a non-exhaustive list of key economic terms and conditions.

Company, if applicable in an alternative transaction process)

- The approximately C$6 million of pre-filing LCs securing certain Ekati operating licenses and permits are to be rolled forward on the above terms;

- The Term Loan shall be structured as either: (i) an assumption and amendment of the funded portion of the existing First Lien Debt; or (ii) repayment of the funded portion of the existing First Lien Debt and the advance of new funding to NewCo in respect of the Term Loan, all on closing.

- $10 million of Incremental 2L Bond with the following terms:

  - Interest Rate: 5.0% cash / 12.5% PIK (compounded)

  - Maturity Date: 12/31/2027

  - Security: Second Lien on Ekati and other assets of NewCo (or the restructured Company, if applicable in an alternative transaction process) for the Incremental 2L Bond (which will be pari passu with the New 2L Bond)

  - Other: Callable at par plus accrued interest

  - Not stapled to equity of NewCo (or the restructured Company, if applicable in an alternative transaction process)

- $8.5 million New 3L Bond with the following terms:

  - Interest Rate: 14% PIK (compounded)

  - Maturity Date: 12/31/2030

  - Security: Third Lien on Ekati and other assets of NewCo (or the restructured Company, if applicable in an alternative transaction process)

  - Change of Control Put Right (percentage is applicable to principal + compounded PIK):

    - Year 1-2: 200%

    - Year 3: 175%

    - Year 4: 150%

    - Year 5: 125%

    - Year 6 and thereafter: 100%

  - Callable at applicable put right price

- Any net proceeds realized with respect to the Company's interest in Diavik on the sale of Diavik diamonds delivered to or for the benefit of the Company following the date hereof or otherwise will be used first to cash collateralize any outstanding Diavik LCs or to repay the 1L Lenders for any Diavik LCs that are called (not to exceed the total amount of any outstanding Diavik LCs existing as of the date hereof, less any existing

cash collateral for those Diavik LCs);

- 1L Lenders to retain their First Lien claims against the Company's Diavik interests and any other assets not purchased by NewCo for the approximately C$105 million existing as of the date hereof (less cash collateral currently held) of pre filing LCs securing the Company's Diavik reclamation obligations

- 1L Lenders to keep $15 million cash collateral securing the Diavik LCs

- 25% of quarterly net excess free cash flow, as reasonably determined by NewCo in accordance with generally accepted accounting standards and subject to maintenance at all times of minimum NewCo cash-on-hand of at least US$15 million, to be utilized within forty-five days of the calendar quarter ending on December 31, 2021 and each calendar quarter thereafter at the direction of NewCo (the "**Cash Flow Terms**") to cash collateralize Ekati LCs or paydown Term Loan and (i) no dividends or distributions shall be declared or paid; (ii) no NewCo or Company shares or equity interests shall be redeemed, purchased or otherwise acquired; and (iii) no loans or other benefits shall be given to direct or indirect shareholders or holders of other equity interests of NewCo or the Company, in each case until the Term Loan is paid down in full in cash. The 2L AHG represents and warrants that the Cash Flow Terms, including the standard for determining excess free cash flow, minimum cash-on-hand requirements and utilization terms, are each as or more favorable to the 1L Lenders as those terms that are or may be provided to any sureties. If, on or after the date hereof, any surety is provided any terms that differ from the Cash Flow Terms, this Agreement shall be, without any further action by any Party, automatically amended and modified in an economically and legally equivalent manner such that the 1L Lenders shall receive the benefit of any more favourable term to be provided to such surety. The 2L AHG shall provide immediate written notice to the Agent of any such terms being provided to a surety and the automatic changes being provided to the 1L Lenders as a result.

- The value of all payments or cash collateral received by the 1L Lenders in respect of: (i) the Company's Diavik mine joint venture agreement interests (including, without limitation, receivables, diamond production, claims, sales proceeds and other rights and assets); and (ii) the existing $15 million cash collateral securing the Diavik LC's; shall in no circumstance exceed the total liability exposure of the 1L Lenders under the Diavik LC's

Second Lien Notes:

- Right to participate in the New 2L Bond if provided for in the APA or applicable court orders.

Unsecured Claims:

- Critical vendors paid in cash, unless otherwise agreed by the 1L Lenders and the 2L AHG.

Surety Bonds:

- $205 million commitment remains outstanding and on terms to be determined

- Cash collateralized over time, terms to be determined, subject to the provisions set forth under *"RCF Lenders Receive"*.

Existing Equity: No consideration shall be given to or for the benefit of the existing equity of the Company or any existing Second Lien Noteholder other than, if provided for in the APA or applicable court orders, participation in funding the New 2L Bond.

Other:

- Payment of all remaining professional fees upon emergence
- Mine to restart as soon as possible, in consultation with the 2L AHG;
- Need to get an acceptable deal with the sureties / GNWT;
- Transaction to close on or before January 29, 2021; and
- The Approval & Vesting Order with respect to the Transaction shall be in form and substance satisfactory to the 1L Lenders, acting reasonably.

SCHEDULE B

LSTA FORM

Form of Assignment Agreement

August 8, 2014

ASSIGNMENT AND ASSUMPTION[1]

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each][2] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each] [3] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees][4] hereunder are several and not joint.][5] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: ______________________________

____

2. Assignee[s]: ______________________________

____

[Assignee is an [Affiliate][Approved Fund] of [*identify Lender*]

---

[1] The LSTA's Form of Assignment Agreement has been drafted so that parties need not tailor the agreement depending on the identity of each assignee. In this way, electronic settlement platforms do not need to create "pop-ups", ie, questions which appear or "pop-up" on the screen of the person completing the assignment agreement and which must be answered before the assignment agreement can be populated and finalised. By avoiding "pop-ups", the loan market can operate more efficiently, for trades will be able to settle more promptly.

[2] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[3] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[4] Select as appropriate.

[5] Include bracketed language if there are either multiple Assignors or multiple Assignees.

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3. Borrower(s): ______________________________

4. Administrative Agent: ______________________, as the administrative agent under the Credit Agreement

5. Credit Agreement: [The [*amount*] Credit Agreement dated as of _______ among [*name of Borrower(s)*], the Lenders parties thereto, [*name of Administrative Agent*], as Administrative Agent, and the other agents parties thereto]

6. Assigned Interest[s]:

Assignor[s][6]	Assignee[s][7]	Facility Assigned[8]	Aggregate Amount of Commitment/Loans for all Lenders[9]	Amount of Commitment/Loans Assigned[8]	Percentage Assigned of Commitment/ Loans[10]	CUSIP Number
			$	$	%	
			$	$	%	
			$	$	%	

[7. Trade Date: ______________][11]

[Page break]

LSTA

[6] List each Assignor, as appropriate.

[7] List each Assignee, as appropriate.

[8] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g., "Revolving Credit Commitment," "Term Loan Commitment," etc.)

[9] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[10] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[11] To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

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Effective Date: _____________ ___, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S][12]
[NAME OF ASSIGNOR]

By:_______________________________
Title:

[NAME OF ASSIGNOR]

By:_______________________________
Title:

ASSIGNEE[S][13]
[NAME OF ASSIGNEE]

By:_______________________________
Title:

[NAME OF ASSIGNEE]

By:_______________________________
Title:

[Consented to and][14] Accepted:

[NAME OF ADMINISTRATIVE AGENT], as
Administrative Agent

By: _________________________________
Title:

[Consented to:][15]

[NAME OF RELEVANT PARTY]

By: _________________________________
Title:

---

[12] Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[13] Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[14] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[15] To be added only if the consent of the Borrower and/or other parties (e.g., Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

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ANNEX 1

[__________________][16]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document[17], (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section [*Successors and Assigns*] of the Credit Agreement (subject to such consents, if any, as may be required thereunder)[18], (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section ___ thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender[19] attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

---

[16] Describe Credit Agreement at option of Administrative Agent.

[17] The term “Loan Document” should be conformed to that used in the Credit Agreement.

[18] By confirming that it meets all the requirements to be an assignee under the Successors and Assigns provision of the Credit Agreement, the assignee is also confirming that it is not a Disqualified Institution (see section (h) of the Successors and Assigns provision).

[19] The concept of “Foreign Lender” should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up. If the Borrower is a U.S. Borrower, the bracketed language should be deleted.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.[20] Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York [*confirm that choice of law provision parallels the Credit Agreement*].

LSTA

[20] The Administrative Agent should consider whether this method conforms to its systems. In some circumstances, the following alternative language may be appropriate:

"From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor[s] and the Assignee[s] shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves."

SCHEDULE C

APPROVED EKATI RESTART EXPENDITURES

Dominion Diamond Mines

Memorandum

Date: November 27, 2020

To: Adhoc Group

From: Kristal Kaye, Chief Financial Officer

Re: Restart Expenditures and Commitments

This memo outlines the cash expenditures and financial commitments required in the immediate short term to continue with our restart schedule as presented. I have also detailed the cash flows by week in the latter weeks leading up to full restart.

Cash Expenditures

The cash expenditures for restart from **today to December 11th** are outlined in the table below by week.

Most of the expense incurred relates to Fuel shipments to Yellowknife. The balance includes the first round of employees recalled, key mobile part orders, prep work at Misery Underground and work streams to restart equipment and prepare site for restart. *(*Some of these expenditures may be delayed a week or so depending on start time.)*

	Unpaid Seasonal	13-Nov-20	20-Nov-20	27-Nov-20	04-Dec-20	11-Dec-20	Total
Budget Submitted							
Labour		-	223,080	-	713,159	-	936,238
Mobile Equipment Parts	488,777	-	-	-	584,105	1,051,233	2,124,115
Light Vehicle Parts		-	-		48,333	36,250	84,583
MUG Preparation		-	-				-
Partners In Performance		-	-	-	-	-	-
Open Pit Preparation		-	-		-	-	-
Health and Safety Support		-	-	-		-	-
Warehouse Materials		-	-	-	-		-
Corporate Support		-	37,504	11,704	11,704	29,910	90,821
Camp and Travel		3,500	6,300	5,600	5,600	63,683	84,683
Comms Parts		-		-	-	-	-
Emergency Power Generator			-	-	-	-	-
SAP PM Improvements		3,000	3,000	4,500	4,500	3,375	18,375
Sable Fire System Commissioning		-		-	-	-	-
Contingency		648	24,818	9,325	27,743	81,564	144,099
	488,777	**7,148**	**294,702**	**31,129**	**1,395,143**	**1,266,015**	**3,482,915**
Diesel		-			3,109,375	3,109,375	6,218,750
Winter Road Consumables							-
	-	**-**	**-**	**-**	**3,109,375**	**3,109,375**	**6,218,750**
							-
	488,777	**7,148**	**294,702**	**31,129**	**4,504,518**	**4,375,390**	**9,701,665**

Apart from Fuel, the only additional cash cost being incurred that was not part of the original forecast for restart before December 11th is <u>$1.6 Million for mobile equipment parts</u>.

Dominion Diamond Mines

The cash expenditures for restart from **December 18th to January 15th** are outlined in the table below by week.

Most of the expenses incurred relate to site-based labour, MUG preparation and equipment preparation for restart. The payment of the last of the fuel and winter road consumable orders also will fall into this period.

	18-Dec-20	25-Dec-20	01-Jan-21	08-Jan-21	15-Jan-21	Total
Budget Submitted						
Labour	-	2,717,228	-	1,321,544	-	4,038,772
Mobile Equipment Parts	922,649	732,014	743,329	92,250	-	2,490,243
Light Vehicle Parts	36,250	36,250	36,250	96,667	-	205,417
MUG Preparation	-	396,647	399,024	816,121	316,490	1,928,282
Partners In Performance	238,000	238,000	204,000	136,000	-	816,000
Open Pit Preparation	-	5,400	16,200	14,040		35,640
Health and Safety Support	-	18,750	56,250	-	75,000	150,000
Warehouse Materials	38,438	38,438	38,438	51,250	38,438	205,000
Corporate Support	19,260	13,935	13,935	63,580	-	110,711
Camp and Travel	102,278	117,468	109,253	179,880	-	508,878
Comms Parts	-	88,000	-	-	-	88,000
Emergency Power Generator	8,820	-	-	-	-	8,820
SAP PM Improvements	3,375	3,375	3,375	4,500	-	14,625
Sable Fire System Commissioning	-	-	8,820	-	-	8,820
Contingency	282,498	320,271	194,882	129,042	500,000	1,426,693
	1,651,567	**4,725,775**	**1,823,756**	**2,904,874**	**929,928**	**12,035,899**
						-
Diesel	3,109,375	-	-	3,109,375	-	6,218,750
Winter Road Consumables		290,000	495,500	540,000	1,200,000	2,525,500
	3,109,375	**290,000**	**495,500**	**3,649,375**	**1,200,000**	**8,744,250**
						-
	4,760,942	**5,015,775**	**2,319,256**	**6,554,249**	**2,129,928**	**20,780,149**

Commitments

A few commitments are required now to allow us to continue with the restart plan. These have been summarized in the table below.

Financial Commitments	CAD	Comments
Labour	2,717,228	(next full rotation of three weeks employees and contractors)
Mobile Equipment Parts	1,635,338	(mobile parts needed at site by next rotation)
MUG Preparation	795,671	(prep work required prior to start up)
Diesel	6,218,750	(10 Million Litres committed, other 10 Million still to be confirmed)
Total	**11,366,986**	

Contractor recalls

- Procon want a PO issued for the value of their new contract and some form of proof of new ownership support before they will start calling in staff. Originally scheduled to be in on the Dec. 23rd rotation, we now are pushing them to December 30th. The contract terms allow for cancellation should the PO be issued; however, we would still be on the hook for the demobilization of their equipment at a cost up to $15 Million which is the same as today.

- Domco (Camp and Catering) should be able to meet the Dec. 30th date but needs 30-day notice as some of their staff have taken other temp work and will need notice time
- Other contractors should be OK for the 30th based on keeping our 30-day notice period.

Employee recalls

- Same issue as contractors, won't know what we get until we can phone and offer employment.

Fuel

- We need to order the final 10 Million litres as soon as possible. The refineries will eventually stop making arctic diesel when there is no demand for it. We have notified our supplier that we hope to make that order between next Friday and December 11th.

Mobile parts

- Due to lead times, several parts need to be ordered now to be at site by the December 23rd and 30th rotations. They are not paid for until delivered, but orders need to be placed.

SCHEDULE D

COMPANY'S EKATI RESTART BUDGET

Financial Commitments	CAD	Comments
Labour	2,717,228	(next full rotation of three weeks employees and contractors)
Mobile Equipment Parts	1,567,594	(mobile parts needed at site by next rotation)
MUG Preparation	795,671	(prep work required prior to start up)
Diesel	6,218,750	(10 Million Litres committed, other 10 Million still to be confirmed)
Total	**11,299,242**	

	18-Dec-20	25-Dec-20	1-Jan-21	8-Jan-21	15-Jan-21	Total	Total Restart
Budget Submitted							
Labour	-	2,717,228	-	1,321,544	-	4,038,772	4,975,010
Mobile Equipment Parts	922,649	732,014	743,329	92,250	-	2,490,243	4,614,358
Light Vehicle Parts	36,250	36,250	36,250	96,667	-	205,417	290,000
MUG Preparation	-	396,647	399,024	816,121	316,490	1,928,282	1,928,282
Partners In Performance	238,000	238,000	204,000	136,000	-	816,000	816,000
Open Pit Preparation	-	5,400	16,200	14,040		35,640	35,640
Health and Safety Support	-	18,750	56,250	-	75,000	150,000	150,000
Warehouse Materials	38,438	38,438	38,438	51,250	38,438	205,000	205,000
Corporate Support	19,260	13,935	13,935	63,580	-	110,711	201,532
Camp and Travel	102,278	117,468	109,253	179,880	-	508,878	593,560
Comms Parts	-	88,000	-	-	-	88,000	88,000
Emergency Power Generator	8,820	-	-	-	-	8,820	8,820
SAP PM Improvements	3,375	3,375	3,375	4,500	-	14,625	33,000
Sable Fire System Commissioning	-	-	8,820	-	-	8,820	8,820
Contingency	282,498	320,271	194,882	129,042	500,000	1,426,693	1,570,793
	1,651,567	**4,725,775**	**1,823,756**	**2,904,874**	**929,928**	**12,035,899**	**15,518,814**
						-	-
Diesel	3,109,375	-	-	3,109,375	-	6,218,750	12,437,500
Winter Road Consumables		290,000	495,500	540,000	1,200,000	2,525,500	2,525,500
	3,109,375	**290,000**	**495,500**	**3,649,375**	**1,200,000**	**8,744,250**	**14,963,000**
						-	-
	4,760,942	**5,015,775**	**2,319,256**	**6,554,249**	**2,129,928**	**20,780,149**	**30,481,814**

MOBILE MAINTENANCE

MUG PREPARATION

OPEN PIT PREPARATION

FIXED PLANT AND ELECTRICAL

HEALTH AND SAFETY SUPPORT, ENVIRONMENT, TRAINING

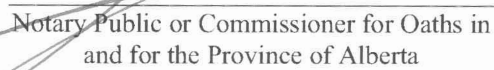
SUPPLY CHAIN AND SITE SERVICES

CORPORATE SUPPORT

This is Exhibit "E"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

JOINDER AGREEMENT

To:	DDJ Capital Management, LLC ("**DDJ**")
And To:	Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Bidders**")
And To:	Dominion Diamond Holdings, LLC ("**Dominion Holdings**")
And To:	Dominion Diamond Mines ULC ("**DDM**")
And To:	Dominion Diamond Delaware Company LLC ("**DDC**")
And To:	Dominion Diamond Marketing Corporation ("**Dominion Marketing**")
And To:	Dominion Diamond Canada ULC ("**DDCU**")
And To:	Dominion Finco Inc. ("**Finco**", and together with Dominion Holdings, DDM, DDC, Dominion Marketing, DDCU, the "**Sellers**")
Re:	Asset Purchase Agreement dated December 6, 2020 (the "**APA**") by and among the Bidders and the Sellers

Capitalized terms used in this Joinder Agreement but not otherwise defined herein shall have the respective meanings attributed thereto in the APA.

WHEREAS the Bidders and the Sellers entered into the APA pursuant to which, *inter alia,* the Purchaser, a special purpose acquisition vehicle, shall acquire the Acquired Assets and assume the Assumed Liabilities in accordance with the terms and conditions set forth in the APA;

AND WHEREAS pursuant to Section 2.1 of the APA, the Bidders shall cause the Purchaser to enter into and accept the terms and conditions under the APA.

NOW THEREFORE pursuant to and in accordance with Section 2.1 of the APA, the undersigned hereby agrees that upon the execution of this Joinder Agreement, it shall become a party to the APA and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the APA as though an original party thereto.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of this 31st day of January, 2021.

ARCTIC CANADIAN DIAMOND COMPANY LTD.

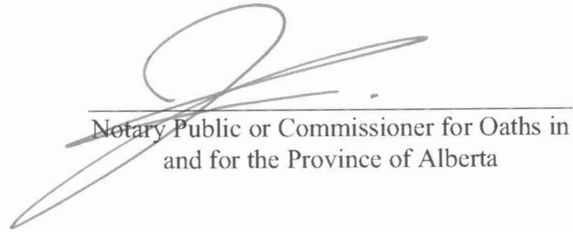
By:

Name: Patrick Evans
Title: Director

This is Exhibit "F"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

1205065

CLERK'S STAMP

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

DATE ON WHICH ORDER WAS PRONOUNCED:	December 11, 2020
LOCATION OF HEARING:	Calgary
NAME OF JUDGE WHO MADE THIS ORDER:	The Hon. Madam Justice K. Eidsvik

UPON THE APPLICATION by Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), Dominion Diamond Canada ULC ("**DDCU**"), Dominion Finco Inc. ("**Finco**") (Dominion Diamond, Dominion Holdings, DDC, Dominion Marketing, DDCU and Finco collectively, the "**Sellers**") and Washington Diamond Investments, LLC ("**Parent**") for, *inter alia*, an order (i) approving the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement (as may be further amended from time to time in accordance with the terms thereof and this Order, the "**Purchase Agreement**") dated as of December 6, 2020, by and among, *inter alia*, the Sellers, as sellers, and DDJ Capital Management, LLC and Brigade Capital Management, LP (the "**Contracting Purchasers**"), a copy of which is attached as **Schedule "A"** hereto, (ii) vesting in one or more entities duly designated by the Contracting Purchasers in accordance with the Purchase Agreement (collectively, the "**Purchasers**" and each, a "**Purchaser**") all of the Sellers' right, title and interest in and to the Acquired Assets, free and clear of all Encumbrances other than the Permitted Encumbrances (as defined below), and (iii) granting related relief;

AND UPON having read the Application, the Affidavits of Brendan Bell sworn sworn May 21, 2020, June 12, 2020, October 4, 2020, October 23, 2020, and December 7, 2020; the Affidavits of John Startin sworn May 21, 2020, June 12, 2020, and October 5, 2020; **AND UPON** having read the Affidavit of Thomas Croese sworn December 10, 2020; **AND UPON** reading the Eleventh Report of FTI Consulting Canada Inc. (the "**Monitor**"), filed;

AND UPON hearing counsel for the Applicants, counsel for the Purchasers, counsel for the Monitor, counsel for Credit Suisse AG, Cayman Islands Branch, counsel for Diavik Diamond Mines (2012) Inc., and those other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

DEFINED TERMS

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement or the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020 (as amended and restated on May 1, 2020, further amended on May 15, 2020, and further amended and restated on June 19, 2020, and as may be further amended, restated or supplemented from time to time, the "**Initial Order**").

APPROVAL OF TRANSACTION

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

VESTING OF PROPERTY

4. Upon delivery of a Monitor's certificate to the Purchasers substantially in the form set out in **Schedule "B**" hereto (the "**Monitor's Certificate**"), all of the Sellers' right, title and interest in and to the Acquired Assets described in the Purchase Agreement shall vest absolutely in the name of each applicable Purchaser free and clear of and from any and all caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements,

charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including, without limiting the generality of the foregoing:

(a) any encumbrances or charges as created by the Initial Order or any other Orders granted in the within CCAA proceedings;

(b) any charges, security interests or claims evidenced by registrations, filing or publication pursuant to (i) the *Personal Property Security Act*, SNWT 1994, c 8 (NWT); (ii) the *Personal Property Security Act*, RSO 1990, c P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c P-7 (Alberta); (iii) the *Personal Property Security Act*, RSBC 1996, c 359 (British Columbia)*;* (iv) the Uniform Commercial Code (U.C.C.); (v) the *Land Titles Act*, RSNWT 1988, c 8 (the "***Land Titles Act*** **(NWT)**"); the (vi) *Northwest Territories Mining Regulation*, SOR/2014-68; and (vii) any other personal or real property registration system;

(c) any charges, security interests or claims evidenced by registrations at the Canadian Intellectual Property Office or similar intellectual property offices in Canada or elsewhere in the world; and

(d) any liens or claims of lien under the (i) *Miners Lien Act*, RSNWT 1988, c M-12 (NWT); and (ii) the *Garage Keepers' Lien Act*, RSA 2000, c G-2 (Alberta);

but in each case, excluding the permitted encumbrances listed in **Schedule "E"** hereto (collectively, the "**Permitted Encumbrances**"), as such Permitted Encumbrances may be hereafter modified pursuant to paragraph 5 of this Order, and for greater certainty, this Court orders that all Claims including Encumbrances, other than Permitted Encumbrances, affecting or relating to the Acquired Assets, are hereby expunged, discharged and terminated as against the Acquired Assets. Except as set forth in the last sentence of Section 8.1(a) of the Purchase Agreement, the Purchasers' acquisition of the Acquired Assets shall be free and clear of any "successor liability" Liabilities or Claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing; *provided* that nothing in this sentence shall limit Purchasers' agreement

to assume the Assumed Liabilities in accordance with the terms of the Purchase Agreement.

5. If Schedule “E” to this Order designates any Permitted Encumbrances that prior to Closing are determined to relate to agreements which are not Assigned Contracts, such Permitted Encumbrances shall become Encumbrances and the Sellers shall give prompt written notice thereof to the beneficiaries of such Encumbrances. Upon Sellers giving such written notice, which shall be given not less than 10 days prior to Closing, title in the Acquired Assets shall vest in the Purchaser free and clear of all such Encumbrances at Closing without need for further order of this Court and notwithstanding their original inclusion on Schedule “E” to this Order as Permitted Encumbrances.

6. Without limiting paragraph 4, upon delivery of the Monitor’s Certificate, all right, title and interest in and to any assets held by any Applicant that are used or useful in connection with the Business (other than the Excluded Assets) or that would otherwise constitute Acquired Assets if held by any Seller, shall vest absolutely in the name of each applicable Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, and for greater certainty, all such assets shall constitute Acquired Assets and each Applicant shall constitute a Seller hereunder with respect to any such Acquired Assets.

7. Upon delivery of the Monitor’s Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acquired Assets including, without limitation, those referred to at paragraph 8 of this Order (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to (i) accept delivery of such Monitor’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchasers clear title to the Acquired Assets subject only to Permitted Encumbrances, and (ii) take such steps as are necessary to give effect to the terms of this Order and the Purchase Agreement. Presentment of this Order and the Monitor’s Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest free and clear of any Encumbrances other than Permitted Encumbrances.

8. Without limiting the generality of foregoing paragraph 7:

(a) each applicable Registrar under the Government of the Northwest Territories - Department of Industry, Tourism and Investment, including the Mining Recorder's Office of the Northwest Territories and all other government ministries and authorities in the Northwest Territories exercising jurisdiction with respect to the Acquired Assets, and each applicable Registrar under the Crown-Indigenous Relations and Northern Affairs Canada (Nunavut), including the Mining Recorder's Office of Nunavut shall and is hereby authorized, requested and directed to transfer in the name of one or more of the Purchasers, the mining leases, mineral claims and surface leases listed in **Schedule "C"** hereto free and clear of all Encumbrances, including without limitation, the Encumbrances listed in **Schedule "D"** hereto, other than the Permitted Encumbrances; and

(b) the applicable Registrar of the Canadian Intellectual Property Office shall be and is hereby authorized and directed to (i) cancel and discharge those Encumbrances, if any, other than the Permitted Encumbrances, registered against the estate or interest of the Sellers in and to the Acquired Assets, and (ii) transfer all of the right, title and interest of the Sellers in and to the Acquired Assets free and clear of and from any and all Encumbrances, if any, other than the Permitted Encumbrances.

9. No further authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Acquired Assets shall be required for the Closing and post-Closing implementation of the Transaction contemplated in the Purchase Agreement.

10. Upon delivery of the Monitor's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the NWT Land Registrar in accordance with section 175 of the *Land Titles Act* (NWT), and notwithstanding that the appeal period in respect of this Order has not elapsed.

11. Upon completion of the Transaction, the Sellers and all Persons who claim by, through or under the Sellers in respect of the Acquired Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Acquired Assets, save and except for the Persons entitled to the benefit of the Permitted Encumbrances (but solely with respect to and to the extent of such Permitted Encumbrances), shall stand absolutely and forever

barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption, or other Claim or Encumbrance whatsoever in respect of or to the Acquired Assets, and to the extent that any such Persons remain in the possession or control of any of the Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate or interest in and to the Acquired Assets, they shall forthwith deliver possession thereof to the applicable Purchaser.

12. Following completion of the Transaction, the Sellers are hereby permitted to complete, execute and file any necessary application, articles of amendment, certificate of amendment or such other documents or instruments as may be required to change their respective legal names, to the extent required pursuant to any of the Transaction Documents, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable governmental authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any applicable federal, provincial or state legislation.

13. The Purchasers shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for their own use and benefit without any interference of or by any Person claiming by, through or against the Sellers.

14. Immediately upon Closing of the Transaction, the holders of the Permitted Encumbrances, other than the First Lien Lenders and their agents, shall have no claim whatsoever against the Monitor or the Sellers.

15. Notwithstanding any other provision of this Order (including, without limitation, paragraphs 4, 11 and 14), any encumbrances ("**DDMI Encumbrances**") which Diavik Diamond Mines (2012), Inc. ("**DDMI**") may hold pursuant to the Diavik Joint Venture Agreement against the Applicants' share of Diavik Diamond Mine production, or proceeds therefrom pursuant to the Monetization Process approved by this Court on November 4, 2020, which have never been (or which have never been required to be) released or delivered to the Applicants or any replacement or assignee (collectively, "**Undelivered DDM Diamonds**") shall, subject always to DDMI's compliance with all orders of this Court, be unaffected by this Order and shall continue to attach to the Undelivered DDM Diamonds until such time as the Undelivered DDM Diamonds are (or are required to be) released or delivered to the

Applicants or any replacement or assignee. For greater certainty, all DDMI Encumbrances shall be automatically, immediately and forever released and discharged by operation of this Order from and against any Undelivered DDM Diamonds that at any time are, or are required to be, released or delivered to the Applicants or any replacement or assignee, and any such Undelivered DDM Diamonds shall constitute Diavik Realization Assets which are free and clear of DDMI Encumbrances.

16. This Order shall be without prejudice to the rights of each of Sandstorm Gold Ltd. (as successor in interest to Repadre Capital Corporation) and Christopher Jennings to seek, by notice of application to this Court to be served on all counsel of record in these proceedings no later than January 15, 2021, payment or entitlement to payment of certain royalty amounts from the Diavik Realization Assets and/or in respect of the Applicants' share of production from the Diavik Diamond Mine pursuant to two separate agreements made the 30th day of September, 2003, all without prejudice to the rights of any other person to oppose any such requested relief.

17. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchasers.

18. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Monitor and the Sellers are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Sellers' records pertaining to the Sellers' past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in accordance with applicable law.

19. The Sureties Support Confirmations shall inure to the benefit of the Applicants and their respective agents, successors, and assigns, all of whom are hereby deemed to be beneficiaries of such Sureties Support Confirmations.

BREAK-UP FEE AND CHARGE

20. The Sellers' obligation to pay the Break-Up Fee pursuant to and in accordance with the Purchase Agreement is hereby approved.

21. The Bidders shall be entitled to the benefit of and are hereby granted a charge (the "**Break-Up Fee Charge**") on the Property as security for the payment of the Break-Up Fee by the Sellers pursuant to and in accordance with the Purchase Agreement.

22. The Break-Up Fee Charge shall rank in priority subsequent to the security securing the (i) Charges; (ii) indebtedness under the Diavik Joint Venture Agreement; and (iii) indebtedness under the Pre-filing Credit Agreement.

MISCELLANEOUS MATTERS

23. Notwithstanding:

    (a) the pendency of these proceedings CCAA proceedings;

    (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") in respect of the Sellers and any bankruptcy order issued pursuant to any such applications;

    (c) any application for a receivership order; or

    (d) the provisions of any federal or provincial statute,

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

24. The Monitor, the Sellers, the Purchasers and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

25. This Honourable Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order, the Purchase Agreement, all amendments thereto, in connection with any disputes involving the Applicants, and to

adjudicate, if necessary, any and all disputes concerning the Applicants and related in any way to the Transaction; *provided*, *however*, that in the event that this Honourable Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, including Delaware, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

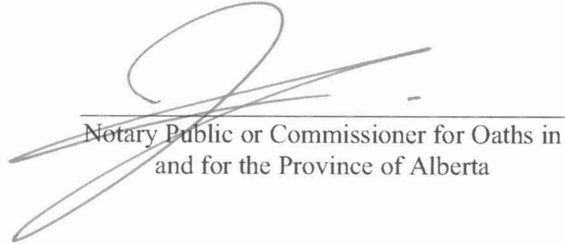
26. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

Justice of the Court of Queen's Bench of Alberta

This is Exhibit "G"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

1202489

COM
Dec. 11 2020
Justice Eidsvik

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	ELEVENTH 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. **December 9, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** FTI Consulting Canada Inc. 1610, 520, 5th Ave S.W. Calgary, AB T2P 3R7 Deryck Helkaa / Tom Powell Telephone: (403) 454-6031 / (604) 551-9881 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com E-mail: tom.powell@fticonsulting.com **COUNSEL** Bennett Jones LLP 4500 Bankers Hall East, 855 - 2nd Street SW Calgary, AB, T2P 4K7 Christopher Simard / Kelsey Meyer Telephone: (403) 298-4485 / (403) 298-3323 Fax: (403) 265-7219 E-mail: simardc@bennettjones.com E-mail: meyerk@bennettjones.com

ELEVENTH REPORT OF THE MONITOR

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Appendix "A" **Asset Purchase Agreement dated December 6, 2020**

Appendix "B" **Sixth Cash Flow Statement**

INTRODUCTION

1. On April 22, 2020, Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Dominion Diamond Canada ULC ("**DDCU**"); Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC ("**Dominion Holdings**") and Dominion Finco Inc. ("**Finco**" and, 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. On September 18, 2020, Dominion Diamond Marketing Corporation ("**Dominion Marketing**") was added as an applicant in the CCAA Proceedings.

2. The Initial Order appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings ("**FTI**" or the "**Monitor**") and established a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until May 2, 2020. On October 30, 2020, this Honourable Court granted an order extending the Stay of Proceedings to December 15, 2020.

3. On June 19, 2020, this Honourable Court granted a second Amended and Restated Initial Order (the "**Second ARIO**") including, among other things, the following relief:

    a. approving a financial advisor agreement dated April 22, 2020 between the Applicants and Evercore Group L.L.C. ("**Evercore**");

    b. approving procedures for a sales and investment solicitation process (the "**SISP**"); and

    c. authorizing DDH and DDM to execute a stalking horse agreement of purchase and sale (the "**Stalking Horse Bid**") with an affiliate of Washington Diamond Investments Holdings II, LLC (the "**Stalking Horse Bidder**").

4. As described in the Sixth Report of the Monitor dated September 22, 2020, the Applicants, in conjunction with Evercore, marketed the business and assets of Dominion in accordance with the SISP. The detailed timelines and procedures of the SISP are described in the Fifth Report of the Monitor and are not repeated herein.

5. The Applicants received one or more qualified bids in addition to the Stalking Horse Bid prior to the Phase I non-binding bid deadline, and therefore advanced the SISP to Phase 2. However, at the conclusion of Phase 2 of the SISP, the Applicants did not receive any third-party bids to compete with the Stalking Horse Bid.

6. On October 5, 2020, the Applicants filed a Notice of Application for a sale approval and vesting order to approve the sale transaction contemplated by the Stalking Horse Bid.

7. The Stalking Horse Bid remained subject to, among other things, entering into agreements with the Government of the Northwest Territories ("**GNWT**") and Dominion's surety providers (the "**Sureties**") with respect to collateralization obligations of the Stalking Horse Bidder under environmental agreements, permits, licenses and subleases to be transferred.

8. On October 9, 2020 Dominion issued a press release disclosing, among other things, that it had been advised by the Sureties and the Stalking Horse Bidder that those parties had reached an impasse in negotiations and that there was no reasonable prospect of reaching a satisfactory agreement and that as a result of the foregoing, Dominion did not anticipate it would be able to complete the transaction contemplated by the Stalking Horse Bid.

9. On November 8, 2020, the Stalking Horse Bidder formally gave notice to the Applicants that it had terminated the Stalking Horse Bid.

10. The Applicants continued to facilitate ongoing discussions with representatives of key creditor constituencies, including the First Lien Lenders, the ad hoc committee of senior secured second lien lenders (the "**Ad Hoc Group**"), the Sureties, and other stakeholders

with respect to the terms on which they would be supportive of a going concern restructuring transaction.

11. On December 6, 2020 Dominion Holdings, DDM, DDC, Dominion Marketing, DDCU and Finco (collectively, the "**Sellers**") reached an agreement with DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Bidders**") for the purchase and sale of certain of the Sellers' assets pursuant to an asset purchase agreement (the "**APA**"). Also, on December 6, 2020, the Bidders, Western Asset Management Company, LLC and the First Lien Lenders entered into a Mutual Support Agreement (the "**MSA**") with respect to the transaction contemplated by the APA (the "**Transaction**"). A copy of the APA including the MSA is attached as Appendix "**A**".

12. On December 6, 2020, the Applicants filed a Notice of Application for the following orders:

    a. a sale approval and vesting order (the "**Approval and Vesting Order**") approving the Transaction and vesting the purchased assets in the Bidders; and

    b. an extension of the Stay of Proceedings until and including March 1, 2021 (the "**Stay Extension**").

PURPOSE

13. The purpose of this Eleventh Report is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to:

    a. the APA, MSA and Dominion's application for the Approval and Vesting Order;

    b. the Applicants' actual cash receipts and disbursements for the 32-week period ended November 27, 2020 as compared to the cash flow statement included in the

Seventh Report of the Monitor dated October 27, 2020 (the "**Fifth Cash Flow Statement**");

c. a summary of the updated cash flow statement (the "**Sixth Cash Flow Statement**") prepared by the Applicants for the nine weeks ending January 29, 2021, including the key assumptions on which it is based;

d. the Applicants' request for the Stay Extension; and

e. the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

14. 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**").

15. 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.

16. 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.

17. 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.

18. All capitalized terms that are used in this Eleventh Report but not defined herein are intended to bear their meanings as defined in the Monitor's prior Reports.

19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

APA

20. The APA provides for the purchase and sale of substantially all of the assets of Dominion with the exception of certain "Excluded Assets" as defined in the APA.

21. The key commercial terms of the APA are summarized as follows:

    a. the Bidders shall form one or more special purpose acquisition vehicles (the "**Purchaser**") for the purpose of completing the Transaction;

        i. the Sellers shall sell to the Purchaser all of the Sellers' right, title and interest in the assets of the Sellers, other than certain excluded assets (the "**Acquired Assets**");

    b. the Acquired Assets shall exclude the following assets (collectively, the "**Excluded Assets**"):

        i. the Diavik Joint Venture Agreement;

        ii. all equity interest in Finco, DDC, DDCU and Dominion Diamond (Cyprus) Ltd.;

        iii. certain excluded contracts;

        iv. the Seller's rights under the APA and ancillary agreements;

        v. all insurance policies including insurance recoveries thereunder arising out of actions taking place prior to closing;

vi. all equipment and tangible assets that are subject to a lease that is not an Assigned Contract as defined in the APA;

vii. all assets removed from the Acquired Assets by designation of the Bidders or Purchaser prior to closing; and

viii. certain corporate documents, records and seals.

c. the Acquired Assets include the Sellers' rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Sellers' 40% beneficial interest in the assets (including property and products derived therefrom) of the Diavik joint venture held by DDM pursuant to the Diavik Joint Venture Agreement (the "**Diavik Joint Venture Interest**"), including, without limitation, all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders or other persons, and other assets realized by or on behalf of the Sellers (collectively, the "**Diavik Realization Assets**") which shall be assigned to the Purchaser subject only to the continuing liens and charges of the First Lien Lenders until such time as all letters of credit issued by the First Lien Lenders in respect of the Diavik diamond mine have been cash collateralized or cancelled and all related fees have been paid;

d. the Purchaser shall assume only the following liabilities (collectively, the "**Assumed Liabilities**"):

i. all liabilities under the Assigned Contracts as defined in the APA, including cure cost funding amounts of up to US$20.5 million (the "**Cure Funding Amount**") of which the closing cure amount of not more than US$10.5 million (the "**Closing Cure Amount**") will be made available at closing;

ii. all post-filing trade payables for which the permitted payment period has not expired and which the Sellers have not yet paid but have reserved for in the Budget;

iii. liabilities with respect to transferred employees under the assumed pension and benefits plans arising prior to closing and for the payroll for the period which includes the closing date;

iv. all liabilities for claims and actions arising from the operation of the Ekati diamond mine and the Acquired Assets from and after closing;

v. any and all environmental obligations with respect to the Acquired Assets;

vi. intercompany indebtedness among the Sellers and the acquired subsidiaries; and

vii. all liabilities with respect to letters of credit issued pursuant to the First Lien Lenders' pre-filing revolving credit agreement with respect to the Ekati Diamond Mine, subject to such liabilities being assumed in a manner contemplated by the MSA.

e. the Purchaser shall take assignment of certain Assigned Contracts to the extent of the Cure Funding Amount;

f. the purchase price ("**Purchase Price**") for the Acquired Assets shall be the aggregate of:

i. the assumption by the Purchaser at closing (or, at Purchaser's option and if permitted under the MSA, the repayment at closing) of US$70 million of outstanding indebtedness to the First Lien Lenders on the terms set out in the MSA;

ii. the assumption by the Purchaser of indemnity obligations in respect of certain bonds in the face amount of $279 million (US$204 million) issued by the Sureties for the benefit of the Seller;

iii. the cash payment at closing of up to $10.5 million of the Cure Funding Amount (to be paid, to the extent necessary, from working capital financing to be provided by the Bidders) and the assumption by the Purchaser of the balance of the Cure Funding Amount up to an aggregate maximum of $20.5 million; and

iv. the assumption by the Bidders on closing of the Assumed Liabilities.

g. at closing, the Bidders shall provide the Purchaser with new working capital financing of US$70 million to fund the Purchaser's post-closing satisfaction of the Assumed Liabilities, operations of the Ekati diamond mine and general working capital on terms set out in the MSA;

h. prior to closing, the Sellers shall, among other things, take all actions reasonably necessary or appropriate in furtherance of restarting operations at the Ekati diamond mine as soon as possible and shall in any case ensure that such operations are restarted by no later that January 29, 2021 in accordance with the restart plan approved by the Bidders (subject to compliance with the MSA);

i. the Sellers shall, from cash on hand, fund a designated bank account with a sufficient amount to cover the costs to facilitate the wind-down of the Seller's estate, such amount not to exceed US$250,000 (the "**Wind-down Account**");

j. the Sellers shall, from cash on hand, fund a designated bank account with a sufficient amount to cover the costs to administer the Diavik Realization Assets both before and after closing, such amount not to exceed US$1,000,000 (the "**Diavik Realization Account**");

k. immediately prior to closing, the Sellers shall pay in full, net of any retainers, all unpaid obligations secured by priority charges ordered by the Court in the CCAA Proceedings and all professional fees and expenses of the legal and financial

advisors to the Sellers and the Monitor due and payable at closing as well as all professional fees and expenses of the First Lien Lenders;

l. prior to or concurrent with closing, the Sellers shall pay and/or otherwise obtain releases in a form satisfactory to the Bidders of all obligations in respect of any period that are due and payable prior to closing in respect of royalties or similar payment obligations to GNWT including, for the avoidance of doubt, all royalty and similar payments to GNWT in respect of fiscal year 2019;

m. the sale of the Acquired Assets and assumption of the Assumed Liabilities are subject to, among other things:

   i. approval of this Honourable Court;

   ii. all necessary regulatory approvals having been obtained;

   iii. the Purchaser shall have received all material authorizations required to operate the business and Acquired Assets including the Environmental Agreement and Aboriginal Agreements as described in the APA;

   iv. the Sureties shall have taken all the steps contemplated by the Sureties Support Confirmations;

   v. the Purchaser not being subject to any mandatory government regulations or restrictions related to COVID-19 which would prevent or materially restrict: (i) the Purchaser from taking actions and conducting operations at the Ekati diamond mine substantially consistent with the restart plan approved by the Bidders, or (ii) the Purchaser's ability to transport, sort and conduct diamond sales in a quantum substantially consistent with past practices prior to COVID-related impacts;

   vi. the entering into of the definitive documents contemplated by the MSA; and

vii. the receipt of all consents, approvals or waivers, or an Assignment Order, in respect of the assignment of Essential Contracts, and the Cure Funding Amount not exceeding US$20.5 million.

n. the closing of the APA shall occur on the fifth business day following full satisfaction or waiver of the closing conditions; and

o. if the APA is terminated as a result of a material breach by any of the Bidders of any representation, warranty, covenant or agreement on the part of the Bidders that would cause any of the conditions precedent to the obligations of the Sellers not to be satisfied and such breach is incapable of being cured or, if capable of being cured, the Sellers have failed to cure the breach within 30 days of receipt of notice of the same or by its nature or timing the breach cannot be cured within that time period, the Sellers, as their sole remedy, shall be entitled to liquidated damages in the amount of US$7 million (the "**Purchaser Termination Fee**");

p. if the APA is terminated for any reason other than the Bidders' non-compliance with their obligations under the APA, and an alternative transaction is consummated within nine months of the date of the APA (which alternate transaction requires the Indebtedness under the Pre-filing Credit Agreement to be repaid in full) the Sellers shall pay to the Bidders a break-up fee of approximately US$2.5 million as consideration for disposition of the Bidders' rights under the APA (the "**Break-up Fee**"). The Seller's obligation to pay the Break-up Fee shall be secured by a charge (the "**Break-up Fee Charge**") against all of the Sellers' properties to be included in the Approval and Vesting Order, which charge shall rank subsequent to other priority charges ordered in the CCAA Proceedings and indebtedness under the Pre-filing Credit Agreement; and

q. the Sellers shall, immediately upon issuance of the Approval and Vesting Order, and from time to time thereafter, pay all costs and expenses incurred by the Bidders and the Ad Hoc Group in respect of the APA and CCAA Proceedings; and

r. the Sellers shall pay at closing all legal fees and expenses incurred by the indenture trustee of the second lien notes in respect of its participation or representation in the CCAA Proceedings up to a maximum amount satisfactory to the Bidders.

CONTRACT ASSIGNMENT AND CURE COST PAYMENTS

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

Defined Terms Relevant to the Assumption of Executory Contracts

a. at closing, the purchasers will assume the "Assumed Liabilities"[1] which include, among other things, all liabilities of any Seller under "Assigned Contracts";[2]

b. "Assigned Contracts" include two subcategories of contracts: [3]

    i. "Essential Contracts"; and

    ii. "Other Contracts";

c. the purchasers will not assume any liabilities of any Seller under "Excluded Contracts";[4]

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

d. Schedule "A" to the APA ("**Schedule A**") will list all executory contracts to which any Seller is a party and shall also, for each executory contract:

1 APA, s. 3.3
2 APA, s. 3.3(a)
3 APA, s. 3.1(l)
4 APA, s. 3.4(b), 3.2(c)

i. identify the Seller's good faith estimate of the Cure Amount (the definition of which is described below) for each such contract that is an Assigned Contract; and

ii. categorize each contract as an Essential Contract, an Other Contract or an Excluded Contract;[5]

e. the Bidders shall have the sole discretion to determine which contracts are Assigned Contracts and shall have the right, up to five business days before the date of the application for the Assignment Order (the definition of which is described below), to change the categorization of a contract as between Essential Contracts, Other Contracts and Excluded Contracts;[6] and

f. if, prior to closing, the Bidders discover an executory contract that should have been listed in Schedule "A", or the Sellers have entered into an executory contract since the execution of the APA (a "**Previously Omitted Contract**"), the Sellers must notify the Bidder Parties of such contract, and the Cure Amount relating thereto, and the Bidder Parties must designate such contract as an Essential Contract, an Other Contract or an Excluded Contract. If a Previously Omitted Contract is designated as an Essential Contract or an Other Contract, the counterparty will be notified and if the parties cannot consent to the assignment thereof and the Cure Amount, the sellers will seek an Assignment Order respecting that contract;[7]

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5 APA, s. 3.6(a)
6 APA, s. 3.6(a)
7 APA, s. 3.6(b)

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

g. the Sellers are obligated to use commercially reasonable efforts to obtain all consents from counterparties necessary to assign the Assigned Contracts to the Purchaser;[8]

h. the Bidder Parties may request modifications or amendments to Assigned Contracts and the sellers are obligated to cooperate and seek to obtain counterparties' agreement to same. If such modifications or amendments cannot be obtained, the Bidder Parties may, in their sole discretion following consultation with the Sellers, designate any such Contract as an Excluded Contract;[9]

i. if the Bidder Parties and Sellers are unable to obtain a counterparties' consent to assign an Assigned Contract and such Assigned Contract is not assignable without consent, the Sellers will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contracts, prior to the Closing Date;[10]

j. the “Assignment Order” is to be an order of this Honourable Court, in form and substance acceptable to the Sellers and Bidders, acting reasonably, assigning to the purchasers any Assigned Contract for which the Sellers have not obtained the counterparty's consent; and

k. the Sellers cannot disclaim any Assigned Contracts without the consent of the Bidder Parties but are free to seek to do so with respect to any Excluded Contracts, from and after the date that is five business days prior to the application for the Assignment Order.[11]

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[8] APA, s. 3.6(a)
[9] APA, s. 3.6(a)
[10] APA, s. 3.6(a)
[11] APA, s. 3.6(c)

The Mechanism for the Payment of Cure Amounts

l. the "Cure Amount" is, with respect to an Assigned Contract, the amount required to be paid pursuant to the Assignment Order to remedy all of the Sellers' monetary defaults as at the Closing Date, or the amount required to be paid to a counterparty to secure its consent to the assignment;[12]

m. if a Cure Amount is payable for the assignment of any Assigned Contract, the Sellers shall pay such Cure Amounts, either in accordance with the consent agreed to with the counterparty, or in accordance with the Assignment Order;[13]

n. the "Cure Funding Amount" is the aggregate of the "Closing Cure Amount" and such other amount as may be required to satisfy the aggregate Cure Amount, and shall not exceed the aggregate sum of US$20.5 million;[14]

o. the "Closing Cure Amount" means the Cure Amount in respect of Assigned Contracts which is payable on Closing, and shall not exceed US$10.5 million;[15]

p. therefore, the Closing Cure Amount of up to US$10.5 million will be paid at Closing. The balance of the Cure Funding Amount will be paid after closing, pursuant to the terms and conditions set out in settlement agreements entered into between the Sellers and counterparties to Assigned Contracts;[16]

q. as reported in para. 35 of the December 7, 2020 Affidavit of Brendan Bell, the Sellers have engaged in confidential settlement negotiations with many trade creditors and suppliers; and

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12 APA, s. 1.1
13 APA, s. 3.6(a)
14 APA, s. 1.1
15 APA, s. 1.1
16 APA, s. 7.14

Closing Conditions Related to Executory Contracts

r. the following events or occurrences, among others, are conditions precedent to the Purchaser's obligations to consummate the purchase and sale transaction pursuant to the APA:

   i. the granting of the Assignment Order in form and substance acceptable to the Bidder Parties and Sellers, acting reasonably, and such order(s) being final;[17]

   ii. all consents necessary for the assignment of the Essential Contracts must have been obtained, or an Assignment Order must have been granted authorizing the assignment of the Essential Contracts;[18] and

   iii. the Cure Amount shall not exceed the Cure Funding Amount.[19]

MSA

23. The MSA sets out the agreement among the First Lien Lenders and the Ad Hoc Group (comprised of the Bidders and Western Asset Management Company, LLC) with respect to the Transaction.

24. The key commercial terms of the MSA are as follows:

   a. each party agrees to the Transaction terms and the implementation of same in the CCAA Proceedings subject to the terms of the MSA;

   b. the Ad Hoc Group agrees to purchase US$15 million of the New First Lien Term Debt (subsequently defined) or, should the Transaction not close by January 29, 2021 (the "**Closing Date**"), US$15 million of the funded amounts owed to the First

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17 APA, s. 1.1, 9.1
18 APA, s. 9.7
19 APA, s. 9.7

Lien Lenders under the Pre-filing Credit Agreement, subject to restricted voting rights;

c. the Ad Hoc Group agrees to provide a new money commitment of a US$70 million second lien bond to the Purchaser, stapled to 100% of the equity of the Purchaser (the "**New Second Lien Bond**", and referred to above in this report as the working capital facility);

d. the Ad Hoc Group will provide a US$25 million debtor-in-possession loan if necessary for funding the Applicants' operations in the CCAA Proceedings and to execute on the Transaction, to rank *pari passu* to the funded portion of the pre-filing revolving credit facility and which would be converted into New Second Lien Bond debt upon completion of the Transaction;

e. the First Lien Lenders will receive:

    i. the Purchaser's assumption of US$70 million of the funded portion of the First Lien Lenders' pre-filing indebtedness (the "**New First Lien Term Loan**"), on and subject to the terms and conditions set out in the MSA plus the Purchaser's assumption of approximately $6 million of pre-filing letters of credit to secure operating licenses and permits for the Ekati diamond mine;

    ii. a US$10 million second lien bond, callable at par plus accrued interest;

    iii. a US$8.5 million third lien bond with various call rights and change-of-control put rights throughout the term of the loan until maturity at December 31, 2030;

    iv. any net proceeds realized with respect to the Applicants' interest in Diavik on the sale of Diavik diamonds delivered to or for the benefit of the Applicants following the date of the MSA (December 6, 2020) will be used

first to collateralize the outstanding Diavik letters of credit or to repay the First Lien Lenders for any Diavik letters of credit that are called;

v. the First Lien Lenders will retain their first lien claims against the Applicants' Diavik interests and other assets not acquired by the Purchaser for the approximately $105 million of existing letters of credit securing the Applicants' Diavik exposure; and

vi. 25% of the Purchaser's quarterly net excess free cash flow is to be used to cash collateralize Ekati letters of credit or paydown the New First Lien Term Loan, beginning in December 31, 2021; and

f. all remaining professional fees are to be paid upon emergence;

g. each party agrees that Dominion shall be permitted to make certain expenditures for the restart of the Ekati mine prior to obtaining the Approval and Vesting Order and only such other expenditures for the restart of the Ekati mine as may be expressly consented to by the parties. The restart costs forecast to be incurred during the period of the Stay Extension total approximately $33 million and are described in paragraph 34(e); and

h. in the event the Approval and Vesting Order has not been obtained by December 18, 2020, the parties shall preserve their right to oppose or support expenditures by Dominion to restart the Ekati mine prior to granting of the Approval and Vesting Order.

25. The illustrative sources and uses of the Transaction as contemplated by the APA and MSA are summarized in the table below:

Illustrative Tranaction Sources and Uses US$ Millions			
Sources		**Uses**	
Non-Cash		**Non-Cash**	
Ekati Surety Bonds	$ 205.0	Ekati Surety Bonds	$ 205.0
New First Lien Term Debt	74.4	Ekati LCs	4.4
New Second Lien Bond	10.0	Pre-filing Revolving Credit Facility	70.0
New Third Lien Bond	8.5	Other Claims of First Lien Lenders	18.5
Cash		**Cash**	
Ending Cash (Net of Closing Cure Amount)	4.5	Cash Available at Close	74.5
New Second Lien Bond Proceeds	70.0		
Total Sources	$ 372.4	**Total Uses**	$ 372.4

SURETIES SUPPORT CONFIRMATIONS

26. The Sureties Support Confirmations are confidential letters of confirmation provided by the Sureties to the Ad Hoc Group. The Sureties Support Confirmations provide that, upon the completion of the Transaction, the Sureties will issue the necessary documentation to replace the existing surety bond coverage for Dominion, with new surety bond coverage for the Purchaser. This confirmation is subject to certain conditions, including the provision by the Purchaser and certain of its affiliates, if applicable, of a General Indemnity Agreement.

27. The Monitor has reviewed the Sureties Support Confirmations and is of the view that they provide reasonable comfort and certainty that ongoing surety bonds will be provided by the Sureties if the Transaction closes, and if the Purchaser executes the General Indemnity Agreements.

APPROVAL AND VESTING ORDER

28. The Approval and Vesting Order provides for, among other things:

    a. approval of the APA and the Transaction;

b. upon delivery of a Monitor's certificate, vesting the Sellers' right title and interest in and to the Acquired Assets, free and clear of any encumbrances other than certain permitted encumbrances;

c. authorizing and directing each applicable registrar under the GNWT to transfer in the name of the Purchaser, the applicable mining leases, mineral claims and surface leases;

d. declaring that the Sureties Support Confirmations shall enure to the benefit of the Applicants and their respective agents, successors and assigns, all of whom are deemed to be beneficiaries of such Sureties Support Confirmations; and

e. approving the Break-up Fee and Break-up Fee Charge.

29. The Monitor's comments with respect to the APA and Approval and Vesting Order are as follows:

a. the Applicants, in conjunction with Evercore, have marketed the business and assets in a fair and transparent manner and all participants were treated consistently and with equal access to information and in a manner that managed against potential conflicts of interest among related parties;

b. the price and terms of the APA represent the highest and best offer in respect of the Acquired Assets and are fair and reasonable in the circumstances;

c. the Transaction will result in a significantly higher recovery to creditors than would likely be achieved in a liquidation of the Acquired Assets;

d. the Transaction is supported by the First Lien Lenders, Ad Hoc Group and Sureties as documented in the MSA and Sureties Support Confirmations;

e. the Transaction will provide for substantial recoveries to Dominion vendors under operational contracts and joint venture agreements as well as on amounts due to employees, unions, First Nations, aboriginal groups and GNWT;

f. the Transaction and new money commitment allow for a near-term restart of the Ekati diamond mine which is of strategic importance to numerous stakeholders including Northern-based employees, contractors, suppliers and the Northern communities in general;

g. the Diavik Realization Account and the Wind-down Account provide funding for estate costs to completion of the CCAA Proceedings and administration of Dominion's ongoing interest in recoveries from the Diavik Joint Venture Agreement;

h. the Purchaser Termination Fee and Break-up Fee are commercially reasonable in the circumstances and have been agreed amongst stakeholders. Given that that the Break-up Fee will only become payable if the Applicants are proceeding with an Alternative Transaction, the securing of this obligation via the Break-up Fee Charge is appropriate in the circumstances;

i. concluding the Transaction in a timely manner will allow the Applicants to mitigate the substantial ongoing cost of care and maintenance operations and the professional fee costs of the CCAA Proceedings; and

j. overall, the Transaction is in the best interests of the Dominion's creditors.

CASH FLOW VARIANCE ANALYSIS

30. The Applicants' actual cash flows in comparison to those contained in the Fifth Cash Flow Statement for the period April 22, 2020 to November 27, 2020 are summarized below:

Cash Flow Variance Analysis Thirty-Two Week Period Ending November 27, 2020 *($ thousands)*	Actual	Forecast	Variance
Operating Receipts			
Sales	$ 82,796	$ 113,314	$ (30,518)
Total Operating Receipts	82,796	113,314	(30,518)
Operating Disbursements			
Payroll and Benefits	21,893	22,045	(152)
Consultants and Contractors	6,508	6,312	196
Rent	906	867	39
Equipment Leases	6,177	6,824	(647)
Underground Mining Contractor	3,003	3,602	(599)
Travel	623	649	(26)
Insurance	3,926	5,778	(1,852)
IT & Software	3,320	3,337	(17)
IBA Payments	619	1,733	(1,115)
Power	1,141	1,144	(3)
Site Maintenance & Environment	2,471	3,915	(1,444)
CCAA Professional Fees	20,783	22,320	(1,537)
Critical Vendors Accounts Payable	2,510	2,409	101
Winter Road & Diesel Purchases	9,313	8,863	450
Net GST	(13,150)	(12,479)	(672)
Other	2,890	4,448	(1,559)
Total Operating Disbursements	72,931	81,766	(8,835)
Startup Disbursements			
Diesel Purchases / Freight	-	8,706	(8,706)
Other Winter Road consumables	762	2,597	(1,835)
Total Startup Disbursements	762	11,303	(10,541)
Net Change in Cash from Operations	9,104	20,245	(11,142)
Financing			
Intercompany Receipts / (Disbursements)	6,072	4,482	1,590
Interest & Bank Charges	(4,672)	(4,993)	320
DIP Facility Interest	(437)	(439)	2
Government Support Program	6,108	6,108	-
FX on DIP Draw	(2,198)	(2,198)	-
DIP Facility Draw	42,600	42,600	-
DIP Facility Repayment	(40,402)	(40,402)	-
Net Change in Cash from Financing	7,070	5,158	1,912
Net Change in Cash	16,174	25,403	(9,229)
Opening Cash	26,823	26,823	-
Ending Cash	**$ 42,997**	**$ 52,226**	**$ (9,229)**

a. Operating Receipts are approximately $31 million lower than forecast due to the timing of repatriation to Canada of the net proceeds of diamonds sold during the

week ended November 27, 2020 for which cash is expected to be received in the week ending December 4, 2020;

b. Operating Disbursements are approximately $9 million lower than forecast which is primarily a result of timing differences which are expected to reverse in future periods;

c. Startup Costs are approximately $11 million below forecast due to timing differences in certain fuel orders and delays in the restart program the delivery of winter road consumables, all of which are expected to reverse in following weeks; and

d. Net Change in Cash from Financing is lower than expected by approximate $2 million due to the intercompany receipt of cash repatriated from the wind-up of the Dominion Diamond Luxembourg entity.

31. As at November 27, 2020, the Applicants have an ending cash balance of approximately $43 million.

SIXTH CASH FLOW STATEMENT

32. Management has prepared the Sixth Cash Flow Statement to set out the Applicants' liquidity requirements for the nine weeks ending January 29, 2021 (the "**Forecast Period**"). A copy of the Sixth Cash Flow Statement is attached as Appendix "**B**".

33. The Sixth Cash Flow Statement is summarized as follows:

($ thousands)	April 22 to November 27 Actuals	November 28 to January 29 Forecast	Total
Operating Receipts			
Sales	$ 82,796	$ 90,630	**$ 173,426**
Total Operating Receipts	82,796	90,630	**173,426**
Operating Disbursements			
Payroll and Benefits	21,893	9,095	**30,988**
Consultants and Contractors	6,508	4,674	**11,182**
Rent	906	143	**1,048**
Equipment Leases	6,177	1,813	**7,990**
Underground Mining Costs	3,003	2,796	**5,800**
Travel	623	634	**1,257**
Insurance	3,926	4,055	**7,981**
IT & Software	3,320	3,258	**6,577**
IBA Payments	619	454	**1,072**
Power	1,141	390	**1,531**
Site Maintenance & Environment	2,471	2,943	**5,414**
CCAA Professional Fees	20,783	28,935	**49,718**
Closing Costs	-	31,055	**31,055**
Critical Vendors Accounts Payable	2,510	-	**2,510**
Winter Road & Diesel Purchases	9,313	2,500	**11,813**
Net Taxes	(13,150)	110	**(13,040)**
Other	2,890	2,360	**5,250**
Total Operating Disbursements	72,931	95,215	**168,146**
Startup Disbursements			
Diesel Purchases / Freight	-	12,438	**12,438**
Other Winter Road Consumables	762	4,566	**5,327**
Ramp-up costs	-	15,888	**15,888**
Total Startup Disbursements	762	32,891	**33,653**
Net Change in Cash from Operations	9,104	(37,476)	**(28,373)**
Financing			
Intercompany Receipts / (Disbursements)	6,072	(1,137)	**4,935**
Interest & Bank Charges	(4,672)	(1,927)	**(6,599)**
DIP Facility Interest	(437)	-	**(437)**
Government Support Program	6,108	1,576	**7,683**
FX on DIP Draw	(2,198)	-	**(2,198)**
DIP Facility Draw	42,600	-	**42,600**
DIP Facility Repayment	(40,402)	-	**(40,402)**
Net Change in Cash from Financing	7,070	(1,489)	**5,582**
Net Change in Cash	16,174	(38,965)	**(22,791)**
Opening Cash	26,823	42,997	**26,823**
Ending Cash	$ 42,997	$ 4,032	**$ 4,032**

34. The key assumptions on which the Sixth Cash Flow Statement is based are summarized as follows:

   a. operating receipts include $91 million in net proceeds from diamond sales expected to occur during the forecast period and the repatriation of net proceeds of recent sales;

   b. operating disbursements relate to ongoing care and maintenance costs and an assumed restart of mining operations in January 2021, as provided for in the APA;

   c. professional fees are forecast to be approximately $29 million during the period, inclusive of estimated fees due upon completion of the Transaction. These include payment of professional fees and expenses for the First Lien Lenders, Ad Hoc Group, and, subject to a cap to be approved by the Bidders, the indenture trustee of the senior secured second lien notes, each of which are to be paid under the terms of the APA and MSA. The fees set out in the table below are based on estimates which have been provided by the First Lien Lenders and the Ad Hoc Group and payment in full is a requirement of the APA and MSA. A summary of the fees forecast to be incurred by role are set out in the table below:

($ thousands) **Role**	**Weeks 1 - 32** **Actuals**	**Weeks 33 - 41** **Forecast**	**Weeks 1 - 41** **Total**
Financial Advisor to Applicant	$ 4,635	$ 9,285	**$ 13,921**
Legal Counsel to Applicants	5,390	3,750	**9,140**
Monitor	1,117	750	**1,867**
Legal Counsel to Monitor	345	300	**645**
Legal Counsel to The Washington Companies	4,444	-	**4,444**
Legal Counsel to the First Lien Lenders	3,317	2,671	**5,988**
Financial Advisor to the First Lien Lenders	1,496	1,762	**3,259**
Legal Counsel to the Ad Hoc Group and the Indenture Trustee	-	4,740	**4,740**
Financial Advisor to the Ad Hoc Group	-	5,420	**5,420**
Other	39	258	**296**
Total Professional Fees	**$ 20,783**	**$ 28,935**	**$ 49,718**

   The Monitor understands that the amounts forecast to be paid to certain professional firms remain subject to change based on ongoing discussions and negotiations amongst parties;

d. other closing costs included in the forecast are approximately $31 million, based on an assumed closing date of January 29, 2021 and are summarized in the table below:

($ thousands)		
Closing Costs		**Total**
Wind-Down Account	$	340
Diavik Realization Account		1,360
GNWT Royalty Payment		4,200
Cure Funding Amount		14,280
Royalty Audit		5,000
Surety Renewal		3,250
Other		2,625
Total Closing Costs	**$**	**31,055**

e. $33 million is forecast to be incurred for start-up disbursements which specifically relate to the estimated costs to restart the Ekati Mine in mid-January 2021. These costs include diesel purchases and related freight costs, winter road consumables and ramp up costs. Ramp up costs include payroll costs of employees to be brought back to prepare for the mine restart, contractor support, equipment spare parts and additional camp, catering, travel and site service costs associated with the period leading up to the restart.

35. Overall, the Applicants are forecasting to have $4 million in cash on hand at the end of the forecast period.

STAY EXTENSION

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

a. the Applicants, in conjunction with their key financial stakeholders, have made significant progress towards a going concern restructuring transaction which has resulted in the APA and preparation for a near-term restart of mining operations. The proposed extension will provide the Applicants with time to complete the Transactions and address other remaining restructuring matters;

b. the Sixth Cash Flow Statement forecasts that the Applicants have available liquidity though the scheduled closing date under the APA. Should the Transaction not be completed by the end of the Forecast Period, the Applicants plan to provide a further cash flow forecast to cover the remaining period of the Stay Extension;

c. the Stay Extension allows the Applicants to continue to perform ongoing care and maintenance activities to preserve the Ekati mine site and related assets, ensure ongoing compliance with the Applicants' environmental and regulatory obligations and take steps towards the planned restart of mining operations in early 2021;

d. the Stay Extension is supported by certain key creditor constituencies including the First Lien Lenders, the Ad Hoc Group, the Sureties, and certain other stakeholders;

e. the Applicants are acting in good faith and with due diligence; and

f. Dominion's overall prospects of effecting a viable restructuring transaction will be enhanced by the Stay Extension.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

37. The APA and ancillary agreements provide Dominion with a successful going-concern restructuring transaction that is in the best interest of the Applicants' stakeholders. The proposed extension will provide the Applicants with time to complete the Transactions and address other remaining restructuring matters.

38. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the Approval and Vesting Order and the Stay Extension.

*****

All of which is respectfully submitted this 9th day of December, 2020.

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

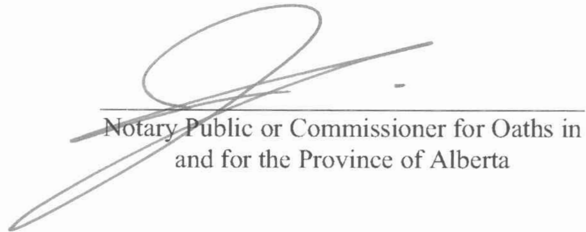
Deryck Helkaa
Senior Managing Director

Tom Powell
Senior Managing Director

This is Exhibit "H"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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	**AFFIDAVIT #6 OF THOMAS CROESE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod Tel: 403-260-3531 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

AFFIDAVIT #6 OF THOMAS CROESE
Sworn on December 10, 2020

I, Thomas Croese, of the City of Yellowknife, Northwest Territories, **SWEAR AND SAY THAT:**

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true. Capitalized terms used in this Affidavit and not otherwise defined shall have the same meaning as in the JVA (as defined below) or the Asset Purchase Agreement (the "**Purchase Agreement**"), which is before the Court for approval in the Application presently returnable on December 11, 2020.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995

TMC

between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").

3. Pursuant to the JVA, DDMI holds a sixty percent (60%) interest in, and Dominion holds a forty percent (40%) interest in, a diamond mine site and various surrounding exploration properties (collectively, the "**Diavik Mine**") located approximately 300 kilometers northeast of Yellowknife, Northwest Territories.

4. In connection with Dominion's application returnable December 11, 2020 at 2:00 pm MST for an order (the "**SAVO**") approving the Purchase Agreement, I note the following:

(a) I am advised by counsel to DDMI that the Notice of Application was provided at approximately 9:00 pm last Sunday night (December 6). The Affidavit of Brendan Bell was provided at approximately 5:00 pm on Monday (December 6) and Dominion Diamond's Bench Brief was provided at approximately 3:00 p.m. on Wednesday (December 7). The late service of Dominion's materials is a serial and recurring process employed by Dominion in this matter;

(b) DDMI has a number of individuals involved in the review and assessment of court applications in relation to this matter. Such individuals are spread across time zones with an 11 hour time difference;

(c) DDMI has endeavoured to review, assimilate, and formulate a position in time for the December 11 application. Following such review, DDMI determined that the formulation of the proposed Purchase Agreement and SAVO is fundamentally flawed inasmuch as it purports to allow a transfer of the Diavik Mine and Products (including diamonds) to the purchaser in contravention of the JVA including, but without limitation, for reasons that include a purported and wrongful conveyance of Products (including diamonds) to the purchaser free and clear of the Cover Payment Security. I am advised by counsel to DDMI that they arranged a call with the Monitor and its counsel that took place on the morning of December 8. I am further advised that, during the call, counsel articulated DDMI's concerns with the Purchase Agreement and the SAVO. The Monitor and its counsel indicated that it understood the concerns, would seek Dominion and the First Lien Lenders advice with respect to the concerns, and would revert with its advice;

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(d) On December 9, 2020, the Monitor provided its advice by way of email to DDMI's counsel. The text of the email is set out below and the email is attached as **Exhibit "A"** to this Affidavit:

> "Sean,
>
> As we advised yesterday, we have discussed with counsel for the company, and the 1Ls and 2Ls, the issues you raised yesterday. Here is the consensus view from those parties:
>
> - The APA does not convey any of Dominion's interest in the Diavik JV. Essentially, what is being conveyed by Dominion to the Purchaser is all receivables that Dominion receives out of the Diavik JV
> - In other words, it is only Dominion's share of diamonds that are transferred to it by DDMI, that would then be acquired by the Purchaser
> - Consistent with that concept:
>   - o The definition of "Inventory" is not intended to capture any of Dominion's diamonds in the possession of DDMI that are subject to DDMI's cover payment security interests. Inventory would only capture diamonds that have been transferred by DDMI to Dominion;
>   - o Paras. 11 and 14 of the Vesting Order are not intended to override DDMI's rights to hold diamonds per Eidsvik J's collateral orders and require delivery of diamonds other than as contemplated in that order, nor to somehow derogate from DDMI's cover payment claims
> - On all the foregoing points, the company, 1L's and 2L's will work on some revisions to the Vesting Order to make these points clear
>
> Happy to discuss if you'd like. Let me know."

(e) I am advised by counsel to DDMI that, on December 10, 2020, counsel for DDMI, Dominion and the First Lien Lenders had a conference call and that counsel for the First Lien Lenders advised that a revised form of SAVO would be provided to DDMI. As at the time of swearing this my Affidavit, no revised form of SAVO has been received.

TM

Process for Commissioning of this Affidavit

5. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

(a) I have shown the Commissioner the front and back of my current government-issued photo identification ("**ID**") and the Commissioner has compared my video image to the information on my ID;

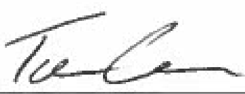
(b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;

(c) the Commissioner and I have a paper copy of this Affidavit before us;

(d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;

(e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video conference on December 10, 2020	)	
	)	
A COMMISSIONER FOR OATHS in and for the Province of Alberta	)	THOMAS CROESE

CERTIFICATE

CANADA	)	*IN THE MATTER OF THE COMPANIES' CREDITORS*
	)	*ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED*
PROVINCE OF	)	*AND IN THE MATTER OF A PLAN OF COMPROMISE OR*
	)	*ARRANGEMENT OF DOMINION DIAMOND MINES ULC,*
ALBERTA	)	*DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION*
	)	*DIAMOND CANADA ULC, WASHINGTON DIAMOND*
	)	*INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND*
	)	*DOMINION FINCO INC.*

I, Colleen Bonnyman, of the City of Calgary, in the Province of Alberta, Student-At-Law, **DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated December 10, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.

2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 10th day of December, 2020.

Colleen Bonnyman

A Commissioner for Oaths in
and for the Province of Alberta

154213/516250
MT DOCS 21029905

TMC

This is Exhibit "A" referred to in the Affidavit of Thomas Croese

sworn before me by two-way video conference this 10th day of December, 2020.

____

A Commissioner for Oaths in and for the Province of Alberta

TMC

Doran, Katie

From:	Chris Simard <SimardC@bennettjones.com>
Sent:	Wednesday, December 09, 2020 11:59 AM
To:	Collins, Sean F.; MacLeod, Walker W.; Taylor, Adam
Cc:	Helkaa, Deryck; Powell, Tom; Kelsey Meyer
Subject:	[EXT] Dominion AVO and APA issues

Sean,

As we advised yesterday, we have discussed with counsel for the company, and the 1Ls and 2Ls, the issues you raised yesterday. Here is the consensus view from those parties:

- The APA does not convey any of Dominion's interest in the Diavik JV. Essentially, what is being conveyed by Dominion to the Purchaser is all receivables that Dominion receives out of the Diavik JV
- In other words, it is only Dominion's share of diamonds that are transferred to it by DDMI, that would then be acquired by the Purchaser
- Consistent with that concept:
    - The definition of "Inventory" is not intended to capture any of Dominion's diamonds in the possession of DDMI that are subject to DDMI's cover payment security interests. Inventory would only capture diamonds that have been transferred by DDMI to Dominion;
    - Paras. 11 and 14 of the Vesting Order are not intended to override DDMI's rights to hold diamonds per Eidsvik J's collateral orders and require delivery of diamonds other than as contemplated in that order, nor to somehow derogate from DDMI's cover payment claims
- On all the foregoing points, the company, 1L's and 2L's will work on some revisions to the Vesting Order to make these points clear

Happy to discuss if you'd like. Let me know.

Chris Simard
Bennett Jones LLP

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. 403 298 4485 | F. 403 265 7219
E. simardc@bennettjones.com

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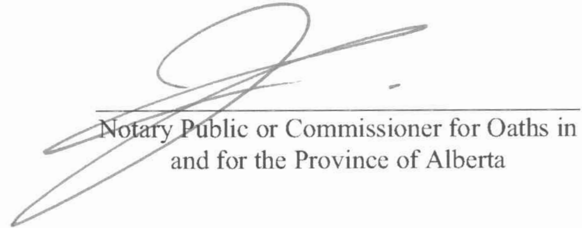
External Email: Exercise caution before clicking links or opening attachments | **Courriel externe:** Soyez prudent avant de cliquer sur des liens ou d'ouvrir des pièces jointes

TMC

This is Exhibit "I"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

Court File No. VLC-S-S-206419
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DOMINION DIAMOND MINES ULC

PLAINTIFF

AND

DIAVIK DIAMOND MINES (2012) INC.

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

(a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or

(d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. Dominion Diamond Mines ULC ("**Dominion**") is an unlimited liability company incorporated under the laws of British Columbia. Dominion is Canada's largest independent producer of natural and responsibly mined premium rough diamonds.

2. Diavik Diamond Mines (2012) Inc. ("**DDMI**"), is a company incorporated under the laws of Canada and is a wholly-owned subsidiary of Rio Tinto plc ("**Rio**"). Rio is a global mining and metals company operating in approximately 36 countries with a current market capitalization of approximately USD$65 Billion.

The Diavik Diamond Mine

3. Dominion supplies rough diamonds to the global market from its operation of the Ekati Diamond Mine, in which it has an approximate 90% interest, and the Diavik Diamond Mine (the "**Diavik Mine**"), in which it has a 40% interest. DDMI has a 60% interest in the Diavik Mine.

4. The Diavik Mine, consisting of the mine site and surrounding exploration properties, is located on a 20-kilometer island in Lac de Gras, approximately 300 kilometers northeast of Yellowknife, in the Northwest Territories. Commercial production commenced at the Diavik Mine in 2003.

5. The resources at the Diavik Mine were discovered by Dominion (then Aber Resources Limited (**"Aber"**)) in the early 1990s. Due to the costs required to develop the mine, Dominion entered into a joint venture with Kennecott Canada ULC (**"Kennecott"**) in 1995 and Kennecott became the Manager of the joint venture.

6. The Diavik Mine is currently operated by DDMI. All licenses and permits required to undertake operations at Diavik Mine are held by DDMI, as operator. All employees engaged at the Diavik Mine are the employees of DDMI.

The JV Agreement

7. Dominion and DDMI are successors in interest to a joint venture agreement dated as of March 23, 1995 between Aber and Kennecott. The JV Agreement was subsequently amended pursuant to:

(a) Amending Agreement, dated as of December 1, 1995, between Kennecott and Aber;

(b) Amending Agreement No.2, dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber; and

(c) Amending Agreement No.3, dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber.

(collectively, the **"JV Agreement"**).

8. The fundamental purpose of the JV Agreement is the exploitation of mineral interests such that both DDMI and Dominion can benefit from the assets of the joint venture through a proportionate share of production. Dominion's proportionate share of production under the JV Agreement is taken in kind in the form of rough diamonds. At all relevant times DDMI was aware that Dominion depended on the sale of its share of production to finance operation of the Diavik Mine.

9. DDMI acts as Manager under the JV Agreement and exercises an executive role over the operations of the joint venture, subject to direction by the Management Committee. Pursuant to the JV Agreement Dominion's and DDMI's votes on the Management Committee are equal to their participating interests, and nearly all decisions of the Management Committee are decided by a simple majority vote of the participating interests.

10. As the majority participant, DDMI effectively controls the Management Committee. Together with DDMI's position as Manager under the JV Agreement, DDMI exercises all discretionary authority under the JV Agreement, including overall joint venture property and funds supplied by Dominion pursuant to cash calls.

11. Section 7.3 of the JV Agreement provides that the Manager must conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices. As a minority joint venture participant, Dominion is further entitled to expect that DDMI's efforts – and the funds supplied by Dominion – will be devoted to maximizing the profitable production of diamonds from the Diavik Mine.

COVID-19 Impact

12. COVID-19 has had an acute negative impact on all segments of the global diamond industry. Dominion's ability to move its rough diamond inventory from the point of extraction in the Northwest Territories to sorting facilities in India for further movement and eventual sale on the world market has been effectively frozen.

13. Dominion's inability to generate revenues from its share of production at the Diavik Mine, among other factors, created a liquidity crisis for Dominion that rendered it insolvent and in urgent need of protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").

14. On April 22, 2020, upon the application of Dominion and certain of its affiliates (together, the **"CCAA Applicants"**), the Alberta Court of Queen's Bench in Bankruptcy and Insolvency (the **"CCAA Court"**) granted an initial order with respect to the CCAA Applicants.

DDMI's Cash Calls

14. DDMI's operation of the Diavik Mine is significantly over budget, and production has failed to meet targets. DDMI's poor performance preceded the impact of COVID-19 and has continued to deteriorate. In 2019, costs rose approximately 7% above the stretch plan, while total carats recovered were 8.5% below plan. In November 2019, DDMI committed to achieving its stretch plan and embarking on a program that would focus on cost reduction, among other initiatives. However, in the first quarter of 2020, cash costs were more than 19% above DDMI's stretch plan, while at the same time carats recovered were 13.6% below plan. Dominion has repeatedly objected to DDMI's failure to reduce cash consumption, particularly considering its record of poor production.

15. Despite DDMI's failure to meet production and grade plans, DDMI has taken no effective steps to mitigate, and instead has continually demanded that Dominion satisfy increasingly large cash calls. In the first three months of 2020 alone, those cash calls totaled $68.9 million. In April 2020, DDMI issued further cash calls to Dominion totaling approximately $33 million.

16. Despite repeated requests for information, DDMI has refused or neglected to provide all relevant current information to Dominion, including resource and reserve reconciliation reports and information regarding an ongoing reclamation feasibility study being conducted, all of which has been funded by joint venture funds.

17. At the direction of Rio, DDMI has been and continues to prioritize the interests of DDMI and Rio in its management of the Diavik Mine to the detriment of Dominion and the joint venture as a whole.

18. DDMI has continued to maintain full operations at the Diavik Mine without taking into account the disruptions to the diamond industry caused by the COVID-19 and, in particular, without taking into account Dominion's circumstances. DDMI has done so knowing that Dominion has no ability to pay for such cash calls because it cannot materially monetize diamond inventories to pay for them.

19. Without Dominion being able to generate revenues due to COVID-19 related impacts on the diamond market and Dominion's business operations, the DDMI cash call payments have drained Dominion's cash reserves and contributed to Dominion's liquidity crisis. The continued cash calls will also negatively impact Dominion's restructuring efforts.

DDMI's Breaches

20. Despite express knowledge that Dominion is particularly harmed by DDMI's conduct, DDMI has and continues to breach its obligations under the JV Agreement, including by, without limitation:

(a) failing to meet cost budgets, production plans and diamond recovery budgets, including failures in the period preceding the COVID-19 pandemic;

(b) failing to achieve agreed-upon and appropriate cost reductions;

(c) deliberately attempting to extract as much capital as possible from Dominion with knowledge of its liquidity crisis;

(d) utilizing funds supplied by Dominion pursuant to recent bi-weekly cash calls to operate the mine in a manner that is not economically efficient and does not maximize profitability;

(e) failing to develop adequate modelling to support economic development of resources;

(f) failing or refusing to base operational and management decisions on sound engineering, mining and economic principles;

(g) mining the deposits in a manner inconsistent with the planned program;

(h) failing to disclose all relevant information to Dominion;

(i) failing to adequately consult with Dominion; and

(j) placing DDMI's and Rio's interests ahead of the joint venture with the result of depriving Dominion of the benefit of the JV Agreement.

(together, DDMI's "**Misconduct**")

Part 2: RELIEF SOUGHT

21. Dominion seeks the following relief against DDMI:

(a) a declaration that DDMI has conducted operations in breach of or in a manner inconsistent with the JV Agreement;

(b) general damages;

(c) special damages;

(d) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

(e) costs; and

(f) such further and other relief as this Court may deem just.

Part 3: LEGAL BASIS

Breach of Contract

22. Pursuant to the JV Agreement and in light of its fundamental purpose, Dominion is entitled to reasonably expect, among other things, that:

(a) the funds supplied by Dominion pursuant to the terms of the JV Agreement will be devoted to optimizing profitable economic production;

(b) DDMI will regularly consult with Dominion; and

(c) the Participants, including DDMI in its capacity as Manager, will not operate in such a manner as to cause significant harm to Dominion or substantially impair the objective of the agreement, being, again, the profitable economic production of product from the Diavik Mine.

23. The Manager and Management Committee must exercise decision-making powers in accordance with the JV Agreement and the duties of all participants to act fairly and in good faith. As both Manager and controlling participant on the Management Committee, DDMI's fundamental obligations include a duty not to undermine the purposes of the JV Agreement and not to deprive Dominion of the intended benefits of the JV Agreement.

24. DDMI's continued course of conduct, including its Misconduct, defies reasonable expectations and amounts to a flagrant breach of DDMI's obligations under to the JV Agreement, including its fundamental duty to act honestly, reasonably and in good faith in the performance of its contractual obligations.

Breach of Fiduciary Duty

25. At all material times and by virtue of DDMI's role as Manager, DDMI owed and continues to owe fiduciary obligations to Dominion, including but not limited to fiduciary obligations of loyalty, good faith, disclosure and avoidance of a conflict of duty and self-interest. DDMI's continued course of conduct, including but not limited to the Misconduct, amounts to a breach of DDMI's fiduciary obligations.

Willful Misconduct and Gross Negligence

26. At all material times, DDMI owed and continues to owe a duty of care requiring DDMI to, among other things, conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices.

27. DDMI's continued course of conduct, including but not limited to DDMI's Misconduct, breached DDMI's duty of care and amounts to willful misconduct and gross negligence. Dominion's acts and omissions exhibit a conscious or reckless indifference to Dominion's rights and a marked departure from the standards according to which a reasonable Manager in DDMI's position would conduct themselves.

Loss and Damage to Dominion

28. As a result of DDMI's wrongful acts and omissions, including the breaches, willful misconduct, and negligence described herein, Dominion has suffered and continues to suffer loss and damage including but not limited to economic losses and damages resulting from DDMI's misuse of funds supplied by Dominion during DDMI's management of the Diavik Mine.

Plaintiff's address for service:	Blake, Cassels & Graydon LLP Barristers and Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Joe McArthur
Fax number address for service (if any):	604-631-3309
E-mail address for service (if any):	N/A
Place of trial:	Vancouver, B.C.
The address of the registry is:	800 Smithe Street, Vancouver, B.C.

Date: 16/June/2020

Signature of Joe McArthur
[x] lawyer for Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a List of Documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim in breach of contract, breach of fiduciary duty and negligence related to a joint venture.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
[ ] a motor vehicle accident
[ ] medical malpractice
[ ] another cause

A dispute concerning:
[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[x] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues concerning the probate of an estate
[ ] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[ ] a class action
[ ] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflict of laws
[ ] none of the above
[ ] do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Plaintiff claims the right to serve this notice of civil claim on the Defendant outside British Columbia on the ground that, among other things, the proceeding:

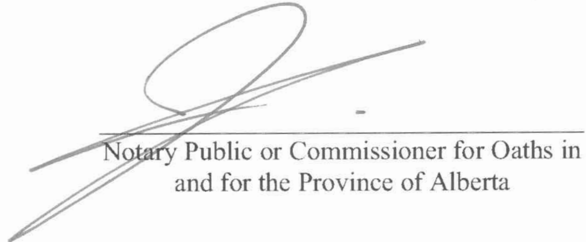
(a) concerns contractual obligations, and, by its express terms, the contract is governed by the law of British Columbia; and

(b) concerns a business carried on in British Columbia.

This is Exhibit "J"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

Execution Version

FIRST LIEN CREDIT AGREEMENT

dated as of

February 3, 2021

among

ARCTIC CANADIAN DIAMOND COMPANY LTD.,
as Borrower,

ARCTIC CANADIAN DIAMOND HOLDING, LLC,
as Parent,

the Lenders Party Hereto,

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent and Collateral Agent

(v) if all or any portion of any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.20(c), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender's LC Exposure is cash collateralized and/or reallocated;

(d) no Issuing Bank shall be required to issue, amend or increase any Letter of Credit unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(c), and participating interests in any such newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and Defaulting Lenders shall not participate therein); and

(e) in the event and on the date that each of the Administrative Agent, the Borrower, and the Issuing Banks agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the other Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.21 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

Section 2.22 Banking Services. Each Lender or Affiliate thereof providing Banking Services for any Loan Party, shall deliver to the Administrative Agent, promptly after entering into such Banking Services, written notice setting forth the aggregate amount of all Banking Services Obligations of such Loan Party to such Lender (whether matured or unmatured, absolute or contingent). In furtherance of that requirement, each such Lender or Affiliate thereof shall furnish the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations. The most recent information provided to the Administrative Agent shall be used in determining which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations will be placed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

On the dates and to the extent required pursuant to Section 4.01 or 4.02, as applicable, Parent and the Borrower hereby represent and warrant to the Lenders that:

Section 3.01 Organization; Powers. Each of Parent and its Subsidiaries (a) is (i) duly organized and validly existing and (ii) in good standing (to the extent such concept exists in the relevant jurisdiction) under the laws of its jurisdiction of organization, (b) has all requisite organizational power and authority to own its properties and assets and carry on its business as now conducted and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where its ownership, lease or operation of its properties or conduct of its business requires such qualification; except, in each case referred to in this Section 3.01 (other than clause (a)(i) with respect to the Borrower) where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The execution, delivery and performance by each Loan Party of each of the Loan Documents to which such Loan Party is a party are within such Loan Party's corporate or other organizational power and have been duly authorized by all necessary organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

Section 3.03 Governmental Approvals; No Conflicts. The execution and delivery of the Loan Documents by each Loan Party party thereto and the performance by such Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) for filings necessary to perfect Liens created pursuant to the Loan Documents, (iii) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which would not be reasonably expected to have a Material Adverse Effect and (iv) the creation of a Belgian law register pledge is subject to a retribution cost of maximum EUR 518 for the registration in the Belgian national pledge register, (b) will not violate any (i) of such Loan Party's Organizational Documents or (ii) Requirements of Law applicable to such Loan Party which, in the case of this clause (b)(ii), would reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any Material Indebtedness to which such Loan Party is a party which, in the case of this clause (c), would reasonably be expected to have a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Effect. (a) The financial statements provided pursuant to Section 4.01(c) present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent and its Subsidiaries on a consolidated basis as of such dates and for such periods in accordance with IFRS, (x) except as otherwise expressly noted therein, (y) subject, in the case of financial statements provided pursuant to Section 4.01(c) to the absence of footnotes and normal year-end audit adjustments and (z) except as may be necessary to reflect any differing entity and/or organizational structure prior to giving effect to the Transactions.

(b) Since the Closing Date, there has been no event, change or condition that has had, or would reasonably be expected to have, a Material Adverse Effect.

Section 3.05 Properties. (a) As of the Closing Date, Schedule 3.05 sets forth the address of each parcel of "fee-owned" Real Estate Asset owned by any Loan Party having a fair market value as of the Closing Date (as determined by the Borrower in good faith after taking into account any liabilities with respect thereto that impact such fair market value) in excess of $1,000,000. Each Loan Party and each Subsidiary has good title to, or valid leasehold interests in, all of its real and personal property, in each case, except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes or (ii) where the failure to have such title or interests, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property ("IP Rights") necessary to its business as currently conducted, and the use thereof by the Loan Parties and their Subsidiaries does not infringe in any material respect upon the rights of any other Person, except in each case where the failure to do so or where such infringement could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.06 Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting Parent, the Borrower or any of their Subsidiaries that (i) would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) neither Parent, the Borrower nor any of their Subsidiaries has received written notice of any Environmental Liability or knows of any basis for any Environmental Liability, and (ii) neither Parent nor any of its Subsidiaries (A) has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license, authorization or other approval required under any Environmental Law or (B) has become subject to any known Environmental Liability.

Section 3.07 Compliance with Laws. Each of Parent and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, it being understood and agreed that this Section 3.07 shall not apply to any law specifically referenced in Section 3.17.

Section 3.08 Investment Company Status. No Loan Party is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.09 Taxes. Each of Parent and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which Parent, the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 ERISA; Canadian Pension Plans. (a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to result in a Material Adverse Effect.

(b) Each Loan Party and its Subsidiaries, to the extent applicable, is in compliance with the requirements of the *Pension Benefits Standards Act, 1985* (Canada) or any other applicable federal or provincial laws with respect to each Canadian Pension Plan, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Canadian Pension Plan. No Pension Event has occurred which has resulted or would reasonably be expected to result in any Loan Party incurring any liability which would reasonably be expected

to have a Material Adverse Effect. Except where failure to comply with the following clauses (i) through (iv) would not reasonably be expected to have a Material Adverse Effect: (i) all contributions required to be made by a Loan Party under the Canadian Union Plans have been made in the amounts and in the manner set forth in the applicable collective agreement, (ii) the minimum contributions to each Canadian Defined Benefit Plan required under the most recent actuarial valuation filed with the applicable Governmental Authority have been contributed to the Canadian Defined Benefit Plan , (iii) all contributions (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable laws and the terms of each Canadian Pension Plan have been made in accordance with all applicable laws and the terms of each Canadian Pension Plan, and (iv) all contributions required to be made by a Loan Party or any of its Subsidiaries under the Canadian Union Plans have been made. No Loan Party is required to make contributions to a Canadian Union Plan, except for contributions in the amounts and in the manner set forth in any applicable collective agreement and any other contributions that, in the aggregate, would not reasonably be expected to have a Materially Adverse Effect.

(c) As of the Closing Date, no Loan Party contributes to, participates in, or otherwise has any liability in respect of any Canadian Defined Benefit Plan, except as set forth on Schedule 3.10. Schedule 3.10 identifies, as of the Closing Date, the amount of any unfunded liability under each Canadian Defined Benefit Plan (including any going concern unfunded liability, solvency deficiency or wind-up deficiency), as set out in the most recent actuarial valuation filed with the applicable Governmental Authority.

Section 3.11 Disclosure.

(a) As of the Closing Date (with respect to the Acquired Business, to the knowledge of the Borrower), all written factual information (other than the Projections, other forward-looking information and information of a general economic or general industry nature and all third party memos or reports furnished to the Initial Lenders) concerning Parent and its Subsidiaries and the Transactions that was prepared by or on behalf of the foregoing or their respective representatives and made available to any Initial Lender or the Administrative Agent on or before the Closing Date (the "Information"), when taken as a whole, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto).

(b) The Projections have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished to the Initial Lenders (it being agreed that (i) such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, (ii) no assurance can be given that any particular financial projections (including the Projections) will be realized, (iii) actual results may differ from projected results and (iv) such differences may be material).

Section 3.12 Federal Reserve Regulations. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U and Regulation X.

Section 3.13 Solvency. As of the Closing Date, after giving effect to the Transactions and the related transactions contemplated by the Loan Documents, Parent and its subsidiaries, when taken as a whole on a consolidated basis, (a) have property with fair value greater than the total amount of their debts and liabilities, contingent, subordinated or otherwise (it being understood that the amount of contingent

liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, can reasonably be expected to become an actual or matured liability), (b) have assets with present fair salable value not less than the amount that will be required to pay their liability on their debts as they become absolute and matured, (c) will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as they become absolute and matured and (d) are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which they have unreasonably small capital.

Section 3.14 Capitalization and Subsidiaries and Surety Bonds. Schedule 3.14(a) sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of each subsidiary of Parent and the ownership interest therein held by Parent or its applicable subsidiary and (b) the type of entity of Parent and each of its subsidiaries. Schedule 3.14(b) sets forth, as of the Closing Date, a correct and complete list of each surety bond issued for the benefit of Parent or any of its Subsidiaries.

Section 3.15 Security Interest in Collateral. Subject to the terms of the last paragraph of Section 4.01, the Legal Reservations, the Perfection Requirements, the provisions, limitations and/or exceptions set forth in this Agreement and/or the other relevant Loan Documents, the Collateral Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of itself and the other Secured Parties, and upon the satisfaction of the applicable Perfection Requirements, such Liens constitute perfected Liens (with the priority such Liens are expressed to have within the relevant Collateral Documents) on the Collateral (to the extent such Liens are required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein. For the avoidance of doubt, notwithstanding anything herein or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty (other than any representation or warranty expressly made in such Loan Document) as to (a) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Capital Stock of any Foreign Subsidiary of Parent, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under foreign Requirements of Law, (b) the enforcement of any security interest, or right or remedy with respect to any Collateral that may be limited or restricted by, or require any consent, authorization approval or license under, any Requirement of Law or (c) on the Closing Date and until required pursuant to Section 5.10 or Section 5.13, as applicable, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent the same is not required on the Closing Date pursuant to the final paragraph of Section 4.01.

Section 3.16 Employment Matters. As of the Closing Date, except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes, lockouts or slowdowns against the Parent or any of its Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (b) the hours worked by and payments made to employees of the Parent and its Subsidiaries have not been in violation of the Fair Labor Standards Act, the *Employee Standards Act* (Ontario) or any other applicable federal, provincial, territorial, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages, vacation pay, and employee health and welfare insurance and other benefits, including with respect to the Canada Pension Plan maintained by the Government of Canada or the Québec Pension Plan maintained by the Government of Québec, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect.

Section 3.17 Anti-Corruption Laws and Sanctions.

(a) Neither Parent nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any director, officer, employee, agent or Affiliate of any of the foregoing is a Sanctioned Person or is located, organized, or is a resident in a Sanctioned Country. Furthermore, neither any Loan Party nor any Subsidiary engages in any dealings or transactions, or is otherwise associated, with a Canadian Blocked Person.

(b) No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will directly, or, to the Borrower's knowledge after due inquiry indirectly violate Anti-Corruption Laws or applicable Sanctions or will fund the activities of or business with any Sanctioned Person.

(c) Each Loan Party is in compliance with Anti-Corruption Laws (including the USA Patriot Act) applicable to the Loan Parties and their Subsidiaries and applicable Sanctions, in each case, in all material respects. In the past 5 years, no Loan Party has committed a violation of the Anti-Corruption Laws applicable to such Loan Party.

Section 3.18 Accounts. As of the Closing Date, no Loan Party has any deposit account, securities account or commodity accounts other than the accounts listed on Schedule 3.18.

Section 3.19 Beneficial Ownership Certification. The information included in any Beneficial Ownership Certification provided to any Lender on or prior to the Closing Date is true and correct in all respects.

ARTICLE IV

CONDITIONS

Section 4.01 Closing Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 8.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from each Loan Party party thereto (i) a counterpart signed by each such Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (a) this Agreement, (b) each Security Agreement, (c) the Guaranty, (d) the Intercreditor Agreement, (e) each Intellectual Property Security Agreement and (f) any promissory note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Borrowing Request as required by Section 2.03.

(b) Legal Opinions. The Administrative Agent (or its counsel) shall have received, on behalf of itself and the Lenders and each Issuing Bank on the Closing Date, a customary written opinion of (i) Torys LLP, in its capacity as U.S., Canadian, Alberta and British Columbia counsel to the Loan Parties and (ii) Field LLP, in its capacity as Northwest Territories counsel for the Loan Parties, in each case, dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements. The Lenders shall have received (i) audited consolidated balance sheets of WDI or DDH, as applicable, and its respective subsidiaries as at the end of, and related consolidated statements of income (loss), comprehensive (loss) income, cash flows and changes in equity of WDI or DDH, as applicable, and its respective subsidiaries for, the three most

SCHEDULE 3.06

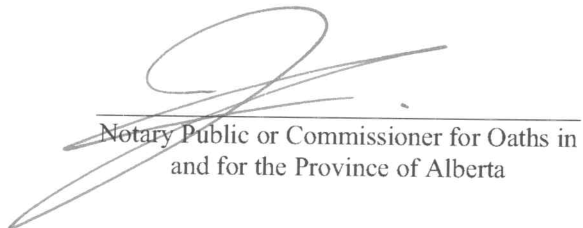
Disclosed Matters

1. DDM filed an action, dated June 16, 2020, against Diavik Diamond Mines (2012) Inc. (“DDMI”) in the Supreme Court of British Columbia Action No. S206419 with respect to DDMI’s breaches of the Diavik Joint Venture Agreement.

This is Exhibit "K"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

COM
Oct 30 2020
J. Eidsvik

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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	**BENCH BRIEF OF CREDIT SUISSE AG** **DDMI APPLICATION FOR REALIZATION PROCEDURE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**OSLER, HOSKIN & HARCOURT LLP** Suite 2500, 450 – 1 Street SW Calgary, AB T2P 5H1 Attention: Marc Wasserman / Michael De Lellis / Emily Paplawski Telephone: 416.862.4908 / 416.862.5997 / 403.260.7071 Facsimile: 403.260.7024 Email: mwasserman@osler.com / mdelellis@osler.com / epaplawski@osler.com Matter: 1210529

PART I - INTRODUCTION

1. This Brief is filed by Credit Suisse AG, Cayman Islands Branch, as agent (the "**Agent**") for the first secured lenders (the "**First Lien Lenders**") to Dominion Diamond Mines ULC ("**Dominion**"), Washington Diamond Investments, LLC and various of their direct and indirect subsidiaries (together, the "**Debtor**") in response to the Application filed by Diavik Diamond Mines (2012) Inc. ("**DDMI**").

2. The Agent opposes the relief sought by DDMI. The "comeback" clause in the Second Amended and Restated Initial Order (the "**SARIO**") is not available to DDMI to assist it in obtaining a "leg up" relative to other creditors in a manner contrary to fundamental CCAA principles. No circumstances have changed that could possibly justify revisiting or otherwise seeking to override paragraph 16 of the SARIO or to expand DDMI's rights beyond those that were granted based on this Court's view of the appropriate balancing of interests in this proceeding. In fact, paragraph 16(e) was designed, based on DDMI's own submissions, to protect it against the "real and material" risk[1] of the very circumstance that has now occurred. Absent "changing circumstances", this Court has no jurisdiction to revisit or vary the SARIO. It is a final, entered, non-appealable order of this Court on which parties are entitled to rely and which, in the words of Justice Morawetz, must "be respected."[2]

3. Contrary to the fundamental purposes of section 11 of the *Companies' Creditors Arrangement Act* ("**CCAA**"),[3] which require a careful balancing of interests among all stakeholders in furtherance of the objectives of the CCAA,[4] DDMI is seeking to obtain an

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[1] Transcript of Proceedings, June 19, 2020 (the "June 19 Transcript") at p. 85:30-34.

[2] *Target Canada Co. (Re)*, 2016 ONSC 316 ("*Target*") at para 81. **[TAB 2]**

[3] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") at s. 11 **[TAB 1]**

[4] *9354-9186 Quebec inc v Callidus Capital Corp*, 2020 SCC 10 ("*Callidus*") at para 49. **[TAB 3]**

advantage purely in its own interests based on its entirely unsubstantiated claims that it might, at some point in the future, be under-secured. This is this contrary to evidence, to CCAA principles, and it fundamentally mischaracterizes the legal rights held by DDMI. Moreover, these CCAA proceedings are ongoing and no other creditors, including the First Lien Lenders, are entitled to enforce on their security, let alone take enforcement steps in relation to security held by another party.

4. This Court is being asked to allow DDMI to realize against Dominion's property (not just property secured in favour of DDMI). This property is subject to a priority security interest in favour of the First Lien Lenders. DDMI proposes a fundamentally flawed realization process designed by DDMI to favour its own interests. DDMI effectively seeks to confer power on itself to appropriate value that rightly belongs to Dominion, the First Lien Lenders, and other stakeholders, while providing no transparency and no accountability to these stakeholders, to their material prejudice.

5. The Agent therefore submits that DDMI's requested relief should be denied. Alternatively, if this Court determines that it is appropriate to approve a realization process to monetize Dominion's share of diamond production (the "**Dominion Products**") held by DDMI as security for the Cover Payments, this Court should not approve the one-sided process proposed by DDMI. Both the Agent and Dominion have proposed alternate realization processes that appropriately balance the rights of all stakeholders.

PART II - FACTS

6. On April 22, 2020, Dominion and various related companies obtained an Initial Order under the CCAA (the "**Initial Order**").[5]

7. At the hearing of Dominion's comeback application, DDMI sought: (a) a modification to the stay of proceedings in the Initial Order to permit DDMI to make Cover Payments on behalf of Dominion; and (b) authorization to hold a portion of Dominion's production from the Divaik mine (the "**Diavik Mine**") to secure Dominion's obligations in respect of the Cover Payments.[6] DDMI requested that a provision be included in the Initial Order providing that:

> … DDMI 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 JVA Cover Payments made by DDMI. The share of production shall be held at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "PSF") and the value of the Dominion Diamond's share of production to held at the PSF shall be determined based on royalty valuations performed from time to time at the PSF by the GNWT. DDMI shall release Dominion Diamond's share of production upon receiving payment of the indebtedness owing to it on account of JVA Cover Payments made by DDMI on or after the Filing Date.[7] [Emphasis added]

8. On May 8, 2020, this Court determined that the relief sought by DDMI was premature and granted an Order providing that Dominion would not call for delivery of any diamonds, and DDMI would maintain possession of all diamonds located at the Diavik Production Splitting Facility ("**PSF**"), "until the Court rendered its decision in respect of DDMI's response to the proposed amended and restated initial order."[8]

9. On May 15, 2020, this Court granted a further order permitting DDMI to hold Dominion's share of production from the Diavik mine scheduled to be delivered on May 20, 2020, and declaring that the Order was "made on a temporary, without prejudice basis pending determination

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[5] Initial Order of the Honourable Madam Justice Eidsvik, granted April 22, 2020.

[6] Bench Brief of Diavik Diamond Mines (2012) Inc., dated May 6, 2020 (the "May DDMI Bench Brief") at para 2.

[7] May DDMI Bench Brief at Tab 1.

[8] Order of the Honourable Madam Justice K. Eidsvik, granted May 8, 2020 at para 3.

by this Court whether the next scheduled deliveries of Dominion Diamond's proportionate share of diamonds produced from the Diavik Mine as set out on the Delivery Schedule are to remain at the PSF or whether they are to be delivered by DDMI to Dominion Diamond."[9]

10. On June 19, 2020 – after three days of hearings and extensive oral argument, the filing of three additional affidavits and two separate bench briefs by DDMI, a bench brief by the Agent, and significant application materials by Dominion – this Honourable Court granted the SARIO. Section 16 of the SARIO provided, among other things, 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.[10] [Emphasis added]

11. Section 16(e) of the SARIO provided that upon the happening of certain defined occurrences, DDMI would be entitled to apply to the Court to seek an Order allowing it to exercise rights and remedies as against the Dominion Products. Such triggering events included where no Phase 2 Qualified Bid existed which included Dominion's interest in the Diavik Joint Venture.[11]

12. On October 19, 2020, in accordance with section 16(e) of the SARIO, DDMI filed an application seeking an order permitting it to realize on the Dominion Products. However, in addition to such relief, DDMI also requested a variance of paragraph 16 of the SARIO to eliminate the limitation that permitted DDMI to hold only the Dominion Products sufficient to satisfy the outstanding Cover Payments, as determined on the basis of the DICAN valuation. DDMI now

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[9] Order of the Honourable Madam Justice K. Eidsvik, granted May 15, 2020 at paras 3-4.

[10] Second Amended and Restated Initial Order of the Honourable Madam Justice Eidsvik, granted June 19, 2020 ("SARIO") at para 16.

[11] SARIO at section 16(e).

seeks to withhold the entirety of Dominion's share of the products from the Diavik Mine, and to appoint itself to sell those products under a flawed realization process.

13. In requesting this relief DDMI improperly purports to rely on the "comeback clause" in the SARIO to revisit and vary the otherwise final, non-appealable order of this Court.

PART III - ISSUE

14. There are two issues before this Court for determination:

(a) whether section 16 of the SARIO should be varied to permit DDMI to hold all of Dominion's share of production from the Diavik Mine, including that portion in excess of the value required to secure the outstanding Cover Payments made by DDMI, as determined on the basis of the monthly DICAN valuation; and

(b) whether DDMI's proposed Realization Process should be approved?

PART IV - LAW AND ARGUMENT

A. DDMI is not entitled to Revisit the SARIO

15. DDMI seeks to rely on the "comeback clause" in the SARIO to seek an order revisiting and overriding paragraph 16 of the SARIO requiring DDMI to return the portion of Dominion's 40% share of diamond production from the Diavik Mine that is in excess of the outstanding Cover Payments, as determined based on the valuations performed by DICAN. DDMI seeks to retain all of Dominion's share of production, notwithstanding the terms of the JVA and paragraph 16 of the SARIO, which DDMI itself sought and which other stakeholders, including the Agent, have relied upon. DDMI seeks to do so on the basis "of the material adverse change resulting from the fact

that there is no sale and the challenges associated with the valuation of diamond collateral in the current market."[12]

16. Paragraph 65 of the SARIO (the "**comeback clause**") provides that "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." Recourse through the comeback clause is available when circumstances change.[13] A comeback clause is not intended to give one stakeholder multiple kicks at the same can. As Justice Topolniski recently noted in the CCAA proceedings of the Canada North Group, "[i]n supervising a proceeding under the C.C.A.A. orders are made, and orders are varied as changing circumstances require. Orders depend upon a careful and delicate balancing of a variety of interests and of problems."[14]

17. There are no "changing circumstances" since June 19, 2020 which would permit DDMI to revisit or otherwise seek to override paragraph 16 of the SARIO. Paragraph 16(e) of the SARIO was expressly granted to protect DDMI against the very situation which DDMI now claims constitutes a "material adverse change" – the failure of the SISP to result in any sale of Dominion's 40% interest in the Diavik Joint Venture. In its Bench Brief, filed June 17, 2020 in support of "its request that the entirety of the Dominion Products be held at the PSF", DDMI argued: "Dominion has proposed a Stalking Horse APA that expressly contemplates a circumstance where the Diavik Mine will not be sold; DDMI has significant concern that there will not be a transaction…"[15] At

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[12] Bench Brief of Diavik Diamond Mines (2012) Inc., dated October 20, 2020 (the "October DDMI Bench Brief") at para 22.

[13] *Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 at para 50 ("*Canada North*"), aff'd 2019 ABCA 314, leave to appeal granted 2020 CanLII 23629 (SCC). **[TAB 4]**

[14] *Canada North* at para 50, citing *Re Pacific National Lease Holding Corp.* (1992), 15 CBR (3d) 265, 72 BCLR (2d) 368 (CA) at para 30 .**[TAB 4]**

[15] Bench Brief of Diavik Diamond Mines (2012) Inc, dated June 17, 2020 at paras 11 and 31.

the hearing of Dominion's application for the SARIO on June 19, 2020, counsel for DDMI submitted: "what DDMI identifies as difficulties with the stalking horse bid and difficulties in the sense that it creates risk to DDMI that there will not be a purchaser of Diavik, that there will not be cash paid to reimburse it for the cover payments that are being made, those risks are real and material…"[16] [Emphasis added]

18. In response to this risk, paragraph 16(e) was included in the SARIO permitting DDMI to "seek an Order allowing it to exercise rights and remedies as against Dominion Products… (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." While DDMI is entitled to bring an application for a realization process because the triggering event under paragraph 16(e) of the SARIO has materialized, DDMI is not entitled to rely on that very same triggering event as grounds to revisit and override the SARIO's express terms. Circumstances which (a) existed at the time the SARIO was granted and which DDMI described as "real and material", (b) were brought to this Court's attention and argued extensively by DDMI and other parties, and (c) were expressly contemplated and addressed in the SARIO, cannot and do not constitute "changing circumstances".

19. DDMI similarly points to "the challenges associated with the valuation of diamond collateral in the current market" as grounds for revisiting paragraph 16 of the SARIO.[17] DDMI submits that its concerns regarding the DICAN valuation as a proxy for the market value of the Dominion Products has been "materially amplified due to the significant market disruption, depressed sale activity and ongoing uncertainty caused by the COVID-19 pandemic."[18] DDMI

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[16] June 19 Transcript at p. 85:30-34.

[17] October DDMI Bench Brief at para 22.

[18] Affidavit #4 of Thomas Croese, sworn October 19, 2020 (the "Fourth Croese Affidavit") at para 13.

fails to reference even a single market occurrence which was not pre-existing as at the date of the SARIO. This is because no such occurrences or circumstances exist.

20. When the SARIO was granted on June 19, 2020 and when DDMI sought and obtained the paragraph 16 relief in relation to the Dominion Products based on the DICAN valuation methodology, the following circumstances existed, to the knowledge of all parties: (a) global diamond sales had already dramatically fallen when the COVID-19 related lockdown began in China, the impact of which became more acute as lockdown measures were implemented in nearly all parts of the world; (b) the Government of India had ordered a nationwide shutdown, (c) Antwerpsche Diamantkring, Antwerp's rough-diamond exchange, had announced that the city's four Diamond Bourses would shut their trading floors; and (d) Debeers (the world's largest producer of diamonds) had suspended production at most of its mines.[19] DDMI's own evidence cites the June 1, 2020 forecast of WWW Diamond Forecasts Ltd. which noted:

> We can be certain that the diamond jewellery market will be subject to extreme stresses this year and a severe contraction as the global economy slowly recovers. Luxury goods will lag the recovery. The length and size of the market contraction will be highly correlated with the timing of the recoveries in the USA and China respectively.
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> Negative price pressure will persist in the rough and polished markets for the short to medium term. Demand is not expected to recover quickly so producers will need to accept lower prices for rough or accumulate inventory and curtail supply.[20]

21. The only circumstance which has changed since June 19, 2020 is the gradual reopening of international diamond markets.[21] By all accounts, this reopening of diamond markets has been positive. In September, Dominion completed the sales of two tranches of diamonds having a book value of $58 million USD for a combined sales price of $54.7 USD.[22] Recently, Dominion sold a

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[19] Affidavit of Kristal Kaye, sworn April 21, 2020 at paras 12-14; Affidavit of Kristal Kaye, sworn May 6, 2020 ("May 6 Kaye Affidavit") at para 13 and Exhibit A.

[20] Fourth Croese Affidavit, Confidential Exhibit #4 at p. 62.

[21] Affidavit of Kristal Kaye, sworn September 18, 2020 at para 15.

[22] Affidavit of Brendan Bell, sworn October 23, 2020 (the "Third Bell Affidavit") at para 33.

tranche of smaller diamonds having a book value of $15.4 million USD for a sales price of $15.3 million USD.[23] As Mr. Bell notes "[o]verall pricing achieved from these sales was higher than anticipated."[24] Mr Croese acknowledges in his Fourth Affidavit that, "market conditions and demand have improved somewhat in recent weeks".[25]

22. Further, as discussed in Ms. Kaye's recent affidavit, both DICAN and market values build in a premium to the value of Cover Payments made by DDMI.[26] At its most fundamental, this premium is not surprising because, as the Agent has previously noted, it would be commercially absurd for DDMI to continue operating the Diavik Mine unless there was value in doing so. DDMI is over-secured by approximately $8.9 million USD based on the DICAN valuation of the Dominion Products held by DDMI as at September 30, 2020.[27] It remains over-secured notwithstanding that DICAN valuations for 2020 undervalue diamond production because of the point in time at which such valuations were completed (at the height of the COVID-19 pandemic).[28] If all diamonds currently held by DDMI for the production dates up to September 30, 2020 are valued using the most recent DICAN valuation numbers, DDMI is over-secured by approximately $17.5 million USD.[29] Applying the actual pricing obtained by Dominion for its most recent diamond sales in September 2020 results in DDMI being over-secured by $26.0 million USD.[30]

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[23] Third Bell Affidavit at para 33.

[24] Third Bell Affidavit at para 33.

[25] Fourth Croese Affidavit at para 29.

[26] Affidavit of Kristal Kaye, sworn October 28, 2020 (the "October 28 Kaye Affidavit") at paras 19-24.

[27] October 28 Kaye Affidavit at para 21.

[28] October 28 Kaye Affidavit at para 22.

[29] October 28 Kaye Affidavit at para 22.

[30] October 28 Kaye Affidavit at para 23.

23. In light of the foregoing, the position now advanced by DDMI that "changing circumstances" since the SARIO have "materially amplified" its concern regarding the use of DICAN as a valuation precedent is not only unsupported, but completely backwards. It should be Dominion and the Agent – not DDMI - applying for a variance of the SARIO to eliminate the significant differential currently enjoyed by DDMI between the value of the Dominion Products and the quantum of outstanding Cover Payments. That differential is the property of Dominion for the benefit of its stakeholders.

24. DDMI's current efforts to rely on the "comeback clause" to revisit and override paragraph 16 of the SARIO are nothing more than an attempt to reargue the terms of a Court Order that it sought for its own protection in order to improve its position. Absent "changing circumstances" permitting reliance on the "comeback clause", this Court has no jurisdiction to revisit or otherwise vary its earlier order. DDMI could have sought leave to appeal paragraph 16 of the SARIO to the Alberta Court of Appeal pursuant to section 13 of the *CCAA*. It did not do so. The SARIO constitutes a final, entered, non-appealable order of this Honourable Court on which interested parties are entitled to rely.

25. The First Lien Lenders have relied on paragraph 16, and particularly the inclusion of DICAN in the SARIO, as an objective valuation methodology which would result in diamonds being delivered to the Agent to collateralize a portion of the current $105 million in outstanding letters of credit posted in respect of the Diavik Mine. Paragraph 16 of the SARIO is critical in providing some element of discipline or control. DDMI is consistently and significantly over the Approved JV Budget in its spending. In the period from April 22, 2020 when Dominion filed for CCAA protection until September 30, 2020, DDMI has issued cash calls and, in turn, made Cover

Payments, exceeding the Approved JV Budget by approximately $13.3 million or 18.9%.[31] Dominion has no ability under the JVA to control or curtail such spending. The inclusion of DICAN at paragraph 16 of the SARIO provides some limited, though crucial, protection to Dominion and its stakeholders.

26. DDMI's application for a variance of the SARIO must be dismissed. As Justice Morawetz recently noted in *Target Canada Co. (Re)*, "The CCAA process is one of building blocks. In these proceedings, a stay has been granted and a plan developed. During these proceedings, this court has made number of orders. It is essential that court orders made during CCAA proceedings be respected."[32]

B. Variance of the SARIO is not in accordance with section 11 of the CCAA

27. In the alternative, even if DDMI is entitled to rely on the "comeback clause" (which is expressly denied), the variance of the SARIO sought by DDMI does not advance the policy objectives underlying the CCAA, is not in accordance with the guiding principles for exercise of a Court's discretion under section 11 of the CCAA, and should not be granted. DDMI seeks to confer on itself rights that go beyond its contractual entitlements, to the material prejudice of the First Lien Lenders.

28. Section 11 of the CCAA provides this Court with broad discretionary power to make any order it considers appropriate in the circumstances, subject to the restrictions set out in the CCAA.[33] However, as the Supreme Court of Canada observed in *Century Services Inc. v. Canada*

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[31] October 28 Kaye Affidavit at para 12.

[32] *Target* at para 81. **[TAB 2]**

[33] CCAA at s. 11 **[TAB 1]**; *Canada North* at para 22. **[TAB 4]**

(Attorney General), there are limits on the exercise of inherent judicial authority in a CCAA restructuring:

> … the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[34]

29. Orders granted pursuant to section 11 of the CCAA "must, in my view, be read as 'may … in furtherance of the purposes of this act, make any order it considers appropriate in the circumstances.'"[35] Section 11 of the CCAA is "is not open-ended and unfettered."[36] As the Supreme Court of Canada recently noted in *9354-9186 Quebec inc v Callidus Capital Corp*, "The discretionary authority conferred by the CCAA, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the CCAA."[37]

30. The CCAA stay of proceedings preserves the status quo as between creditors so that the insolvent company has an opportunity to reorganize itself without any creditor having an advantage over the company or any other creditor.[38] During the proceeding, the CCAA Court must balance multiple interests in order to facilitate a restructuring.[39] An order that confers an unfair advantage on one creditor, to the material prejudice of other creditors and to the detriment of the status quo is patently not a "balance".

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[34] *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 70. **[TAB 5]**

[35] *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 at para 81. **[TAB 6]**

[36] *Re Stelco Inc* (2005), 75 O.R. (3d) 5 (ONCA) at para 44. **[TAB 7]**

[37] *Callidus* at para 49. **[TAB 3]**

[38] *Lightstream Resources Ltd (Re)*, 2016 ABQB 665 ("*Lightstream*") at para 51. **[TAB 8]**

[39] *Canada North* at para 21. **[TAB 4]**

31. DDMI requests that this Court exercise its broad statutory jurisdiction pursuant to section 11 of the CCAA to vary the SARIO to permit it to retain possession of, and realize against, all of Dominion's share of the Diavik production, including diamonds in excess of the gross Cover Payments. On its face, DDMI's request is based entirely on the potential prejudice that it may experience if not permitted to hold the entirety of the Dominion Products (including amounts in excess of the value of the outstanding Cover Payments) to protect against some unsubstantiated fear that it will be under-secured.

32. At the hearing on June 19th, DDMI submitted that "nobody can demonstrate that we're oversecured with respect to the -- the holding of the diamonds" and that "applying any formulaic valuation, at least on the basis of the record before the Court today, could very well prejudice DDMI if DDMI is required to turn diamonds over." DDMI repeats such arguments in its current application, focusing on general industry discussions forecasting continuing uncertainty in the diamond markets as a result of COVID-19, and declining sales experienced by DeBeers and ALROSA in 2020 because of COVID-19 and the closure of international diamond markets. DDMI submits that "restricting DDMI to holding collateral equal to an appraisal of its value (whether it be based on DICAN or alternative metrics) places DDMI <u>at risk of loss</u>."

33. These fears are not a proper foundation for the extraordinary relief DDMI is requesting. First, DDMI's fears are entirely without foundation. The evidence provided by Ms. Kaye confirms that DDMI is over-secured regardless of whether the Dominion Products are valued on the basis of DICAN or recent pricing realized by Dominion in the sale of its diamonds.[40]

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[40] October 28 Kay Affidavit at paras 16-24.

34. Second, prejudice to DDMI – as one stakeholder – is not a sufficient basis for an order under section 11 of the CCAA, particularly where that order will cause material prejudice to the debtor and its other stakeholders. DDMI submitted at the hearing of Dominion's application on June 19th and now again in its application that "a balancing of the prejudice" favours the broadened relief sought by DDMI.[41] However, the interest of one creditor cannot and should not eclipse the general interest of all other stakeholders in the restructuring process, as affirmed by the Honourable Mr. Clement Gascon (as he then was) in *Boutiques San Francisco Inc.*:

> Therefore, as section 11 of the CCAA enacts and these precedents reiterate, in order to allow a debtor company to restructure itself and continue its operations, the stay of proceedings is a basic component of the maintenance of the status quo. Staying the proceedings means to suspend or freeze not only actual or potential litigation, but likewise any type of manoeuvres for positioning amongst creditors. This obviously includes the possibility of creditors seeking to repossess their goods in the hands of the debtor company who, to the contrary, should be allowed to continue operating as a going concern while protected under the CCAA.
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> …
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> Surely, maintaining the status quo involves balancing the interests of all affected parties and avoiding advantages to some over the others. Under the CCAA, the restructuring process and the general interest of all the creditors should always be preferred over the particular interests of individual ones.[42] [Emphasis added]

35. DDMI has failed to demonstrate that it is experiencing any more severe or different prejudice from any other stakeholder in this proceeding. In particular, the requested relief causes material prejudice to the First Lien Lenders, who: (a) have a priority ranking security interest in Dominion's share of the Diavik production, subject only to DDMI's security in respect of the Cover Payments; (b) who posted $105 million in letters of credit to secure Dominion's obligations to DDMI for its proportionate share of abandonment and reclamation obligations at the Diavik

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[41] June 19th Transcript at p. 90:30; DDMI Bench Brief at paras 24 – 26.

[42] *Boutiques San Francisco Inc., Re,* [2004] RJQ 986 (SC) at paras 21-23. **[TAB 9]**

Mine on March 11, 2020 – less than 6 weeks before commencement of these CCAA proceedings, and (c) who remain subject to the CCAA stay and unable to enforce their own security.

36. Third, DDMI fails to account for, or make any mention of, the fact that its security interest under the JVA attaches not only to Dominion's share of the Diavik production, but also to Dominion's 40% interest in the entirety of the Diavik mine's real and personal property, including all mining claims, mining leases, equipment, personal property, goods and money.

37. Finally, if DDMI wishes to retain all production from the Diavik Mine, the JVA provides it with a process to do so. Pursuant to section 9.4(e) of the JVA, if Dominion fails to pay one or more outstanding cover payments to DDMI, DDMI may elect to purchase all right, title and interest of Dominion in the Diavik Joint Venture at a purchase price equal to 80% of fair market value. In doing so, it takes both the benefits and burdens of that interest. The relief currently sought by DDMI is a request to achieve this result without also assuming the associated burdens, instead diverting such burdens to be borne by other stakeholders of Dominion and, in particular, the First Lien Lenders.

38. Dominion owns 40% of diamond production from the Diavik mine, subject only to the security interests it has granted. In the normal course, pursuant to the terms of the Diamond Production Splitting Protocol (Version No. 4), DDMI is required to deliver Dominion its proportionate share of all diamond production "at the time of each GNWT valuation" or, for gem quality diamonds, after the final result of the auction at the Antwerp Facility.[43] Paragraph 16 of the SARIO varies this arrangement solely for the purposes of giving effect to DDMI's security by permitting DDMI to "hold an amount of Dominion Diamond's share of production from the Diavik

[43] Supplemental Affidavit of Thomas Croese, sworn May 7, 2020 at Confidential Exhibit 4.

Mine equal to the total value of the JVA Cover Payments made by DDMI (the "Dominion Products") … 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."

39. DDMI now seeks to broaden this relief "just in case" the current uncertainty in the diamond markets result in diamond prices being lower than the DICAN valuations, "just in case" a surplus in supply materializes in the international diamond markets which drives prices down, and "just in case" a second wave of COVID-19 causes a further interruption to international diamond sales. In other words, DDMI seeks to divert value otherwise available to Dominion and its stakeholders to its sole and only benefit on the basis of a contingency, in circumstances where: (a) it already has ample other security over all of Dominion's share of the other Diavik Joint Venture assets and properties, and (b) the evidence establishes that DDMI is not only over-secured based on the value of the Dominion Products currently held, but significantly over-secured. Such relief contradicts at the most fundamental level the scope and purpose of section 11 of the CCAA.

40. Not surprisingly, the Monitor objected in its Fifth Report to the relief sought by DDMI "[a]s a matter of principle".[44] The Monitor submitted that, "DDMI should be entitled to hold Dominion's diamonds in an amount that is sufficient to cover the amount of the cumulative Cover Payments made by DDMI, but not to hold diamonds of a value exceeding the cumulative Cover Payments."[45] At the hearing of Dominion's application on June 19th, counsel for the Agent advised this Court that the First Lien Lenders "were prepared, based on the monitor's recommendations, to live with what the monitor has to say."[46]

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[44] Fifth Report of the Monitor, FTI Consulting Canada Inc., dated June 18, 2020 ("Monitor's Fifth Report") at page 19.

[45] Monitor's Fifth Report at page 19.

[46] June 19th Transcript at p. 116:30-32.

41. To the extent that DDMI's submissions are based on the alleged inadequacy of DICAN as a valuation method for ascertaining the Dominion Products that DDMI is entitled to retain, the portion of paragraph 16 of the SARIO incorporating DICAN as the method of valuing Dominion's production which DDMI now opposes, is the very relief which DDMI sought from this Honourable Court during the initial stages of these proceedings. DDMI's current assertion that such valuation was incorporated at the request of "the Monitor, Dominion Diamond and the stakeholders that supported the process" is false.[47] At the hearing of DDMI's opposition to the terms of the proposed Amended and Restated Initial Order on May 8, 2020, DDMI sought an Order providing, among other things:

> DDMI 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 JVA Cover Payments made by DDMI. The share of production shall be held at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories (the "PSF") and the value of the Dominion Diamond's share of production to held at the PSF shall be determined based on royalty valuations performed from time to time at the PSF by the GNWT.[48] [Emphasis added]

42. DDMI's own evidence establishes that:

(a) DICAN is an independent company wholly separate from both Dominion and DDMI which provides independent resource evaluation and diamond valuation services to the Governments of the Northwest Territories and Ontario;

(b) DICAN values production from the Diavik mine on a monthly basis, At each valuation, DICAN assess the value of production from Diavik, which it then later uses to compare assessed values to royalties, which are paid based on sales price;

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[47] October DDMI Bench Brief at para 2.

[48] May DDMI Bench Brief, dated May 6, 2020 at Tab 1.

(c) for diamonds that are mechanically rifled, DICAN applies the same value to Dominion's share of production as to DDMI's share. For diamonds that are intelligently rifled, value may differ but DDMI expects that values attributed as between Dominion's and DDMI's shares of production are consistent; and

(d) the same sorting process and valuation process for production from Diavik have been in place for years.[49]

43. DDMI further submits that the Dominion Products "would not exist" without DDMI continuing to make Cover Payments, suggesting the existence of a correlation between the Dominion Products it is holding and the Cover Payments which have been made since the date of the Initial Order.[50] There is no such correlation. The amount of a Cover Payment, and the diamonds produced from the Diavik Mine immediately following that Cover Payment, are not connected. The Dominion Products exist because, among other things, Dominion (or its predecessor) have invested in excess of $3 billion in the Diavik Mine over the past 15 years.[51] The Dominion Products exist because Dominion has made cash call payments of approximately $760 million in respect of the Diavik mine over the past three years.[52]

44. DDMI's position essentially requests that the continuing value of the substantial investment made by Dominion in the Diavik Mine should be diverted to DDMI's sole benefit, to the exclusion of every other stakeholder of Dominion, "just in case" any of the contingencies noted above were to materialize. As the Monitor noted in its Fifth Report, and as the Court determined

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[49] Affidavit #3 of Thomas Croese, sworn June 16, 2020 (the "Third Croese Affidavit") at paras 20 – 23; June 19 Transcript at p. 122:33 – 124:16.

[50] October DDMI Bench Brief at para 24.

[51] May 6 Kaye Affidavit at para 9.

[52] May 6 Kaye Affidavit at para 9.

when limiting DDMI's rights to the value of Dominion's share of the Diavik production equal to the quantum of Cover Payments (as determined by the DICAN valuation), DDMI is not entitled to divert this value. It is value owned by Dominion for the benefit of its stakeholders, including the First Lien Lenders who have invested significant funds in Dominion's operations, including during the CCAA.

45. DDMI is seeking extraordinary relief from this Court allowing it to realize against Dominion's property during the pendency of a CCAA proceeding in which Dominion is attempting to restructure for the benefit of all stakeholders and in which no other secured creditor is currently entitled to realize on their security. As noted in Mr. Bell's recent affidavit, Dominion has continued since issuance of the Press Release on October 9, 2020 both to remain focused on finding a restructuring option that will be in the best interest of Dominion and its stakeholders, and to explore alternate scenarios if a going concern transaction fails, including preparation of a liquidation analysis.[53]

46. In the Agent's submission, the relief sought by DDMI not only fails to further the remedial objectives of the CCAA, but gives DDMI an advantage over Dominion and its stakeholders, a result expressly rejected in the jurisprudence as repugnant to the objectives of the CCAA. The Agent submits that the SARIO should not be revisited or overridden.

C. The DDMI Realization Process is not Commercially Reasonable or Transparent

47. In the alternative, if this Court determines to grant the relief requested by DDMI, the Agent submits that this Court should not approve the DDMI Realization Process as currently proposed. The Agent has serious concerns about the DDMI Realization Process on the basis that it is not: (a)

[53] Third Bell Affidavit at paras 29 and 31.

commercially reasonable; (b) transparent with clear and precise information and reporting requirements; or (c) value maximizing in the circumstances.

48. On October 23, 2020, the Agent received a copy of DDMI's proposed Realization Process (the "**DDMI Realization Process**").[54] DDMI's counsel advised that the proposed DDMI Realization Process remained subject to revision or modification based on additional comments received from DDMI. Accordingly, the Agent has not undertaken a detailed analysis of the concerns it has with the proposed DDMI Realization Process in this Bench Brief since the document may change substantially between now and the hearing of DDMI's application on October 30, 2020. For now, the Agent offers the following significant, high level concerns with the DDMI Realization Process:

(a) It is not commercially reasonable as it contains no checks or balances to protect Dominion and its stakeholders (including the First Lien Lenders). DDMI controls both the input (i.e. the quantum of cash calls) and the output (i.e. the realization of the Dominion Products in satisfaction of such cash calls). The unilateral and excessive control which DDMI exercises over cash calls is a central feature of the Notice of Civil Claim filed by Dominion against DDMI in the Supreme Court of British Columbia in which Dominion alleges that DDMI has improperly used its controlling position in the Diavik Joint Venture to prioritize its own interests and the interests of its parent, Rio Tinto, over the interests of its joint venture partner - Dominion. Dominion notes in the Notice of Civil Claim that, "In 2019, costs rose approximately 7% above the stretch plan, while total carats recovered were 8.5%

[54] A prior draft of the Realization Process had been provided by DDMI's counsel to the Agent in September, however the Agent was advised that the proposed Realization Process circulated on October 23, 2020 superseded the earlier draft in all respects.

below plan…in the first quarter of 2020, cash costs were more than 19% above DDMI's stretch plan, while at the same time carats recovered were 13.6% below plan." There is nothing in the proposed DDMI Realization Process that would preclude DDMI from manipulating cash calls to ensure that all Dominion's share of production from the Diavik Mine is retained for its own benefit.

(b) Protections for Dominion and its stakeholders (including the First Lien Lenders) in the DDMI Realization Process are particularly important if DDMI is entitled under the DDMI Realization Process to realize upon a portion of the Diavik production that rightfully belongs to Dominion and that is secured in favour of the First Lien Lenders, as opposed to only that portion to which DDMI's security attaches. The DDMI Realization Process, as drafted, provides little insight, control or protection to Dominion or the Agent in respect of such property, notwithstanding the significant interest of each therein.

(c) DDMI has no motivation under the proposed Realization Process to maximize the value of the Dominion Products above the outstanding Cover Payments. Any failure of DDMI to maximize value is borne directly by Dominion's stakeholders and, in particular, the First Lien Lenders that have posted $105 million in letters of credit in respect of the Diavik Mine and which have a first priority claim to any value realized in excess of the Cover Payments.

(d) The process is not transparent or potentially value-maximizing in the circumstances as it permits DDMI to "sell, transfer and convey the DDMI Collateral to any person on such terms and conditions of sale as DDMI, in its discretion, may deem or consider appropriate." Dominion has no assurances that DDMI is achieving the best

price or is not selling at a discount in exchange for a guaranteed third party sale. Any sale process permitted under the DDMI Realization Process must be public and ensure the highest value possible for Dominion's share of the Diavik production is obtained.

(e) There are no parameters whatsoever regarding the timing for DDMI's sale of the Dominion Products. The proposed DDMI Realization Process provides DDMI complete and sole discretion to "act at once in respect of the DDMI Collateral." There is no obligation on DDMI to sell during periods when market demand for diamonds and pricing is high. DDMI's complete discretion in respect of timing for realizing on the Dominion Products permits DDMI to do indirectly what it cannot do directly under the JVA – retain the full amount of Dominion's share of the Diavik production to secure future, contingent amounts which may become due and owing by Dominion at some later date.

(f) The annual cover payment cycle compared to diamond production at Diavik shifts between DDMI and Dominion over the course of a year. DDMI's evidence is that "the cash calls made of the Participants are highest during the second quarter of each year" and "[t]he total cash calls to the end of July represent approximately 70% of the total cash call obligations for the 2020 calendar year".[55] Based on this cycle, diamond production should meet and exceed outstanding Cover Payments during the Fall each year. The effect of DDMI's proposal is to permit it to retain possession of Dominion's property during the latter part of each year when production has met and exceeded the quantum of outstanding Cover Payments. A

[55] Affidavit of Thomas Croese, sworn April 30, 2020 at para 37.

regular schedule based on the annual cover payment cycle must be established for the benefit of Dominion and its stakeholders including, most importantly, the First Lien Lenders. As the Alberta Court of Appeal has previously noted, "[m]arket participants want certainty" and commercial reasonableness must be judged by "what can reasonably be expected of participants in the market in which the particular transaction took place".[56]

(g) Related to the previous two sub-paragraphs, the DDMI Realization Process is commercially unreasonable because it allows DDMI to hold all of the Dominion Products, regardless of their value as compared to outstanding Cover Payments, until the end of life of the Diavik Mine on the expectation that future amounts may become due and owing by Dominion. Such a result is commercially absurd and a departure from the JVA. DDMI proposes to divert value to itself that is owned by Dominion for the benefit of Dominion's other stakeholders. Such a result significantly and unduly prejudices all Dominion's stakeholders other than DDMI.

(h) The DDMI Realization Process departs significantly in substance from the "key principles" outlined in the Fourth Croese Affidavit upon which DDMI relies in support of its requested relief. For example, in the Croese Affidavit, Mr. Croese alleges that "DDMI Collateral will be treated the same as DDMI product (including using the same pricebooks) and handled in the same way DDMI handles its own 60% share." The proposed DDMI Realization Process in fact provides that "the DDMI Collateral shall, <u>whenever possible</u>, be treated in the same <u>or a substantially similar fashion</u> as the DDMI production from the Diavik Mine." By way of further

[56] *Nothwest Equipment Inc. v. Daewoo Heavy Industries America Corp.*, 2002 ABCA 79 at paras 56-57. **[TAB 10]**

example, Mr. Croese states in the Croese Affidavit that "DDMI Collateral will be … phased into the market over time to avoid a high volume of product being offered at once." Nowhere is this phased approach contained in the proposed DDMI Realization Process which, as noted above, provides DDMI with sole and complete discretion regarding how and when the Dominion Products are sold.

(i) It does not provide any information rights or transparency to the Agent, notwithstanding that the DDMI Realization Process proposes to give DDMI authority to realize upon a portion of the Diavik production that rightfully belongs to Dominion and in which the Agent holds a first priority security interest. This complete lack of transparency with respect to the Agent is particularly problematic since, according to DDMI's own evidence, the Diavik mine is approaching its end of life in 2025. The First Lien Lenders have posted $105 million in letters of credit in respect of the Diavik Mine. The Agent will need to monitor, and work with, DDMI for a significant number of years. For DDMI to submit that the Agent must do so in a vacuum is not tenable.

(j) The DDMI Realization Process completely excludes consideration of the fact that DDMI's security interest under the JVA attaches not only to the Dominion Products, but also to Dominion's 40% interest in the entirety of the Diavik Mine's real and personal property, including all mining claims, mining leases, equipment, personal property, goods and money.

49. In short, the DDMI Realization Process is fatally flawed. All risk associated with DDMI's realization of the Dominion Products is borne by Dominion's stakeholders and, in particular, the First Lien Lenders. The Agent submits that the DDMI Realization Process must be significantly

revised to account for, and ensure protection of, the interests of Dominion's other stakeholders in the Dominion Products. Such balancing of interests goes to the heart of section 11 of the CCAA and must limit the exercise of discretion by this Court under section 11 of the CCAA in considering DDMI's proposed Realization Process.

PART V - SUMMARY

50. The relief sought by DDMI is antithetical to the most fundamental objectives of the CCAA and should not be granted by this Court. It is nothing more than an effort by DDMI to appropriate value from Dominion and its stakeholders to which it is not entitled, while leaving all risk, all loss, and all burdens to be borne by the First Lien Lenders and Dominion's other stakeholders. It seeks to vary a previous, binding Order of this Court which was granted at its request, for its benefit, and on which Dominion's other stakeholders have relied, while not complying with this Court's May 8th Order by retaining diamonds which this Court directed be immediately delivered to Dominion. Such behaviour is materially prejudicial to the First Lien Lenders and Dominion's other stakeholders and should not be countenanced by this Honourable Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF OCTOBER, 2020

OSLER, HOSKIN & HARCOURT LLP

Marc Wasserman / Michael De Lellis / Emily Paplawski
Counsel to Credit Suisse AG

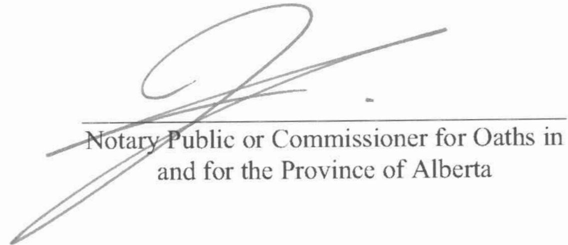
TABLE OF AUTHORITIES

TAB	CASE
1.	*Companies' Creditors Arrangement Act*, RSC 1985, c C-36
2.	*Target Canada Co. (Re)*, 2016 ONSC 316
3.	*9354-9186 Quebec inc v Callidus Capital Corp*, 2020 SCC 10
4.	*Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550
5.	*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60
6.	*U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662
7.	*Re Stelco Inc* (2005), 75 O.R. (3d) 5 (ONCA)
8.	*Lightstream Resources Ltd (Re)*, 2016 ABQB 665
9.	*Boutiques San Francisco Inc., Re,* [2004] RJQ 986 (SC)
10.	*Nothwest Equipment Inc. v. Daewoo Heavy Industries America Corp.*, 2002 ABCA 79

This is Exhibit "L"

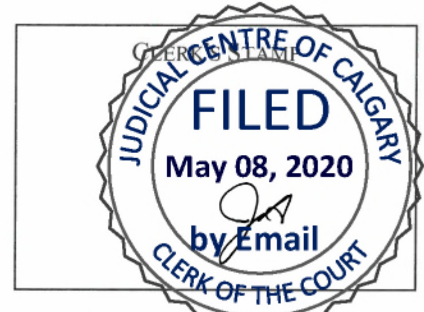
to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta



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	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BLAKE, CASSELS & GRAYDON LLP** Barristers and Solicitors 3500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309 File: 00180245/000013

COM
May 8, 2020
Justice Edisvik

AFFIDAVIT OF KRISTAL KAYE

Sworn on May 6, 2020

I, Kristal Kaye, of Calgary, Alberta, MAKE OATH AND SAY THAT:

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC ("**Dominion Diamond"**) and Dominion Diamond Canada ULC ("**Dominion Canada"**), two of the applicants in these proceedings, as well as a director of Dominion Canada. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true

2. Dominion Diamond and Dominion Canada, together with the other applicants in these proceedings, being Dominion Diamond Delaware Company, LLC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, and Dominion Finco Inc., are collectively referred to in this affidavit as the "**Applicants"**.

3. I swear this affidavit in relation to the court hearing related to the Diavik joint venture and the request by Diavik Diamond Mines (2012) Inc. ("**DDMI"**) to be permitted to make cover payments as set out in the affidavit of Thomas Croese sworn April 30, 2020 (the "**Croese Affidavit**").

The Croese Affidavit

4. At the outset, the Applicants do not agree with much of what is contained in the Croese Affidavit and, in the Applicant's view, the Croese Affidavit paints an incomplete picture of the facts, does not accurately portray the true state of affairs and in certain places is vague on details which creates false impressions. While I do not address all of the concerns the Applicants have with the Croese Affidavit, I do wish to address certain matters.

5. At paragraphs 6 and 7 of the Croese Affidavit, Mr. Croese references the second cash call for the last two weeks of April. Mr. Croese is incorrect in his assertion that Dominion Diamond requested that the payment schedule be altered. Rather, DDMI had incorrectly altered and moved up the payment schedule contrary to a Management Committee resolution. DDMI attempted to issue a cash call invoice on April 9, 2020 when it should have been issued on April 15, 2020. Dominion Diamond wrote to DDMI to question why DDMI had moved up the billing dates and as set out in the emails attached as Exhibit A to the Croese Affidavit, Dominion Diamond asked DDMI to comply with the Management Committee resolution which provided for a cash call invoice dated April 15 and due on April 22. Mr. Croese confirms this Management Committee resolution and the appropriate timing later in his affidavit at paragraph 17.

6. At paragraph 28 of the Croese Affidavit, Mr. Croese references but does not attach an April 27, 2020 letter from Dominion Diamond's counsel to DDMI's counsel. Mr. Croese does state in his affidavit that "DDMI refutes and disagrees with the characterization of the Manager's operation of the Joint Venture and various other accusations set out in the April 27 Correspondence." What is clear from Mr. Croese's statement is that Dominion Diamond has had for some time, and continues to have, concerns with the way in which DDMI has operated and continues to operate the joint venture and the Diavik mine and that as Manager it has breached its obligations to Dominion Diamond. While Mr. Croese may disagree with Dominion Diamond's position and concerns, Dominion Diamond has expressed concerns related, but not limited, to:

(a) The operational and financial performance of the Diavik mine generally and DDMI's repeated failure to meet costs budgets, production (ore processed) plans and diamond recovery budgets, including a significant failure to meet these in the January to March period of this year as against the approved budget, which budget is noted at paragraph 35 of the Croese Affidavit; many of which failures preceded the COVID-19 pandemic;

(b) The mining of the Diavik mine in a manner inconsistent with the annual planned program and appears to be a result of DDMI adopting a high-grade approach, which makes little economic sense and is destructive of value for the joint Venture and its participants;

(c) The operation of the Diavik mine since March in light of the current COVID 19 environment;

(d) The operation of the Diavik mine since March in light of the current status of the diamond industry, including sales channels, diamond prices and current diamond stockpiles;

(e) The operational and financial performance of the Manager in relation to the Diavik mine including the amount of the bi-weekly cash calls;

(f) The inability of the Manager to achieve appropriate cost reductions; and

(g) The lack of appropriate consultation with Dominion Diamond and the failure to properly take into consideration the interests and views of Dominion Diamond.

7. In the view of the Applicant's, the frequency and amount of the cash calls in this particular environment could have a negative impact on the restructuring efforts of the Applicants. All of the above is prejudicial to Dominion Diamond.

8. As noted in my affidavit of April 21, 2020 sworn in support of the initial CCAA application, in the first three months of 2020, Dominion Diamond has made cash call payments in respect of the Diavik joint venture in the amount of $68.9 million. In addition, a further cash call payment was made by Dominion Diamond in early April 2020, for the April 1-15 period, in the amount of $17.2 million.

9. In total, in 2020 Dominion Diamond has made cash call payments totalling approximately $86 million. In just over three years, Dominion Diamond has paid approximately $760 million in cash calls in relation to the Diavik joint venture. Over the last 15 years, in excess of $3 billion has been contributed to the Diavik joint venture by Dominion Diamond or its predecessor as 40% participant.

10. At paragraph 35 of the Croese Affidavit, Mr. Croese states that the applicable program and budget was approved by both DDMI and Dominion Diamond. What is not referenced in paragraph 35 is the fact that the applicable Management Committee Resolution notes the concerns Dominion Diamond had with suggested costs and specifically states that formal collaboration via a face-to-face meeting is required to identify further cost reduction opportunities for 2020. Of course, those cost concerns were months before the onset of COVID 19 and the corresponding global ramifications has made the concerns noted above all the more acute.

11. At paragraph 38 of the Croese Affidavit, DDMI references DDMI's experience with respect to the impact of COVID 19 on the diamond industry and implies that in certain ways it is business as usual. If that is the impression that was created by the DDMI affidavit, that impression is far from accurate. While there are certain sales that undoubtedly have taken place, such as private sales as noted by DDMI, these sales are a fraction of what ordinarily takes place as the significant majority of the regular diamond channels are effectively closed.

12. It is also worthy of note that the Croese Affidavit makes very general statement about DDMI's sales saying that an affiliate of DDMI has achieved "material sales during March and April 2020." There is no evidence or details in the Croese Affidavit of what "material" means, how the volume of such sales compares to sales in the preceding several months and years and what level of discount (or reduced sale price) these sales occurred at as compared to sales in the

preceding several months and years. It is unknown if the discounts were "material", what discounts were offered, and which sales were offered and rejected.

13. In a recent May 3 article by Rapaport News, it was confirmed that while some diamond sales could still take place, Debeers (the world's largest diamond producer) "suspended production at most of its mines" and "Almost all other diamond producers have halted or significantly reduced supply, with some mines unlikely to return to production." The May 3 article also states that "On Friday, India extended its nationwide lockdown by two weeks, raising the question of when diamond manufacturing would revert to normal, especially in the city of Surat, which produces more than 90% of the world's polished goods." Attached as **Exhibit "A"** is the May 3, 2020 article by Rapaport News.

Diavik Joint Venture Documents

14. Attached hereto and marked as **Exhibit "B"** is a copy of an invoice from DDMI to Dominion Diamond dated March 30, 2020 in the amount of $17,200,000. with the description "April Cash Requirement – 1st cash call." Dominion Diamond paid this cash call.

15. As described in my affidavit sworn in these CCAA proceedings on April 21, 2020, Dominion Diamond (as successor to Aber Resources Limited) and DDMI (as successor to Kennecott Canada Inc.) are party to the Diavik Joint Venture Agreement (the "**Diavik JVA**") dated as of March 23, 1995 between Aber Resources Limited and Kennecott Canada Inc., as amended. Attached hereto and collectively marked as **Confidential Exhibit "1"** is a copy of the Diavik JVA, together with (a) a Diavik JVA amending agreement dated December 1, 1995, (b) a Diavik JVA amending agreement (no. 2) dated January 17, 2002, and (c) a Diavik JVA amending agreement (no. 3) dated March 3, 2004.

16. Attached hereto and marked as **Confidential Exhibit "2"** is a copy of an Agreement to Establish a Protocol for Diamond Production Splitting dated January 7, 2003, between Diavik Diamond Mines Inc. (a predecessor entity to DDMI) and Aber Diamond Mines Limited (a predecessor to Dominion Diamond).

17. Attached hereto and marked as **Confidential Exhibit "3"** is a copy of Schedule A – Diamond Production Splitting Protocol (Version No. 4) entered between Dominion Diamond and DDMI.

18. Attached hereto and marked as **Confidential Exhibit "4"** is a copy of an e-mail sent to me by Thomas Croese on April 9, 2020 at 5:29 PM attaching the Diavik Joint Venture Updated 2020 Cash Call Schedule.

19. Attached hereto and marked as **Confidential Exhibit "5"** is a copy of a redacted e-mail sent by Sean Collins of McCarthy Tetrault LLP, counsel to DDMI to Peter Rubin of Blake, Cassels & Graydon LLP, counsel to the Applicants, dated April 30, 2020. The portions of Confidential Exhibit "5" that have been redacted pertain to without prejudice discussions among Mr. Rubin and Mr. Collins.

20. Confidential Exhibits "1" to "5" contain confidential and commercially sensitive information regarding the Diavik JVA and the business arrangements among Dominion Diamond and DDMI that, if disclosed, could be determinantal to Dominion Diamond's and DDMI's commercial interests and these CCAA proceedings. The Applicants request that Confidential Exhibits "1" to "5" be sealed on the court record. I don't believe that any stakeholder will be prejudiced by this relief.

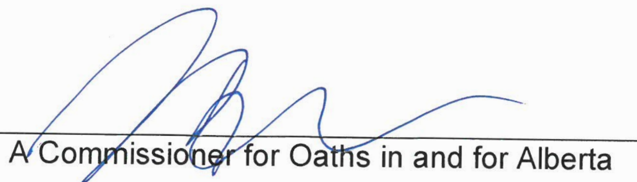
SWORN BEFORE ME at Calgary, Alberta)
this 6th day of May, 2020.)

A Commissioner for Oaths in and for the Province of Alberta
Morgan Crilly
Barrister & Solicitor

KRISTAL KAYE

TAB A

This is Exhibit "**A**" referred to in the Affidavit of **KRISTAL KAYE** sworn before me this 6 day of May, 2020.



A Commissioner for Oaths in and for Alberta

Morgan Crilly
Barrister & Solicitor

Rough Markets

Don't Ban Rough Buying, De Beers Urges

Compelling trade members not to purchase is "counterproductive," says CEO Bruce Cleaver.

May 3, 2020 9:37 AM By Rapaport News

RAPAPORT... De Beers CEO Bruce Cleaver has called on the trade to allow rough purchases, assuring manufacturers the company won't require them to buy in the weak market.

"We will only sell [rough] when the demand is such that it can create sustainable value for all of us," the executive wrote in a blog post Friday. "However, just as we are not compelling our clients to purchase, we strongly believe it is counterproductive for any part of the industry to compel them not to purchase."

Cleaver's plea comes after the Gem & Jewellery Export Promotion Council (GJEPC) and other Indian trade organizations called on the nation's diamond sector to pause rough-diamond imports for 30 days, beginning on May 15. The move would improve the Indian industry's liquidity situation and deplete inflated polished inventories, the trade bodies explained.

Without explicitly referencing the Indian trade groups' appeal to their members, Cleaver argued that supply had already been significantly reduced after De Beers suspended production at most of its mines. "Almost all other diamond producers have halted or significantly reduced supply, with some mines unlikely to return to production," he added. De Beers cut its production guidance for 2020 to 25 million to 27 million carats, more than 20% below its initial projection, Cleaver noted.

The company also canceled its March sight and is offering 100% deferrals at sight 4, which begins Monday. Sightholders are likely to defer the vast majority of purchases to later in the year, as weak consumer demand and the shutdown of India's cutting industry have diminished appetite for rough.

On Friday, India extended its nationwide lockdown by two weeks, raising the question of when diamond manufacturing would revert to normal, especially in the city of Surat, which produces more than 90% of the world's polished goods.

Marketing message

Meanwhile, Cleaver urged the industry to capitalize on the diamond's symbolism, as consumers will seek to purchase "fewer, but more meaningful things" as they move out of lockdown. Signs of pent-up demand from delayed weddings, and self-purchases to reward hardships that have been overcome, are starting to show in China as the lockdown there has eased, the CEO commented. People are visiting stores and shopping malls again, he said.

In its communication with consumers over the coming months, De Beers will emphasize the role diamonds play in shaping a better world and in forging meaningful connections, he stressed.

"Just as they have had to find innovative ways to stay connected with loved ones, we will find new ways to connect with them," he said.

“Throughout time, the diamond has served as a powerful symbol of connection and meaning,” he wrote. “It has always been attached to life’s most precious moments and relationships and represented a store of value, but increasingly we believe a diamond is becoming a store of values.”

Image: Bruce Cleaver. (Joe McGorty/De Beers)

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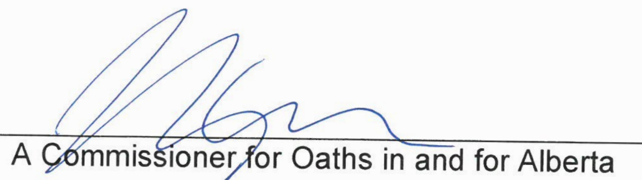
TAB B

This is Exhibit "**B**" referred to in the Affidavit of **KRISTAL KAYE** sworn before me this 6 day of May, 2020.



A Commissioner for Oaths in and for Alberta

Morgan Crilly
Barrister & Solicitor

RioTinto

Diavik Diamond Mines (2012) Inc.
P.O. Box 2498
Suite 300, 5201-50th Avenue
Yellowknife, NT X1A 2P8 Canada
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC
900 – 606 4 Street SW
Calgary, AB T2P 1T1
Canada

Attention: DDC-AP

DATE: **30-MAR-20**

INVOICE: **DDC 04-20A**

DESCRIPTION		**AMOUNT**
	100%	**40%**
April Cash Requirement – 1st cash call	43,000,000.00	$17,200,000.00
GST Registration # 83952 4048RT		

TOTAL CASH CALL **$17,200,000.00**

(DUE ON April 06, 2020)

CONFIDENTIAL EXHIBIT "1"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "2"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "3"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "4"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

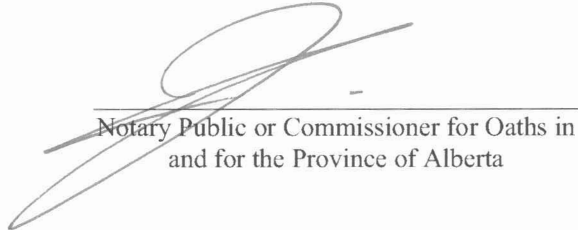
CONFIDENTIAL EXHIBIT "5"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

This is Exhibit "M"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

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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	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BLAKE, CASSELS & GRAYDON LLP** Barristers and Solicitors 3500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309

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AFFIDAVIT OF KRISTAL KAYE

Sworn on October 28, 2020

I, Kristal Kaye of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Canada ULC ("**Dominion Canada**"), and Dominion Diamond Delaware Company, LLC ("**Dominion Delaware**"), three of the applicants in these proceedings , a director of Dominion Canada and Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), and I also hold other director and officer positions with certain other non-CCAA applicant entities affiliated with Dominion Diamond. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. I make this affidavit in response to the affidavit of Thomas Croese sworn October 19, 2020 (the "**Croese Affidavit**") and in opposition to DDMI's application for:

(a) an amendment to the Second and Amended Restated Initial Order of this Court dated June 19, 2020 (the "**SARIO**") that would allow DDMI to retain all of Dominion's share of the Diavik Mine production (as opposed to only the Additional Diamond Collateral, as defined below); and

(b) an order permitting DDMI to implement its proposed realization process (the "**DDMI Sale Proposal**") for the sale of the diamonds currently held by DDMI (the "**Additional Diamond Collateral**") as further security for the "**Cover Payments**" made by DDMI pursuant to the SARIO.

3. For the reasons set out below, the Applicants reject DDMI's assertion that DDMI requires further collateral to secure the Cover Payments and oppose DDMI's application to vary the SARIO to allow DDMI to hold any more of Dominion's production from the Diavik Mine beyond the Additional Diamond Collateral.

4. With respect to the DDMI Sale Proposal, the Applicants submit that any process that is implemented to sell the Additional Diamond Collateral must be fair, transparent, and provide for the best realization value available in the circumstances.

5. The Applicants should be permitted to, and are able and prepared to, sell the Additional Diamond Collateral themselves, but if DDMI is to be responsible for the sale, modifications to the DDMI Sale Proposal are required.

(1) Background

6. I have previously sworn several affidavits in these CCAA proceedings, including my affidavit of April 21, 2020 (the "**April Affidavit**") and May 6, 2020 (the "**May Affidavit**"). Background facts relevant to DDMI's application are set out in my April and May Affidavits.

7. If not defined in this affidavit, capitalized terms have the meaning given to them in my April and May Affidavits.

(2) DDMI's Cash Calls

8. As is described in my April Affidavit, one of the significant financial burdens faced by Dominion prior to its filing for CCAA protection were the bi-monthly "**Cash Calls**" issued by DDMI with respect to Dominion's forty percent share of the operating expenses of the Diavik Mine, which DDMI has been running notwithstanding the disruptions to the diamond industry sales channels caused by the COVID-19 pandemic.

9. As is described in both the Affidavit of Mr. Croese sworn April 30, 2020 and my May Affidavit, pursuant to the Joint Venture Agreement that governs Dominion and DDMI's participation in the Diavik Mine joint venture, the operation of the Diavik Mine is conducted in accordance with an approved program and budget (the "**Approved JV Budget**").

10. In the period from April 22, 2020 when the Applicants filed for CCAA protection, until September 30, 2020, DDMI has made the following Cash Calls (which are compared in the table below to the amounts payable under the Approved JV Budget for Dominion's 40% share):

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	Actual	Over/ (Under) Budget	Approved JV Budget	Actual	Over/ (Under) Budget
2nd April Cash Call	17,283,400	16,000,000	(1,283,400)	13,294,923	12,093,726	(1,201,197)
1st May Cash Call	11,283,400	17,600,000	6,316,600	8,679,538	13,303,099	4,623,561
2nd May Cash Call	11,283,400	12,000,000	716,600	8,679,538	9,070,295	390,757
1st June Cash Call	8,483,400	5,600,000	(2,883,400)	6,525,692	4,232,804	(2,292,888)

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	**Actual**	**Over/ (Under) Budget**	**Approved JV Budget**	**Actual**	**Over/ (Under) Budget**
2nd June Cash Call	8,483,400	10,000,000	1,516,600	6,525,692	7,558,579	1,032,887
1st July Cash Call	6,883,400	8,400,000	1,516,600	5,294,923	6,349,206	1,054,283
2nd July Cash Call	6,883,400	8,000,000	1,116,600	5,294,923	6,046,863	751,940
Exploration	-	1,977,282	1,977,282	-	1,494,544	1,494,544
1st Aug Cash Call	5,883,400	8,000,000	2,116,600	4,525,692	6,046,863	1,521,171
2nd Aug Cash Call	5,883,400	6,400,000	516,600	4,525,692	4,837,491	311,799
1st Sept Cash Call	4,283,400	8,800,000	4,516,600	3,294,923	6,651,550	3,356,627
Exploration	-	80,293	80,293	-	60,690	60,690
2nd Sept Cash Call	4,283,400	7,200,000	2,916,600	3,294,923	5,442,177	2,147,254
TOTAL to September 30th	**90,917,400**	**110,057,575**	**19,140,175**	**69,936,462**	**83,187,887**	**13,251,425**

11. Further Cash Calls in the month of October are as follows:

Cash Call Period	$ CAD			$ USD		
	Approved JV Budget	**Actual**	**Over/ (Under) Budget**	**Approved JV Budget**	**Actual**	**Over/ (Under) Budget**
1st Oct Cash Call	6,083,400	8,800,000	2,716,600	4,679,538	6,651,550	1,972,012
Exploration	-	664,634	664,634	-	502,369	502,369
2nd Oct Cash Call	6,083,400	4,800,000	(1,283,400)	4,679,538	3,628,118	(1,051,420)
TOTAL	**103,084,200**	**124,322,209**	**21,238,009**	**79,295,538**	**93,969,924**	**14,674,386**

12. As is contemplated by the SARIO, while the exercise of Dominion's creditors' rights and remedies are stayed, DDMI has the ability to make Cover Payments with respect to Dominion's

Cash Call obligations to DDMI. The amount of the above listed Cash Calls is equivalent to the amount that DDMI has paid as Cover Payments as of September 30, 2020. That is to say, as of September 30, DDMI has made Cover Payments in the amount of approximately $83.2 USD million since the Applicants were granted CCAA protection. This amount is over the Approved JV Budget by approximately $13.3 million USD or 18.9%.

13. As I described in my May Affidavit, Dominion Diamond has had for some time, and continues to have, concerns with the way in which DDMI has operated and continues to operate the joint venture and the Diavik Mine. The concerns that Dominion has raised are described in paragraph 6 of my May Affidavit, which include concerns related to the operational and financial performance of the Diavik Mine generally and DDMI's repeated failure to meet cost budgets, including a significant failure to meet the Approved JV Budget (many of which failures preceded the COVID-19 pandemic). Dominion has commenced litigation against DDMI with respect to its operation of the Diavik Mine in the British Columbia Supreme Court.

14. In light of its concerns with respect to the operation of the Diavik Mine, as is also described in my May Affidavit, Dominion has repeatedly asked DDMI to pursue appropriate cost reductions, including months before the onset of the COVID-19 pandemic. Despite these requests, as is clear from the above, DDMI's Cash Calls have continued to be in an amount well in excess of the Approved JV Budget.

15. The Applicants' concerns with respect to DDMI's operation of the Diavik Mine have continued to manifest since filing for CCAA protection. Among others, the Applicants' concerns include the following two issues:

(a) **Cash Account**: DDMI maintains a cash account to fund the operations of the Diavik Mine (the "**JV Cash Account**"), 40% of which is funded by the Applicants in respect of their proportional share of the Diavik Mine obligations. Prior to the Applicants' filing for CCAA protection (with a starting point of January 2017), the average month-end balance in the JV Cash Account has been approximately $5 million CAD. Since the Applicants' filing for CCAA protection in April, the average month-end balance in the JV Cash Account has been approximately $15 million CAD. As of the last financial reporting at September 30, 2020 I understand that the cash balance in the JV Cash Account was approximately $17 million CAD. Yet, in October, DDMI has again made Cash Calls in excess of the Approved JV Budget by approximately $2 million CAD. I am not aware of any reason for DDMI

to maintain such an increased balance in the JV Cash Account, which in effect increases the amount of Dominion's Cash Calls (and therefore the DDMI Cover Payments and the associated interest payable on these Cover Payments).

(b) **CEWS Benefit**: To the best of my knowledge, DDMI has not applied for the Canadian Emergency Wage Subsidy ("**CEWS**") benefit that has been made available to Canadian employers who have seen a drop in revenue due to COVID-19 to cover part of employee wages. A general discussion on CEWS eligibility occurred between Dominion and DDMI at a meeting held on April 20, 2020. At a third-quarter joint venture meeting held on October 21, 2020, Dominion confirmed that DDMI had not applied for the CEWS benefit. Subsequent to that meeting Dominion requested further details from DDMI in order to calculate the potential benefit available to DDMI pursuant to the CEWS. This information has not been provided to Dominion as of the date of this affidavit. If DDMI's operations have been impacted in a similar way as Dominion's by the pandemic, particularly with respect to the ability to conduct significant sales, this could be a significant benefit to DDMI and provide them with additional funds in the tens of millions of dollars, which would again reduce the amount of the Dominion Cash Calls and corresponding Cover Payments. DDMI has advised that it may apply for this subsidy in the coming months but the Dominion Cash Calls should have already been reduced.

(3) DDMI is Over-Secured (not Under-Secured)

16. DDMI's claim that the Cover Payment indebtedness of the Applicants to DDMI exceeds the gross value of the Additional Diamond Collateral is incorrect. If anything, as is set out below, DDMI is over-secured with respect to the Cover Payments on the basis of the most recent pricing information available.

Valuation of the Additional Diamond Collateral

17. Mr. Croese is correct that historically the DICAN (as defined in the Croese Affidavit) valuations have been higher than the realized value of diamonds from the Diavik Mine. However, all of the diamonds that Dominion has sold in 2020 (beginning as early as January, prior to both the COVID-19 pandemic and the Applicants' CCAA filing) have sold at a higher realized value than the DICAN valuation.

18. As noted by Mr. Croese himself at paragraph 13 of his affidavit, DDMI has also sold diamonds in September and early October of this year in excess of the DICAN valuation.

19. Below is a table showing the average price per carat that Dominion has obtained in its sales in 2020 as compared to the DICAN valuation for those same diamonds (being the DICAN valuation conducted several months prior):

Production Date	DICAN value (USD$/carat)	Sales Month	Sale value (USD$/carat)	$/carat Variance	Percentage Difference
November 2019	$90.82	January 2020	$97.56	$6.74	7%
December 2019-January 2020	$80.41/$87.85	February 2020	$93.94	$9.65	11%
February 2020	$86.13	September 2020	$90.52	$4.39	5%

20. If the DICAN values applied at the time the valuation was performed are applied to the Dominion diamonds currently held by DDMI, the total value of these diamonds is approximately $92.1 million USD:

Production Dates	Carats	DICAN USD$/ct	Total DICAN Value (USD)
April 16-May 6	51,578.47	$102.63	$5,293,436.87
May 7 - May 27	242,242.17	$73.13	$17,716,298.61
May 28 - June 17	171,587.14	$71.61	$12,286,998.25
June 18 - July 22	251,599.75	$71.87	$18,081,391.17
July 23 - 26 August	262,052.28	$74.28	$19,465,839.98
27 August-30 September	230,251.02	$83.45	$19,213,928.58
Production up to September 30	**1,209,310.83**	**$76.12**	**$92,057,893.47**

21. As set out above, as of September 30, 2020, the Cover Payments made by DDMI are approximately $83.2 million USD. The value of the Dominion diamonds being held by DDMI for this same period of time using the DICAN pricing is approximately $92.1 million USD. In other words, DDMI is over-secured by approximately $8.9 million USD, based on the DICAN valuations.

22. However, these DICAN valuations for 2020 undervalue the diamonds because of the point in time at which the valuations were done (at the height of the pandemic). If all of the diamonds currently held by DDMI for the production dates up to September 30 are valued using the most recent DICAN valuation number, $83.45 per carat, the total value of the inventory held by DDMI to secure its Cover Payments (both current to September 30) is approximately $100.7 million USD. This results in DDMI being over-secured in an amount of approximately $17.5 million USD.

23. An even more accurate way to value the Additional Diamond Collateral is to use the actual pricing obtained by Dominion in its most recent diamond sales in September of this year. If the Additional Diamond Collateral is valued at the average sales price obtained by Dominion during its September sale, being $90.52 per carat, the total value of the Additional Diamond Collateral (to September 30) is approximately $109.2 million US. DDMI is therefore over-secured by $26.0 million US.

24. In my view, Dominion's recent sales data, or in the alternative the current DICAN valuation, is the best and most accurate way to value the Additional Diamond Collateral. For clarity, Dominion is not asking this Court to revise the terms of SARIO or change the method of valuation used – it is only providing this evidence to illustrate that the position taken by DDMI with respect to the valuation of the Additional Diamond Collateral is incorrect.

Further Inaccuracies in DDMI's valuation

25. In paragraph 16(a) of the Croese Affidavit, Mr. Croese claims that an amount of 13-20% must be deduced from the gross value of the Additional Diamond Collateral to account for sale, marketing, royalty and other fees and expenses associated with selling these diamonds. According to Mr. Croese, the basis of this information is data from a recent sale of diamonds by Dominion that is found in in the Monitor's Sixth Report.

26. Mr. Croese's claim that these expenses will amount to 13-20% of the gross value of the Additional Diamond Collateral is incorrect. An estimation of 20% is too conservative (given, among other things, the fixed cost of sales that does not fluctuate materially with increased volume, except for per-stone sorting costs).

27. The actual amount of these costs for Dominion's share of production from the Diavik Mine is 11%. This accounts for Belgian taxes, GNWT royalties, private royalties and sorting and shipping costs. The estimated 13% expense value derived from the information on diamond

sales from the Monitor's Sixth Report, dated September 22, 2020, was arrived at using diamond sale figures reported on a consolidated basis and included costs associated with both the Ekati and Diavik Mines. Dominion does not own 100% of the Ekati Mine and has to pay the proportionate share of Ekati's net revenues to its JV partner, Mr. Stu Blusson. There are no other deductions or expenses that I am aware of to justify an ask of 13-20%.

28. If DDMI truly estimates that it will have to deduct an amount of 13-20% from the gross value of the Additional Diamond Collateral to account for sale, marketing, royalty and other fees and expenses associated with selling these diamonds, whereas Dominion estimates these costs to be approximately 11%, that is only further evidence that Dominion should be the party responsible for selling the Additional Diamond Collateral.

29. For the sake of accuracy, I also note that in his affidavit Mr. Croese indicates that the diamonds owed to Dominion for May 20, 2020 are in an amount of 49,832.78 carats, but the DICAN report provided to Dominion by GNWT indicates that the correct weight is 50,316.99 carats.

Projections as to Future Diamond Sales

30. I do not disagree with Mr. Croese that there is uncertainty as to how diamond prices may fluctuate in the coming months and year. Even absent the COVID-19 pandemic, diamond pricing is dynamic. However, it is important to recognize that diamond experts hold differing views with respect to what the future holds for the diamond market. For example, Paul Zimnisky Diamond Analytics ("**Zimnisky Analytics**"), a monthly subscription service that is used by financial institutions, management consulting firms, private and public corporations, governments, intergovernmental organizations and universities, takes a more optimistic view in its monthly reports for September (the "**September Zimnisky Report**") and October (the "**October Zimnisky Report**", together the "**Zimnisky Reports**") than the views contained in the secondary market sources relied on in the Croese Affidavit.

31. In the September Zimnisky Report, Zimnisky Analytics stated that:

> "While the impact of the pandemic has led to a continuation of a multi-year down-trend in diamond prices, the situation has also acted as a catalyst to expediate pre-existing supply trends that should be fundamentally supportive of prices going forward."

32. Further, the Zimnisky October Report notes that "in the weeks spanning late-August through early-September, both De Beers and ALROSA held sales in which rough was sold at levels not seen since before the pandemic".

33. Similar to the WWW Forecasts relied on by Mr. Croese in his affidavit, the Zimnisky Reports are not publicly available and have been attached to this Affidavit with the express consent of Zimnisky Analytics on the basis that they will not be disclosed due to the commercially sensitive and proprietary information contained in them. The September Zimnisky Report is attached to this affidavit as "Confidential Exhibit 1" and the October Zimnisky Report is "Confidential Exhibit 2".

34. This more positive view of the future value of diamonds contained in the Zimnisky Reports, for example, aligns with Dominion's recent sales experience. Dominion sold 99.6% of the diamonds it put to market in September at a price per carat that is significantly higher than the DICAN valuation. As noted in the Croese Affidavit, DDMI's recent diamond sales have yielded a similar result.

35. There is no reasonable basis for DDMI to assert that applying the DICAN valuation to the Additional Diamond Collateral results in DDMI being under-secured for the amounts owing to it with respect to the Cover Payments. As is set out above, the evidence demonstrates the opposite - DDMI is over-secured.

(4) DDMI Continues to Hold Diamonds Owing to Dominion

36. As is stated in my May Affidavit, prior to filing for CCAA protection on April 22, Dominion paid DDMI's first Cash Call for the month of April (the "**First April Cash Call**"). The First April Cash Call was in amount of $17,200,000.

37. Following a dispute between DDMI and Dominion as to Dominion's entitlement to the diamonds owing to Dominion by virtue of its payment of the First April Cash Call, being the diamonds with a production start of April 1, 2020 and up to April 15, 2020, in an order of May 8, 2020, this Court required DDMI to provide those diamonds to Dominion. In that order the Court stated that DDMI "shall forthwith make available for delivery" to Dominion Diamond the diamonds referenced in a confidential exhibit to my May Affidavit "for the period with the Production Start of April 1, 2020 and the Cut-Off of April 15, 2020."

38. However, DDMI has only provided Dominion with the smaller stones from that April 1 – April 15 production cycle (8 gr and below). The larger stones (10 gr to +6), approximately 7,275 carats, have not been provided to Dominion. Dominion is entitled to receive all diamonds owing to it from the April 1 – April 15 production cycle, not only these smaller stones.

(5) DDMI's Proposed Process to Monetize the Additional Diamond Collateral

39. I have reviewed the draft DDMI Sale Proposal that was circulated by counsel to DDMI on Friday October 23. This proposal is markedly different from previous proposals circulated by DDMI prior to the delivery of their court materials. The DDMI Sale Proposal eliminates the parameters previously being negotiated between the parties to ensure Dominion and its stakeholders had some assurance that DDMI would maximize the Additional Diamond Collateral. Specifically, the DDMI Sale Proposal is deficient in that:

(a) it does not identify the scope of the Additional Diamond Collateral to be sold by DDMI;

(b) it does not speak to maximizing the value of the Additional Diamond Collateral or establish a procedure which would require it to do so;

(c) it purports to "empower and authorize" DDMI to sell the Additional Diamond Collateral on any terms and conditions as it may deem or consider appropriate;

(d) it does not properly establish the basis on which DDMI would act as Dominion's agent for the purpose of selling the Additional Diamond Collateral; and

(e) it purports to distribute proceeds to Dominion's creditors without a proper adjudication of priorities.

40. In addition, the DDMI Sale Proposal does not provide for sufficient reporting to Dominion to allow it and its stakeholders to review, consider and assess the results of any sales undertaken by DDMI of the Additional Diamond Collateral.

41. Dominion has been working with the First Lien Lenders to prepare an alternative process (the "**Revised Monetization Process**") to the DDMI Sale Proposal served Friday, October 23. The Revised Monetization Process will be a fair and transparent sales process designed to maximize the value received for the Additional Diamond Collateral and provide the appropriate and necessary information to Dominion, the First Lien Lenders and the Monitor, to allow for the

appropriate degree of insight into the monetization process and exchange of information. This Revised Monetization Process will include details as to the monthly reporting that should be provided to Dominion, the Monitor, and the First Lien Lenders.

42. Both Dominion and the First Lien Lenders have provided initial comments on revised sales proposals to DDMI. Dominion is continuing to work with the First Lien Lenders on the Revised Monetization Process.

43. Dominion is prepared to sell the Additional Diamond Collateral and will be prepared to do so on the terms of the Revised Monetization Process, including providing to DDMI the monthly reporting provided for in the Revised Monetization Process.

44. Dominion has all of the infrastructure required to effectively realize value for these assets, including an excellent, secure facility, sorting abilities, quick and secure collection of cash, and the ability for the Court-appointed Monitor to oversee and ensure priority distribution of the cash proceeds to DDMI to reimburse the Cover Payments and associated expenses.

45. However, should this Court conclude that DDMI ought to be permitted to sell the Additional Diamond Collateral, certain safeguards are required to ensure that the sales process is fair and transparent and that the interests of both the Applicants and their other stakeholders are protected.

More Transparency is Required

46. If DDMI is permitted to sell the Additional Diamond Collateral, the process must be transparent. DDMI must provide monthly reporting with sufficient information to allow Dominion and its stakeholders, including the First Lien Lenders, to evaluate the pricing, marketing, and results of the sale of the Additional Diamond Collateral by DDMI. The DDMI Sale Proposal provides none of this.

47. As is set out in my May Affidavit, DDMI's lack of consultation with Dominion and failure to properly take into consideration the interests and views of Dominion was a concern to Dominion prior to the commencement of these CCAA proceedings. As Dominion and other CCAA stakeholders' interests will be directly impacted by any sale of the Additional Diamond Collateral, any realization process approved by this Court must ensure that adequate consultation occurs, including by requiring that the process is structured to maximize value, transparent and designed to give Dominion the information it needs to participate effectively.

48. There is no valid reason for DDMI to resist providing the necessary information to the Applicants and their stakeholders, particularly if sufficient safeguards are put in place to ensure protection of any confidential or commercially sensitive details.

49. The information I reviewed with respect to DDMI's proposed realization process, including Exhibit "A" to the Croese Affidavit (DDMI's Proposed Monthly Reporting Form) indicates that more information must be made available to the Applicants and their stakeholders. A transparent process must, among other things:

(a) require a prescribed level of reporting from DDMI that meets a number of criteria with respect pricing and sorting of diamonds, beyond the level of detail provided for in Exhibit "A" to the Croese Affidavit, in conjunction with copies of all detailed DICAN valuation reports so that the Applicants have some evidence as to a third-party's valuation and can confirm carat recoveries;

(b) prior to each sales cycle, Dominion should receive a report showing each category of diamond parcels and each individual "special" stone, the most recent achieved price per carat in such category and the proposed average reserve price for such category;

(c) following each sales cycle, Dominion should receive a report showing the results of the sale for each category of diamond parcels and each individual special stones, the performance versus the reserve pricing and the amount of goods which remain unsold;

(d) a right to inspect and value the sorted diamond inventory (on notice to DDMI);

(e) a month-end snapshot of current inventory, carats and estimate value (by production cycle if possible); and

(f) an ability to audit information provided by DDMI with respect to the sale of diamonds.

50. In addition to these general transparency requirements, there are further points discussed below that the Applicants view as critical to ensuring a fair process. Given that there are ongoing discussions occurring between DDMI and the Applicants at this stage, I have only provided high level comments on certain aspects of what is required of any potential realization process.

An Auction Process Should be Required

51. As a general statement, diamond evaluation and pricing is a complicated, dynamic, and often confidential process. There are a number of different ways that diamond producers market and sell their diamonds. As is set out in the Croese Affidavit, this can include through supply contracts, auctions, tenders, and negotiated spot sales.

52. As is also set out in the Croese Affidavit, DDMI's Sale Proposal proposes to use new supply agreements (term contracts) and spot auctions to sell the diamonds.

53. Dominion's auction process involves inviting clients to view the diamonds, holding viewing appointments over 6-8 working days (with approximately 50 appointments), using a reserve price to ensure sufficient value is realized for the diamonds, even if a temporary drop in demand occurs, and using an ascending clock auction process where participating clients bid until there is a winner. In the Applicants' view, this process maximizes realization for Dominion's diamonds.

54. It is my understanding that Rio Tinto sells a large portion of its diamonds from the Diavik Mine through long-term supply contracts, as opposed to an auction process similar to the one described above. The Applicants are concerned that DDMI will continue to use its existing long-term contracts (or similar long-term supply contracts) in its sale of the Additional Diamond Collateral. In Dominion's view, there are two primary issues with the use of long-term supply contracts to sell diamonds:

(a) In general, long-term supply contracts may result in a lower price (1 to 5%) being paid for diamonds than auction sales due to the commitment to take future volumes without knowing market demand.

(b) Due to the nature of the ongoing business relationship created by a long-term supply contract, the purchasing counter-parties are often granted certain accommodations that in this case could result in a lower valuing being paid for the Additional Diamond Collateral, including for example cross-subsidizing diamonds from different sources which may be of differing values. This results in a higher price being paid for lower quality diamonds and a lower price being paid for higher quality diamonds.

55. Rio Tinto (DDMI's parent company) is a significant player in the rough diamond market and has access to and sells rough diamonds from its other diamond mines to its customers. Rio Tinto's global marketing and sales strategy may not involve maximizing value for Dominion's share of production from the Diavik Mine. DDMI could sell the Additional Diamond Collateral pursuant to long term supply contracts or through spot sales with existing customers at a discount to then prevailing market rates. DDMI may also be motivated to sell the Additional Diamond Collateral without considering market factors relating to current supply and demand which would achieve the highest pricing for its goods.

56. Dominion has previously requested that DDMI consider profitability when determining its operating costs budgets. However, DDMI will not provide its average diamond pricing information to Dominion or anyone else. As such, there is no way for Dominion to assess the price paid by DDMI's purchasers with respect to its long-term contract sales.

57. In the Applicants' view, an auction process (with a minimum floor price) is the most transparent and effective way to realize value for diamonds. Dominion is prepared to permit DDMI to sell the Additional Diamond Collateral on its behalf through ascending bid auctions with reserve pricing established by DDMI.

58. Selling the Additional Diamond Collateral through an auction at reasonable intervals is the only way to ensure value is maximized. An auction process, which opens the sale up to hundreds of potential buyers (as opposed to a limited number of contract customers), could expose the Additional Diamond Collateral to a higher number of potential purchasers than existing Rio Tinto contract customers. This increased customer exposure creates market tension and can yield a higher price, giving comfort to the Applicants' stakeholders that the best possible price is being achieved for the Additional Diamond Collateral. It is ultimately a fairer and more transparent process.

DDMI's Proposed Fee Is Unreasonable

59. At paragraph 9(f) of the Croese Affidavit, Mr. Croese states that pursuant to DDMI's proposed DDMI Sale Proposal, DDMI will deduct 2.5% from the net sale proceeds of the Additional Diamond Collateral as a handling, sorting, sales and cash collecting fee. Mr. Croese states that this fee is consistent with fees charged by affiliates of Rio (DDMI's parent company) to arm's length third parties for similar services in their commercial profit making arrangements.

60. In my view, this fee is too high. Many of the costs associated with selling diamonds are fixed and should not change in any material way if DDMI sells the Additional Diamond Collateral. Indeed, as Mr. Croese notes in his affidavit, DDMI already has "existing secure and well-established infrastructure" in place to sell DDMI's share of the diamonds from the Diavik Mine, and DDMI's diamond team will handle the Additional Diamond Collateral in the same way it handles its own share of production.

61. If Dominion were to sell the Additional Diamond Collateral, I would expect the fee charged as a handling, sorting, sales and cash collecting fee would be not more than 1%. As stated above, an appropriate alternative solution is to allow Dominion to sell the Additional Diamond Collateral and pay the net proceeds to DDMI on account of the amounts owing for the Cover Payments, particularly given that Dominion anticipates charging a significantly lower fee for these services than DDMI does. As stated earlier, Dominion will be prepared to sell the Additional Diamond Collateral on the terms set out in the Revised Monetization Process and will be able to do so for a 1% fee.

Other Protections Required to Ensure a Fair Process

62. The tax issues that arise in various jurisdictions with respect to the sale of diamonds are complex. Any sales process implemented by DDMI will have to give due consideration to the tax requirements of all relevant jurisdictions, including allocation of tax liability and subsequent reassessment, and ensure that the chain of title to the Additional Diamond Collateral is one that effectively maximizes sale proceeds.

63. Similarly, as is set out in my April Affidavit, there are certain royalties payable on Dominion's share of diamonds from the Diavik Mine. Any sales process implemented by DDMI will have to ensure that liability for these royalties are properly allocated.

(6) Sealing Order

64. In light of the commercially sensitive, proprietary and confidential information contained in Confidential Exhibits 1 and 2, the Applicants ask that these exhibits be sealed on the court record. I do not believe that any stakeholder will be prejudiced by this relief.

SWORN BEFORE ME at Calgary, Alberta, this 28th day of October, 2020.

A Commissioner for Oaths in and for the Province of Alberta

Morgan E. Crilly
Barrister & Solicitor

KRISTAL KAYE

CONFIDENTIAL EXHIBIT "1"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

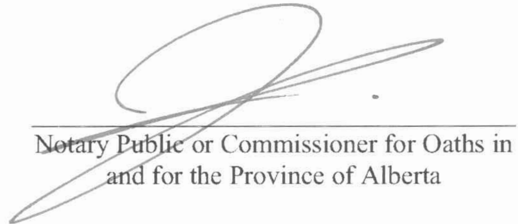
CONFIDENTIAL EXHIBIT "2"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

This is Exhibit "N"

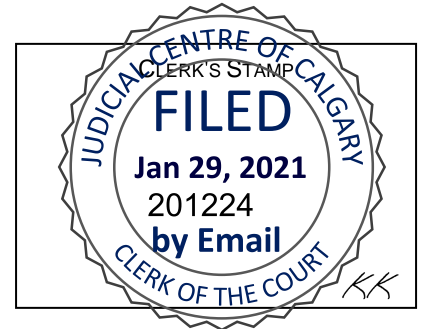
to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in
and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta



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 – 2nd Street SW Calgary, Alberta T2P 4J8 Attention: Peter L. Rubin / Peter Bychawski / Claire Hildebrand / Morgan Crilly Telephone No.: 604.631.3315 / 604.631.4218 / 604.631.3331 / 403.260.9657 Email: peter.rubin@blakes.com / peter.bychawski@blakes.com / claire.hildebrand@blakes.com / morgan.crilly@blakes.com Fax No.: 604.631.3309

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 25, 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 (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: (i) any gross negligence or wilful misconduct on its part; or (ii) liability for any costs award made in connection with any proceeding joined, continued or commenced by the Monitor on behalf of the Applicants or any of them. Save as aforesaid, 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 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.

Justice of the Court of Queen's Bench of Alberta

CLERK'S STAMP

SCHEDULE "A"

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
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 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	**MONITOR'S DISCHARGE CERTIFICATE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** 4500, 855 – 2nd Street S.W. Calgary, Alberta T2P 4K7 Attention: Chris Simard / Kelsey Meyer Telephone: (403) 298-4485 / (403) 298-3323 Facsimile: (403) 265-7219 Email: simardc@bennettjones.com / meyerk@bennettjones.com File No. 76142-10
DATE ON WHICH ORDER WAS PRONOUNCED:	**Wednesday, January 27, 2021**

LOCATION OF HEARING:	**Calgary Courts Centre**
NAME OF JUSTICE WHO MADE THIS ORDER:	**The Honourable Madam Justice K. M. Eidsvik**

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice K. M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") granted April 23, 2020 (the **"Initial Order"**), FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") in the *Companies' Creditors Arrangement Act* proceedings 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 (the "**CCAA Proceedings**");

B. Pursuant to Orders of the Honourable Madam Justice K. M. Eidsvik of the Court granted May 1, 2020 (the "**ARIO**") and June 19, 2020 (the "**SARIO**"), the Initial Order was amended;

C. Pursuant to paragraph 11 of an Order of the Honourable Madam Justice K. M. Eidsvik of the Court granted January 27, 2021 (the "**Enhanced Monitor's Powers Order**"), upon providing five (5) business days' written notice to the purchaser nominated by the Contracting Purchasers and to the 1L Agent (as those capitalized terms are defined in the Enhanced Monitor's Powers Order), the Monitor is authorized to resign unilaterally from its role as Monitor, as described in the Enhanced Monitor's Powers Order and in any other Order granted in the CCAA Proceedings, effective upon the filing of a certificate substantially in this form, if the Monitor is not funded to carry out its role;

THE MONITOR CERTIFIES the following:

1. The Monitor is no longer funded to carry out its role, in accordance with the Enhanced Monitor's Powers Order and all other Orders granted in the CCAA Proceedings;

2. The Monitor has provided five (5) business days' written notice to the purchaser nominated by the Contracting Purchasers and to the 1L Agent (as those capitalized terms are defined in the Enhanced Monitor's Powers Order) of its resignation from its role as Monitor;

3. This Certificate was delivered by the Monitor on ___________________________, 202_.

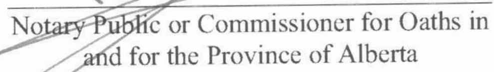
FTI CONSULTING CANADA INC., in its capacity as Monitor of Dominion Diamond Mines ULC, Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. and Dominion Diamond Marketing Corporation

Per:___________________________
Name:
Title:

This is Exhibit "O"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (the "**Agreement**") is dated as of February 3, 2021 by and among Arctic Canadian Diamond Company Ltd. (the "**Purchaser**"), Dominion Diamond Holdings, LLC ("**Dominion Holdings**"), Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), Dominion Diamond Canada ULC ("**DDCU**"), Dominion Finco Inc. ("**Finco**" and together with Dominion Holdings, DDM, DDC, Dominion Marketing and DDCU, "**Dominion**") and Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent (the "**Agent**") for the first lien secured lenders (the "**1L Lenders**") to DDM and various of its affiliates pursuant to the Revolving Credit Agreement dated as of November 1, 2017 (as amended, restated or supplemented from time to time, the "**1L Credit Agreement**").

WHEREAS on April 22, 2020, Dominion obtained an initial order (as amended and restated on June 19, 2020, and as further amended, restated or supplemented from time to time, the "**SARIO**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") from the Alberta Court of Queen's Bench (the "**CCAA Court**") that, among other things, granted an initial stay of proceedings in respect of Dominion and appointed FTI Consulting Canada Inc. as monitor of Dominion (in such capacity, the "**Monitor**").

WHEREAS DDJ Capital Management, LLC, Brigade Capital Management, LP and Dominion are parties to an Asset Purchase Agreement, dated as of December 6, 2020 (the "**Purchase Agreement**"), pursuant to which the Purchaser agreed to purchase Dominion's right, title and interest in and to the Acquired Assets and assume the Assumed Liabilities, all as more fully described therein, which was approved by the CCAA Court pursuant to the Approval & Vesting Order granted on December 11, 2020 (the "**AVO**");

WHEREAS pursuant to the Enhanced Monitor's Powers Order (the "**EMP Order**") granted by the CCAA Court on January 27, 2021, the Monitor has been authorized, among other things, to take any and all actions and steps in the name of and on behalf of Dominion to facilitate the administration of Dominion's Business, Property, operations, affairs and estate, and to execute any agreement in the name of and on behalf of Dominion; provided, however, that the EMP Order shall only take effect upon the delivery of a certificate of the Monitor as set out in paragraph 4 of the AVO (the "**Monitor's Certificate**");

WHEREAS the Monitor's Certificate has been delivered in accordance with the AVO and, as a result, the purchase transaction contemplated in the Purchase Agreement has closed (the "**Closing**") and the EMP Order has taken effect;

WHEREAS the parties hereto (collectively, the "**Parties**" and each a "**Party**") wish to enter into this Agreement to ensure the orderly administration of various post-Closing matters; and

WHEREAS each capitalized term used herein and not otherwise defined shall have the meaning ascribed to thereto in the Purchase Agreement or the SARIO, as applicable.

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth, the Parties hereby agree as follows:

ARTICLE 1
SERVICES

Section 1.01 Provision of Services by the Purchaser

(a) Pursuant to, and subject to the terms of, the Purchase Agreement, the Purchaser acknowledges and agrees that it shall, upon the request of Dominion, use commercially reasonable efforts to execute and deliver such documents and instruments of assumption as Dominion may reasonably request in order to more fully consummate the transactions contemplated by the Purchase Agreement and this Agreement, provided that such reasonable efforts shall not require the Purchaser to make any payments.

(b) The Purchaser agrees to respond in good faith to any reasonable request from Dominion for access to any additional services that are necessary for the wind-down of Dominion's Business, Property, operations, affairs and estate and that are not contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably.

(c) The Purchaser agrees to monetize any diamonds received by Dominion pursuant to the Diavik Joint Venture Agreement and applicable Orders granted by the CCAA Court (the "**Subject Diamonds**") at the direction of the Agent (or the Agent's counsel, on its behalf), subject to the approval of the Monitor and in accordance with the EMP Order, until the letters of credit issued by the 1L Lenders with respect to the Diavik Diamond Mine (the "**Diavik LCs**") have been fully cash collateralized and thereafter at the election of the Purchaser (the "**Monetization Activities**"). The Monetization Activities may include, among other things:

(i) the transportation of the Subject Diamonds;

(ii) the engagement of consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, on terms and conditions that are commercially reasonable and consistent with standard processes and procedures of the Purchaser, to assist with the other Monetization Activities;

(iii) cleaning, sorting, valuing and marketing the Subject Diamonds to, and with the assistance of, any person;

(iv) selling, transferring and conveying the Subject Diamonds to any person in accordance with the terms of this Agreement;

(v) receiving and collecting on behalf of Dominion all monies and accounts now owed or hereafter owing to Dominion in respect of the Subject Diamonds sold by the Purchaser; and

(vi) steps reasonably incidental to carrying out the provisions set forth in this Agreement.

(d) The Purchaser agrees that the terms set forth in Schedule "A" hereof apply to the Monetization Activities. The Purchaser agrees to also provide the Monitor and the Agent with such other information as is reasonably requested from time to time with respect to the Monetization Activities, subject to entering into commercially reasonable confidentiality and restriction on use arrangements where such information is not otherwise subject to confidentiality and use provisions under this Agreement or any other agreement(s) between such Parties.

Section 1.02 Provision of Services by Dominion

(a) Dominion agrees to take all reasonable steps that are necessary or desirable for the full realization and recovery of the Diavik Realization Assets, as determined by the Monitor, acting reasonably, and with the consent of the Agent (or the Agent's counsel) (the "**Realization Activities**"). The Realization Activities may include, among other things:

(i) enforcement of all rights relating to the Diavik Realization Assets, including rights provided for under the Orders granted in the CCAA Proceedings and the Diavik Joint Venture Agreement;

(ii) participation in management committee matters and meetings pursuant to the Diavik Joint Venture Agreement;

(iii) review of reporting and calculations relating to the Diavik Diamond Mine by Diavik Diamond Mines (2012), Inc. ("**DDMI**");

(iv) review of budgets and cash calls pursuant to the Diavik Joint Venture Agreement; and

(v) exercising audit rights under the Diavik Joint Venture Agreement where appropriate.

(b) In addition to all other reporting obligations to the Parties, Dominion agrees to provide such other information as is reasonably requested by the Agent or Purchaser from time to time and monthly written reports with respect to the status of the Realization Activities (including the funds remaining in the Diavik Realization Account and the Wind-Down Account) to the Agent and the Purchaser, subject to entering into commercially reasonable confidentiality and restriction on use arrangements where such information is not otherwise subject to confidentiality and use provisions under this Agreement or any other agreement(s) between such Parties.

(c) Dominion agrees to respond in good faith to any reasonable request from the Purchaser for access to any additional services that are necessary for the transition of the Acquired Assets and the Assumed Liabilities that are not contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably.

ARTICLE 2
COMPENSATION

Section 2.01 Terms of Payment and Related Matters

(a) The reasonable documented costs, fees and expenses incurred by Dominion or the Monitor in completing the Realization Activities, along with the reasonable documented costs incurred by the Agent and the Purchaser with respect to same, shall be funded initially from the Diavik Realization Account, which shall be administered in accordance with the Purchase Agreement and the First Lien Lender MSA. Thereafter, but only with the consent of the Monitor, such costs may be funded from the Wind-Down Account, to the extent available for such costs pursuant to the Purchase Agreement. Thereafter, such costs shall be funded (i) at the cost of the 1L Lenders if they so elect in their sole discretion; or (ii) subject to the consent of the Agent, at the cost of another Party or Parties if they so elect in their sole discretion. If neither the 1L Lenders nor any Party elects to fund the Realization Activities after the use of all available funds in the Diavik Realization Account and, if applicable, the Wind-Down Account in accordance with this Section 2.01(a), neither Dominion nor the Monitor shall be required to take any further steps or incur any further costs to complete Realization Activities. The Purchaser covenants to: (i) take reasonable efforts to not incur costs with respect to the Realization Activities that would be duplicative with the actions (and related costs) taken by Dominion and/or the Agent, to the extent that such activities are known to the Purchaser; and (ii) advise the Agent of any intended material costs that it anticipates incurring with respect to the Realization Activities reasonably in advance of incurring such costs. For the avoidance of doubt, the costs, fees and expenses incurred by the Agent for its analysis of DDMI's reporting, calculations, legal and commercial positions and other actions taken by DDMI with respect to the Diavik Diamond Mine, along with such reasonable actions that are incidental thereto (which may include consideration of possible legal actions that may be taken against DDMI) as determined by the Agent, shall be funded from the Diavik Realization Account and, if applicable, the Wind-Down Account in accordance with this Section 2.01(a).

(b) As compensation for the Monetization Activities, the Purchaser shall be paid a fee (the "**Sale Fee**") equal to 1% of the gross value of any sale of Subject Diamonds by the Purchaser (a "**Sale**") that is completed in accordance with the terms hereof, and reimbursed for all reasonable and documented costs and expenses incurred for the completion of such Sale. The foregoing payments shall be deducted from the proceeds of any Sale by the Purchaser (the "**Proceeds**") prior to such Proceeds being paid to or at the direction of Dominion; provided, however, that the Purchaser shall provide Dominion, the Monitor and the Agent with reasonable documentation evidencing such fees and expenses and the calculation of any Sale Fee no later than five (5) Business Days prior to deducting such amounts from the Proceeds. For the avoidance of doubt, no fees or expenses incurred by the Purchaser in connection with Monetization Activities shall constitute fees or expenses in connection with the Realization Activities and, accordingly, such amounts shall not be paid from the Diavik Realization Account or the Wind-Down Account.

(c) Subject to Section 1.01(b) and Section 1.02(c), no fees shall be payable with respect to the delivery of any services hereunder except as expressly set forth in Section 2.01(a) and Section 2.01(b).

ARTICLE 3
DISTRIBUTION OF PROCEEDS

Section 3.01 Distribution of Proceeds.

(a) The Purchaser agrees to promptly distribute the Proceeds to Dominion following the receipt of same, subject to deductions from Proceeds being made in accordance with Section 2.01(b).

(b) Following the receipt of Proceeds in accordance with Section 3.01(a), Dominion agrees to promptly distribute such Proceeds in accordance with the following:

(i) first, towards any applicable taxes with respect to any Sale, as determined by the Monitor, and to applicable royalty holders in accordance with the Sandstorm and Jennings Royalties Order granted by the CCAA Court on January 27, 2021;

(ii) second, to the Agent until the Diavik LCs have been fully cash collateralized; and

(iii) third, to the Purchaser.

(c) For greater certainty, the distributions contemplated in this Section 3.01 shall be the sole responsibility of Dominion and the Purchaser shall have no liability to any party entitled to receive such distributions.

ARTICLE 4
TERM

Section 4.01 Termination of Agreement. Unless extended by written agreement of the Parties, this Agreement shall terminate on the earlier of: (i) February 3, 2022; or (ii) the date on which the full realization of the Diavik Realization Assets has occurred (as determined by the Parties, acting reasonably) (the "**Termination Date**"), provided, however, that if the Agreement is extended beyond February 3, 2022, any Party may terminate this Agreement prior to the Termination Date by providing ninety (90) days written notice to all other Parties. Nothing in this Section 4.01 shall restrict the Monitor's authorization to resign from its role as Monitor as set out in paragraph 11 of the EMP Order.

Section 4.02 Breach. In the event that a Party (the "**Breaching Party**") has failed to perform any of its material obligations under this Agreement and such failure has continued for a period of seven (7) Business Days after another Party has given the Breaching Party written notice of such breach, the Parties that are not the Breaching Party may agree to terminate this Agreement with

respect to any service, in whole but not in part, at any time upon written notice to the Breaching Party.

Section 4.03 Effect of Termination. Following the Termination Date, all obligations of the parties hereto shall terminate, except for the provisions of Article 5 and Article 7, which shall survive any termination or expiry of this Agreement. Upon termination or expiry of any or all services under this Agreement, or upon the termination of this Agreement in its entirety, the Parties shall have no further obligation to provide the applicable terminated services or to pay any future costs relating to such services (other than for or in respect of services already provided in accordance with the terms of this Agreement and received by the Parties before such termination).

ARTICLE 5
LIMITATION OF LIABILITY

Section 5.01 Limitation of Liability.

(a) In no event shall either of the Parties have any liability under any provision of this Agreement for any punitive, exemplary, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value, or any damages based on any type of multiple, whether based on statute, contract, tort or otherwise.

(b) The Parties agree that all Sales shall be permitted to be completed in one or more transactions, in the Purchaser's sole and absolute discretion, including without limitation, with respect to the timing, process and manner of such Sale, provided that such Sale complies with Section 1.01(d). Other than liabilities that the Purchaser expressly agrees to incur in writing with respect to any Sale, no person shall sue or otherwise take any action against the Purchaser with respect to any Sale or the Monetization Activities, except for claims that the Purchaser: (i) did not comply with the terms of this Agreement or any other written agreement(s) entered into on or after the date hereof with respect to the Monetization Activities, including but not limited to any Sale; or (ii) did not act in good faith and in a commercially reasonable manner.

(c) The Purchaser shall not be acting as, and shall not be deemed to act as an agent for Dominion or the 1L Lenders as a result of carrying out the provisions of this Agreement and shall not become liable for or obligated to perform any liability, indebtedness or obligation of Dominion as a result of carrying out the provisions of this Agreement, completing any Monetization Activities or distributing any proceeds resulting therefrom.

(d) For the avoidance of doubt, the Parties acknowledge that the Purchaser is not assuming any obligations under the Diavik Joint Venture Agreement or the Diavik Joint Venture Interest.

ARTICLE 6
MONITOR ACTING ON BEHALF OF DOMINION

Section 6.01 Monitor Acting on Behalf of Dominion. The Parties acknowledge that the Monitor is executing this Agreement on behalf of Dominion pursuant to its authority under the EMP Order, and that the services and obligations of Dominion set forth herein may be delivered and satisfied by the Monitor on Dominion's behalf, and shall be subject to the protections afforded to the Monitor pursuant to the EMP Order.

ARTICLE 7
MISCELLANEOUS

Section 7.01 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and shall be deemed to have been given: (i) when received if given in person, (ii) on the date of transmission if sent by electronic mail, or (iii) one (1) Business Day after being delivered to a nationally known commercial courier service providing next day delivery service. Such Notice must be sent to each Party at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section):

If to Dominion:

c/o FTI Consulting Canada Inc.
520 5th Ave SW
Calgary AB T2P 3R7
Attention: Deryck Helkaa
E-Mail: deryck.helkaa@fticonsulting.com

with a copy (which shall not constitute notice) to:

Bennett Jones LLP
4500 Bankers Hall East
855 - 2nd Street SW
Calgary AB T2P 4K7
Attention: Chris Simard
Email: simardc@bennettjones.com

If to Purchaser:

Arctic Canadian Diamond Company Ltd.
900 – 606 4th Street SW
Calgary, AB T2P 1T1
Attention: Kristal Kaye
Email: Kristal.Kaye@ddcorp.ca

with a copy (which shall not constitute notice) to:

Torys LLP
79 Wellington St. West, 30th Floor

Toronto, Ontario, M5K 1N2
Attention: Tony DeMarinis
Email: tdemarinis@torys.com

If to the Agent:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue, 6th
New York, New York 10010
Attention: Didier S Siffer & Lawrence Park
E-Mail: didier.siffer@credit-suisse.com; lawrence.park@credit-suisse.com

with a copy (which shall not constitute notice) to:

Osler, Hoskin & Harcourt LLP
1 First Canadian Place, Suite 6300
Toronto ON M4X 1B8
Attention: Marc Wasserman & Michael De Lellis
Email: mwasserman@osler.com; mdelellis@osler.com

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

Section 7.02 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 7.03 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 7.04 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties hereto in respect to the transactions contemplated hereby, and this Agreement supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or statements, oral or written, that have been relied on by any Party hereto, except those expressly set forth in this Agreement.

Section 7.05 Successors and Assigns. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Parties. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 7.06 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is

intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 7.07 Amendments and Modifications. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party.

Section 7.08 Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 7.09 Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Any legal action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the courts of the Province of Alberta, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 7.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written.

ARCTIC CANADIAN DIAMOND COMPANY LTD.

By: Patrick Evans
Its: Director

DOMINION DIAMOND HOLDINGS, LLC, DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND MARKETING CORPORATION, DOMINION DIAMOND CANADA ULC AND DOMINION FINCO INC.

BY FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor, and without personal or corporate liability

By: ____________________________________
Its: Deryck Helkaa

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, solely in its capacity as administrative agent for the lenders under the 1L Credit Agreement

Didier Siffer

By: Didier Siffer
Title: Authorized Signatory

megan kane

By: Megan Kane
Title: Authorized Signatory

SCHEDULE A

PROCEDURE FOR SALE OF SUBJECT DIAMONDS

Key Principles

Striving for diamond production value optimization by following a number of key principles across all sales:

1. Product must be fully cleaned and sorted in a wide variety of diamond categories (sizes, colours, clarities, shapes) to be able to offer the right products to the right customers. This sorting process needs to be executed in a safe and secure operation.

2. Timing of sales must as much as possible be aligned to market cycles placing the right volume of product aligned with market demand.

3. A professional experienced well-equipped team is required to execute the sales process, optimize the sale proceeds (taking into consideration the existing circumstances facing the diamond market) and collect cash in a fast and cost-efficient manner.

Disclosure to 1L Lenders

The Purchaser and Monitor shall promptly provide the Agent with any and all information, documents and notices in accordance with the Transition Services Agreement. All information, documents and notices received by the Agent from either the Monitor or the Purchaser pursuant to this paragraph shall be subject to the confidentiality provisions in the 1L Credit Agreement. For the avoidance of doubt, the disclosure obligations herein are in addition to, and not in substitution of, all other disclosure obligations of Dominion and the Monitor, including but not limited to those set forth in the Approval of Monetization Process Order of the CCAA Court granted on November 4, 2020. The Parties to the Transition Services Agreement acknowledge and agree that the Monitor will rely upon certain information provided to it by third parties in complying with its obligation to promptly provide the Agent with any and all information, documents and notices in accordance with the Transition Services Agreement, and that the Monitor shall not have any responsibility or liability to the Agent or the 1L Lenders with respect to the accuracy or completeness of the information, documents and notices.

Procedure for Sale of Subject Diamonds

The Purchaser will follow the following process when carrying out the Monetization Activities:

1. The Purchaser or persons who are affiliates of or retained by the Purchaser will handle the Subject Diamonds in a commercially reasonable manner and generally apply the same processes, audits and analysis as such persons utilize with any equivalent diamonds owned by the Purchaser (the "**Purchaser Diamonds**").

2. The Purchaser or persons who are affiliates of or retained by the Purchaser will insure, import, clean, sort, value and sell the Subject Diamonds using their existing secure infrastructure, including existing experienced teams, security systems, diamond stock tracking software, sorting technology and experts, pricing methods, contracts (other than long term contracts providing for pricing which may represent a discount to the prevailing market), auction platform, and industry network.

3. The Subject Diamonds will, to the extent reasonably practical, be sorted and valued using the same sorting product line, Ekati mine samples and pricebook that is applied to any equivalent Purchaser Diamonds.

4. The Purchaser or persons who are affiliates of or retained by the Purchaser will sort and phase the Subject Diamonds over appropriate periods to avoid a high volume of product being offered at once and to help optimize sales proceeds unless, in the Purchaser's reasonable business judgment, market conditions would allow a higher volume of product to be sold without negatively impacting the market.

5. The Purchaser or persons who are affiliates of or retained by the Purchaser will sell all Subject Diamonds using an auction process unless, in the Purchaser's reasonable business judgment, and with the approval of the Monitor and the Agent, a different sales process would yield superior sales results.

Transparent process

The interests of Dominion, the Purchaser and the Agent are fully aligned as all are seeking to optimize returns for sales of the Subject Diamonds.

The Purchaser will work constructively with the parties by providing full transparency into the status of the monetization, subject to regulatory constraints. At a minimum, monthly reporting will be provided by the Purchaser to the Monitor and the Agent with respect to the following items:

- Detailed listing of Subject Diamond inventory offered for sale;
- Subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Agent, diamond sorting results (size and quality analysis);
- Subject to entering into commercially reasonable confidentiality and restriction on use arrangements with the Agent, the Purchaser's handling, sales and cash collection fee.

The Purchaser agrees that:

- Unsold inventory will be safely stored in the Purchaser's secure premises and insured by the Purchaser;
- Upon request by the Monitor and/or the Agent, the Purchaser shall permit an independent and internationally recognized accounting firm to audit the records and information identified above, with the cost and expense of any such audit to be paid using funds in the Diavik Realization Account (subject to entering into commercially reasonable confidentiality arrangements with such accounting firm including without limitations confidentiality arrangements with respect to information which such accounting firm may share with any other Person including, without limitation, the Agent and the Monitor);
- The Purchaser will permit the Agent and Monitor to have periodic access to the Subject Diamonds upon reasonable notice for the purpose of verifying and assessing value of the Subject Diamonds, with the cost and expense of any such access to be paid using funds in the Diavik Realization Account. The Agent and Monitor shall accord with the

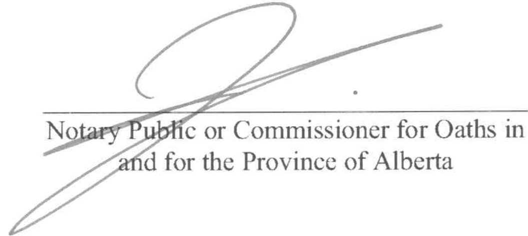
Purchaser's safety and security policies and procedures when viewing the Subject Diamonds.

- The Purchaser will facilitate quarterly / half-yearly meetings with the Agent and Monitor to review market and sale results and permit on-site (if and when appropriate and safe) or virtual tours and/or meetings to introduce key team members and show key processes and infrastructure.

This is Exhibit "P"

to the Affidavit of Kristal Kaye

sworn before me this 13th day of October, 2021



Notary Public or Commissioner for Oaths in and for the Province of Alberta

Jaspreet Mann
Barrister & Solicitor
A Commissioner for Oaths
in and for Alberta

$500,000
INTERIM FINANCING TERM SHEET

October ■, 2021

WHEREAS FTI Consulting Canada Inc. (the "**Monitor**") was appointed as monitor of Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. (collectively, the "**Dominion Parties**") and Washington Diamond Investments, LLC, (together with the Dominion Parties, the "**Applicants**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") pursuant to an initial order dated April 23, 2020 (as amended, the "**SARIO**");

AND WHEREAS DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**", and together with DDJ, the "**Interim Lenders**") were bidders under that certain asset purchase agreement dated as of December 6, 2020, between the Interim Lenders, the Dominion Parties and Dominion Diamond Marketing Corporation (the "**APA**").

AND WHEREAS the Court granted an Approval and Vesting Order dated December 11, 2021 (the "**Approval and Vesting Order**"), pursuant to which the Court approved the APA and vested certain assets of the Applicants thereunder in Arctic Canadian Diamond Company Ltd. ("**ACDC**");

AND WHEREAS pursuant to an order dated January 27, 2021: (a) the powers of the Monitor were expanded to authorize the Monitor to, among other things: (i) cause the Applicants to take any action permitted pursuant to the SARIO or any other order granted in these CCAA proceedings; and (ii) to execute any agreement, document, instrument or writing in the name of and on behalf of the Applicants; and (b) the Monitor was authorized to enter into a transition services agreement dealing with, among other things, conducting, supervising and directing the realization and recovery of the Applicants' remaining property or other assets or interests;

AND WHEREAS ACDC, the Dominion Parties, Dominion Diamond Marketing Corporation and Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent for the First Lien Lenders to DDM entered into a transition services agreement dated February 3, 2021 (the "**TSA**");

AND WHEREAS the Monitor has requested that the Interim Lenders provide financing in accordance with the terms and conditions set forth herein to fund certain of the Applicants' cash requirements related to the Monitor's activities under the TSA during the pendency of the Applicants' proceedings under the CCAA (the "**CCAA Proceedings**");

NOW THEREFORE, the parties, for good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged), agree as follows:

1. BORROWER	FTI Consulting Canada Inc., solely in its capacity as monitor of Dominion Diamond Mines ULC, Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Dominion Diamond Holdings, LLC, Dominion Finco

Inc. and Washington Diamond Investments, LLC (the "**Borrower**").

2. INTERIM LENDERS

DDJ Capital Management, LLC and Brigade Capital Management, LP and/or any of their respective affiliates and managed funds or other vehicles.

3. DEFINED TERMS

Capitalized terms used in this Interim Financing Term Sheet have the meanings given thereto in Schedule A.

4. PURPOSE

The Borrower shall use the proceeds of the Interim Facility solely for the following purposes and in the following order, in each case during and for the purposes of the Borrower's pursuit of the CCAA Proceedings:

(a) To fund professional fees (including fees of the Monitor), and the legal fees of counsel to the Monitor.

(b) To finance operating expenses, restructuring costs in the CCAA Proceedings related to the TSA in accordance with the Agreed Budget.

(c) To fund such other costs and expenses as agreed to in advance by the Interim Lenders, in writing.

(d) To fund a process for the orderly realization of the remaining assets of the Applicants in order to maximize the value available to the Applicants' creditors.

For greater certainty, the Monitor may not use the proceeds of the Interim Facility to pay any pre-filing obligations of the Applicants without the prior written consent of the Interim Lenders; it being agreed by the Interim Lenders that such consent is not required for the Monitor to pay: (i) taxes, accrued payroll and other ordinary course liabilities, provided that such amounts are included in the Agreed Budget or the Interim Lending Order (as defined below); or (ii) any other amounts owing by the Applicants to the extent specifically identified in the Agreed Budget or the Interim Lending Order.

5. INTERIM FACILITY

A super-priority, debtor-in-possession interim, non-revolving credit facility (the "**Interim Facility**") up to a maximum principal amount of **[$500,000]** (the "**Interim Facility Commitment**"), excluding for certainty any PIK Interest,

subject to the terms and conditions contained herein. Advances under the Interim Facility shall be deposited into the Deposit Account and utilized by the Monitor in accordance with the terms hereof.

6. CONDITIONS PRECEDENT TO EFFECTIVENESS AND ADVANCES

The effectiveness of this Interim Financing Term Sheet shall be subject to the satisfaction of the following conditions precedent, as determined by the Interim Lenders:

(a) The Interim Lenders shall have had a reasonable opportunity to review advance copies of, and shall be reasonably satisfied with, all materials to be filed in respect of the CCAA Proceedings.

(b) The Court shall have issued an order in the CCAA Proceedings (the "**Interim Lending Order**") on or before October ■, 2021 (the "**Outside Date**"), satisfactory to the Interim Lenders and substantially in the form contained in the draft Interim Lending Order attached hereto as Schedule B, on notice to such parties as are acceptable to the Interim Lenders, which shall: (i) approve this Interim Financing Term Sheet and the Interim Facility; (ii) grant the Interim Lenders a charge (the "**Second Interim Lenders' Charge**") securing all obligations owing by the Borrower to the Interim Lenders under this Interim Financing Term Sheet (collectively, the "**Interim Financing Obligations**"), including, without limitation, all principal amount of the outstanding Advances and interest thereon, which shall have priority over all Liens other than the Permitted Priority Liens (as defined below); and (iii) treat the Interim Lenders as unaffected creditors in the CCAA Proceedings;

(c) The Interim Lenders shall have received the Agreed Budget.

(d) The Interim Lenders shall be satisfied, acting reasonably, that the Applicants and the Monitor have complied with and are continuing to comply in all material respects

with all applicable laws, regulations, policies and licenses applicable to the Applicants' business, other than as may be permitted under a Court Order or as to which any enforcement in respect of non-compliance is stayed by a Court Order, provided the issuance of such Court Order does not result in the occurrence of an Event of Default.

(e) All governmental and third-party consents and approvals necessary or required by the Interim Lenders in connection with the Interim Facility and its effectiveness shall have been obtained and shall remain in full force and effect.

The Interim Facility shall be made by four Advances of **[$125,000]** each, with an initial Advance on or about ■ and subsequent Advances on or about ■, ■ and ■.

Making of each Advance shall be further subject to the satisfaction of the following conditions precedent (collectively, the "**Funding Conditions**"), as determined by the Interim Lenders:

(a) The Interim Lending Order shall not have been stayed, vacated or otherwise caused to be ineffective or materially amended, restated or modified, without the consent of the Interim Lenders.

(b) The Applicants and the Monitor shall be in compliance with the: (i) Interim Lending Order and any amendments thereto; and (ii) all other orders issued in the CCAA proceedings.

(c) The Applicants shall have paid all statutory liens, trust and other government claims including, without limitation, source deductions, except, in each case, for any such amounts that are not yet due and payable or which are in dispute in which case appropriate reserves have been made.

(d) The Monitor shall be in compliance with the TSA.

(e) All of the representations and warranties of the Applicants and the Monitor as set forth herein shall be true and accurate in all material respects.

(f) No Default or Event of Default shall have occurred or, if applicable, shall occur as a result of the requested Advance.

(g) No Material Adverse Change shall have occurred after the date of the issuance of the Interim Lending Order.

(h) There shall be no Liens ranking in priority to the Second Interim Lenders' Charge, other than the Permitted Priority Liens.

(i) The Interim Lenders shall have received a written request for an Advance from the Monitor, substantially in the form attached hereto as Schedule C, which shall be executed by the Monitor, and shall certify, *inter alia*, that: (i) the requested Advance is within the Interim Facility Commitment and is consistent with the Agreed Budget; and (ii) the Borrower is in compliance with this Interim Financing Term Sheet and the Court Orders.

(j) The requested Advance shall not cause the aggregate amount of all outstanding Advances (excluding for the purposes of this calculation, any PIK Interest) to exceed the Interim Facility Commitment or be greater than the amount shown on the Agreed Budget as at the date of such Advance.

(k) The Interim Lenders shall have received a certificate from an officer of the Borrower, in form and substance satisfactory to the Interim Lenders, certifying the conditions set out in clauses (e), (f) and (g) above.

(l) All other conditions precedent to the effectiveness of this Interim Financing Term Sheet shall continue to be satisfied.

For greater certainty, the Interim Lenders shall not be obligated to make any Advance or otherwise make available funds pursuant to this Interim Financing Term Sheet unless and until all the foregoing applicable conditions have been satisfied and all the foregoing applicable documentation and confirmations have been obtained (for certainty, each of the same, as applicable, as a condition precedent to each Advance), each in form and content satisfactory to the Interim Lenders in their sole discretion (unless specified otherwise).

7. INTERIM FACILITY SECURITY AND PRIORITY

All Interim Financing Obligations shall be secured by the Second Interim Lenders' Charge, which shall be a super-priority Lien over all Collateral, including realizations from activities under the TSA, subordinate only to the Permitted Priority Liens. The Second Interim Lenders' Charge shall be approved by the Court on terms and conditions satisfactory to the Interim Lenders.

The Interim Lenders may take such steps from time to time as they deem necessary or appropriate to file, register, record or perfect the Second Interim Lenders' Charge.

All Collateral will be free and clear of all Liens, except for the Permitted Liens.

Notwithstanding the foregoing, and subject to the concluding sentence of this paragraph, no proceeds of any Advance may be used to (a) investigate, object to or challenge in any way any claims of the Interim Lenders against any of the Applicants or the Borrower in respect of the Interim Facility, or (b) investigate, object to or challenge in any way the validity, perfection or enforceability of the Liens created pursuant to the Second Interim Lenders' Charge.

Subject to the Agreed Budget and other limitations set forth herein, the Borrower may only request and apply Advances through the accounts as agreed to with the Interim Lenders.

8. TERM AND MATURITY

The Interim Facility shall be repayable in full on the earlier of: (i) the occurrence of any Event of Default hereunder which is continuing and has not been cured in accordance with the terms hereof; (ii) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (iii) the date that is six (6)

months after the date of this Interim Financing Term Sheet (the earliest of such dates being the "**Maturity Date**").

The commitment in respect of the Interim Facility shall expire on the Maturity Date and all amounts outstanding under the Interim Facility shall be repaid in full no later than the Maturity Date, without the Interim Lenders being required to make demand upon the Monitor or to give notice that the Interim Facility has expired and the obligations are due and payable. The order of the Court sanctioning any Plan shall not discharge or otherwise affect in any way any of the obligations of the Borrower to the Interim Lenders under the Interim Facility, other than after the permanent and indefeasible payment in cash to the Interim Lenders of all obligations under the Interim Facility on or before the date the Plan is implemented.

9. AGREED BUDGET, REVISED BUDGETS, AND OTHER REPORTING

The Monitor has delivered, and the Interim Lenders have accepted, on the date hereof a current weekly line item budget covering the period of at least ■ days following the date of this Interim Financing Term Sheet (together with all updates thereto approved by the Interim Lenders in their sole and absolute discretion, including the Revised Budget, the "**Agreed Budget**"). A summarized version of the Agreed Budget is attached hereto as Schedule D. The Agreed Budget sets forth expected receipts and the expected operating and other expenditures to be made during each calendar week and in the aggregate for the period of time covered by the Agreed Budget.

On ■ of each week by 5:00 p.m. (Toronto time), commencing on the ■ of the calendar week following the Outside Date, the Monitor shall deliver to the Interim Lenders: (a) a report showing actual cash receipts and actual expenditures for each line item in the Agreed Budget covering the previous week and comparing the foregoing amounts with the budgeted cash receipts and budgeted expenditures, respectively, set forth in the Agreed Budget for such line item during such one week period; and (b) a one week roll-forward of the Agreed Budget (the "**Revised Budget**"), which shall reflect the Monitor's good faith projections and be in form and detail consistent with the initial Agreed Budget and subject to the approval of the Interim Lenders in their sole discretion.

10. AVAILABILITY UNDER INTERIM FACILITY	Provided that the Funding Conditions are satisfied, as determined by the Interim Lenders, acting reasonably, each Advance shall be made by the Interim Lenders on or about the dates set out in Section 6, subject to delivery by the Monitor to the Interim Lenders of a written request for an Advance, substantially in the form attached hereto as Schedule C. Advances shall be available to the Borrower in Canadian dollars. All proceeds of Advances shall be deposited into the Deposit Account. The Deposit Account shall be subject to the Second Interim Lenders' Charge.
11. EVIDENCE OF INDEBTEDNESS	The Interim Lenders' accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Interim Lenders pursuant to the Interim Facility.
12. VOLUNTARY PREPAYMENTS	The Borrower may prepay any amounts outstanding or any portion of any amounts outstanding under the Interim Facility at any time prior to the Maturity Date, without any prepayment fee or penalty.
13. INTEREST RATE AND DEFAULT RATE	The Advances shall bear interest at a rate per annum equal to 5.25%. Such interest shall accrue daily and shall be payable monthly in arrears on each Interest Payment Date for each Advance for the period from and including the date upon which the Interim Lenders advance such Advance to the Borrower to and including the day such Advance is repaid or paid, as the case may be, to the Interim Lenders, and shall be calculated on the principal amount of each Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 356 or 366 days, as the case may be. On each Interest Payment Date, the accrued interest shall be capitalized and added to the principal amount of the outstanding Advances (such capitalized interest being the "**PIK Interest**"). Amounts representing PIK Interest that are added to the principal amount of an Advance shall thereafter constitute principal and bear interest in accordance with this Section 13 and otherwise be treated as part of the principal of such Advance for all purposes of this Interim Financing Term Sheet, unless specifically noted herein.

14. CURRENCY

Unless otherwise stated, all monetary denominations in this Interim Financing Term Sheet shall be in Canadian dollars.

15. REPRESENTATIONS AND WARRANTIES

The Monitor represents and warrants to the Interim Lenders, which representations and warranties shall be deemed to be repeated at each request for an Advance, and upon which the Interim Lenders rely on entering into this Interim Financing Term Sheet, that:

(a) Subject to the granting of the Interim Lending Order, the execution, delivery and performance of, and the transactions contemplated by, this Interim Financing Term Sheet:

(i) are within the powers of the Monitor;

(ii) have been duly executed and delivered by or on behalf of each of the Applicants;

(iii) constitute legal, valid and binding obligations of the Monitor and each of the Applicants (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally); and

(iv) do not require the consent or approval of, registration or filing with, or any other action by, any Governmental Authority, other than filings which may be made to register or otherwise record the Second Interim Lenders' Charge.

(b) The Monitor is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is qualified to carry on business in each jurisdiction in which it owns property or assets or carries on business.

(c) The Monitor has taken all corporate and other actions to authorize the execution, delivery and performance of this Interim Financing

Term Sheet and the transactions contemplated hereby.

(d) The activities of the Applicants and the Monitor have been conducted in material compliance with all applicable provincial, state and federal laws, subject to the provisions of the CCAA and any Court Order, and any applicable shareholder's agreement, unless: (i) otherwise ordered by the Court, or (ii) the sanctions for non-compliance are stayed by a Court Order.

(e) The Monitor is in compliance with, and operates the business in compliance with, all applicable laws, in all material respects.

(f) Each of the Applicants has maintained its obligations for payroll, source deductions, goods and services tax and harmonized sales tax, as applicable, and is not in arrears in respect of payment of these obligations.

(g) Each of the Applicants has obtained and maintain in good standing each of the material licenses required from the Governmental Authorities that are necessary to conduct its business.

(h) The Agreed Budget is reasonable and prepared in good faith, and is based on good-faith estimates and assumptions believed by the Monitor to be reasonable at the time made.

(i) No Default or Event of Default has occurred and is continuing.

(j) The Second Interim Lenders' Charge is effective to create, in favour of the Interim Lenders, a legal, valid, binding, and enforceable perfected security interest in the collateral and the proceeds and products noted therein, without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements, or other agreements or documents.

(k) The Applicants have in full force and effect policies of insurance with sound and reputable insurance companies in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses.

16. AFFIRMATIVE COVENANTS

The Monitor, on behalf of the Applicants, covenants and agrees to perform and do each of the following until the Interim Financing Obligations are permanently and indefeasibly repaid in full and the Interim Facility is terminated:

(a) Pay all indebtedness due and payable in connection with the Interim Facility in accordance with the terms hereof.

(b) (i) Allow the Interim Lenders or their respective agents and advisors, on reasonable notice during regular business hours, to enter on and inspect each of the Applicants' assets and properties; (ii) provide the Interim Lenders or their respective agents or advisors, on reasonable notice and during normal business hours, full access to the books and records of the Applicants; and (iii) fully co-operate with the Interim Lenders and their respective agents and advisors, as applicable.

(c) Keep the Interim Lenders apprised on a timely basis of all material developments with respect to the business and affairs of the Applicants, including (without limitation) the development of a Plan or a Restructuring Option.

(d) Deliver to the Interim Lenders the following reporting packages: (i) documents referred to in Section 9 above, on the dates and times specified in Section 9; (ii) copies of all pleadings, motions, applications, judicial or financial information and other documents to be filed by or on behalf of any of the Applicants or the Monitor with the Court, in each case in a reasonable period of time prior to filing such documents with the Court to the extent practicable in the circumstances; (iii)

prompt notice of material events, including, without limitation, defaults, new material litigation or changes in status of ongoing material litigation, regulatory and other filings; (iv) other reasonable information requested by the Interim Lenders from time to time; (v) prompt notice of any event that could reasonably be expected to result in a Material Adverse Change; and (vi) without limiting the foregoing, in a timely manner and prior to effecting or incurring such transaction or expense, the Monitor shall deliver to the Interim Lenders copies of any financial reporting which shows a material transaction or material expense, or a materially adverse financial position of the Applicants, which is not reflected in the Agreed Budget, and shall forthwith provide any reports or commentary received from the Monitor in respect of same.

(e) Use the proceeds of the Interim Facility only for the purposes described in Section 4, and in a manner consistent with the restrictions set out herein.

(f) Comply with the provisions of the court orders made in the CCAA Proceedings applicable to the Applicants or the Monitor (collectively, the "**Court Orders**" and each a "**Court Order**"); provided that if any such Court Order contravenes this Interim Financing Term Sheet so as to materially adversely impact the rights or interests of the Interim Lenders, as determined by the Interim Lenders, the same shall be an Event of Default hereunder.

(g) Preserve, renew and keep in full force and good standing its respective corporate existence and its respective material licenses, permits, approvals, and other authorizations required in respect of its business, properties, assets or any activities or operations carried out therein, unless otherwise agreed by the Interim Lenders.

(h) Conduct all activities in a manner consistent with the Agreed Budget.

(i) Forthwith notify the Interim Lenders of the occurrence of any Default or Event of Default, including an Updated Budget Default.

(j) Provide to the Interim Lenders regular updates on a timely basis regarding the status of the CCAA Proceedings including, without limitation, reports on the progress of any Plan or Restructuring Option and any information which may otherwise be confidential, subject to same being maintained as confidential by the Interim Lenders; provided however, in no event shall any information subject to privilege be required to be provided to the Interim Lenders.

17. NEGATIVE COVENANTS

The Monitor shall, and shall cause each of the Applicants not to do the following, other than with the prior written consent of the Interim Lenders:

(a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking, except for Permitted Dispositions.

(b) Enter into any sale and leaseback agreement.

(c) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than as expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

(d) Make any payments or distributions of any kind, including payments of principal and interest in respect of existing debt or obligation, other than as may be permitted by a Court Order and that does not result in an Event of Default and is provided for in the Agreed Budget.

(e) Create or permit to exist indebtedness (including guarantees thereof or indemnities or other financial assistance in respect thereof) other than (i) existing debt, (ii) debt

contemplated by this Interim Financing Term Sheet, (iii) post-filing trade payables or other post-filing unsecured obligations incurred in the ordinary course of business in accordance with the Agreed Budget and any Court Order, and (iv) obligations or indebtedness expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

(f) Make or give any additional financial assurances, in the form of bonds, letters of credit, guarantees or otherwise, to any person (including, without limitation, any Governmental Authority).

(g) Create, permit to exist or seek or support a motion by another party to provide to any third party a Lien on the Collateral, other than the Permitted Liens.

(h) Change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity.

(i) Cease (or threaten to cease) to carry on their business or activities as currently being conducted or modify or alter in any material manner the nature and type of their operations, business or the manner in which such business is conducted.

(j) Amend, replace or modify the Agreed Budget other than in accordance with the terms of this Interim Financing Term Sheet.

(k) Apply for, or consent to, any Court Orders or any change or amendment to any Court Order which affects the Interim Lenders, without the prior consent of the Interim Lenders.

(l) Commence, continue or seek court approval of any other restructuring transaction that will not repay the Interim Lenders in full without the prior written consent of the Interim Lenders.

(m) Enter into any contract or other agreement which involves potential expenditures in

excess of $■ in any fiscal year without the prior written consent of the Interim Lenders.

18. EVENTS OF DEFAULT

The occurrence of any one or more of the following events without the Interim Lenders' written consent shall constitute an event of default ("**Event of Default**") under this Interim Financing Term Sheet:

(a) the issuance of an order of the Court (including any Court Order) or any other court of competent jurisdiction:

(i) dismissing the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit (A) the enforcement of any Lien against an Applicant, or a material portion of their respective property, assets or undertaking, or (B) the appointment of a receiver and manager, receiver, interim receiver or similar official, or substituting the Monitor or enhancing any monitor's powers, or the making of a bankruptcy order against an Applicant; granting any Lien which is senior to or *pari passu* with the Second Interim Lenders' Charge, other than the Priority Charges; or

(ii) staying, reversing, vacating or otherwise modifying this Interim Financing Term Sheet or any Court Order in a manner materially adverse to the interests of the Interim Lenders, as determined by the Interim Lenders;

(b) the filing of any pleading by any Applicant or the Monitor seeking any of the matters set forth in paragraph (a) above, or failure of any Applicant or the Monitor to diligently oppose any party that brings an application or motion for the relief set out in paragraph (a) above;

(c) failure of any of the Applicants or the Monitor to comply with any of the negative covenants in this Interim Financing Term Sheet and to the extent such Default is capable of being

remedied, such Default shall continue unremedied for a period of ■ (■) Business Days;

(d) any update in the Revised Budget: (i) contemplates or forecasts an adverse change or changes from the then-existing Agreed Budget, and such change(s) constitute a Material Adverse Change; or (ii) contemplates or forecasts a cash flow deficit in excess of $■ prior to the Maturity Date, without the Interim Lenders' approval (each, an "**Updated Budget Default**");

(e) the occurrence of a Material Adverse Change;

(f) any representation or warranty by an Applicant or the Monitor in this Interim Financing Term Sheet is incorrect or misleading in any material respect;

(g) the aggregate amount of the outstanding Advances under the Interim Facility exceeds the Interim Facility Commitment;

(h) any material violation or breach of any Court Order;

(i) any proceeding, motion or application is commenced or filed by any Applicant or the Monitor, or if commenced by another party, supported or otherwise consented to by any Applicant or the Monitor: (i) seeking the invalidation, subordination or other challenging of the terms of the Interim Facility, the Second Interim Lenders' Charge or this Interim Financing Term Sheet; (ii) challenging the validity, priority, perfection or enforceability of the Liens created pursuant to the Second Interim Lenders' Charge; or (iii) unless the Plan or Restructuring Option provides for repayment in full of the Interim Facility, seeking the approval of any Plan or Restructuring Option which does not have the prior written consent of the Interim Lenders;

(j) the priority of the Liens created pursuant to the Second Interim Lenders' Charge is varied without the consent of the Interim Lenders;

(k) the failure of any Applicant to make expenditures or pay damages, fines, claims, costs or expenses to remediate, in respect of any Environmental Liabilities, required by any Governmental Authority, except as set out in the Agreed Budget, or as otherwise agreed to in writing by the Interim Lenders, and such Default shall remain unremedied for a period of ■ (■) Business Days after such amount is due;

(l) failure of the Borrower to pay any principal amount owing under this Interim Financing Term Sheet when due;

(m) failure of the Borrower to pay any interest **[or fees]** or any portion thereof owing under this Interim Financing Term Sheet when due and such Default shall remain unremedied for a period of ■ (■) Business Days after written notice from the Interim Lenders to the Monitor that such amount is overdue; and

(n) failure of any Applicant or the Monitor to perform or comply with any other term or covenant under this Interim Financing Term Sheet and such Default shall continue unremedied for a period of ■ (■) Business Days.

19. REMEDIES

Upon the occurrence of an Event of Default, and subject to the Court Orders, the Interim Lenders may, in their sole and absolute discretion, elect to terminate their commitment to make Advances to the Borrower hereunder and declare the obligations in respect of this Interim Financing Term Sheet to be immediately due and payable and cease making any further Advances. Without limiting the foregoing remedies, upon the occurrence of an Event of Default, the Interim Lenders may, in their sole and absolute discretion, elect to permanently reduce the Interim Facility Commitment. In addition, upon the occurrence of an Event of Default, the

Interim Lenders may, in their sole and absolute discretion, subject to any Court Order:

(a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral to substitute the Monitor and/or enhance any powers of the Monitor, or for the appointment of a trustee in bankruptcy of the Applicants;

(b) subject to obtaining prior approval from the Court, exercise the powers and rights of a secured party under the *Personal Property Security Act* (**[Alberta]**), or any legislation of similar effect; and

(c) subject to obtaining prior approval from the Court, exercise all such other rights and remedies under this Interim Financing Term Sheet, the Court Orders and applicable law.

The rights and remedies of the Interim Lenders under this Interim Financing Term Sheet are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA in the CCAA Proceedings.

20. TAXES, YIELD PROTECTION AND INCREASED COSTS

All repayments and prepayments of the Advances will be made free and clear of any taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"). If any Taxes are required by applicable law to be withheld ("**Withholding Taxes**") from any amount payable to the Interim Lenders under this Interim Financing Term Sheet, the amount so payable to the Interim Lenders shall be increased to the extent necessary to yield to the Interim Lenders, on a net basis after payment of all Withholding Taxes, the amount payable under this Interim Financing Term Sheet at the rate or in the amount specified herein, and the Borrower shall provide evidence satisfactory to the Interim Lenders that the Taxes have been so withheld and remitted.

If the Borrower pays an additional amount to the Interim Lenders to account for any deduction or withholding, the Interim Lenders shall reasonably cooperate with the Borrower to obtain a refund of the amounts so withheld, including filing income tax returns in applicable jurisdictions, claiming a refund of such tax and providing evidence of entitlement to the benefits of any applicable tax treaty. The amount of any refund so received, and interest paid by the tax authority with respect to any refund, shall be paid over by the Interim Lenders to the Borrower promptly. If reasonably requested by the Borrower, the Interim Lenders shall apply to the relevant taxing authority to obtain a waiver from such withholding requirement, and the Interim Lenders shall cooperate with the Borrower and assist the Borrower to minimize the amount of deductions or withholdings required.

The Borrower will reimburse the Interim Lenders for any costs incurred by the Interim Lenders in performing their obligations under this Interim Financing Term Sheet resulting from any change in law, including, without limitation, any reserve or special deposit requirements or any tax or capital requirements or any change in the compliance of the Interim Lenders therewith that has the effect of increasing the cost of funding to the Interim Lenders or reducing their effective rate of return on capital.

21. INTERIM LENDERS' APPROVALS

Any consent, approval, instruction or other expression of the Interim Lenders shall be in the Interim Lenders' sole and absolute discretion, unless otherwise provided in this Interim Financing Term Sheet and shall to be delivered by any written instrument, including by way of electronic mail, by the Interim Lenders, or their counsel, pursuant to the terms of this Interim Financing Term Sheet.

22. TERMINATION BY THE CREDIT PARTIES

At any time following the indefeasible payment in full in immediately available funds of all of the outstanding Interim Financing Obligations, the Borrower shall be entitled to terminate this Interim Financing Term Sheet upon notice to the Interim Lenders.

23. AMENDMENTS, WAIVERS, ETC.

No amendment or waiver of any provisions of this Interim Financing Term Sheet or consent to any departure by the Borrower from any provision thereof is effective unless it is in writing and signed by Interim Lenders holding at least 50.1% of the Interim Facility Commitment (and in the case of amendments, the Monitor). Such amendment, waiver or

	consent shall be effective only in the specific instance and for the specific purpose for which it is given.
24. ASSIGNMENT	The Interim Lenders may assign this Interim Financing Term Sheet and their rights and obligations hereunder, in whole or in part, or grant a participation in their respective rights and obligations hereunder to any person acceptable to the Interim Lenders in their sole and absolute discretion. Neither this Interim Financing Term Sheet or any right or obligation hereunder may be assigned by the Borrower.
25. COUNTERPARTS AND FACSIMILE SIGNATURES	This Interim Financing Term Sheet may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Any party may execute this Interim Financing Term Sheet by signing any counterpart of it.
26. CONFIDENTIALITY	This Interim Financing Term Sheet is delivered on the condition that each of the Applicants and their affiliates and the Monitor shall not disclose such documents or the substance of the financing arrangements proposed therein to any person or entity outside of their respective organizations, except to those professional advisors who are in a confidential relationship with them and as required in connection with any court filing in the CCAA Proceedings.
27. FURTHER ASSURANCES	Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.
28. TIME IS OF THE ESSENCE	Time is of the essence in this Interim Financing Term Sheet.
29. ENTIRE AGREEMENT	This Interim Financing Term Sheet constitutes the entire agreement between the parties hereto pertaining to the matters therein set forth and supersede and replace any prior understandings or arrangements pertaining to the Interim Facility. There are no warranties, representations or agreements between the parties in connection with such matters except as specifically set forth or referred to herein.
30. SEVERABILITY	Each of the provisions contained in this Interim Financing Term Sheet is distinct and severable and a declaration of

invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

31. NO THIRD-PARTY BENEFICIARY	No person, other than the Applicants, the Monitor and the Interim Lenders, is entitled to rely upon this Interim Financing Term Sheet and the parties expressly agree that this Interim Financing Term Sheet does not confer rights upon any other party.
32. NATURE OF OBLIGATIONS	The obligations of each Interim Lender under this Interim Financing Term Sheet are several and not joint and several. Neither Interim Lender will be responsible for the obligations of any other Interim Lender hereunder.
33. NOTICES	Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered by email in accordance with the notice provisions set forth below:

In the case of the Monitor:

■

Attention: ■
Email: ■

With a copy to:

■

Attention: ■
Email: ■

In the case of the Interim Lenders:

■

Attention: ■
Email: ■

with a copy to:

Torys LLP
Suite 3000, 79 Wellington Street W
Box 270, TD Centre
Toronto, ON M5K 1N2

Attention: Scott Bomhof
Email: sbomhof@torys.com

34. GOVERNING LAW	This Interim Financing Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of **[Alberta]** and the federal laws of Canada applicable therein.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

BORROWER:

FTI CONSULTING CANADA INC., solely in its capacity as Monitor of the Applicants and not in its personal capacity

By: ______________________________
Name:
Title:

INTERIM LENDERS:

DDJ CAPITAL MANAGEMENT, LLC

By: ______________________________
Name:
Title:

BRIGADE CAPITAL MANAGEMENT, LP

By: ______________________________
Name:
Title:

SCHEDULE A

DEFINED TERMS

"**Administration Charge**" means the administration charge on the Collateral in an aggregate amount not to exceed $500,000.

"**Advances**" means a borrowing by the Borrower under the Loan Facility and any reference relating to the amount of Advances means the sum of the principal amount of all outstanding Advances, and includes any PIK Interest that has been added to the principal of any Advance in accordance with the terms of this Interim Financing Term Sheet.

"**Agreed Budget**" has the meaning given thereto in Section 9.

"**Borrower**" has the meaning given thereto in Section 1.

"**Break-Up Fee and Expense Charge**" has the meaning given thereto in the SARIO.

"**Business Day**" means a day, excluding Saturday and Sunday, on which banks are generally open for business in the Province of **[Alberta]**.

"**CCAA**" has the meaning given thereto in the preamble.

"**CCAA Proceedings**" has the meaning given thereto in the preamble.

"**Collateral**" means all present and future assets and property of the Applicants, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of an Applicant.

"**Court**" means the Court of Queen's Bench of Alberta.

"**Court Order**" and "**Court Orders**" have the meanings given thereto in Section 16(f).

"**DDMI Charge**" means Encumbrances (as such term is defined in the Diavik JVA) under Article 9 of the Diavik JVA.

"**Default**" means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

"**Deposit Account**" means the account(s) maintained by the Monitor to which payments and transfers under the Interim Financing Term Sheet are to be affected, which are specified in writing by the Monitor to the Interim Lenders, or such other account or accounts as the Monitor may from time to time designate by written notice to the Interim Lenders.

"**Diavik JVA**" means the Diavik Joint Venture Agreement dated March 23, 1995, between Kennecott Canada Inc. and Aber Resources Limited, the predecessors in interest to Diavik Diamond Mines (2012) Inc. and Dominion Diamond Mines ULC, respectively.

"**Directors' Charge**" means the directors and officers charge on the Collateral in an aggregate amount not to exceed $4,000,000.

"**Environmental Liabilities**" means all liabilities, obligations, responses, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs and other costs and expenses, including fines, penalties, sanctions and interest incurred as a result of or related to any claim, investigation, proceeding or demand of any Governmental Authority against any of the Applicants including, without limitation, arising under or related to any law relating to the environment or in connection with any substance which is or is deemed under any applicable law to be, alone or in combination, hazardous, hazardous waste, toxic, a pollutant, a contaminant or source of pollution or contamination whether on, at, in, under, from or about or in the vicinity of any real or personal property owned by any of the Applicants, or any real or personal property that was previously owned, leased or occupied by any of the Applicants.

"**Event of Default**" has the meaning given thereto in Section 18.

"**Financial Advisor Charge**" has the meaning given thereto in the SARIO.

"**First Lien Lenders**" means the lenders under the Pre-filing Credit Agreement.

"**First Lien Lenders Charge**" means a charge on the Collateral in the aggregate amount not to exceed $■ for the benefit of the First Lien Lenders in respect of the Pre-filing Credit Agreement.

"**Funding Conditions**" has the meaning given there in Section 6.

"**Governmental Authority**" means any federal, provincial, state, regional, municipal or local government or any department, agency, board, tribunal or authority thereof or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government or the operation thereof.

"**Interim Facility**" has the meaning given thereto in Section 5.

"**Interim Facility Commitment**" has the meaning attributed thereto in Section 5.

"**Interim Financing Obligations**" has the meaning given thereto in Section 6.

"**Interim Lenders**" has the meaning given thereto in the recitals hereof.

"**Interim Lenders' Charge**" has the meaning given thereto in the SARIO.

"**Interim Lending Order**" has the meaning given thereto in Section 6.

"**KERP Charge**" has the meaning given thereto in the SARIO.

"**Liens**" means all mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever

created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

(a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn, returned or transferred only upon fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;

(b) (i) rights of set-off or (ii) any other right of or arrangement of any kind with any creditor, which in any case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing indebtedness, (B) preferring some holders of indebtedness over other holders of indebtedness or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set-off granted or arising in the ordinary course of business); and

(c) absolute assignments of accounts receivable, in each of the foregoing cases, granted by the Applicants or against the Collateral.

"**Material Adverse Change**" means any event, circumstance, occurrence or change which, individually or in the aggregate, results, or which could reasonably be expected to result, in a material adverse change in:

(a) the ability of the Monitor or any Applicant to perform any material obligation under this Interim Financing Term Sheet or any Court Order, or the ability of any Applicant to carry out a Plan or Restructuring Option;

(b) the validity or enforceability of any of the Second Interim Lenders' Charge or the ranking of any of the Liens granted thereby or the material rights or remedies intended or purported to be granted to the Interim Lenders under or pursuant to such Second Interim Lenders' Charge; or

(c) the business, operations, assets, condition (financial or otherwise) or results of operations of the Applicants, on a consolidated basis.

"**Maturity Date**" has the meaning given thereto in Section 8.

"**Monitor**" has the meaning given thereto in the recitals hereof.

"**Outside Date**" has the meaning given thereto in Section 6.

"**Permitted Disposition**" means (i) inventory sold, leased or disposed of in the ordinary course of business, (ii) obsolete equipment which is being replaced with equipment of an equivalent value, (iii) assets sold, leased or disposed of during a fiscal year having an aggregate fair market value not exceeding $■ for such fiscal year, and (iv) any other sale, lease or disposition expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

"**Permitted Liens**" means (i) the Second Interim Lenders' Charge; (ii) any charges created under any order of the Court in the CCAA Proceedings subsequent in priority to the Second Interim Lenders' Charge, the limit and priority of each of which shall be acceptable to the Interim Lenders in their discretion; (iii) valid and perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Outside Date in respect of any accounts payable arising after the Outside Date in the ordinary course of business, provided to pay all such amounts are paid as and when due; and (v) the Permitted Priority Liens.

"**Permitted Priority Liens**" means: (a) the Priority Charges; (b) statutory super-priority Liens for unpaid employee source deductions; (c) Liens for unpaid municipal or county property taxes or utilities to the extent that are given first priority over other Liens by statute; and (d) such other Liens as may be agreed to in writing by the Interim Lenders. For greater certainty, except as expressly set forth herein, Liens arising from the construction, repair, maintenance and/or improvement of real or personal property, shall not be "**Permitted Priority Liens**".

"**PIK Interest**" has the meaning given thereto in Section 13.

"**Plan**" has the meaning given thereto in Section 8.

"**Pre-filing Credit Agreement**" means the revolving credit agreement, dated as of November 1, 2017, as amended and as may be further amended from time to time, among DDM, Washington Diamond Investments, LLC, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as administrative agent.

"**Priority Charges**" means: (i) the Administration Charge; (ii) the Directors' Charge; (iii) the First Lien Lenders Charge; (iv) the DDMI Charge; (v) the KERP Charge; (vi) the Break-Up Fee and Expense Charge; and (vii) the Financial Advisor Charge.

"**Restructuring Option**" means any transaction involving the refinancing of an Applicant, the sale of all or substantially all of the assets of any Applicant or any other restructuring of the Applicants' businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any of the Applicants.

"**Revised Budget**" has the meaning given thereto in Section 9.

"**SARIO**" has the meaning given thereto in the recitals hereof.

"**Second Interim Lenders' Charge**" has the meaning given thereto in Section 6.

"**Updated Budget Default**" has the meaning given thereto in Section 18(d).

SCHEDULE B

FORM OF INTERIM LENDING ORDER

		CLERK'S STAMP
COURT FILE NUMBER	2001-05630	
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
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	**INTERIM FINANCING ORDER**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	■	

DATE ON WHICH ORDER WAS PRONOUNCED: ■, 2021

LOCATION OF HEARING: Calgary

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

UPON THE APPLICATION by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in these proceedings, for an Order, *inter alia*: ■, was heard this day via video conference in Calgary, Alberta.

AND UPON having read the Application, the Affidavit of ■ and the ■ Report of the Monitor dated October 6, 2021, filed;

AND UPON hearing counsel for the Monitor, counsel for DDJ Capital Management, LLC and Brigade Capital Management, LP (together, the "**Interim Lenders**") 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 Interim Financing Term Sheet dated as of October ■, 2021 (the "**Interim Financing Term Sheet**") among the Monitor and the Interim Lenders, attached hereto as Schedule "A" or the Sixteenth Report of the Monitor dated October 6, 2021.

INTERIM FINANCING AND SECOND INTERIM LENDERS' CHARGE

3. The Monitor is hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Facility**"), pursuant to the Interim Financing Term Sheet, in order to finance the Monitor's efforts to realize on the remaining assets of the Applicants for the benefit of the creditors of the Applicants and other general 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 $500,000 unless permitted by further order of this Court and agreed to by the Interim Lenders.

4. The Interim Facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet, as such Interim Financing Term Sheet may be amended in accordance with its terms.

5. The Monitor and the Interim Lenders 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 Monitor is 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.

6. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the "**Second Interim Lenders' Charge**") on the Collateral to secure all Interim Financing Obligations (as defined in the Interim Financing Term Sheet), which Second Interim Lenders' Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Second Interim Lenders' Charge shall not secure any obligation existing before the date this Order is made. The Second Interim Lenders' Charge shall have the priority set out in paragraphs ■ and ■ hereof.

7. 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 Second Interim Lenders' Charge or any of the Definitive Documents;

   (b) upon the occurrence of an event of default under the Definitive Documents or the Second Interim Lenders' Charge, the Interim Lenders may: (i) immediately cease making advances to the Monitor and set off and/or consolidate any amounts owing by the Interim Lenders to the Monitor against the obligations of the Monitor to the Interim Lenders under the Interim Financing Term Sheet, the Definitive Documents

or the Second Interim Lenders' Charge and make demand, accelerate payment, and give other notices; (ii) upon five (5) days' notice to 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 Collateral under or pursuant to the Interim Financing Term Sheet, Definitive Documents, and Second 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 Collateral.

8. 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.

9. This Order is subject to provisional execution and, if any of the provisions of this Order in connection with the Definitive Documents or the Second 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 Second Interim Lenders' Charge) for all advances so made.

VALIDITY AND PRIORITY OF CHARGES

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

First – Administration Charge (to the maximum amount of $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;

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

Sixth – Second Interim Lenders' Charge.

11. The filing, registration or perfection of the Second Interim Lenders' Charge shall not be required, and the Second Interim Lenders' Charge 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 Second Interim Lenders' Charge coming into existence, notwithstanding any failure to file, register, record, possess, or perfect.

12. The Second Interim Lenders' Charge shall constitute a charge on the Collateral and subject always to section 34(11) of the CCAA the Second Interim Lenders' Charge 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 Second Interim Lenders' Charge and the Financial Advisor Charge shall rank subordinate to any Encumbrances under Article 9 of the Diavik JVA; and

    (b) the Encumbrances of the Existing Credit Facility Agent in respect of the Collateral shall rank senior to the Second Interim Lenders' Charge in respect of the Collateral.

13. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over the Collateral that rank in priority to, or *pari passu* with, the Second Interim Lenders' Charge unless the Applicants also obtain the prior written consent of the Monitor and the Interim Lenders, or further order of this Court.

14. The Second Interim Lenders' Charge, the Interim Financing Term Sheet and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of 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 Second Interim Lenders' Charge 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) the Interim Lenders shall not 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 Second Interim Lenders' Charge, 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 Monitor pursuant to this Order, including the Interim Financing Term Sheet or the Definitive Documents, and the

granting of the Second Interim Lenders' Charge, 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

15. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Second Interim Lenders' Charge amongst the various assets comprising the Collateral, 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 Collateral in accordance with the Interim Financing Term Sheet.

GENERAL

16. Except as may be necessary to give effect to this Order, the Initial Order 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 and the Initial Order, the terms of this Order shall govern.

17. 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 property of the Applicants or the business of the Applicants.

18. 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.

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

____

Justice of the Court of Queen's Bench of Alberta

SCHEDULE C

REQUEST FOR ADVANCE

REQUEST FOR ADVANCE

TO: DDJ Capital Management, LLC and Brigade Capital Management, LP, as Interim Lenders

DATE: ____________, 2021

Dear Sirs:

The undersigned refers to the interim financing term sheet dated as of October ___, 2021 (the "**Interim Financing Term Sheet**") made among DDJ Capital Management, LLC and Brigade Capital Management, LP, as Interim Lenders, and FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants (in such capacity, the "**Borrower**").

Capitalized terms used in this Request for Advance have the same meanings herein as are ascribed thereto in the Interim Financing Term Sheet.

1. The Borrower hereby gives you notice pursuant to the Interim Financing Term Sheet that the undersigned requests an Advance under the Interim Facility (the "**Interim Facility Advance**") in the Interim Financing Term Sheet be deposited into the Deposit Account as follows:

    (a) Amount of Advance requested: $________________

    (b) Requested funding date: ________________

    (c) Total principal amount currently outstanding (excluding this Interim Facility Advance and any PIK Interest): $________________

    (d) Availability remaining under the Interim Facility (excluding this Interim Facility Advance): $________________

2. The Monitor hereby certifies to you for and on behalf of itself and the Applicants (and not in his or her personal capacity) as follows:

    (a) all of the representations and warranties contained in the Interim Financing Term Sheet are true and correct on and as of the date hereof and will be true and correct as of the date of the requested Interim Facility Advance as though made on and as of such date (unless expressly stated to be made as of a specified date);

    (b) no Default or Event of Default has occurred and is continuing or shall result from the requested Interim Facility Advance;

[Signature Page to Request for Advance]

(c) the Interim Facility Advance shall not cause the aggregate amount of all outstanding Advances to exceed the Interim Facility Commitment or be greater than the amount shown on the Agreed Budget as at the date of such Interim Facility Advance;

(d) the Interim Facility Advance is consistent with the Agreed Budget; and

(e) the Applicants are in compliance with the Interim Financing Term Sheet and the Court Orders.

[Signature Page Follows]

Dated as of the date first written above.

FTI CONSULTING CANADA INC., solely in its capacity as Monitor of the Applicants and not in its personal capacity

By: ________________________________

Name:
Title:

[Signature Page to Request for Advance]

SCHEDULE D

SUMMARY OF AGREED BUDGET

Certificate of Commissioning by Video Technology
to the Affidavit of Kristal Kaye
sworn on October 13, 2021

I, Jessie Mann, Notary Public/Commissioner for Oaths in and for the Province of Alberta, took the Affidavit of Kristal Kaye via video technology on October 13, 2021 (the "**Affidavit**").

The deponent and I followed the process outlined by the Alberta Court of Queen's Bench Notice to the Profession & Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the deponent with the initialed copy that was before me while I was linked by video technology with the deponent. Upon being satisfied that the two copies were identical, I affixed by name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

Jessie Mann