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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
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, DOMINION FINCO INC. AND DOMINION MARKETING CORPORATION
DOCUMENT	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 MARKETING CORPORATION **October 6, 2021**

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SIXTEENTH REPORT OF THE MONITOR

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INTRODUCTION

1. On April 22, 2020 (the "**Filing Date**"), Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Canada ULC ("**DDCU**"), Dominion Diamond Delaware Company LLC ("**DDC**"), Washington Diamond Investments, LLC ("**WDI**"), Dominion Diamond Holdings, LLC ("**Dominion Holdings**") and Dominion Finco Inc. ("**Finco**") 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 ("**CCAA**"). On September 18, 2020, Dominion Diamond Marketing Corporation ("**Dominion Marketing**") was added as an applicant in the CCAA Proceedings. DDM, DDCU, DDC, Washington Diamond Investments, LLC, Holdings, Finco and Dominion Marketing are collectively referred to herein as "**Dominion**" or the "**Applicants**".

2. The Initial Order appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the "**Monitor**") and established a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until May 2, 2020. The Stay of Proceedings was subsequently extended by further Orders of this Honourable Court. On September 8, 2021, this Honourable Court granted an order extending the Stay of Proceedings to December 15, 2021.

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 Dominion Holdings 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 ("**Washington**").

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

5. The SISP, which represented the fourth strategic process aimed at the sale of the Applicants' assets, was conducted by Evercore, with the oversight of the Monitor, over a five-month period, from the commencement of these CCAA Proceedings on April 22, 2020 to the formal commencement of the SISP on June 19, 2020, through to the expiry of the Second Extended Phase II Deadline under the SISP on September 15, 2020.

6. 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 II. However, at the conclusion of Phase II of the SISP, the Applicants did not receive any third-party bids to compete with the Stalking Horse Bid.

7. On October 5, 2020, the Applicants filed an application for a sale approval and vesting order to approve the sale transaction contemplated by the Stalking Horse Bid.

8. 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 Washington under environmental agreements, permits, licenses and subleases to be transferred.

9. On October 9, 2020, Dominion issued a press release disclosing, among other things, that it had been advised by the Sureties and Washington that those parties had reached an impasse in negotiations and that there was no reasonable prospect of reaching a satisfactory

agreement. On November 8, 2020, Washington 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 senior secured first lien lender syndicate (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 November 4, 2020, this Honourable Court granted an order (the "**Monetization Order**") approving a process for Diavik Diamond Mines (2012) Inc. ("**DDMI**") to monetize certain diamond production (the "**Dominion Production**") held by DDMI as collateral for cover payments made by DDMI on behalf of DDM ("**Cover Payments**") pursuant to 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**").

12. On December 6, 2020, Dominion Holdings, DDM, DDCU, Dominion Marketing, DDC and Finco (collectively, the "**Sellers**") reached an agreement with DDJ Capital Management, LLC ("**DDJ**") and Brigade Capital Management, LP ("**Brigade**" together with DDJ, the "**Bidders**") for the purchase and sale of certain of the Sellers' assets (the "**ACDC Transaction**") pursuant to an asset purchase agreement (the "**ACDC APA**"). The Bidders designated Arctic Canadian Diamond Company Ltd. ("**ACDC**") as the purchaser under the ACDC Transaction. The Bidders are substantial holders of the senior secured second lien notes and are also the current equity holders of ACDC. The Bidders' senior secured second lien notes did not form any of the consideration for the ACDC Transaction (*i.e.,* there was no credit bid), rather the bidders paid the purchase price in cash and by assuming certain liabilities. The holders of the senior secured second lien notes received no recoveries from the ACDC Transaction.

13. On December 11, 2020, this Honourable Court granted a sale approval and vesting order approving the ACDC Transaction and vesting the purchased assets in ACDC. The ACDC Transaction was closed on February 3, 2021.

14. The assets acquired by ACDC under the ACDC Transaction excluded the Diavik JVA but included 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) held by Dominion pursuant to the Diavik JVA, 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**"). These Diavik Realization Assets were assigned to ACDC subject only to the continuing liens and charges of the First Lien Lenders and there will be no recovery to ACDC 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.

15. On January 27, 2021, this Honourable Court granted an order expanding the Monitor's powers upon the closing of the ACDC Transaction (the "**EMP Order**"). The EMP Order authorized the Monitor to, among other things, execute a transition services agreement on behalf of the Applicants concurrent with or after closing of the ACDC Transaction, 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.

16. On February 3, 2021, the Monitor entered into a transition services agreement (the "**TSA**") as contemplated by the EMP Order, as between ACDC, the administrative agent to the First Lien Lenders (the "**Agent**"), and Dominion.

17. When the ACDC Transaction closed, future funding for the Dominion estate was provided via a US $1,000,000 Diavik Realization Account and a US $250,000 Wind-Down Account.

18. On September 16, 2021, the Agent and DDMI entered into a Support Agreement (the "**Support Agreement**") regarding the acquisition by DDMI of the participating interest held by Dominion pursuant to the Diavik JVA (the "**Diavik Joint Venture Interest**"), Dominion's share of the products and inventory produced from the Diavik Diamond Mine (the "**Dominion Production**") and cash collateral held by the First Lien Lenders as security for the letters of credit (the "**LCs**") issued by the First Lien Lenders with respect to the Diavik Diamond Mine (the "**Cash Collateral**"), free and clear of all claims and encumbrances and subject to permitted deductions (the "**AVO Transaction**"). A copy of the Support Agreement is attached as Appendix "**A**".

19. The LCs and Cash Collateral held by the First Lien Lenders as at September 30, 2021 are summarized in the table below:

LC Balance **As at September 30, 2021** ***($ thousands)***	
LC Balance	$ 105,000
Less:	
Pre-Filing Cash Collateral, net of fees	17,517
Net Diamond Proceeds	33,874
Total Cash Collateral	51,390
Net LC Balance	**$ 53,610**

20. An unexecuted asset purchase agreement between DDM and DDMI (the "**AVO Agreement**") for the AVO Transaction has been negotiated by DDMI, the Monitor and the Agent and is attached as Appendix "**B**".

21. Washington proposed to the Monitor a term sheet (the "**RVO Term Sheet**") for a reverse vesting order transaction (the "**RVO Transaction**") whereby Washington will fund process costs (US $250,000) and make a payment of US $1.5 million to Dominion (the "**RVO Payment**"). The RVO Payment will be made upon the entry of a reverse vesting order ("**RVO**") pursuant to which DDM, WDI, Dominion Holdings, and Dominion Marketing (collectively, the "**Dominion RVO Entities**") will be irrevocably cleansed of

certain transferred liabilities and certain transferred property would be vested out of the subject entities to be held in trust by the Monitor for the Applicants' creditors in order to maximize the value of the tax attributes resident in each of the Dominion RVO Entities (the "**Tax Attributes**") for the benefit of Washington and its affiliates. A copy of the RVO Term Sheet is attached as Appendix "**C**".

22. On October 6, 2021, the Monitor is filing herewith an application for the following orders:

    a. the advice and direction of the Court as to whether the Monitor can deliver to DDMI the discontinuance and release of the BC Civil Claim (as defined below) and, if the Court so directs, an approval and vesting order (the "**AVO**") approving the AVO Transaction and vesting DDM's right, title and interest in the acquired assets described in the AVO Agreement;

    b. the RVO; and

    c. an extension of the Stay of Proceedings until and including March 4, 2022 (the "**Stay Extension**").

PURPOSE

23. The purpose of this Sixteenth Report of the Monitor is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to:

    a. the AVO Transaction, including an update on the Diavik Joint Venture, the Support Agreement and the AVO Agreement;

    b. the RVO Transaction and the Monitor's application for the RVO;

    c. the Applicants' actual cash receipts and disbursements for the 34-week period ended September 24, 2021 as compared to the cash flow statement included in the

Fifteenth Report of the Monitor dated August 30, 2021 (the "**Eighth Cash Flow Statement**");

d. a cash flow statement (the "**Ninth Cash Flow Statement**") prepared by the Monitor to set out the liquidity requirements of Dominion for the 57 weeks ending March 4, 2022, including the key assumptions on which it is based;

e. the Monitor's application for the Stay Extension Order; and

f. the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

24. 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**").

25. 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.

26. 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.

27. 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.

28. All capitalized terms that are used in this Sixteenth Report but not defined herein are intended to bear their meanings as defined in the Monitor's prior reports.

29. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

UPDATE ON THE DIAVIK JOINT VENTURE INTEREST

30. As described in the Fifteenth Report of the Monitor dated August 30, 2021, the Monitor has administered the Diavik JVA pursuant to the EMP Order and in consultation with the Agent.

31. Since the Date of the EMP Order, Dominion has received two deliveries of diamonds from DDMI containing approximately 263,000 carats and 179,000 carats, respectively. The deliveries have been monetized by ACDC pursuant to the TSA, resulting in net proceeds of $33.9 million to the Agent, net of certain deductions for royalty payments and other costs. It is these net proceeds, along with the pre-filing Cash Collateral, net of fees, of $17.5 million that comprise the Cash Collateral that is being held by the Agent and is proposed to be transferred to DDMI, pursuant to the AVO Transaction.

32. Dominion and DDMI disagree as to the appropriate treatment of certain diamond collateral of less common size or category (the "**Section 4 Diamonds**"). Section 4 Diamonds with a DICAN value of approximately $8.4 million have not been delivered to Dominion and currently remain in DDMI's possession. Pursuant to the AVO Transaction, these Section 4 Diamonds would be transferred to DDMI.

33. Since the granting of the EMP Order, DDMI has made approximately $229.0 million of cash calls, including $166.4 million for operating cash calls, $1.6 million for exploration cash calls, and $60.9 million for reclamation cash calls, the latter resulting from an increase in DDMI's provision for Diavik reclamation costs. DDMI has made cover payments on behalf of DDM, to fund these cash calls.

34. DDMI has continued to sell diamond collateral pursuant to the Monetization Order and apply the proceeds, after deduction of certain costs, against the cover payment balance.

35. As at August 31, 2021, the net cover payment balance was approximately $243.0 million and the DICAN value of diamond collateral held by DDMI was approximately $178.2 million resulting in a net collateral shortfall for DDMI of approximately $64.8 million.

36. Since the commencement of the CCAA Proceedings, DDMI's estimates of reclamation costs for the Diavik Diamond Mine have increased significantly from previous estimates, thereby resulting in a large increase in the quantum of cover payments made by DDMI and the amount of diamond collateral retained by DDMI. As discussed further below, the significant increase in DDMI's estimated reclamation costs impacted the diamond collateral anticipated to be delivered to the Agent based on prior DICAN estimates. DDMI has continued to provide information with respect to the reclamation estimates and related cash calls as part of its ongoing reporting to the Monitor pursuant to the Diavik JVA.

37. The Monitor understands that the Agent has expressed significant concern to DDMI about the timing and validity of the rapid escalation in Diavik reclamation costs, and the associated increase in reclamation cash calls and diamond collateral retained by DDMI. Prior to execution of the Support Agreement, the Agent advised the Monitor that it was in discussion with various technical experts regarding a potential review of DDMI's updated estimate of Diavik reclamation costs and life of mine projections, among other things. The Monitor understands that the Agent has temporarily suspended discussions with the technical experts in light of the commercial resolutions reached between DDMI and the Agent in the form of the Support Agreement.

38. DDMI and the Agent have advised the Monitor that they have had direct discussions regarding the terms under which the Agent would support an acquisition by DDMI of the Diavik Joint Venture Interest, Dominion Production and Cash Collateral which have ultimately resulted in DDMI and the Agent entering into the Support Agreement on September 16, 2021.

SUPPORT AGREEMENT

39. The Support Agreement and incorporated term sheet set out the agreement between DDMI and the Agent to support the AVO Transaction.

40. Under the Support Agreement, each of DDMI and the Agent agree to:

    a. the AVO Transaction and related terms;

    b. not to take any action, or omit to take any action that is inconsistent with their respective obligations under the Support Agreement; and

    c. not to propose, file, solicit or otherwise support any alternative transaction that is inconsistent with the AVO Transaction.

41. Schedule B to the Support Agreement is a term sheet that describes the principle terms for the AVO Transaction, pursuant to which:

    a. Dominion will sell the Diavik Joint Venture Interest and the Dominion Production to DDMI;

    b. all LCs issued by the First Lien Lenders will be cancelled by the beneficiary and returned to the issuers thereof, without any further obligation; and

    c. all cash collateral shall be transferred to DDMI, subject to certain permitted deductions.

42. The AVO Transaction will result in a full recovery to the First Lien Lenders with respect to their LCs which stand as security in relation to the Diavik Diamond Mine. However, the AVO Transaction will not result in any additional recoveries to ACDC with respect to the recoveries/assets it acquired under the ACDC Transaction (i.e., the Diavik Realization Assets).

43. The terms in the Support Agreement are incorporated into the AVO Agreement which is described below.

AVO AGREEMENT

Commercial Terms

44. The key commercial terms of the AVO Agreement are summarized as follows (and any capitalized terms not defined herein are intended to bear their meanings as defined in the AVO Agreement):

    a. DDMI intends to purchase DDM's right, title and interest in and to the Acquired Assets (the "**Acquired Assets**");

    b. the Acquired Assets shall include all of DDM's right, title and interest in and to the following:

        i. the Diavik Joint Venture Interest;

        ii. the unincorporated joint venture arrangement established pursuant to the purposes set out in the Diavik JVA (the "**Diavik Joint Venture**");

        iii. the Diavik Diamond Mine located approximately 300 kilometers from Yellowknife, Northwest Territories, Canada;

        iv. the Dominion Production;

        v. DDM's royalty agreements including the Jennings Royalty Agreement and Repadre Royalty Agreement (the "**Royalty Agreements**");

        vi. certain assigned contracts and option agreements (the "**Assigned Contracts**");

vii. the Cash Collateral, subject to any permitted deductions made pursuant to the provisions of the AVO Agreement;

viii. all rights under non-disclosure, confidentiality and similar arrangements with third parties related to any of the Acquired Assets; and

ix. all other rights and benefits pursuant to or arising from the foregoing.

c. the Purchaser shall assume only the following liabilities (collectively, the "**Assumed Liabilities**"):

i. all liabilities and obligations pursuant to or arising from the Diavik Joint Venture Interest, the Diavik JVA and the Diavik Diamond Mine (which includes liabilities in respect of the Cover Payments and LC obligations);

ii. all liabilities and obligations of Dominion under the Royalty Agreements arising on or after the Filing Date;

iii. all liabilities and obligations of DDM under the Assigned Contracts; and

iv. all liabilities and obligations of DDM to the GNWT for any royalty payments owing to the GNWT that relate to or arise from the Acquired Assets.

d. the Assumed Liabilities shall exclude the following liabilities (collectively, the "**Excluded Liabilities**"):

i. except as set forth in the AVO Agreement, any and all liabilities of DDM for any taxes arising or related to any periods on or prior to the closing of the AVO Transaction, or taxes arising from or in connection with an asset that is not an Acquired Asset;

ii. any and all liabilities for any taxes, including any and all property taxes, arising out of or relating to the operation of DDM's business or the ownership of the Acquired Assets for any period prior to the closing of the AVO Transaction;

iii. any liability for any taxes of DDM or its affiliates for any taxable period; and

iv. any liability for any withholding taxes imposed as a result of the transactions contemplated by the AVO Agreement;

e. the indebtedness of DDM in respect of the Royalty Agreements incurred prior to the Filing Date is to have been fully settled prior to the Effective Date, as defined in the preamble to the AVO Agreement;

f. the Purchaser shall take assignment of the Assigned Contracts;

g. DDMI is purchasing the Acquired Assets on an "as-is, where-is" basis without substantial representations and warranties from DDM, the Monitor or its representatives;

h. the purchase price for the Acquired Assets shall be the aggregate of the amount of the Assumed Liabilities, which includes, for the avoidance of doubt, the liabilities of DDM for the Cover Payments and LC obligations. The illustrative purchase price for the AVO Transaction is summarized in the table below:

Illustrative Purchase Price Summary *($ millions)*		
LCs	$	105
Cash Collateral		(51)
DDMI Cover Payments, September 30, 2021		255
Total Illustrative Purchase Price	**$**	**308**

i. at or prior to closing, DDM shall provide to DDMI an executed and fileable discontinuance of the Civil Claim DDM filed against DDMI in the Supreme Court of British Columbia (the "**BCSC**"), Vancouver Registry, No. S206419 (the "**BC Civil Claim**"), which shall be releasable on closing;

j. the AVO Transaction is subject to Court approval, and DDMI and DDM shall use their best efforts to cause this Honourable Court to issue the AVO and in any event, on or before the date that is 60 days from the Effective Date or such other date as agreed to by DDMI and DDM; and

k. unless otherwise mutually agreed by the Parties, the closing of the AVO Transaction shall take place on the first business day following full satisfaction or due waiver of the closing conditions set forth in the AVO Agreement.

Discussions with ACDC

45. On September 28, 2021, representatives of the Ad Hoc Group and current owners of ACDC had a scheduled call with the Monitor confirming that they had been advised by the First Lien Lenders on or around September 27, 2021 of the proposed AVO Transaction and RVO Transaction and advising that they would require sufficient time to perform diligence and consider their positions with respect to the two transactions. Following the call, representatives of DDJ provided the Monitor with a detailed list of information requests with respect to the AVO Transaction.

46. On September 29, 2021, the Monitor contacted DDMI to discuss ACDC and DDJ's information requests and to seek confirmation of DDMI's position regarding whether and on what terms such information could be provided to ACDC as a competitor of DDMI. In addition, a number of key financial management personnel of ACDC were previously in senior financial roles at Dominion and, as such, were privy to certain of the requested Confidential Diavik Information (as defined below) relating to the periods prior to the EMP Order.

47. DDMI confirmed that the Monitor could provide the requested information and documentation subject to satisfactory non-disclosure agreements and subject to the information and documentation being restricted to a limited group of representatives due to concerns regarding the commercial sensitivity of the information requested.

48. On September 30, 2021, the Monitor set up a confidential data room and added select members of ACDC, their legal counsel, and other requested representatives. The data room was populated with one document setting out the net outstanding cover payment balance as at August 31, 2021 (a reconciliation of the Dominion Collateral and diamonds sold by DDMI pursuant to the Monetization Order with specific detail regarding the sale of any Section 4 Diamonds mined in the past 18 months). That one document only partially satisfies ACDC and DDJ's information requests. As summarized below, the balance of their information requests comprises documents and information regarding the Diavik Diamond Mine that DDMI considers to be confidential (the "**Confidential Diavik Information**"). The Confidential Diavik Information is comprised of the following requested documents:

    a. updated monthly Diavik Joint Venture financial statements for the last two years;

    b. updated Diavik Joint Venture forecasts for 2021 and 2022;

    c. full exploration program results from studies conducted in 2019;

    d. the updated Diavik Life of Mine Plan; and

e. the updated reclamation plans supporting increased reclamation provisions and related cash calls.

49. On October 3, 2021, the Monitor advised ACDC that DDMI had agreed to provide certain of the requested Confidential Diavik Information to certain groups and individuals, subject to mutually agreeable confidentiality provisions. DDMI requested that it be provided with copies of the non-disclosure agreements signed by DDJ, Brigade and ACDC's counsel as part of the SISP. As of the date of this report, ACDC has not provided permission to the Monitor to share those non-disclosure agreements with DDMI, and as such, no further documents have been provided to ACDC.

50. The Monitor notes the following with respect to its current understanding of ACDC's position on the AVO Transaction:

a. while attempts have been made to provide ACDC and its advisors with information regarding the AVO Transaction, due to disclosure issues, ACDC has advised it has not had sufficient time to diligence the AVO Transaction;

b. ACDC's position is that the value being offered by DDMI with respect to the AVO Transaction is insufficient relative to the current realizable value of the Acquired Assets; and

c. it is ACDC's position that certain of the Acquired Assets included in the AVO Transaction have been assigned to ACDC pursuant to the ACDC Transaction and accordingly cannot be conveyed by Dominion or released by Dominion. These assets include all causes of action, and the recoveries related to the Cash Collateral and Dominion Production.

Monitor's Comments Regarding the AVO Transaction

51. The Monitor's comments with respect to the AVO Transaction and its application for the AVO are as follows:

a. the Applicants, in conjunction with Evercore, marketed the business and assets of DDM, including its interest in the Acquired Assets, extensively and in a fair and transparent manner during the SISP. 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. The SISP did not result in any offers for Dominion's 40% interest in the Diavik Diamond Mine and the Diavik JVA;

b. the Bidders, after fully evaluating the Diavik Diamond Mine and the Diavik JVA during the SISP, chose not to acquire Dominion's share of those assets in the ACDC Transaction. Further, the Cash Collateral and Dominion Production which are included in the AVO Transaction remain subject to the priority charges of the First Lien Lenders;

c. the Monitor confirms that no further marketing process for Dominion's interest in the Diavik Diamond Mine and the Diavik JVA has been completed since the SISP and the completion of the ACDC Transaction. However, given no offers were received on the Diavik Joint Venture Interest during the SISP, the Monitor believes there is limited benefit to a further marketing process of this asset;

d. in order to determine the near-term potential recoveries on the Acquired Assets, the Monitor has reviewed certain confidential documents prepared by DDMI regarding the Diavik Diamond Mine, including the DDMI 2021 budget, the Diavik Life of Mine Plan and related financial projections. Based on its review of these documents, the Monitor is of the view that there is significant uncertainty regarding the prospects of additional diamond deliveries or other recoveries to generate additional Cash Collateral, in the near term;

e. as at August 31, 2021, DDMI is owed approximately $243.0 million for Cover Payments and currently has a net collateral shortfall of approximately $64.8 million, based on DICAN values. The Monitor has prepared an illustrative forecast of the potential recoveries that may be available for the period of October 1, 2021 through to the projected end of mine life on December 31, 2025 (the "**Illustrative**

Cover Payment Forecast") which is summarized in the table below:

Illustrative Cover Payment Forecast Q4 2021 - 2025 *($ thousands)*	Q4 2021	2022	2023	2024	2025	Total
Cash Calls						
Operations	$ 36,800	$ 179,238	$ 157,942	$ 132,706	$ 38,454	**$ 545,139**
Exploration	105	21,125	8,117	3,516	-	**32,863**
Reclamation	49,360	33,454	18,191	18,752	67,458	**187,215**
Total Cash Calls	86,265	233,817	184,250	154,974	105,912	**765,217**
Opening Cumulative Cover Payment Balance	198,614	115,038	68,799	42,263	53,344	**198,614**
Cumulative Cover Payment Balance	284,879	348,855	253,049	197,237	159,256	**963,832**
Less: Diamond Proceeds, net of costs	(169,841)	(280,056)	(210,786)	(143,892)	(52,108)	**(856,683)**
Ending Cumulative Cover Payment Balance	**$ 115,038**	**$ 68,799**	**$ 42,263**	**$ 53,344**	**$ 107,149**	**$ 107,149**

The Illustrative Cover Payment Forecast is for illustrative purposes only to estimate the projected cover payment balances over the remainder of the mine life, based on certain high-level assumptions. The Monitor cannot verify that these assumptions and estimates are correct, and actual results may vary materially. To definitively conclude on the overall remaining mine economics, it would require ongoing participation in the Diavik JVA until the end of mine life. However, such participation would require significant cash call funding by Dominion and incurring ongoing market and operational risk. The Monitor has prepared the Illustrative Cover Payment Forecast based on the best information available to it. The key assumptions on which the Illustrative Cover Payment Forecast is based are as follows:

i. cash calls for Q4 2021 are assumed to be consistent with the 2021 budget prepared by DDMI and the revised pre-feasibility study results as presented by DDMI to the Monitor in the Q2 2021 Diavik JVA quarterly meeting;

ii. forecasted cash calls for 2022 – 2025 are estimated based on Dominion's 40% share of the forecasted expenses included in the Diavik Life of Mine Plan; and

iii. Diamond Proceeds are calculated using a historical average sales price multiplied by Dominion's 40% share of the projected total carats recovered

in the 2022 – 2025 Diavik Life of Mine Plan. Diamond Proceeds are presented net of costs which are assumed to be deducted pursuant to the Monetization Order including sales and marketing costs and GNWT and private royalties which have been estimated based on current run rates as well as interest on the outstanding Cover Payment amounts.

f. given that no bids were received for Dominion's share of the Diavik JVA during the SISP and the Monitor's analysis immediately above, the Monitor concluded that, absent the AVO Transaction, it is unlikely that the First Lien Lenders would receive full recovery of the amounts owed to them and that they are the most significant creditor in respect of their first lien position;

g. if the AVO Transaction is not closed, there is no certainty that DDMI will continue to fund Cover Payments with respect to Dominion's cash calls in the future;

h. any purchaser of the Acquired Assets, other than DDMI, would need to satisfy the existing and outstanding net Cover Payment liabilities in addition to satisfying all future cash calls;

i. if the AVO Transaction is not closed, the Applicants will require additional funding to continue the CCAA Proceedings and the administration of Dominion's ongoing interest in the Diavik JVA, potentially until the end of life of the Diavik Mine. As of September 24, 2021, the Diavik Realization Account is substantially depleted. As discussed further below, professional fees for the Monitor and its counsel during the requested extension to the Stay Period are being funded by means of a deduction from the Cash Collateral pursuant to the Administration Charge. While the Agent intends to pay the professional fees owing to its legal advisors directly from the Cash Collateral upon closing of the AVO Transaction up to the allocated proportion of the professional fee cap in the AVO Agreement, any amount of professional fees incurred by the First Lien Lenders in addition to this capped amount would have to be paid from proceeds realized from the RVO Transaction;

j. the AVO Transaction would provide a full recovery to the First Lien Lenders in respect of their outstanding LCs, in the amount of approximately $105 million, and will end the accrual of ongoing interest and LC fees;

k. the AVO Transaction obviates the need to resolve both the disagreement between DDMI and Dominion as to the appropriate treatment of the Section 4 Diamonds and the potential for a lengthy dispute between DDMI, the Agent and Dominion regarding the significant increase in reclamation cash calls and associated increase in diamond collateral retained by DDMI;

l. the AVO Transaction confirms the entitlement and relative priority of the private royalty holders under the Monetization Order and facilitates the payment of all outstanding royalties;

m. the AVO Transaction, in conjunction with the RVO Transaction, will substantially bring the CCAA Proceedings to a conclusion; and

n. the AVO Transaction represents immediate recoveries on a joint venture mining asset which is nearing the end of its mine life, facing significant uncertainty with respect to future production, is encumbered by large and uncertain reclamation costs and is a minority participating interest with very limited control over operations.

Ownership of/Entitlement to the Cash Collateral and Dominion Production

52. As noted above, ACDC has expressed significant concerns over the AVO Transaction, including that the consideration provided by the AVO Transaction is insufficient and its view that certain of the assets proposed to be conveyed to DDMI or released by DDM pursuant to the AVO Transaction were purchased by ACDC in the ACDC Transaction. The Monitor has provided its views on the commercial terms of the AVO Transaction above. The Monitor's comments with respect to the entitlement/ownership of the Dominion Production and the Cash Collateral are discussed below.

53. Two of the assets proposed to be conveyed to DDMI in the AVO Transaction are, as noted above, the Dominion Production and the Cash Collateral. Dominion Production is comprised of DDM's interest in the diamonds produced from the Diavik Diamond Mine, and Cash Collateral is comprised of all cash or cash equivalents held by the Agent as security for the LCs. ACDC has advised the Monitor that it is the owner of the Dominion Production and the Cash Collateral, and that DDM therefore has no ability to sell those assets to DDMI. The Monitor's analysis of this issue is as follows.

54. In the ACDC APA, ACDC purchased from DDM the "Diavik Realization Assets". Diavik Realization Assets included, among other things, "all receivables, diamond production entitlements, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders…" ACDC purchased such Diavik Realization Assets "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 shall have been cash collateralized or cancelled and all related fees shall have been paid". Counsel for various parties confirmed at the December 11, 2020 hearing that ACDC was essentially purchasing the receivables from the Diavik Diamond Mine as opposed to purchasing the Diavik Joint Venture Interest owned by DDM (see Transcript of Proceedings from December 11, 2020 hearing attached as Appendix "**D**").

55. As noted above, since the ACDC Transaction closed in February 2021, there have been sales of DDM's share of Diavik Diamond Production, resulting in payments of net proceeds to the Agent in the amount of $33.9 million in addition to the pre-filing Cash Collateral, net of fees, of $17.5 million. That amount is being held by the Agent as total Cash Collateral ($51.4 million). Additionally, DDM's share of Section 4 Diamonds with a DICAN value of $8.4 million are being held by DDMI and have not been sold.

56. Both the Cash Collateral resulting from the diamonds that have been sold, and the Section 4 Diamonds that are still being held, comprise part of the "Diavik Realization Assets" that were purchased by ACDC. However, since the LCs have not yet been fully cash collateralized or cancelled (as noted, there is currently a shortfall to the First Lien Lenders of approximately $53.6 million - which will be further reduced by the sale proceeds derived

from the Section 4 Diamonds), the First Lien Lenders are entitled to those assets, and ACDC is not. For these reasons, the Monitor is satisfied that ACDC has no entitlement to the "Diavik Realization Assets" that presently exist.

57. The Monitor has estimated, based on the information available to it, that the value of DDM's interest in any future diamond production from the Diavik Diamond Mine is unlikely to exceed the Cover Payment balance that will be owed to DDMI. This estimate is also supported by the fact that no party in the SISP submitted a bid for the Diavik Joint Venture Interest. Therefore, the Monitor does not project that any future Diavik Realization Assets will come into existence, either for the benefit of the First Lien Lenders, or in an amount sufficient to fully cash collateralize the LCs, so that ACDC would then become entitled to receive Diavik Realization Assets. For these reasons, the Monitor is of the view that ACDC's complaint that DDM cannot sell "Dominion Production" and "Cash Collateral" to DDMI in the AVO Transaction because ACDC owns those assets, is theoretical only.

Discontinuance of the BC Civil Claim

58. The deliverables at or prior to closing of the AVO Transaction include, pursuant to subsections 9.2(e) and 9.2(i) of the AVO Agreement:

    a. at subsection 9.2(e), an executed and fileable discontinuance of the BC Civil Claim, which shall be releasable on closing of the AVO Transaction; and

    b. at subsection 9.2(i), formal releases from the Seller, in form and substance satisfactory to the Purchaser, acting reasonably, which will provide for the 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.

59. The BC Civil Claim referenced in subsection 9.2(e) is a claim brought by DDM against DDMI in the BCSC in Court File No. VLC-S-S-206419, Dominion Diamond Mines ULC v Diavik Diamond Mines (2012) Inc. (the "**DDM Action**"). A copy of the Notice of Civil

Claim filed in the DDM Action on June 16, 2020 is attached as Appendix "**E**". A copy of a Court Services Online File Summary Report in relation to the DDM Action is attached as Appendix "**F**". A copy of the Response to Civil Claim filed by DDMI in the DDM Action on July 15, 2020 is attached as Appendix "**G**".

60. The Monitor understands that the only step taken in the DDM Action after the exchange of pleadings was DDMI's application for security for costs against DDM, which was argued on September 22, 2020. The BCSC adjourned the security for costs application and stayed any further steps in the DDM Action, with leave to DDMI to bring its security for costs application on for re-hearing, if the parties agreed to lift the stay imposed by the BCSC or if the BCSC so ordered (and the BCSC also expressed the view that DDMI might have to apply to this Honourable Court to lift the stay ordered in these CCAA Proceedings). A copy of the BCSC's September 22, 2020 Order is attached as Appendix "**H**" and a copy of the BCSC's Reasons for Judgment is attached as Appendix "**I**". The Monitor is not aware of, nor does the File Summary Report indicate, any further steps taken in the DDM Action after September 22, 2020.

61. As noted above, ACDC has advised the Monitor that it takes the position that it purchased all causes of action of DDM in the ACDC Transaction, and as such, DDM cannot convey or release any such causes of action. Section 3.1(n) of the ACDC APA, a copy of which is attached at Appendix "**J**", states as follows:

> 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:
>
> …
>
> (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;

62. The Agent and DDMI have advised the Monitor that they take the position that ACDC did not acquire the DDM Action as part of the ACDC Transaction, in reliance on the following:

a. certain provisions of the ACDC APA, in which ACDC agreed that it: (i) would not purchase the Diavik Joint Venture Agreement; (ii) would not assume liabilities associated with Excluded Contracts (including the Diavik Joint Venture Agreement) (see *e.g.,* sections 3.2(a), and 3.3(e));

b. certain provisions of the ACDC APA, in which ACDC excluded any and all liabilities 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 (see e.g., section 3.4(g));

c. their argument that based on the foregoing exclusion provisions, there is an apparent disjunction between ACDC's alleged assumption of rights with respect to the DDM Action, but exclusion of any liability with respect thereto;

d. the definition of "Diavik Realization Assets" in section 3.1(b) of the ACDC APA, which definition they argue includes the BC Civil Claim by the inclusion of all realizations and recoveries from "claims" in respect of the Diavik Joint Venture Interest, subject to the continuing liens of the First Lien Lenders. That provision reads as follows:

> 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

; and

e. the Transcript of Proceedings before this Honourable Court on December 11, 2020, a copy of which is attached as Appendix "**D**" in which counsel for a number of parties (including DDM – *e.g.,* at page 9 - and the Monitor – *e.g.,* at page 59) submitted that ACDC was not purchasing DDM's interest in the Diavik Joint Venture, but rather was purchasing net receivables resulting from the sale of Dominion's share of diamonds from the Diavik Diamond Mine.

63. The submissions made on December 11, 2020 regarding the proper characterization of the assets that ACDC had purchased, were in response to DDMI's opposition to the application. DDMI had argued that the ACDC APA prejudiced DDMI because it purported to convey DDM's interest in the Diavik Joint Venture, over which DDMI had security. Attached as Appendix "**K**" is DDMI's Bench Brief dated December 10, 2020, including only Appendix "1" thereto, which is DDMI's proposed blackline to the ACDC APA.

64. Thus, it appears that DDMI and the Agent and ACDC are joined in a dispute as to whether ACDC purchased the BC Civil Claim in the ACDC Transaction, and whether DDM can now deliver a discontinuance and release of the BC Civil Claim to DDMI. The Monitor expects that those parties will fully brief and argue this issue at the hearing on October 15, 2021. As such, the Monitor will not be taking a position with respect to this dispute over the interpretation of the ACDC APA.

65. Given the divergent views and the potential lack of clarity in the ACDC APA, and given that this Honourable Court approved the ACDC Transaction, the Monitor seeks advice and direction from this Honourable Court as to whether the Monitor, on behalf of DDM, can provide DDMI a discontinuance and release of the BC Civil Claim, as contemplated by subsections 9.2(e) and 9.2(h) of the AVO Agreement. For the reasons stated above, if this Honourable Court sees fit to approve the AVO Agreement including the discontinuance by DDM of the BC Civil Claim, then the Monitor is of the view that the AVO Transaction is in the best interests of Dominion and its stakeholders and presents the highest realizable value for the Acquired Assets.

RVO TRANSACTION

66. Affiliates of Washington are the current owners, directly or indirectly, of all equity interests in and of the Dominion RVO Entities.

67. The RVO Term Sheet sets out the definitive terms of the RVO Transaction whereby Washington will fund process costs and make the RVO Payment, and the Monitor, on behalf of the Applicants, will seek the RVO to cleanse the Dominion RVO Entities of liabilities to maximize the value of the tax attributes resident in each of the Dominion RVO Entities (the "**Tax Attributes**") for the benefit of Washington and its affiliates.

68. The key commercial terms of the RVO Term Sheet are as follows (and any capitalized terms not defined herein are intended to bear their meanings as defined in the RVO Term Sheet):

    a. all liabilities and obligations of the Dominion RVO Entities, other than certain retained assets and retained liabilities, shall be transferred or vested out of the applicable entities and held by the Monitor in trust in a creditor trust (the "**Creditor Trust**") and the applicable Dominion RVO Entity shall be fully released from all obligations thereunder, including:

        i. any and all funded indebtedness including the senior secured second lien notes;

        ii. any and all environmental liabilities;

        iii. any and all regulatory or other governmental liabilities;

        iv. any and all trade claims or other unsecured claims;

        v. the approximately $92.8 million of intercompany debt owing by DDM to DDCU; and

vi. any other Excluded Liability as defined under the ACDC APA.

b. the following liabilities and obligations of the Dominion RVO Entities (the "**Retained Liabilities**") shall remain obligations of the Dominion RVO Entities upon completion of the RVO Transaction and shall not be transferred to the Creditor Trust:

i. any intercompany claim or indebtedness owing by a Dominion RVO Entity to another Dominion RVO Entity; and

ii. any other obligation designated as a Retained Liability by Washington prior to the closing of the RVO Transaction.

c. the following items (the "**Retained Assets**") shall not be transferred to the Creditor Trust and shall be retained by the applicable Dominion RVO Entity:

i. all shares of capital stock or other equity interests in other Dominion RVO Entities;

ii. any intercompany indebtedness or claim owing to a Dominion RVO Entity by another Dominion RVO Entity;

iii. all organizational documents, corporate books and records and the corporate seal of any Dominion RVO Entity;

iv. any records that are required by law to be retained by a Dominion RVO Entity;

v. the Tax Attributes;

vi. all current and prior director and office insurance policies of any Dominion RVO Entity and all rights with respect thereto in favour of any Dominion RVO Entity; and

vii. any and all rights of the Dominion RVO Entities under the RVO Term Sheet or the RVO.

d. except for the Retained Assets, any and all property, assets or interests of the Dominion RVO Entities of any kind shall be transferred to the Creditor Trust, including, without limitation, the following:

i. the Diavik JVA and any interest in a joint venture established pursuant to the Diavik Joint Venture;

ii. all excluded contracts as defined in the AVO Agreement; and

iii. all shares or capital stock or other equity interests in any person other than a Dominion RVO Entity

(collectively, the "**Transferred Assets**").

e. upon the transfer of the Diavik JVA and any other interest in the Diavik Joint Venture as part of the Transferred Assets or otherwise contemplated by the RVO Term Sheet, DDM shall no longer hold any equity interest in or with respect to the Diavik Joint Venture;

f. in connection with completion of the RVO Transaction, Washington and its non-Applicant affiliates and related parties (collectively, the "**Washington Entities**") shall:

i. transfer to the Creditor Trust all senior secured second lien notes owned by the Washington Entities; and

ii. release the Dominion RVO Entities from all indebtedness and obligations owing by the Dominion RVO Entities other than indebtedness relating to the senior secured second lien notes.

g. upon execution of the RVO Term Sheet, Washington shall pay process costs of US $250,000 to fund reasonable and documented professional fees incurred by the Monitor, its legal counsel and other professionals, including legal counsel for the Agent, in analysing and obtaining Court approval of the RVO Transaction (the "**Process Costs**"). Any unused portion of the Process Costs shall be refunded to Washington on closing of the RVO Transaction. In the event there is an auction pursuant to the RVO Term Sheet and any party other than Washington is selected by the Monitor as the winning bidder, the Monitor shall refund the full amount of the Process Costs to Washington from the other party's auction deposit;

h. on closing of the RVO Transaction, Washington shall pay US $1.5 million in trust for the creditors of the Applicants;

i. in the event that, following the execution of the RVO Term Sheet, the Monitor determines that a marketing period is required, the Monitor shall be entitled to market the RVO Transaction. In the event that the Monitor identifies an alternative bid, and subject to various bidder qualifications, the Monitor shall conduct an open auction within five days of the conclusion of the marketing period;

j. the Monitor shall file a motion seeking Court approval of the RVO Transaction and entry of the RVO. In the event that an auction is held, the Monitor shall file a motion seeking Court approval of the RVO Transaction within three days of the conclusion of the auction;

k. Washington's obligations to consummate the RVO Transaction will be subject to, among other things, the RVO becoming a final order, no longer subject to appeal, reversal or stay, by no later than November 15, 2021; and

l. the RVO Transaction shall be implemented pursuant to the RVO Term Sheet and RVO and upon filing of a Monitor's Closing Certificate.

69. The Monitor's comments with respect to the RVO Transaction are as follows:

a. the RVO Payment will result in a net recovery of US $1.5 million which the Monitor believes represents the highest and best recovery available to Dominion's creditors with respect to the shares of the Dominion RVO Entities. The net recoveries would be to the benefit of the senior secured second lien notes (in the event the First Lien Lenders are paid out as part of the AVO Transaction and all professional fees incurred by counsel to the Agent are satisfied);

b. the Applicants, in conjunction with Evercore, marketed the business and assets of Dominion, including the shares of the Dominion RVO Entities, extensively and in a fair and transparent manner during the SISP. 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. The SISP did not result in any offers for the shares of the Dominion RVO Entities;

c. the Bidders chose not to acquire the shares of the Dominion RVO Entities in the ACDC Transaction;

d. there is a limited market for the Dominion RVO Entities' shares and Washington, as the current equity holder, is uniquely positioned to preserve and maximize benefit from the tax attributes of the Dominion RVO Entities;

e. it may become more difficult to realize value for the tax attributes of the Dominion RVO Entities if a transaction is not completed before the December 31, 2021 tax year-end;

f. the RVO Term Sheet entitles the Monitor to market the RVO Transaction to other potential purchasers if it determines that a marketing period is required. However,

the funding required to conduct a fulsome marketing process and the compressed timelines of the RVO Term Sheet suggest that this may not be feasible in the circumstances;

g. the RVO Term Sheet entitles the Monitor to conduct an auction in the event it identifies a superior bid for the RVO Transaction. The range of potential parties that may be able to benefit from the Tax Attributes is limited and therefor an auction process could likely be conducted on an expedited basis if required;

h. the RVO Term Sheet provides for advance funding of the Process Costs which mitigates the financial risk to Dominion should the RVO Transaction not be completed. The Monitor believes that US $250,000 should be sufficient to fund the costs to complete the RVO Transaction, but additional funding may be required to complete a marketing process; and

i. overall, the Monitor is of the view that the RVO Transaction will provide incremental recoveries to Dominion, is the only proposal received to date that would result in recoveries from Dominion's tax attributes and is in the best interests of its creditors.

70. The Monitor understands that ACDC is currently reviewing the RVO Transaction, however, the Monitor understands ACDC's preliminary view is that the recoveries from the RVO Transaction are insufficient and that the Tax Attributes have not been marketed. The Monitor notes that the Tax Attributes were in effect marketed in the SISP as any interested parties could have included them in a bid. Furthermore, the ability for the Monitor to conduct an auction would provide ACDC with the ability to provide a superior bid if desired.

CASH FLOW VARIANCE ANALYSIS

71. The Applicants' actual cash flows in comparison to those contained in the Eighth Cash Flow Statement for the 34 weeks ended September 24, 2021 are summarized below:

Cash Flow Variance Analysis Thirty-Four Week Period Ended September 24, 2021 *($ thousands)*	Actual	Forecast	Var $	Var %
Disbursements				
Professional Fees	$1,162	$ 1,308	$(146)	-11%
Other	59	64	(5)	-8%
Total Disbursements	1,221	1,372	(151)	-11%
Net Change in Cash	(1,221)	(1,372)	151	-11%
Opening Cash	1,598	1,598	-	0%
Ending Cash	**$ 377**	**$ 226**	**$ 151**	**67%**

72. Variances primarily relate to timing differences in payments for professional fees which are expected to reverse in future periods and the impact of foreign exchange rate fluctuations during the period.

73. The cash flow variance analysis does not reflect the net proceeds of approximately $33.9 million resulting from the sale of diamonds delivered by DDMI which proceeds were delivered directly to the Agent and which are being held by the Agent as Cash Collateral as security for its LCs.

74. As of September 24, 2021, the Monitor was holding total cash of approximately $377,000 which includes approximately $317,000 (US$250,000) being held in the Wind-Down Account pursuant to the EMP Order.

NINTH CASH FLOW STATEMENT

75. The Monitor has prepared the Ninth Cash Flow Statement to set out Dominion's liquidity requirements for the 23 weeks ending March 4, 2022 (the "**Forecast Period**"). A copy of the Ninth Cash Flow Statement is attached as Appendix "**L**".

76. The Ninth Cash Flow Statement is summarized as follows:

($ thousands)	February 5 to September 24 Actuals	September 25 to March 04 Forecast	Total
Receipts			
Sales Proceeds	$ -	$ 380	**$ 380**
RVO Process Cost Payment	-	317	**317**
RVO Payment	-	1,902	**1,902**
Total Receipts	-	2,599	**2,599**
Disbursements			
Professional Fees	1,162	752	**1,914**
RVO Process Costs	-	317	**317**
Other	59	5	**64**
Total Disbursements	1,221	1,074	**2,295**
Net Change in Cash	(1,221)	1,525	**304**
Opening Cash	1,598	377	**1,598**
Ending Cash	**$ 377**	**$ 1,902**	**$ 1,902**

77. The key assumptions on which the Ninth Cash Flow Statement is based are summarized as follows:

    a. Sales Proceeds relate to amounts held back by the Monitor from diamond sales proceeds distributed to the Agent, to fund the ongoing professional costs otherwise benefiting from the Administration Charge in the CCAA Proceedings;

    b. RVO Process Cost Payment receipt of $317,000 is the Canadian dollar equivalent of the US $250,000 Process Cost payment to be made by Washington to Dominion upon execution of the RVO Term Sheet to fund reasonable and documented professional fees in analyzing, negotiating and obtaining Court approval of the RVO Transaction;

    c. disbursements include professional fees and expenses to administer the Diavik Realization Assets, close the AVO Transaction, close the RVO Transaction and wind-down the CCAA Proceedings. The Monitor is advised by the Agent that it intends to pay the professional fees owing to its legal advisors directly from the Cash Collateral upon closing of the AVO Transaction up to the allocated proportion

of the professional fee cap in the AVO Agreement, rather than having these costs paid directly by Dominion. A summary of the forecast professional fees and expenses, by role, is set out in the table below:

Professional Fees (by Role) *($ thousands)*	February 5 to September 24 Actuals	September 25 to March 04 Forecast	Total
First Lien Lenders	$ 435	$ 77	$ 512
Monitor	581	428	1,010
Legal Counsel to the Monitor	145	247	392
Total Professional Fees	**$ 1,162**	**$ 752**	**$ 1,914**

78. Overall, the Ninth Cash Flow Statement forecasts that Dominion will have sufficient liquidity in the Wind-Down Account to fund the CCAA Proceedings through to their anticipated conclusion by the end of the Forecast Period.

STAY EXTENSION

79. The Monitor's comments with respect to its application for the Stay Extension Order are as follows:

    a. it will provide Dominion with sufficient time to seek to complete the AVO Transaction and the RVO Transaction and address any remaining restructuring matters in the CCAA Proceedings including a distribution application of the proceeds in the Creditor Trust and a discharge application;

    b. the Ninth Cash Flow Statement projects that Dominion will have sufficient funds to cover the costs of the CCAA Proceedings during the period of the proposed extension;

    c. Dominion will be under the expanded oversight of the Monitor during the period of the extension pursuant to the EMP Order;

d. Dominion is acting in good faith and with due diligence; and

e. an extension of the Stay of Proceedings is in the best interests of Dominion's stakeholders.

80. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant an Order extending the Stay of Proceedings to March 4, 2022.

MONITOR'S CONCLUSION AND RECOMMENDATIONS

81. The AVO Transaction and the RVO Transaction represent the best recoveries available to Dominion's creditors from its remaining assets.

82. The proposed stay extension will provide the Applicants with time to seek to complete the AVO Transaction, RVO Transaction, address remaining restructuring matters and conclude the CCAA Proceedings.

83. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the following orders:

a. the RVO; and

b. the Stay Extension Order.

84. If this Honourable Court sees fit to approve the AVO Agreement which provides for the discontinuance by DDM of the BC Civil Claim, then the Monitor respectfully recommends that this Honourable Court grant the AVO.

*****

All of which is respectfully submitted this 6th day of October, 2021.

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

Deryck Helkaa
Senior Managing Director

Tom Powell
Senior Managing Director

APPENDIX “A”

Support Agreement for AVO Transaction

SUPPORT AGREEMENT

WHEREAS, this support agreement (the "**Support Agreement**"), dated as of September 16, 2021, sets out the agreement between Diavik Diamond Mines (2012) Inc. ("**DDMI**") and Credit Suisse AG, Cayman Islands Branch, as administrative agent (the "**First Lien Agent**") under the Credit Agreement (as defined in Schedule "A") regarding the acquisition of the Diavik Joint Venture Interest, the Dominion Production and the Cash Collateral (as such terms are defined in Schedule "A") and certain related matters (the "**Transaction**"), as further described in the term sheet attached as Schedule "B" (the "**Term Sheet**", with the terms of the Transaction set out therein being, collectively, the "**Transaction Terms**").

NOW THEREFORE, DDMI and the First Lien Agent (collectively, the "**Parties**" and each, a "**Party**") hereby agree as follows:

1. Defined Terms

Capitalized terms that are not otherwise defined herein shall have the meanings ascribed thereto in Schedule "A".

2. Transaction

The Transaction Terms as agreed between 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.

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 (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;

(b) 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; and

(c) 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.

4. Parties' Covenants and Agreements

Each Party hereby acknowledges, covenants and agrees:

(a) to the Transaction and the Transaction Terms and the completion of same;

(b) not to directly or indirectly take any action, or omit to take any action, that is inconsistent with its obligations under this Support Agreement or that would frustrate, impede, hinder or delay the consummation of the Transaction; and

(c) not to propose, file, solicit, or otherwise support any alternative transaction that is inconsistent with the Transaction.

5. Negotiation of Documents

(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 which may subsequently be issued relating thereto, and (ii) to the extent it is a party thereto, to execute, deliver and perform its obligations under such documents which may subsequently be entered into by the Parties.

(b) The Parties shall in good faith cooperate with each other and coordinate their activities in respect of (i) the timely satisfaction of any applicable 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.

6. Termination

Each Party (a "**Terminating Party**") may terminate this Support Agreement by providing written notice to the other Party (the "**Other Party**") in accordance with Section 10(l) hereof:

(a) upon the breach of any representation, warranty, covenant or acknowledgement of the Other Party 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 Other Party of written notice of such breach (unless the event giving rise to the termination right is caused by the Terminating Party);

(b) if the Transaction is not approved by the Court on or before the date that is 60 days from the execution of this Support Agreement or such other date as may be agreed to by the Parties, acting reasonably;

(c) if the Transaction has not been completed on or before the date that is 30 days from the approval by the Court of the Transaction or such other date as may be agreed to by the Parties, acting reasonably; or

(d) if Dominion applies to have the Transaction approved by the Court and such application is dismissed.

7. Effect of Termination

(a) Subject to paragraphs 7(b) and 7(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 6, the agreements and obligations of the Parties in Section 10 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.

8. 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.

9. Public Announcements

Prior to making any public announcement in respect of the Support Agreement or the Transaction, each Party shall: (x) give the other Party a reasonable opportunity to review and comment on such any public announcements; and (y) give reasonable consideration to any such comment made by the other Party. Notwithstanding the foregoing, nothing herein shall: (a) require a Party to accept any comments made by the other Party; or (b) prevent a Party from making public disclosure in respect of the Support Agreement or the Transaction to the extent required by applicable law.

10. 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 Schedules hereto), as it may be modified, amended and supplemented pursuant to Section 10(d) hereof, constitutes the entire agreement and supersedes all prior agreements and understandings, both oral and written, between 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 Alberta 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 Alberta.

(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. 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 the First Lien Agent at:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue, 6th
New York, New York 10010
Attention: Lawrence Park
E-Mail: lawrence.park@credit-suisse.com

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 DDMI at:

300 Northwest Tower
5201 50th Ave. Yellowknife, NT
X1A 2P8 Canada, Yellowknife, NT X1A 2P8
Attention: Andrew Russell / Thomas Croese

Email: Andrew.Russell@riotinto.com / Thomas.Croese@riotinto.com

with a required copy (which shall not be deemed notice) to:

McCarthy Tetrault LLP
Suite 4000, 421 7th Ave. SW
Calgary AB T2P 4K9
Attention: Adam Taylor / Walker Macleod
Email: ataylor@mccarthy.ca / wmacleod@mccarthy.ca

(m) 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.

(n) Unless otherwise indicated, any reference to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder.

(o) The words "include", "includes" and "including" mean "include", "includes" or "including", in each case, "without limitation".

(p) Reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time.

(q) Unless otherwise indicated, all dollar amounts referred to in this Support Agreement are expressed in United States dollars.

(r) Whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a business day, such payment shall be made or action taken on the next following business day. Where a time period is expressed to begin after or to be from a specified day, the time period does not include that day.

(s) 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 Parties have caused this Support Agreement to be duly executed and delivered by their respective proper and duly authorized officers as of the date first written above.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, AS ADMINISTRATIVE AGENT

By: Lawrence Park
Name: Lawrence Park
Title: Authorized Signatory
By: Rizwan Merchant
Name: Rizwan Merchant
Title: Authorized Signatory

DIAVIK DIAMOND MINES (2012) INC.

By: _____
Name:
Title:
By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused this Support Agreement to be duly executed and delivered by their respective proper and duly authorized officers as of the date first written above.

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, AS ADMINISTRATIVE AGENT

By: _____
Name:
Title:

By: _____
Name:
Title:

DIAVIK DIAMOND MINES (2012) INC.

By: _____
Name: Thomas Croese
Title: Finance Manager

By: _____
Name: Louis Béland
Title: Secretary

SCHEDULE A

DEFINITIONS

APA	"**APA**" means the Asset Purchase Agreement dated as of December 6, 2020 among, *inter alia*, Dominion, Brigade Capital Management, LP and DDJ Capital Management, LLC.
Cash Collateral	"**Cash Collateral**" means all cash collateral held by the First Lien Agent as security for any letter of credit issued by any First Lien Lender where DDMI is the beneficiary and which, as of the date of the execution of the Support Agreement, totaled $29,071,631.17 (USD).
Court	"**Court**" means the Court of Queen's Bench of Alberta.
Credit Agreement	"**Credit Agreement**" means the Amended and Restated Credit Agreement dated as of February 3, 2021, as it may be amended, restated, supplemented or otherwise modified from time to time, among, *inter alia*, Dominion, the First Lien Agent and the First Lien Lenders.
Diavik Diamond Mine	"**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	"**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	"**Diavik Joint Venture Agreement**" means the joint venture agreement dated March 23, 1995 between Dominion 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 Dominion and DDMI.
Diavik Joint Venture Interest	"**Diavik Joint Venture Interest**" means the Participating Interest (as such term is the Diavik Joint Venture Agreement) and held by Dominion pursuant to the Diavik Joint Venture Agreement.
Diavik Realization Account	"**Diavik Realization Account**" means the bank account that was funded to cover the costs to administer the Diavik Realization Assets pursuant to the APA.
Diavik Realization Assets	"**Diavik Realization Assets**" has the meaning ascribed thereto in the APA.

Dominion	"**Dominion**" means Dominion Diamond Mines ULC.
Dominion Production	"**Dominion Production**" means Dominion'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.
First Lien Lenders	"**First Lien Lenders**" means the first lien secured lenders under the Credit Agreement.
Interim Period Proceeds	"**Interim Period Proceeds**" means any proceeds received by Dominion from the Interim Period Sales.
Interim Period Sales	"**Interim Period Sales**" means any sale or other disposition of any Dominion Production during the Subject Period.
Permitted Encumbrances	"**Permitted Encumbrances**" means (i) any royalty rights arising under the Royalty Agreements, excluding any amounts payable under the Royalty Agreements as of April 22, 2020; (ii) any royalty rights of the Government of the Northwest Territories that relate to the Diavik Joint Venture Interest; and (iii) customary permitted encumbrances in the context of a sale transaction within a proceeding under the *Companies' Creditors Arrangement Act*.
Royalty Agreements	"**Royalty Agreements**" means, collectively, the Repadre Royalty Agreement among Dominion, DDMI and Sandstorm Gold Ltd., each as successors in interest, dated as of September 30, 2003, and the Jennings Royalty Agreement among Dominion, DDMI and Christopher Jennings, dated as of September 30, 2003.
Subject Period	"**Subject Period**" means the period between September 1, 2021 and Closing.
Wind-Down Account	"**Wind-Down Account**" means the bank account that was funded to cover the costs to facilitate the wind-down of the estate of Dominion and its applicable affiliates pursuant to the APA.

SCHEDULE B

TERM SHEET

This Term Sheet describes the principal terms for the Transaction, pursuant to which: (i) Dominion will sell the Diavik Joint Venture Interest and the Dominion Production to DDMI; (ii) all letters of credit (collectively, the "**LCs**") issued by the First Lien Lenders in respect of the Diavik Diamond Mine will be cancelled by the beneficiary and returned to the issuers thereof, without any further obligation; and (iii) all Cash Collateral shall be transferred to DDMI, subject to Permitted Deductions. All capitalized terms used in this Term Sheet and not otherwise defined shall have the meanings ascribed to them in the Support Agreement between DDMI and the First Lien Agent dated as of September 16, 2021.

TRANSACTION TERMS

Acquisition	On the closing of the Transaction ("**Closing**"), DDMI shall acquire the Diavik Joint Venture Interest, the Dominion Production and the Cash Collateral free and clear of all claims, encumbrances and interests, excluding Permitted Encumbrances and subject to Permitted Deductions. For the avoidance of doubt, upon the completion of such acquisition: (i) all liabilities and obligations pursuant to or arising from the Diavik Joint Venture Interest, including any and all reclamation obligations, shall be assumed by DDMI; and (ii) all rights and benefits pursuant to or arising from the Diavik Joint Venture Interest, the Dominion Production and the Cash Collateral (less the Permitted Deductions) shall be acquired by DDMI.
LCs	On Closing, all LCs shall be cancelled by the beneficiary and returned to the issuers thereof, without any further obligation.
Cash Collateral	On Closing, all Cash Collateral (including, for the avoidance of doubt, any Interim Period Proceeds) shall be transferred to DDMI by wire transfer, subject to the First Lien Agent's right to deduct only Permitted Deductions (as defined below) therefrom (see "*Permitted Deductions*") but without any further set-off, netting, consolidation or exercise of similar type of right by the First Lien Agent, provided that, for the avoidance of doubt, the quantum of Dominion or the First Lien Agent's cash collateral transfer obligation on Closing shall be no greater than the quantum of cash collateral held as security for the LCs immediately prior to Closing, less Permitted Deductions as of Closing.
Permitted Deductions	Provided that the First Lien Agent has first provided to DDMI a reasonably detailed summary of all incurred and estimated Permitted Deductions at Closing, the First Lien Agent may deduct

only the following from the Cash Collateral (collectively, the "**Permitted Deductions**") prior to transferring the Cash Collateral to DDMI:

(i) all accrued and unpaid LC fees, if any, as at the Closing, up to the maximum amount of (A) a *per diem* calculation of CAD $10,572.92 for the period of July 1, 2021 to Closing; and (B) CAD $ 18,932.99 for the period prior to June 30, 2021;

(ii) all indebtedness incurred prior to April 22, 2020 and unpaid and owing by Dominion pursuant to the Royalty Agreements, if any, up to the maximum amount of (A) USD $391,665.09 to Sandstorm Gold Ltd.; and (B) USD $399,911.00 to Christopher Jennings (collectively, the "**Pre-Filing Royalty Indebtedness**"); and

(iii) all advisor fees incurred or reasonably anticipated to be incurred by the First Lien Agent and Dominion in connection with the Transaction, the administration of the Diavik Realization Assets, and the wind-down of the estate of Dominion and its affiliates to the extent not paid from the Diavik Realization Account or the Wind-Down Account, up to a maximum of CAD$811,000; provided, however, that to the extent any amounts are deducted for anticipated advisor fees and not so used as of the conclusion of the administration of the estate of Dominion and the discharge of the Monitor, such amounts shall constitute Cash Collateral and shall be paid by the Monitor to DDMI.

For certainty, no other amounts other than those stipulated above are Permitted Deductions.

Diamond Sales; Delivery of Unsold Diamonds

Dominion (i) shall apply any Interim Period Proceeds towards the cash collateralization of the LCs or Permitted Deductions (in accordance with the terms hereof); (ii) keep DDMI apprised (in a timely manner) of all material developments with respect to any Interim Period Sales (including Dominion's expectations with respect to the amount of Residual Dominion Production (if any) and the value of the Interim Period Proceeds, which value shall be provided to DDMI as soon as practicable after such value becomes known by Dominion); and (iii) promptly provide or furnish any information concerning any Interim Period Sales as may be reasonably requested by DDMI.

For the avoidance of doubt,

(i) if any proceeds from Interim Period Sales are payable to Dominion and have not yet been delivered to Dominion as of

Closing, Dominion shall forthwith deliver such proceeds to DDMI upon receipt; and

(ii) if any Dominion Production ("**Residual Dominion Production**") remains at Closing (i.e. Dominion Production has not been sold or disposed of in connection with Interim Period Sales) any such Residual Dominion Production shall be delivered to DDMI (or such other person(s) as identified by DDMI) following Closing under procedures to be agreed prior to Closing by Dominion and DDMI (each acting reasonably) (the "**Residual Dominion Production Procedures**").

Prohibition on Disposing of Collateral in the Subject Period and Exceptions

During the Subject Period, the First Lien Agent will not dispose of any Cash Collateral (including, for the avoidance of doubt, any Interim Period Proceeds), other than applying Cash Collateral to items that constitute Permitted Deductions, provided that such application shall be subject to the limitations for Permitted Deductions as provided herein. In the event that Cash Collateral is so applied by the First Lien Agent, it shall provide DDMI with a reasonably detailed monthly summary of such Permitted Deductions by way of e-mail.

Claim Discontinuance

Concurrent with Closing, the Civil Claim filed by Dominion in the Supreme Court of British Columbia, Vancouver Registry No. S206419, shall be discontinued.

DDMI Closing Conditions

Closing shall be subject to the following:

(i) all Interim Period Proceeds shall have been applied towards the cash collateralization of the LCs or Permitted Deductions (in accordance with the terms hereof);

(ii) arrangements shall have been put in place to transfer all Cash Collateral (including, for the avoidance of doubt, any Interim Period Proceeds), excluding Permitted Deductions, to DDMI; and

(iii) the Dominion Residual Production Procedures (if any) have been agreed upon by DDMI and Dominion (each acting reasonably).

Dominion Closing Condition

Closing shall be subject to all LCs being cancelled by the beneficiary and returned to the issuers thereof concurrent with Closing, without any further obligation.

Court Approval

Closing shall be subject to obtaining Court-approval of the Transaction, the satisfaction or waiver by DDMI (in its sole

discretion) of the DDMI Closing Conditions (as set out above), the satisfaction or waiver by Dominion (in its sole discretion) of the Dominion Closing Condition (as set out above) and, subject only to Permitted Encumbrances, the vesting of all claims, encumbrances and interests, including, without limitation, any claim or encumbrance of Arctic Canadian Diamond Company Ltd. relating to the Diavik Realization Assets and any amounts payable under the Royalty Agreements as of April 22, 2020 (excluding, for the avoidance of doubt, the Pre-Filing Royalty Indebtedness).

The parties shall pursue Court-approval of the Transaction and Closing as soon as reasonably practicable.

Releases

The definitive documentation in respect of the Transaction will provide for the full and final settlement of all outstanding claims held by Dominion, DDMI, the First Lien Agent and the First Lien Lenders against such parties, together with releases confirming same.

APPENDIX “B”

AVO Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

DOMINION DIAMOND MINES ULC, by FTI CONSULTING CANADA INC., in its capacity as court-appointed Monitor of DOMINION DIAMOND MINES ULC and not in its personal capacity, as the Seller

AND

DIAVIK DIAMOND MINES (2012) INC., as the Purchaser

Dated as of October 6, 2021

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LIST OF SCHEDULES

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is dated as of October 6, 2021 (the "Effective Date"), by and among Diavik Diamond Mines (2012) Inc. (the "Purchaser"), and Dominion Diamond Mines ULC (the "Seller"), by FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of Dominion Diamond Mines ULC and not in its personal capacity.

WHEREAS, on April 22, 2020 (the "Filing Date"), the Seller 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") in respect of the Seller. On May 1, 2020, the Seller 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");

WHEREAS, the Purchaser intends to purchase the Seller's 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 Pre-Filing Royalty Indebtedness (as defined below) has been fully settled prior to the Effective Date; and

WHEREAS, subject to the provisions of this Agreement, the Parties desire to consummate the Acquisition as soon as reasonably practicable after the Sale Order (as defined below) has been issued and 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:

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

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

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

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

"Assigned Contracts" shall mean, collectively, the Diavik Option Agreement, the Tenby Option Agreement, the Underlying Agreements (as defined in the Diavik Option

Agreement), the Tenby Underlying Agreement (as defined in the Tenby Option Agreement), the CMO Underlying Agreement (as defined in the Tenby Option Agreement).

"Assumed Liabilities" shall have the meaning ascribed thereto in Section 2.2.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a statutory holiday in Calgary, Alberta, Canada.

"Cash Collateral" means all cash and cash equivalents held by the First Lien Agent as security for any LC issued by any First Lien Lender where the Purchaser is the beneficiary and which, as of [●], totalled USD$[●].

"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, regulatory or otherwise.

"Closing" shall have the meaning ascribed thereto in Section 9.1.

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

"Closure Security Agreement" means the closure security agreement relating to the Diavik Joint Venture Agreement dated as of December 13, 2019 between the Purchaser and the Seller.

"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.

"Credit Agreement" means the Amended and Restated Credit Agreement dated as of February 3, 2021, among, *inter alia*, the Seller, the First Lien Agent and the First Lien Lenders, as it may be amended, restated, supplemented or otherwise modified from time to time.

"December APA" means the Asset Purchase Agreement dated as of December 6, 2020 among, *inter alia*, the Seller, Brigade Capital Management, LP and DDJ Capital Management, LLC.

"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 JVA Cover Payments" has the meaning ascribed thereto in the affidavit of Kristal Kaye sworn April 21, 2020 provided in support of the Initial Order.

"Diavik JVA Cover Payment Liabilities" means all Liabilities owing by the Seller in relation to the Diavik JVA Cover Payments and includes, without limitation, all interest due to the Purchaser pursuant to Article 9.4 of the Diavik Joint Venture Agreement, all reasonable legal fees and all other reasonable costs and expenses incurred by the Purchaser in collecting payment of such Liabilities and enforcing its security interest under Article 9.4 of the Diavik Joint Venture Agreement.

"Diavik Joint Venture" means the unincorporated joint venture arrangement established pursuant to the purposes set out in 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 the Seller and the Purchaser 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 the Seller and the Purchaser.

"Diavik Joint Venture Interest" means the Participating Interest (as such term is defined in the Diavik Joint Venture Agreement) held by the Seller pursuant to the Diavik Joint Venture Agreement.

"Diavik Option Agreement" means the Diavik Option Agreement dated June [●], 1992 between Aber Resources Limited and Kennecott Canada Inc.;

"Diavik Realization Account" means the bank account that was funded to cover costs to administer the Diavik Realization Assets pursuant to the December APA.

"Diavik Realization Assets" has the meaning ascribed thereto in the December APA.

"Dominion Production" means the Seller'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.

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

"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.

"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: (a) no request or motion for stay of the action or order is pending before the Governmental Body, 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; (b) 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; (c) 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 (d) 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.

"First Lien Agent" means Credit Suisse AG, Cayman Islands Branch, as administrative agent under the Credit Agreement.

"First Lien Lenders" means the first lien secured lenders under the Credit Agreement.

"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.

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

"Interim Period Proceeds" means any proceeds received by the Seller from Interim Period Sales.

"Interim Period Sales" means any sale or other disposition of any Dominion Production during the Subject Period.

"Jennings Royalty Agreement" means the royalty agreement made among the Seller, the Purchaser and Christopher Jennings dated as of September 30, 2003, as may have been amended, modified or supplemented prior to the Effective Date.

"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.

"LCs" means all letters of credit issued by the First Lien Lenders in respect of the Diavik Diamond Mine in connection with the Closure Security Agreement.

"LC Obligations" means the obligations of the Seller to post LCs in accordance with the Diavik Joint Venture Agreement, as further evidenced by the Closure Security Agreement.

"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.

"Monetization Order" means the Order (Approval of Monetization Process) granted by the CCAA Court on November 4, 2020 which approved a monetization process to govern the disposition of the Seller's share of production from the Diavik Diamond Mine.

"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 a schedule to the Sale Order, to be delivered by the Monitor to the Seller and the Purchaser on Closing and thereafter filed by the Monitor with the CCAA Court, certifying that the Acquisition has been completed.

"Order" means any decree, order, injunction, rule, judgment, consent, ruling, writ, assessment or arbitration award of or by any Governmental Body.

"Parties" means the Seller and the Purchaser, collectively and "Party" means either one of them.

"Permitted Deductions" means only (a) all accrued and unpaid LC fees, if any, as at the Closing, up to the maximum amount of (1) a *per diem* calculation of CAD $10,572.92 for the period of July 1, 2021 to Closing; and (2) CAD $ 18,932.99 for the period prior to June 30, 2021; and (b) all advisor fees incurred or reasonably anticipated to be incurred by the First Lien Agent and the Seller in connection with this Agreement, the administration of the Diavik Realization Assets, and the wind-down of the estate of the Seller and its affiliates to the extent not paid from the Diavik Realization Account or the Wind-Down Account, up to a maximum of CAD$811,000. For certainty, no other amounts other than those described in this definition are Permitted Deductions.

"Permitted Encumbrances" means, as of any particular time and in respect of any Person, each of the following Encumbrances: (a) 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; (b) any claim based on treaty rights, traditional territory or land claims; (c) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (d) 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 (1) 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 (2) have been complied with to date in all material respects; (e) each of the following Encumbrances: (1) 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 (d) above); (2) any encroachments, title defects or irregularities existing; (3) 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; (4) agreements with any Governmental Body and any public utilities or private suppliers of services; (5) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (1), (2), (3), (4) and (5), 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) purchase money security interests granted by the Purchaser, in its capacity as manager of the Diavik Joint Venture, in respect of equipment leased or purchased in the ordinary course of business of the Diavik Joint Venture (f) Encumbrances to which the Purchaser consents in writing; and (g) other than any Claims on the Royalty Agreements arising prior to the Filing Date, which shall not constitute Permitted Encumbrances, the Royalty Rights.

“Person” means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority or natural person.

"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 Royalty Indebtedness" means all the indebtedness in the amount of: (a) USD$391,665.09 to Sandstorm Gold Ltd.; and (b) USD$399,911.00 to Christopher Jennings, which was incurred prior to April 22, 2020 and was paid by the Seller on September [**27**], 2021 pursuant to the Royalty Agreements.

“Purchase Price” shall have the meaning ascribed thereto in Section 3.1.

“Purchaser” shall have the meaning ascribed thereto in the Preamble to this Agreement.

“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.

"Repadre Royalty Agreement" means the royalty agreement made among the Seller, the Purchaser and Sandstorm Gold Ltd. (each as successors in interest) dated as of

September 30, 2003, as may have been amended, modified or supplemented prior to the Effective Date.

"Representatives" means, in respect of any Person the officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors of such Person.

"Residual Dominion Production" means any Dominion Production that remains at Closing (i.e. Dominion Production has not been sold or disposed of in connection with Interim Period Sales).

"Residual Dominion Production Procedures" shall have the meaning ascribed thereto in Section 6.3(a).

"Royalty Agreements" means, collectively, the Jennings Royalty Agreement and the Repadre Royalty Agreement.

"Royalty Filings" 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 Person in respect of the Royalty Rights, including any amendment, schedule, attachment or supplement thereto and whether in tangible or electronic form.

"Royalty Rights" means (a) any royalty rights provided to the royalty holder under the Repadre Royalty Agreement; (b) any royalty rights provided to the royalty holder under the Jennings Royalty Agreement; and (c) any royalty rights of the GNWT that relate to the Diavik Joint Venture Interest.

“Sale Order” means an Order of the CCAA Court, in substantially the form attached as Schedule A hereto, approving the transactions contemplated by this Agreement, vesting the Acquired Assets in the Purchaser, free and clear of all Encumbrances, subject only to Permitted Encumbrances and including the vesting of any Claim or Encumbrance of Arctic Canadian Diamond Company Ltd. relating to the Diavik Realization Assets, and containing such other provisions as the Seller or the Purchaser may reasonably require.

"Straddle Period" shall have the meaning ascribed thereto in Section 11.6(b).

"Subject Period" means the period between September 1, 2021 and Closing.

"Support Agreement" means the support agreement between the Purchaser and the First Lien Agent dated as of September 16, 2021.

“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. For the avoidance of doubt, the GNWT Royalty Rights are not Taxes.

"Tenby Option Agreement" means the Tenby Option Agreement among Tenby Resources Incorporated, Kennecott Canada Inc., Aber Resources Limited and Commonwealth Gold Corporation dated September 30, 1992.

"Transfer Taxes" shall have the meaning ascribed thereto in Section 11.6(a).

"Wind-Down Account" means the bank account that was funded to cover the costs to facilitate the wind-down of the Seller's estate and its applicable affiliates pursuant to the December APA.

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, the Seller shall sell, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase, acquire and take assignment and delivery of, all of the Seller's right, title and interest in the assets and properties of the Seller identified in this Section 2.1 (the "Acquired Assets"), free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances):

(a) the Diavik Joint Venture Interest;

(b) the Diavik Joint Venture;

(c) the Diavik Diamond Mine

(d) the Dominion Production;

(e) the Royalty Agreements;

(f) the Assigned Contracts;

(g) the Cash Collateral (including, for the avoidance of doubt, any Interim Period Proceeds) and for the avoidance of doubt, subject to any Permitted Deductions made pursuant to the provisions of this Agreement;

(h) all rights under non-disclosure, confidentiality and similar arrangements with (or for the benefit of) third parties related to any of the Acquired Assets (including any

non-disclosure, confidentiality agreements or similar arrangements entered into in connection with or in contemplation of the filing of the CCAA Proceedings); and

(i) all other rights and benefits pursuant to or arising from the foregoing.

2.2 Assumed Liabilities. At the Closing, except as provided in Section 2.3 hereof, the Purchaser shall assume, and agree to pay, perform, fulfill and discharge only the following Liabilities of Seller (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations pursuant to or arising from the Diavik Joint Venture Interest, the Diavik Joint Venture and the Diavik Diamond Mine (which includes for, the avoidance of doubt, the Diavik JVA Cover Payment Liabilities and the LC Obligations);

(b) all Liabilities and obligations of the Seller under the Royalty Agreements arising on or after the Filing Date;

(c) all Liabilities and obligations of the Seller under the Assigned Contracts; and

(d) all Liabilities and obligations of the Seller to the GNWT for any royalty payments owing to the GNWT that relate to or arise from the Acquired Assets.

2.3 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"), which, for the avoidance of doubt, includes:

(a) except as set forth in Section 11.6(a), any and all

(i) Liabilities of the 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 (or any similar provision of any other Law) or otherwise and any Taxes owed by the 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 asset that is not an Acquired Asset;

(b) any and all Liabilities for any Tax or Taxes arising out of or relating to the operation of the Seller's 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;

(c) any Liability for any Tax or Taxes of the Seller or their affiliates for any taxable period; and

(d) any Liability for any withholding Tax or Taxes imposed as a result of the transactions contemplated by this Agreement.

2.4 Conveyance and Consideration. Further to Section 2.1 and Section 2.2, above, the Acquired Assets shall be conveyed to the Purchaser from the Seller in consideration of the Purchase Price.

2.5 Cash Collateral Acknowledgments. With respect to the Cash Collateral, the Parties acknowledge that:

(a) the quantum of the Cash Collateral referred to in Section 2.1(g) shall be no greater than the quantum of Cash Collateral held by the First Lien Agent as security for the LCs immediately prior to Closing, less the Permitted Deductions made in accordance with the provisions of this Agreement on Closing; and

(b) with respect to the advisor fees described in part (b) in the definition of Permitted Deductions, to the extent any amounts are deducted for anticipated advisor fees and not so used as of the conclusion of the administration of the estate of the Seller and the discharge of the Monitor, such amounts shall constitute Cash Collateral, shall vest in the Purchaser free and clear of all Claims and Encumbrances of whatever kind or nature (other than Permitted Encumbrances) and shall be paid by the Monitor to the Purchaser.

2.6 "As Is, Where Is" Sale. The Purchaser acknowledges to and in favour of the Seller that, except as expressly set out herein:

(a) the Purchaser has conducted its own investigations and inspections of the Acquired Assets and that the Purchaser is responsible for conducting its own inspections and investigations of all matters and things connected with or in any way related to the Acquired Assets, that the Purchaser has satisfied itself with respect to the Acquired Assets, and all matters and things connected with or in any way related to the Acquired Assets, that the Purchaser has relied upon its own investigations and inspections in entering into this Agreement;

(b) the Purchaser is purchasing the Acquired Assets on an "as is, where is" basis, that the Purchaser will accept the Acquired Assets in their present state, condition and location and that the Purchaser hereby acknowledges that neither the Seller, the Monitor, or their Representatives have made any representations, warranties, statements or promises with respect to the Acquired Assets, save and except as are contained herein, including as to title, description, merchantability, quantity, condition or quality, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, or any other thing affected the Acquired Assets and that any and all conditions and warranties expressed or implied by any statute do not apply to the sale of the Acquired Assets and Assumed Liabilities and are hereby unconditionally and irrevocably waived entirely by the Purchaser;

(c) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Seller, the, Monitor, 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 Seller 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 Seller contained in Article IV of this Agreement shall survive Closing and, subject to Section 10.1, the Purchaser's sole recourse for any breach of representation or warranty of the Seller in Article IV shall be for the Purchaser not to complete the transactions as contemplated by this Agreement pursuant to the rights set forth in Article X and for greater certainty the Purchaser shall have no recourse or claim of any kind against the Seller or the proceeds of the transactions contemplated by this Agreement following Closing; and

(e) this Section 2.6 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

ARTICLE III
PURCHASE PRICE AND PAYMENT

3.1 Purchase Price. The amount of the purchase price for the Acquired Assets shall be the aggregate of the amount of the Assumed Liabilities, which includes for, the avoidance of doubt, the Diavik JVA Cover Payment Liabilities and the LC Obligations (the aggregate of the foregoing being collectively referred to herein as the "Purchase Price").

3.2 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied by the Purchaser assuming the Assumed Liabilities and in furtherance of this assumption, the Purchaser shall release the Seller from the Diavik JVA Cover Payment Liabilities and the LC Obligations.

3.3 Further Assurances. From time to time after the Closing and without further consideration:

(a) the Seller, upon the request of the Purchaser, shall use commercially reasonable efforts to execute and deliver such documents and instruments of conveyance and transfer as the 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 the Purchaser title to the Acquired Assets transferred hereunder; and

(b) the Purchaser, upon the request of the Seller, shall use commercially reasonable efforts to execute and deliver such documents and instruments of assumption as the Seller may reasonably request in order to confirm the obligations under the Assumed Liabilities or otherwise more fully consummate the transactions contemplated by this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller represents and warrants to the Purchaser as of the Effective Date and the Closing Date, as follows:

4.1 Authority; No Violation. Subject to the issuance of the Sale Order, the 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 the 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 the Seller, enforceable against the 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.

4.2 Contracts.

(a) The Royalty Agreement and all Assigned Contracts that will be assumed by the Purchaser pursuant to Section 2.1 will remain in effect, unamended and unchanged as of the date of Closing.

(b) True, correct and complete copies of the Credit Agreement and the December APA have been provided to the Purchaser prior to the Effective Date and subject to the deemed termination of the Credit Agreement in accordance with the Sale Order, such agreements will remain in effect, unamended and unchanged as of the date of Closing.

4.3 Taxes.

(a) The Seller is not a non-resident of Canada for purposes of section 116 of the Tax Act;

(b) The Seller 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;

(c) The Acquired Assets include all or substantially all of the Seller's "Canadian resource property" for the purposes of sections 66 and 66.7 of the Tax Act; and

(d) The Seller declares that, under this Agreement, the Acquired Assets constitute the Seller's entire interest in the Diavik diamond business with all or substantially all of the property necessary for the Purchaser to carry on that business. The Seller agrees to make the election set out in Section 11.6(h).

4.4 No Other Representations or Warranties. Except for the representations, warranties and covenants of Seller expressly contained herein or in any certificate delivered hereunder, neither Seller, nor any of its Representatives, make any other express or implied warranty to the Purchaser or any other Person (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) to the Purchaser or any other Person.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to Seller as of the Effective Date as follows:

5.1 Organization and Power. The Purchaser is duly formed and validly existing under its jurisdiction of formation and is validly existing in good standing thereunder.

5.2 Purchaser's Authority; No Violation. The Purchaser 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 the Purchaser has been duly and validly authorized and approved by all necessary company action. Assuming the due authorization, execution and delivery by the Seller, this Agreement shall constitute the legal and binding obligation of the Purchaser, enforceable against the Purchaser 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 Financial Capability. The Purchaser has and will have on the Closing Date access to the requisite financial resources to purchase the Acquired Assets, satisfy the Purchase Price, and otherwise consummate the transactions contemplated hereby, subject to the terms and conditions set out herein. The performance of any obligation by the Purchaser under this Agreement is not conditioned on any third party financing commitments or arrangements.

ARTICLE VI
COVENANTS OF SELLER AND/OR PURCHASER

6.1 Diamond Sales and Delivery of Unsold Diamonds. The Seller shall:

(a) apply any Interim Period Proceeds towards the cash collateralization of the LCs or the Permitted Deductions;

(b) keep the Purchaser apprised (in a timely manner) of all material developments with respect to any Interim Period Sales (including the Seller's expectations with respect to the amount of Residual Dominion Production, if any); and

(c) promptly provide or furnish any information concerning any Interim Period Sales as may be reasonably requested by the Purchaser.

And for the avoidance of doubt:

(d) if any Dominion Production has been sold or disposed of and proceeds from such sale or disposition have not yet been delivered to the Seller as of Closing, the Seller shall forthwith deliver such proceeds to the Purchaser upon receipt; and

(e) if there is any Residual Dominion Production, such Residual Dominion Production shall be delivered to the Purchaser (or such other Person(s) as identified by the Purchaser) following Closing under Residual Dominion Production Procedures.

6.2 Cancellation of LCs. On Closing, the Purchaser shall cancel and return all LCs issued by any of the First Lien Lenders to the applicable First Lien Lender without any further obligation.

6.3 Preparation of Additional Items. The Purchaser and the Seller agree to:

(a) as promptly as practicable after the Effective Date, but in any event prior to the Closing, negotiate and prepare in good faith if requested by the Purchaser, acting reasonably, procedures (the "Residual Dominion Production Procedures") regarding the delivery of the Residual Dominion Production (if any) to the Purchaser or a Person designated by the Purchaser, which, for the avoidance of doubt, shall only be put into place in the event that there is Residual Dominion Production;

(b) at Closing, execute and enter into, or cause to be executed and entered into, if applicable, the Residual Dominion Production Procedures.

6.4 Sale Free and Clear. 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 and Assumed Liabilities) to the fullest extent permitted by the CCAA.

6.5 Retained Assets. If it is determined at any time before or after the Closing that the Seller holds any right, title or interest in or to any assets or properties that would otherwise constitute Acquired Assets, then the Seller shall transfer and assign such assets to the Purchaser or to one or more designated Persons, as directed by the Purchaser, subject to the terms of this Agreement. Without limiting the foregoing, the Seller shall transfer and assign to the Purchaser or to one or more designated Persons, as directed by the Purchaser, all rights, options, Claims or causes of action of the Seller 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 the Purchaser or to such other Person designated by the Purchaser pursuant to this Section 6.5 shall constitute Acquired Assets for the purposes of this Agreement.

6.6 Access to the Seller's Records. From time to time, including after the Closing, the Seller shall provide the Purchaser (or its designated Representatives) access, upon advance notice to the Seller, to the Seller's employees, books and records, Tax Returns, Royalty Filings, computer servers (including all database and mail servers), corporate offices and other facilities for the purpose of taking such steps in connection with the Royalty Filings and other related matters as the Purchaser deems appropriate (in its sole discretion) or necessary in order to facilitate the Purchaser's efforts to consummate the transaction provided for herein and in relation to matters related to post-Closing Tax Filings and Royalty Filings, acting reasonably. The Seller hereby covenants and agrees to cooperate with the Purchaser in this regard.

6.7 Notification of Certain Matters.

(a) As promptly as reasonably practicable, the Seller shall give notice to the Purchaser of:

(i) any notice or other communication from any Person alleging that any consent of such Person, which is or may be required in connection with the transactions contemplated by this Agreement 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 by this Agreement, including promptly furnishing the Purchaser with copies of notices or other communications received by the Seller or by any of its 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 non-occurrence 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 non-occurrence 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 limit the remedies available to any Party hereunder.

6.8 Preservation of Books and Records.

(a) The Seller agrees to preserve and keep all books and records held by it relating to the Acquired Assets for a period commencing on the Effective Date and ending (subject to Section 6.8(b)) at such date on which an orderly wind-down of the Seller's operations has occurred in the reasonable judgment of the Seller, the Seller shall make such books and records available to the Purchaser (and permit the Purchaser to make extracts and copies of such books and records at its own expense) as may be reasonably required by the Purchaser in connection with, among other things, facilitating the continuing administration of the CCAA Proceedings, any insurance Claims by, legal proceedings, Royalty Filings or Tax audits against or governmental investigations of the Seller or the Purchaser or in order to enable the Seller or the Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby.

(b) (x) In the event that the Seller, on the one hand, or the Purchaser, on the other hand, wish to destroy such records during the period contemplated by Section

6.8(a); or (y) the Seller has determined to effect a wind-down of its operations as contemplated by Section 6.8(a), such Party shall first give 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 20 day period, to take possession of the records within 30 days after the date of such notice.

6.9 Publicity. Neither the Seller nor the Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without (a) giving the other Party a reasonable opportunity to review and comment on such public announcements and (b) giving reasonable consideration to any comments made by the other Party, provided, however, that nothing herein shall require a Party to accept any comment made by the other Party or prohibit disclosure that is 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.

6.10 CCAA Court Filings.

(a) The Purchaser and the Seller shall use their best efforts to cause the CCAA Court to issue the Sale Order as soon as reasonably practicable, and in any event on or before the date that is 10 days from the Effective Date, or such other date as may be agreed to by the Parties, acting reasonably.

(b) The Seller shall use its commercially reasonable efforts to provide the Purchaser 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.

(a) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, the Seller shall promptly notify the Purchaser of such appeal or stay request and shall provide the Purchaser promptly a copy of the related notice of appeal or order of stay. The Seller shall also provide the Purchaser with written notice of any motion or application filed in connection with any appeal from such orders. The Seller agrees to take all action as may be reasonable and appropriate to defend against such appeal or stay request and the Seller and the Purchaser agree to use their 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 each of the Parties, in their sole discretion, waive in writing the condition that the Sale Order be a Final Order.

(b) The Seller and the Purchaser 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.

(c) After issuance of the Sale Order, neither the Purchaser nor the Seller 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.

6.11 Closing Covenant. Subject to the provisions of this Agreement, the Purchaser and the Seller shall use their best efforts to achieve Closing as soon as reasonably practicable after the Sale Order has been issued.

6.12 Royalty Payments. The Purchaser shall no later than 30 days following the Closing Date, make payment to each of the respective royalty holders under the Royalty Agreements of all royalty amounts due and owing under the Royalty Agreements for the period commencing on the Filing Date and ending on August 31, 2021. The Purchaser shall provide the Seller with evidence that such payments have been made no later than 10 days following payment to the respective royalty holders.

ARTICLE VII
CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of the Purchaser to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by the Purchaser) of the following conditions precedent on or before the Closing Date.

7.1 CCAA Court Approvals. The Sale Order shall have been issued by the CCAA Court and shall have become a Final Order.

7.2 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.

7.3 Representations and Warranties True. Each of the representations and warranties of the Seller made on and as of the date of this Agreement shall be true and correct in all material respects as if made on and as of the Closing Date.

7.4 Compliance with Covenants. The Seller 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.

7.5 Closing Deliveries. Each of the deliveries required to be made to the Purchaser pursuant to Section 9.2 shall have been so delivered.

7.6 Cash Collateral Arrangements. Arrangements shall have been put in place to transfer all Cash Collateral (including, for the avoidance of doubt, all Interim Period Proceeds), excluding Permitted Deductions, to the Purchaser concurrently with Closing.

7.7 Interim Period Proceeds. All Interim Period Proceeds shall have been applied towards the cash collateralization of the LCs or Permitted Deductions.

ARTICLE VIII
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of the Seller to consummate the Closing are subject to satisfaction (or, to the extent permitted by applicable Law, waiver by the Seller) of the following conditions precedent on or before the Closing Date:

8.1 CCAA Court Approvals. The Sale Order shall have been issued by the CCAA Court and shall have become a Final Order.

8.2 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.

8.3 Representations and Warranties True. The representations and warranties of the Purchaser made on and as of the date of this Agreement shall be true and correct in all material respects as if made on and as of the Closing Date.

8.4 LC Cancellation. Arrangement shall have been put in place to cancel all LCs by the beneficiary and effect the return to the issuers thereof concurrent with Closing, without any further obligations.

8.5 Closing Deliveries. Each of the deliveries required to be made to the Seller pursuant to Section 9.3 shall have been so delivered.

8.6 Compliance with Covenants. The Purchaser 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.

ARTICLE IX
CLOSING

9.1 Closing. Unless otherwise mutually agreed by the Parties, the closing of the purchase and sale of the Acquired Assets, the satisfaction 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 first Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of the applicable condition) of the closing conditions set forth in Article VII and Article VIII (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.

9.2 Deliveries by the Seller. At or prior to the Closing, the Seller shall deliver the following to the Purchaser:

(a) a certificate of an officer of the Seller, dated the Closing Date, representing and certifying that the conditions set forth in Sections 7.3 and 7.4 have been fulfilled;

(b) a bill of sale in form and content satisfactory to the Seller and the Purchaser, acting reasonably, duly executed by the Seller;

(c) a true, correct and complete copy of the Sale Order;

(d) a summary of (i) all incurred Permitted Deductions which will be paid on Closing and (ii) all items constituting Permitted Deductions paid during the Subject Period;

(e) an executed and fileable discontinuance of the Civil Claim the Seller filed against the Purchaser in the Supreme Court of British Columbia, Vancouver Registry, No. S206419, which shall be releasable on Closing;

(f) the Cash Collateral (including, for the avoidance of doubt, any Interim Period Proceeds), excluding Permitted Deductions;

(g) reasonable evidence that all Interim Period Proceeds have been applied towards the cash collateralization of the LCs or Permitted Deductions;

(h) if applicable, evidence satisfactory to the Purchaser, acting reasonably, that the Residual Dominion Production Procedures have been put in place;

(i) formal releases, in form and substance satisfactory to the Purchaser, acting reasonably, which will provide for the full and final settlement of all outstanding claims among the Seller, the Monitor, the Purchaser, the First Lien Agent and the First Lien Lenders, including releases of all claims the Seller may have to royalties under the Diavik Joint Venture Agreement;

(j) an assignment and assumption agreement duly executed by the Seller and the Purchaser, pursuant to which the Purchaser agrees to be bound by, and assume all of the Seller's Liabilities and obligations under the Royalty Agreements (arising on or after the Filing Date) and the Assigned Contracts; and

(k) such other documents as the Purchaser 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.

9.3 Deliveries by the Purchaser. At the Closing, the Purchaser will deliver the following to the Seller:

(a) a certificate of an officer of the Purchaser, dated the Closing Date, representing and certifying that the conditions set forth in Sections 8.3 and 8.6 have been fulfilled;

(b) evidence of the cancellation of all LCs and being returned to the issuers thereof;

(c) formal releases, in form and substance satisfactory to the Seller, acting reasonably, which will provide for the full and final settlement of all outstanding claims among the Seller, the Monitor, the Purchaser, the First Lien Agent and the First Lien Lenders, including releases from all claims the Purchaser may have with respect to the Diavik JVA Cover Payment Liabilities and the LC Obligations;

(d) formal releases, in form and substance satisfactory to the Seller, acting reasonably, which will provide for the full and final release of all claims the

Purchaser may have in relation to any actions taken by any representative of the Seller or the Monitor in relation to participation in the Management Committee of Diavik Joint Venture;

(e) an assignment and assumption agreement duly executed by the Seller and the Purchaser, pursuant to which the Purchaser agrees to be bound by, and assume all of the Seller's Liabilities and obligations under the Royalty Agreements (arising on or after the Filing Date) and the Assigned Contracts; and

(f) such other documents as the Seller 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.

9.4 Monitor's Certificate. Upon the completion of the transactions contemplated by this Agreement to the satisfaction of the Monitor, the Monitor shall (i) forthwith issue its Monitor's Certificate concurrently to the Seller 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 Seller and the Purchaser).

9.5 Termination of Diavik Joint Venture Agreement. Each of the Purchaser and the Seller acknowledge and agree that, effective as of the Closing, the Diavik Joint Venture Agreement will be automatically terminated and of no further force and effect.

ARTICLE X
TERMINATION

10.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time on or prior to the Closing Date:

(a) Termination by the Purchaser or the Seller.

(i) by the Purchaser or the Seller, if the Sale Order is not approved by the CCAA Court on or prior to November 15, 2021 or such later date as may be designated by the Purchaser; provided that neither the Purchaser nor the Seller shall be entitled to terminate this Agreement pursuant to this Section 10.1(a)(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 the Purchaser or the Seller, if the CCAA Court or other court of competent jurisdiction or Governmental Body shall have issued or enacted an Order or Law restraining, enjoining or otherwise prohibiting the Closing, which is not capable of appeal, or if the CCAA Court dismisses the Sale Order; provided, however, that the Seller and the Purchaser shall not be entitled to terminate this Agreement pursuant to this Section 10.1(a)(ii) if such Order is caused by such Party's breach of any of its obligations under this Agreement; or

(iii) by the Purchaser or the Seller, if the Support Agreement is terminated for any reason, whether by the First Lien Agent, by the Purchaser, or mutually;.

10.2 Procedure and Effect of Termination. If this Agreement is terminated pursuant to Section 10.1, 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 X, provided further that all Parties remain liable for any default or breaches that have occurred prior to the termination of this Agreement.

ARTICLE XI
MISCELLANEOUS

11.1 Survival of Representations and Warranties. 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.

11.2 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.

11.3 Applicable Law and Jurisdiction. 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.

11.4 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 Purchaser 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.

11.5 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 neither the Purchaser nor Seller shall have any Liability to a non-Party for any obligations or liabilities 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. Purchaser acknowledges that nothing in this Agreement supersedes its obligations under the Support Agreement.

11.6 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 ("Transfer Taxes") shall be borne by the Purchaser as applicable to the transfer of the Acquired Assets pursuant to this Agreement. The Purchaser shall properly file on a timely basis all necessary Tax Returns and other documentation with respect to any Transfer Tax and provide to the Seller 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 the Seller (and, for the avoidance of doubt, such amounts shall be an Excluded Liability).

(c) The Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns and Royalty Filings for any Pre-Closing Tax Period or Straddle Period in respect of the Acquired Assets that is required to be filed after the Closing Date. To the extent any Taxes reflected on any such Tax Return or Royalty Filing are an Excluded Liability, the Seller shall pay to the Purchaser the amount of such liability within 10 days of receiving notice from the Purchaser that such Tax Return or Royalty Filing has been filed or that the Purchaser has paid such Liability, except to the extent such Taxes were paid by the Seller to the applicable Governmental Body prior to the filing of such Tax Return or Royalty Filing.

(d) Cooperation on Tax Matters. The Seller shall make available to the Purchaser such records, personnel and advisors

(i) as the Purchaser may require for the preparation of any Tax Returns and Royalty Filings required to be filed by the Purchaser, as the case may be, and

(ii) as the Purchaser may require for the defense of any audit, examination, administrative appeal, or litigation of any Tax Return or Royalty Filing in which the Purchaser was included.

The Seller agrees to provide all reasonable cooperation to the Purchaser, and shall make available to the Purchaser such records, personnel and advisors as is reasonably necessary for the Purchaser, in determining the Tax attributes of the Seller.

(e) Section 22 Election. To the extent applicable and if requested by the Purchaser, in the Purchaser's sole discretion, the Seller and the 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.

(f) Subsection 20(24) Election. The Seller and the 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 the Seller to the Purchaser for assuming future obligations of the Acquired Assets. In this regard, the Seller and the Purchaser acknowledge that if such election is made, a portion of the Acquired Assets having a value equal to the elected amount under subsection 20(24) of the Tax Act is being transferred by the Seller to the Purchaser as a payment for the assumption of such future obligations by the Purchaser.

(g) Successor Election and Designation. If requested by the Purchaser, in the Purchaser's sole discretion,

(i) the Seller and the 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 the Purchaser from the Seller, under this Agreement and

(ii) the Seller 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 the 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 the Seller, as applicable.

(h) Section 167 Election. At the Closing, the Seller and the Purchaser will jointly make, execute and file an election pursuant to subsections 167(1) and (1.1) of the GST Legislation on the forms prescribed for such purpose along with any documentation necessary or desirable in order to effect the transfer of the Acquired Assets by the Seller without payment of any GST. The Purchaser shall file the election within the time prescribed by the GST Legislation.

11.7 No Presumption against Drafting Party. Each of the Purchaser and the Seller acknowledge that each have 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.

11.8 No Punitive Damages. The Purchaser and the Seller each expressly acknowledge and agree that neither shall 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.

11.9 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.

11.10 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.

11.11 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.

Remainder of page intentionally left blank. Signature page follows.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the date first above written

PURCHASER:

DIAVIK DIAMOND MINES (2012) INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SELLER:

DOMINION DIAMOND MINES ULC, by FTI CONSULTING CANADA INC., in its capacity as court-appointed Monitor of DOMINION DIAMOND MINES ULC and not in its personal capacity

Per: _____
Name:
Title:

Per: _____
Name:
Title:

As an acknowledgment that this constitutes a definitive agreement as contemplated by Section 5 and Schedule A of the Support Agreement and not as a Party to the Agreement:

FIRST LIEN AGENT:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, AS ADMINISTRATIVE AGENT

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE A

SALE ORDER

APPENDIX “C”

RVO Term Sheet

Washington Companies / Dominion Diamond Mines

Definitive Term Sheet for RVO Transaction

This term sheet (the "**Term Sheet**") sets forth the material terms for a proposed transaction pursuant to which Washington Diamond Investments Holdings II, LLC (or its designee) ("**Washington**") will advance the Process Costs and make an RVO Payment (each as defined below) to FTI Consulting Canada Inc., in its capacity as the court-appointed Monitor (the "**Monitor**") of Dominion Diamond Mines ULC ("**DDM**"), 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, as debtors (collectively, the "**CCAA Debtor Entities**") in the proceedings pending before the court of Queen's Bench of Alberta (the "**Court**") under the *Companies Creditors' Arrangement Act* (Canada) (the "**CCAA**"), upon the terms and conditions set forth herein, including in respect of the RVO Payment in particular, upon the entry of the RVO Order and the RVO Order becoming a Final Order in advance of the Outside Date (each as defined below). Alternatively, Washington may pay the Process Costs and/or the RVO Payment to one or more of the CCAA Debtor Entities, in its discretion.

Pursuant to the terms of the Order of the Court dated January 27, 2021 (Order – Expansion of Monitor's Powers) (the "**Expanded Powers Order**"), the Monitor has been authorized, among other things: (i) to conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of any remaining Property (as defined in the Expanded Powers Order) of the CCAA Debtor Entities or any part or parts thereof, whether or not outside of the normal course of business, subject to approval of the Court as may be required pursuant to the SARIO (as defined in the Expanded Powers Order), and to sign or execute on behalf of the CCAA Debtor Entities any conveyance or other closing documents in relation thereto; (ii) to execute, assign, issue and endorse documents of whatever nature in respect of any of the CCAA Debtors Entities' Property, whether in the Monitor's name or in the name of and on behalf of the CCAA Debtors Entities or in the place and stead of any directors or officers of the CCAA Debtors Entities, for any purpose pursuant to the Expanded Powers Order; (iii) to take any and all reasonable steps 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; and (iv) to 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 until the Diavik LCs (as defined in the Expanded Powers Order) have been fully cash collateralized in accordance with paragraph 10(h) of the Expanded Powers Order.

Pursuant to the RVO Order, among other matters, (i) Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, DDM and Dominion Diamond Marketing Corporation (each a "**Dominion Entity**" and collectively, the "**Dominion Entities**") will be fully and irrevocably cleansed of the Transferred Liabilities (as defined below) and (ii)

the Transferred Assets (as defined below) will be vested out of the Dominion Entities and transferred to the Monitor, to be held in trust by the Monitor for the creditors of the CCAA Debtor Entities, and subject to the claims thereof, all in the manner specified in the RVO Order.

Upon execution of this Term Sheet by Washington and the Monitor, on behalf of itself and each of the CCAA Debtor Entities (collectively, the "**Parties**" and each a "**Party**"), this Term Sheet shall create a binding legal obligation on the part of Washington, the Monitor and each of the CCAA Debtor Entities, subject only to the terms and conditions hereof and of the RVO Order. The terms and conditions set forth in this Term Sheet, together with the RVO Order, are intended to be comprehensive and are not subject to any further due diligence by any Party or to any further definitive documentation, except as expressly permitted or contemplated hereunder.

Transaction Structure:	Affiliates of Washington are the current owners, directly and indirectly, of all equity interests in and of the CCAA Debtor Entities. In order to maximize the value of the tax attributes resident in each of the Dominion Entities (the "**Tax Attributes**") for the benefit of Washington and its affiliates, as the owners thereof, each of the Dominion Entities will, pursuant to the terms hereof and the RVO Order, be cleansed of any and all liabilities of any kind other than the Retained Liabilities (as defined below), and all property, assets or interests thereof other than the Retained Assets (as defined below), will be transferred or vested out of the Dominion Entities, to be held by the Monitor in trust (the "**Creditor Trust**") for the creditors of the CCAA Debtor Entities, and subject to the claims thereof (the "**RVO Transaction**"),[1] all in the manner specified and set forth herein and in the RVO Order. The definitive terms and form of the reverse vesting order to be entered by the Court in order to implement the RVO Transaction are appended and set out at Appendix A hereto (the "**RVO Order**").
Transferred Liabilities:	Any and all liabilities and obligations of the Dominion Entities of any kind other than the Retained Liabilities, including without limitation, the following, shall be transferred to and assumed by the Creditor Trust and the applicable Dominion Entity shall be fully released from all obligations thereunder:

[1] The defined terms "RVO Transaction" and "RVO Order" as used herein shall refer to a transaction for which Washington or any other bidder is the successful bidder.

	• any and all funded indebtedness (including, for the avoidance of doubt, any and all claims and liabilities under the Pre-Filing Credit Agreement and the indenture governing the 7.125% Senior Secured Second Lien Secured Notes due 2022 (the "**2L Notes**")); • any and all environmental liabilities; • any and all regulatory or other governmental liabilities; • any and all trade claims or other unsecured claims; • the approximately $92.8 million intercompany debt owing by DDM to Dominion Diamond Canada ULC; and • any other Excluded Liability (as defined in that certain Asset Purchase Agreement dated as of December 6, 2020, by and among, *inter alia*, the CCAA Debtor Entities, as sellers, and DDJ Capital Management, LLC and Brigade Capital Management, LP (the "**2L APA**")). (collectively, the "**Transferred Liabilities**").
Retained Liabilities	The following liabilities and obligations of the Dominion Entities (the "**Retained Liabilities**") shall remain obligations of the Dominion Entities upon completion of the RVO Transaction and shall not be transferred to or assumed by the Creditor Trust: • any intercompany claim or indebtedness owing by a Dominion Entity to another Dominion Entity; and • any other obligation designated as a Retained Liability by Washington in writing to the Monitor prior to the closing of the RVO Transaction.
Retained Assets:	The following items (the "**Retained Assets**") shall not be transferred to the Creditor Trust and shall be retained by the applicable Dominion Entity: • all shares of capital stock or other equity interests in any other Dominion Entity;

	• any intercompany indebtedness or claim owing to a Dominion Entity by another Dominion Entity; • all organizational documents, corporate books and records, income tax returns and the corporate seal of any Dominion Entity; • any records that are required by law to be retained by a Dominion Entity; • the Tax Attributes; • all current and prior director and officer insurance policies of any Dominion Entity and all rights of any nature with respect thereto running in favor of any Dominion Entity; and • any and all rights of the Dominion Entities under this Term Sheet or the RVO Order.
Transferred Assets:	Except for the Retained Assets, any and all Property, assets or interests of the Dominion Entities of any kind, including without limitation, the following, shall be transferred to the Creditor Trust: • the Diavik Joint Venture Agreement (as defined in the 2L APA) and any interest in the joint venture established pursuant to that certain joint venture agreement dated March 23, 1995 between DDM and Diavik Diamond Mines (2012) Inc. originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995 (the "**Diavik Joint Venture**"), in the event that the Diavik Joint Venture is still owned by the CCAA Debtor Entities, when the RVO Transaction closes; • all Excluded Contracts (as defined in the 2L APA); • all shares of capital stock or other equity interests in, any person other than a Dominion Entity including, without limitation, Dominion Finco Inc., Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Dominion Diamond (Cyprus) Limited, Dominion Diamond (Luxembourg) S.a.r.l., Dominion Diamond (India)

	Private Limited, and Dominion Diamond Marketing N.V.; and • the RVO Payment, in the event that Washington has exercised its option to pay the RVO Payment to one of the CCAA Debtor Entities. (collectively, the "**Transferred Assets**").
No Reliance	Washington has conducted its own investigations and diligence regarding the RVO Transaction, the RVO Order, the Transferred Liabilities, the Transferred Assets, the Tax Attributes and the Retained Assets. Washington acknowledges that: (i) it is responsible for conducting its own investigations and diligence of all matters and things connected with or in any way related to the RVO Transaction; (ii) Washington has satisfied itself with respect to the RVO Transaction, and all matters and things connected with or in any way related to the RVO Transaction; and (iii) Washington has relied upon its own investigations and inspections in entering into this Term Sheet. Washington acknowledges that, other than the representations and warranties expressly given by the Monitor in this Term Sheet, the Monitor has made no representations, warranties, statements or promises with respect to any of the foregoing. Washington acknowledges that, other than the representations and warranties expressly given by the Monitor in this Term Sheet, it is not relying on any representation warranty, statement or promise from the Monitor in connection with the RVO Transaction or entry into this Term Sheet. Washington hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims that Washington might have against the Monitor, and its representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Monitor expressly set forth in this Term Sheet. 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. For the purpose of this paragraph, the term "Claims" shall mean any and all claims, charges, lawsuits, demands, directions, orders, suits, inquiries made, hearings, judgments, warnings, investigations, notices of violation, notice of noncompliance, litigation, proceedings, arbitration, or other disputes, whether civil, criminal, administrative, regulatory or otherwise.
Disposition of Diavik Interest:	Upon the transfer of the Diavik Joint Venture Agreement and any other interest in the Diavik Joint Venture as part of the Transferred Assets or otherwise contemplated by this Term Sheet, or prior to the closing of the RVO Transaction, DDM shall no longer hold any equity interest or have any ownership or economic interest in or with respect to the Diavik Joint Venture, and DDM, the Monitor and the Creditor Trust shall take any such further actions as may be reasonably necessary to evidence the disposition of any such interest, as required.
Ancillary Washington Matters	In connection with the completion of the RVO Transaction, Washington and its non-CCAA Debtor Entity affiliates and related parties (collectively, the "**Washington Entities**") shall: (i) transfer to the Creditor Trust all 2L Notes owned by the Washington Entities; and (ii) release the Dominion Entities from all indebtedness and obligations owing by the Dominion Entities to the Washington Entities other than indebtedness relating to the 2L Notes (which indebtedness relating to the 2L Notes shall be transferred to the Creditor Trust pursuant to this Term Sheet and by operation of the RVO Order).
RVO Payments:	In consideration for the Monitor agreeing to undertake the RVO Transaction, Washington shall pay on execution of this Term Sheet, an amount equal to US$250,000 to fund the reasonable and documented professional fees and expenses of the Monitor and its counsel (and other professionals that may be required by the Monitor and its counsel) in analyzing, negotiating and obtaining Court approval of the

	RVO Transaction and implementing the RVO Transaction (the "**Process Costs**"); provided that: (iii) any unused portion of the Process Costs shall be refunded to Washington on closing of the RVO Transaction with Washington; and (iv) in the event that there is an Auction (as defined below) and a party other than Washington is selected by the Monitor as the winning bidder, then the Monitor shall refund the full amount of the Process Costs to Washington from that other party's Auction Deposit (as defined below) upon such other party being formally designated by the Monitor as the winning bidder. On closing of an RVO Transaction with Washington, Washington shall pay US$1,500,000 million (the "**RVO Payment**") in cash, in trust for the creditors of the CCAA Debtor Entities.
Market Opportunity:	There shall be no marketing of the RVO Transaction. However, in the event that, following execution of this Term Sheet by the Parties, the Monitor determines that a marketing period is required, the Monitor shall be entitled to market the RVO to other potentially interested parties who may be interested in a similar transaction (the "**Marketing Period**"). In the event that the Monitor identifies an alternative bidder during the Marketing Period, the Monitor shall conduct an open auction within five (5) days of the conclusion of the Marketing Period at which Washington and other potential bidders shall be permitted to submit binding bids, pursuant to fully executed definitive documentation, for their respective forms of transactions (the "**Auction**"). In order to participate in the Auction, a potential bidder must (a) covenant in writing that it will close the transactions contemplated by its bid on or prior to the Outside Date, (b) acknowledge and agree in writing that it will be responsible for any and all fees incurred by such potential bidder in connection with the formulation, negotiation, submission, and pursuit of its bid, (c) be determined by the Monitor to have sufficient ability (including financial ability) to close on the transactions contemplated by its bid on or prior to the Outside Date, and (d) provide the Monitor with a good-faith

	deposit equal to (A) the Process Costs, plus (B) the greater of (x) $250,000 and (y) 10% of the purchase price reflected in its bid (the "**Auction Deposit**"). At the conclusion of the Auction, the Monitor shall be entitled to select as the winning bid the transaction that provides the highest cash payment to the CCAA Debtor Entities, for the benefit of the creditors thereof, in accordance with their respective priorities. The Monitor shall conduct the Auction in a manner that does not prejudice the value of the Tax Attributes to Washington, and shall consult with Washington and its advisors in this regard. This Term Sheet (as the same may be revised in connection with any Auction) shall qualify as a proper basis for bidding by Washington in respect of the RVO Transaction. Washington shall be entitled to withdraw from the Auction and terminate this Term Sheet without penalty or liability of any kind if: (i) it is not reasonably satisfied that the other parties being permitted to bid at the Auction are proceeding pursuant to bona fide definitive and binding offers, unredacted copies of which shall be made available to Washington upon request in advance of and during the Auction or (ii) if the Monitor conducts the Auction in a manner that Washington reasonably considers to be prejudicial to the benefits contemplated by the RVO Transaction for Washington. Unless Washington otherwise expressly consents in writing, Washington's bid pursuant to this Term Sheet (as the same may be revised in connection with any Auction) will not be deemed to be a "back-up bid" and Washington will not be required under any circumstances to be a back-up bidder. For the avoidance of doubt, in the event that Washington is not the winning bidder at any Auction, Washington shall have no obligations or liabilities in respect of the RVO Transaction, this Term Sheet or the RVO Order. In the event that another bidder is selected as the winning bidder at the Auction or otherwise, then that other bidder shall be responsible for paying the full amount of the Process Costs, and shall refund to Washington (or its designee) the full amount of the Process Costs upon and subject to being

	designated by the Monitor as the winning bidder from the Auction.
Court Approval of RVO Transaction:	The Monitor shall file a motion seeking Court approval of the RVO Transaction, authorization for the Monitor to execute this Term Sheet and entry of the RVO Order on the terms set forth in this Term Sheet, which motion shall be in form and substance acceptable to Washington, acting reasonably. In the event that an Auction is held the Monitor shall file a motion seeking Court approval of the RVO Transaction (as the same may have been modified in connection with the Auction) and entry of the RVO Order (as the same may have been modified in connection with the Auction) within three (3) days of the conclusion of the Auction, which motion shall be in form and substance acceptable to the successful bidder, acting reasonably.
Representations and Warranties of the Parties:	The Monitor represents and warrants to Washington that, pursuant to the terms of the Expanded Powers Order and otherwise, the Monitor has all requisite power and authority to enter into this Term Sheet, to carry out the RVO Transaction contemplated hereby and in the manner contemplated hereby and, subject to entry of the RVO Order and satisfaction of the Closing Conditions, to consummate and implement the RVO Transaction. Washington hereby acknowledges that neither the Monitor, nor any of its representatives, have made any representations, warranties, statements or promises with respect to the RVO Transaction, save and except as are expressly contained in this Term Sheet. Washington represents and warrants to the Monitor that it has all requisite power and authority to enter into this Term Sheet and, subject to entry of the RVO Order and satisfaction of the Closing Conditions, to consummate and implement the RVO Transaction.
Break-Up Fee and Expense Reimbursement:	None, other than that any alternative bidder that is selected in lieu of Washington shall be responsible for the Process Costs as set forth above.

Commercially Reasonable Efforts / Further Assurances:	Washington and the Monitor (whether or not Washington is the successful bidder) shall each use commercially reasonable efforts to satisfy the Closing Conditions (defined below) and implement the RVO Transaction as soon as practicable, but in no event later than the Outside Date (as defined herein). Washington and the Monitor shall cooperate with each other in a timely and commercially reasonable manner to satisfy the Closing Conditions and implement the RVO Transaction soon as practicable. Washington and the Monitor shall duly prepare and execute such further and other documents, and take such further and other actions, as may be reasonably necessary in order to implement and give effect to the RVO Transaction and the transactions and benefits contemplated thereby (collectively, the "**Closing Actions**"). Pursuant to the terms of the RVO Order, upon satisfaction of the Closing Conditions (as defined below) and the Closing Actions, the Monitor shall file the Monitor's Closing Certificate (as defined in the RVO Order) with the Court and the RVO Transaction shall be consummated.
Conditions to Closing (collectively, the "**Closing Conditions**"):	Washington's obligations to consummate the RVO Transaction in accordance with this Term Sheet will be subject to the following conditions, each of which may be modified or waived by Washington in its sole and absolute discretion (collectively, the "**Washington Conditions**"): • in the event of an Auction, Washington shall have been selected by the Monitor as the successful bidder; • the Court shall have entered the RVO Order in the form appended hereto at Appendix A, with only such modifications thereto as may be accepted by Washington in its sole and absolute discretion; • the RVO Order shall have become a final order no longer subject to appeal, reversal or stay (a "**Final Order**") by no later than November 15, 2021 (the "**Outside Date**");

	• on closing of the RVO Transaction, all right, title and interest of the Dominion Entities in and to the Diavik Joint Venture and the Diavik Joint Venture Agreement shall have been transferred to the Creditor Trust or otherwise disposed of pursuant to the Diavik Settlement in a manner satisfactory to Washington in its sole and absolute discretion; • on closing of the RVO Transaction, Washington and its affiliates shall not have any control over, or any legal, beneficial or economic interest in, the Creditor Trust, the Transferred Assets, the Diavik Joint Venture or the Diavik Joint Venture Agreement; and • Washington must have control over or be satisfied in its sole discretion with any 2019, 2020 and 2021 tax returns that have been or are to be filed in respect of any of the CCAA Debtor Entities. The Monitor and the CCAA Debtor Entities' obligations to consummate the RVO Transaction will be subject to the following condition: • Washington (or the winning bidder, if different from Washington) shall have paid the RVO Payment to the Monitor within three (3) Business Days of satisfaction of the Washington Conditions (or such other conditions as may be agreed with the successful bidder). The closing date for the RVO Transaction shall be as soon as practicable after all of the Closing Conditions and Closing Actions have been satisfied or waived, but in all events no later than the Outside Date (unless Washington expressly consents in writing (which may be done by way of email from Goodmans) to an extension of the Outside Date). For the avoidance of doubt, upon closing of the RVO Transaction, Washington shall have no interest (economic or otherwise) in the Diavik Joint Venture or any of the other Transferred Assets.
Termination Rights:	The Monitor and the CCAA Debtor Entities shall be entitled to terminate this Term Sheet if:

	• Washington or the winning bidder (if the winning bidder is not Washington) fails to make the RVO Payment in accordance with the terms hereof; • the Court does not enter the RVO Order in the form attached as Appendix A (or with only such modifications thereto as may be accepted by Washington or the successful bidder in its sole and absolute discretion), which RVO Order shall become a Final Order on or prior to the Outside Date; • any court or other governmental body shall have issued, enacted, entered, withdrawn, overturned, promulgated or enforced any law, regulation, opinion, guidance or order restraining, enjoining or otherwise prohibiting the transactions contemplated by this Term Sheet; • the RVO Order is set aside on appeal or otherwise; or • the RVO Transaction does not close on or prior to the Outside Date. Washington shall be entitled to terminate this Term Sheet if: • Washington is not the successful bidder at any Auction; • the Monitor fails to conduct the Auction (if necessary) in accordance with this Term Sheet; • the Court does not enter the RVO Order or does not enter the RVO Order in a form acceptable to Washington in its sole and absolute discretion; • any court or other governmental body shall have issued, enacted, entered, withdrawn, overturned, promulgated or enforced any law, regulation, opinion, guidance or order restraining, enjoining or otherwise prohibiting the transactions contemplated by this Term Sheet; • the RVO Order does not become a Final Order before the Outside Date; or

	• the RVO Transaction does not close on or prior to the Outside Date.
Definitive Documentation:	The RVO Transaction shall be implemented pursuant to and by operation of this Term Sheet and the RVO Order, and upon filing of the Monitor's Closing Certificate. To the extent of any inconsistency between this Term Sheet and the terms of the RVO Order, the terms of the RVO Order shall govern.
Amendment:	This Term Sheet may not be amended, supplemented, amended and restated, modified, or waived except in a writing signed by Washington and the Monitor.
Counterpart execution:	This Term Sheet may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Any executed counterpart signature page to this Term Sheet may be delivered by electronic mail ("e-mail") or other electronic imaging means, which shall be deemed to be an original for the purposes of this Term Sheet.
Governing Law:	Alberta
Dispute Resolution:	Alberta Court of Queen's Bench

* * *

[*Appendix A – Form of RVO Order*]

* * *

[*Signature Pages*]

7179390

APPENDIX “D”

Transcript of Proceedings before this Honourable Court
on December 11, 2020

Action No. 2001-05630
E-File Name: CVQ20DOMINION
Appeal No._____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

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., and DOMINION DIAMOND MARKETING CORPORATION

P R O C E E D I N G S

Calgary, Alberta
December 11, 2020

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Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

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December 11, 2020	Afternoon Session
The Honourable Madam Justice Eidsvik (remote appearance)	Court of Queen's Bench of Alberta
P.L. Rubin (remote appearance)	For Dominion Diamond Mines UCL, Dominion Diamond Delaware Co. LLC, Dominion Diamond Canada ULC, Washington Diamond Investments LLC, Dominion Diamond Holdings LLC, Dominion Finco Inc.
M.I.A. Buttery, QC (remote appearance)	For the Government of Northwest Territories
C.D. Simard (remote appearance)	For the Monitor
K.J. Meyer (remote appearance)	For the Monitor
A. Astritis (remote appearance)	For Public Service Alliance of Canada and the Union of Northern Workers
M. Wasserman (remote appearance)	For First Lien Lenders
E. Paplawski (remote appearance)	For First Lien Lenders
K. Kashuba (remote appearance)	For Ad Hoc Group of Bondholders
T. DeMarinis (remote appearance)	For Ad Hoc Group of Bondholders
J.J. Salmas (remote appearance)	For Wilmington Trust
T.M. Warner (remote appearance)	For Dene Dyno Nobel and Dyno Novel Canada Inc.
S.F. Collins (remote appearance)	For Diavik Diamond Mines (2012) Inc.
J. Regush (remote appearance)	For Hay River Heavy Truck and Dene Aurora Mining Ltd.
J. Pawlyk (remote appearance)	For SMS Equipment Inc and Kitikmeot BBE Expediting Ltd.
J. Schultz (remote appearance)	For Procon Mining & Tunnelling Ltd.
P. Mak	Court Clerk

THE COURT: Thank you very much. All right. Good afternoon everyone. Nice to see a few of you, some of you are hidden away.

Discussion

MR. RUBIN: My Lady, it's Mr. Rubin, are you able to hear me?

THE COURT: Yes, I am. Thank you very much.

MR. RUBIN: Thank you My Lady. I just realized I'm having trouble with the video portion, but if you can hear me I will get going because I know time is short.

THE COURT: Okay. No problem. I have got the afternoon devoted to you, but it is a Friday, I am just saying.

MR. RUBIN: Yes, understood. I think we have about -- I think I counted in excess of 60 participants on -- I can go through who I think is on who maybe is making submissions, My Lady, or they can introduce themselves, whether or not they want to make submissions, I'm obviously in your hands on that.

THE COURT: Okay, why do you not go through the initial list and then we'll ask if you have missed anybody. That would probably be the best way to do it.

MR. RUBIN: Very good. So from acting for the First Lien Lenders, I believe we have Mr. Wasserman, he's on the call or on this WebEx call and I think his colleague, Ms. Paplawski, is on, as well.

On behalf of the purchaser, there's someone from the Ad Hoc Group, Mr. Kashuba is on, you've heard from Mr. Kashuba prior in previous matters and I think his colleague, Mr. DeMarinis is also on, as well.

I do see, Mr. Simard, he's on as well as Ms. Meyer. Mr. Simard and Ms. Meyer are counsel to the Monitor FTI.

I do see Ms. Buttery on the line, you've heard from her previously and Ms. Buttery is counsel to the Government of the Northwest Territories.

Mr. Salmas is on the line. Mr. Salmas is counsel to Wilmington Trust, who is the noteholder Trustee.

I presume Mr. Collins is on, I haven't heard from him -- but I think I do actually see him. Mr. Collins is on; he is counsel for DDMI.

THE COURT: Yes, I see him there.

MR. RUBIN: And he's for the 60 percent joint venture holder at Diavik.

We also have Mr. Astritis. Mr. Astritis is counsel to PSAC, which is the union of northern workers and Mr. Astritis introduced himself earlier.

THE COURT: Yes.

MR. RUBIN: We also have Mr. Warner, who is on, he is counsel to Dene Dyno, they are the largest lienholder, let me put it that way.

THE COURT: Right.

MR. RUBIN: We have a couple of other counsel for other lienholders, one is Mr. Regush, R-E-G-U-S-H, I apologize how I'm pronouncing his name wrong, but he is counsel to Hay River and Dene Aurora, who are also lienholders.

I believe Mr. Pawlyk is also on the line. Mr. Pawlyk is counsel to SMS Equipment, which is a lienholder. Mr. Pawlyk circulated an email prior to the hearing indicating that he may be opposing the application or at least would like money set aside for his client's lien claim.

Other than that, Mr. McConvey, M-C-C-O-N-V-E-Y, has introduced himself, I believe he is either counsel or an individual representing one of the bondholders, but I'm not clear, I don't know who he is an I apologize if I've mis-stated that. But Mr. McConvey, is on the line, as well.

THE COURT: Oh I see that you are for Rossport Investment Bondholders, is that right? Oh I lost you there your voice is not coming through. No still don't hear you -- oh there you go -- I heard you briefly.

MR. RUBIN: Mr. McConvey, I think you're on mute. I would appear that he's still on mute but perhaps he will figure that out if he does want to make submissions, My Lady.

THE COURT: Okay.

MR. MCCONVEY: Can you hear me now?

THE COURT: Yes, we can, yes, there we go.

MR. MCCONVEY: An individual with Rossport Investments, we are

bondholders.

THE COURT: Okay. So you are an individual, okay, right. All right.

MR. RUBIN: And My Lady, that's the list that I had and I'm sure there are others, 'cause as I said, there's in excess of 60 people here.

THE COURT: Right.

MR. RUBIN: Actually Angela our CFO is on as well.

THE COURT: Okay. All right. Well we have got, as you would say, the usual suspects. So all right, why do we not get going then. I have received quite a bit of material, hopefully everything I need for today anyways and you have got an application and the Monitor -- and you want to have this matters stayed and then you have your application for sale and DDMI has filed a brief outlining certain things that they would like to see. So maybe you can take it away, Mr. Rubin and get me caught up as to what has been going on and what you would like from me today.

Submissions by Mr. Rubin

MR. RUBIN: Yes, My Lady, and because I'm having technical problems, I will keep the -- I have my laptop on, but I apologize if I'm not looking directly on you, but I need to access CaseLines --

THE COURT: That is okay.

MR. RUBIN: -- in order to access case law at a certain point. So I apologize for that.

I guess we are seeking approval of a going concern transaction today, My Lady, and so after eight months in *CCAA* protection, I'm happy to report we have a going concern restructuring transaction that will involve a restart of the Ekati Mine by the end of January. So that is six or seven weeks from today.

This is obviously very good new. A lot of hard work has gone into getting to today and this is a very significant, it's a very positive step for the company for the Northern communities, for hundreds of employees and contractors and many other stakeholders. This transaction has the support of the first lien lenders and it also has support of the Monitor.

It obviously has the support of the two purchasing entities which are Brigade and DDJ and they're represented by the Tory's firm, that's Mr. Kashuba's client. And it also has the support of another bondholder named Western Asset Management and while not a purchaser, they are a signatory to a support agreement. And all three of those parties also are -- or happen to own second lien notes and together they hold approximately 45 percent of those second lien notes, as I understand it.

But to be clear this is not a credit bid. You've heard that before. This is not a credit bid from the second lien -- or excuse me -- from the purchasers. This is not a noteholder structured transaction and it's not a transaction that has been advanced by those noteholders qua noteholder. Rather it's a separate purchase transaction which also happens where the purchasers also happen to own or hold second lien notes.

I can also advise, My Lady, that the company has been in discussions with numerous critical trade suppliers including lien claimants with respect to settlement and resolution of their claims and there have been a number of those settlements that have been reached and those settled claims are being assumed and paid through the transaction. And that is obviously a very significant matter obviously for the benefit of the company and those trade creditors.

The purchases have agreed to make available the critical vendors and that's not just any claimants, but the critical vendors, up to US $20.5 million. This is of significant benefit to critical suppliers and as I mentioned, those trade creditors and lien claimants have, on a confidential basis, settled their claims which has assisted the company in moving forward with a going concern transaction.

It is, I will say unfortunate, but perhaps not surprising that there is no recovery for the second lien noteholders as a class. You've heard that from us before and of course, there is no recovery for unsecured creditors who are not critical vendors that are being assumed by the purchaser.

But as I started out by saying, if this transaction is approved today and there is absolute urgency to this and I will come back to it, this plan contemplates a restarting of this mine by the end of January.

I did want to mention and talk a little bit about service. There obviously are a lot of parties involved in a transaction such as this, so those -- it includes the first lien lenders and again, the first lien lenders are a consortium of financial institutions, so it's not just one party. In addition, there's obviously the purchasers and there's a group of those purchasers. The Sureties have been involved in discussions and so has Dominion, so there are a lot of

moving parts, there are a lot of people.

And those parties have been working non-stop and when I say "non-stop", I mean they have been working every, single day for weeks and to be honest it feels like months and it actually might be months. But we've got to a point now where we have a deal, we have a signed APA.

All of this, that is the signed APA happened on Sunday evening and so the asset purchase agreement or APA and the form of approval and vesting order was sent out to the service list on Sunday and obviously we couldn't send it out before we had a deal. So we are working on five days of service, not seven, but of course, there was simply nothing we could do about that. There are a lot of people working very hard and we got the material out as soon as we could.

There is an affidavit from Mr. Brendan Bell, you've seen his affidavits before. Mr. Bell in the independent director and I will take you to his affidavit briefly.

In terms of opposition today, unfortunately it looks like there may still be some oppositions. Mr. Collins' client, DDMI again appears to be opposing the relief being sought or maybe perhaps more accurately, aspects of the relief being sought, but their opposition to those aspects does put a roadblock in front of this transaction and I will obviously have more to say about their position and their opposition, as I'm sure other stakeholders will.

I also understand that there may be a lien claimant who is opposing the transaction, but we will hear from them.

I did also, My Lady, want to talk a little bit about whether there are any alternatives and I say alternatives, in respect of today's application. And I will say this; that we are at the end of this restructuring and that after eight months and a very, very comprehensive sales and investment solicitation process that you've heard about, that the Court has approved, after eight months there is only one going concern transaction and it is the one that is before the Court.

Your Ladyship has previously heard that we have a stalking horse bidder, that transaction fell away because there was an impasse reached with the Sureties and that I can report that the -- this purchasing group has come to an agreement and there are what I call, Surety Support Confirmation letters that have been sent, so that is obviously very good news.

The transaction is supported by many, many parties. I've mentioned the Monitor, I've mentioned the first lien lenders already, but I will say that as a result of this transaction, we will see the Government of the Northwest Territories paid the amounts that are owing to

them. We will also see, as I mentioned, approximately $20 million US going to critical vendors or let's call that $26 million Canadian through the assumption of obligations.

This will see the Ekati Mine reopen. This will substantially all employee jobs being saved, along with their pension and their benefits. We will see contracts being saved with those critical vendors. As a result of this, we will see impact benefit agreements being maintained. We will see tax revenues start to be generated for the benefit of the North. We will also -- because there will be no shutdown, we will see environment commitments being maintained.

And I pause here to say; that if this transaction is not approved, the only alternative at this time would appear to be liquidation. We don't have another transaction on the backburner. We're at the end of the line, so to speak. And I also say that this transaction needs to be approved today, My Lady, and there are a variety of reasons for that, one of which is the company is simply not able to absorb the very, very significant continued costs of the *CCAA* process. They need to get out of the *CCAA*. The company needs to reopen the mine and start producing diamonds.

And, in addition, the framework of this transaction is structured on an economic model that has the mine reopening because without the mine reopening the income and revenue is not being generated to support the transaction and the continued operation of the business. To put this simply, My Lady, we have a melting ice cube and we need to move forward and we need to move forward ASAP.

In addition, there are complicating matters and complicating regulatory approval mechanisms that need to be advanced ASAP in order to complete this transaction. This is not simply a lawyers get in a room; sign some documents and we close. There is consultation that is needed. There's a regulatory process through Ms. Buttery's client that needs to be undertaken and we need to try and do that by the end of January. So we need to get started today.

And then finally, in our submission, this transaction fulfills the very purpose of the *CCAA*, My Lady, this is what the goal and the purposes of the *CCAA* is, is to allow a company like this to restructure and to carry on.

I would like to take you to the -- to the asset purchase agreement and for that I will need to take you to CaseLines and I'm sorry, My Lady, I'm going to need to take a moment here because of my computer problems. I have lost my CaseLines for the time being -- here it is.

And what I would like to do is simply to take you through the APA and I would like to

start at page 17.2-45 -- 17.2-45 -- and perhaps you could let me know when you are there, My Lady.

THE COURT: 2-45?

MR. RUBIN: Yes, 17.2-45.

THE COURT: Oh -45, oh it is part of the notice of application -- cause I was actually looking up the one Mr. Collins sent, 'cause it is highlighted with changes he wants.

MR. RUBIN: Yes I will come back -- so this is attached to the APA and yes, Mr. Collins has redrafted the APA and those changes are not acceptable to the purchasers, or the first lien lenders or the company and in our submission, they are unnecessary. And I will -- and we will -- I'm sure we will discuss that.

So if you have 17.2-45, that's Article 2 of the APA.

THE COURT: I am getting there, okay that is it, I am here, yes.

MR. RUBIN: Okay. So if I could scroll down that page and start with Article 3, which is Purchase and Sale Assumption of Certain Liabilities.

THE COURT: M-hm --

MR. RUBIN: So this is the 3.1 or the acquired assets and as you can see in 3.1 it says: (as read)

> Subject to the terms and conditions set forth in this agreement at closing the seller shall assign [and so obviously Dominion, our client, is the seller] shall sell, assign, transfer and deliver to the purchaser and the purchaser shall purchase, acquire and take assignment and delivery of all of the seller's right, title and interest.

So what's being sold is Dominion's right, title and interest because of course, we can't sell what we don't own. We're selling our right, title and interest in the assets and property of the sellers, again what we own, other than excluded assets and they're being sold free and clear of claims and encumbrances, which is standard of whatever nature or kind other than permitted encumbrance.

So in paragraph 3.1 the APA recognizes that we can't sell what we don't own. You will

see that the APA and I will take you to the form of order that we're seeking, do not override -- I want to be careful on this and we'll take you to the provision -- do not override the security that's granted to Mr. Collins' client. And what the APA does is it merely transfers, what I will call, residual rights.

And if you could turn over the page to 3.1(b) in the APA

THE COURT: Sorry over to where? Paragraph what?

MR. RUBIN: The next page is which is paragraph (b) as in Bob.

THE COURT: Yes, I'm there, (b). Okay.

MR. RUBIN: And so this is, in addition, this is part of what's being acquired by the purchaser, there's an assignment of Dominion's rights and interests and again, I want to be clear, if there are no rights and interests that Dominion can assign, then the purchaser isn't purchasing them. So there's an assignment of all the seller's rights and interests in relation to the receipt of realizations and recoveries from or in respect of the Diavik joint venture interest and that's defined as the Diavik realization assets.

So what this is, is essentially the purchasers purchasing a receivable. If DDMI is obligation to and does return diamonds to Dominion and deliver those diamonds to Dominion as per your prior orders then that will be a receivable that the purchaser is purchasing. And so as Your Ladyship already ordered, you may recall on June 16th, we had a contested application with Mr. Collins and his client and then you'll recall you made an order on June 16th related to cover payments and how Mr. Collins' client is entitled to keep diamonds in an amount to cover those cover payments, according to the DICAN valuation.

THE COURT: Right.

MR. RUBIN: And then you'll recall on October 30th, Mr. Collins brought an application to vary your June 19th order and you denied that application and so as of today's date, to be clear, DDMI has not delivered any diamonds under your orders and there's a dispute between our client and DDMI as to whether they should be delivering diamonds.

Dominion believes that there's about $16 million US of excess diamonds they should be delivering, that was at the end of October, so about $20 million DDMI says they're over secured, but DMMI contests that. They disagree and that is an issue that we'll have to bring back before this Court and it's not an issue for today.

But the point is, that if and when -- so My Lady, if and when diamonds are delivered by DDMI to Dominion pursuant to your prior orders, so if and when they're delivered and hopefully they are, the purchaser is purchasing those diamonds, once they're delivered. And so that is why this is characterized as a purchase of a receivable, it is really no more complicated than that.

THE COURT: So are you saying that in terms of sorting it out, you will -- you will sort out that issue later?

MR. RUBIN: So what we'll do is, whether Mr. Collins' client is required to deliver diamonds or not, there's a dispute as to the interpretation of your order, that will have to come back before you on another day and we can't -- it's not being decided today.

THE COURT: Okay.

MR. RUBIN: What we are seeking in order today is that this purchase agreement and the order be approved and what the purchaser is buying are those receivables, if and when, Dominion is required to deliver them to -- if DDMI is required to deliver them to Dominion pursuant to your prior orders. That's all this is. They're buying a receivable. If there's no receivable, if there's no obligation on DDMI to deliver diamonds or proceeds thereof, then their purchasing a receivable but there is no receivable. So that's why this is just simply a receivable. If DMMI owes and must deliver diamonds, they're being purchased.

THE COURT: Okay, are you going to deal with -- at this point with what Mr. Collins says with respect to that or are you going to leave that for later?

MR. RUBIN: Well, I'll deal with it a general sense and then we'll let Mr. Collins make his submissions.

THE COURT: Okay. All right.

MR. RUBIN: But in our respectful view, a disproportionate amount of time has been spent dealing with DDMI issues and I fear it's going to continue today in the face of what's an urgent and critical application for this company.

And I do note DDMI's most recent affidavit complains about what they say is our late delivery of material, obviously it's not by choice, we're dealing with a number of parties trying to save this business.

THE COURT: Right.

MR. RUBIN: But I would note that Mr. Collins' client has had sufficient time to prepare an affidavit, prepare a written legal brief and in fact, prepare a revised form of APA. And so what DDMI is attempting to do is to reopen a heavily negotiated agreement amongst a syndicate of financial institutions, noteholder groups and Dominion and in our view, I want to be clear on this because I am concerned that Mr. Collins will take us into a rabbit hole that doesn't need to be undertaken today. That in our respectful view, no changes, My Lady, no changes need to be made to the APA and in our view DDMI is not adversely affected by this transaction.

If there's an impact on DDMI, and we don't say that there is, it's a result of prior orders, which they're appealing and that's fine, but this transaction does not move the needle. You will see, My Lady --

THE COURT: And what happens -- what happens with respect to those appeals in terms of these orders? Are you saying that since this is carved out they can be dealt with later?

MR. RUBIN: Well, the issues that DDMI is raising, I say will be matters for their appear if they're granted leave, but the issue today is simply again, coming back to its most basic, the purchaser is simply buying a receivable. If DDMI has to deliver diamonds to Dominion, then they're purchased assets and the purchaser is purchasing it free and clear of DDMI's security. If DDMI does not have to deliver diamonds pursuant to your order or pursuant to a different order from the Court of Appeal, well then they don't have to deliver diamonds and there's no receivable that the purchaser will be purchasing. It is no more complicated than that.

And I will take you to our approval and vesting order and in our approval and vesting order we have added an override provision to ensure that nothing in here could be interpreted as taking away DDMI's security rights in those diamonds that they hold.

THE COURT: Cause I think at base that was their problem. They also suggested I think that they wanted -- like if they were delivered that they would still have security over them if they were in your possession, right? That was also what they were saying.

MR. RUBIN: Yes and let me address that issue just right now, My Lady, since you've asked.

THE COURT: Right, we have to deal with all of this, so whenever is convenient to you.

MR. RUBIN: So why don't I come back to that, My Lady, and I'll just finish taking you through the APA.

THE COURT: Okay.

MR. RUBIN: And so these again we're on page 22 of the APA or page 46 of CaseLines, so these are the acquired assets.

THE COURT: Okay.

MR. RUBIN: And you can see that, you know, this is -- you know on paragraph (c) they're buying Ekati, which is not Diavik, joint venture interest. You can see in (g) that they're buying cash and cash equivalents and you can see in (h) that they're buying accounts receivable, again trade and non-trade accounts receivable that is essentially what they're buying from -- with respect to Diavik and DDMI, as well.

And so further down, paragraph (l) which is at the top of page 47 of CaseLines, you can see that they're purchasing essential contracts and those contracts that are set out on schedule A, and I want to be clear here, that list of assigned contracts is not complete, but what the purchaser is going to do, like the stalking horse purchaser was going to do, is decide which contracts they need to carry on the business and they will add or remove contracts according to what they need to carry on the business. And then further down in (p) you can see all assumed plans, so they are as part of the acquired assets, assuming plans and these are the employee plans, so this is the pension plan and those kinds of things, so that's what the purchaser is doing.

And then if I can scroll down to -- I'm just going to use the pages of APA, but scroll down to page 34, which is the next page.

THE COURT: Okay.

MR. RUBIN: And 3.2, so this is what's excluded and the very first thing that's excluded is the Diavik joint venture agreement. So the agreement is clear that the purchaser is not purchasing the Diavik joint venture agreement, the purchaser is not stepping into to -- well let just say this -- they're not purchasing a joint venture agreement, what they're purchasing as I already said, are the receivables to the extent there are any receivables that are paid to Dominion by DDMI.

THE COURT: And I think Mr. Collins had wanted you to make it clear that they are not purchasing anything in that mine, like just saying it out -- instead of saying, you know, the Diavik joint venture agreement.

MR. RUBIN: He does, he wants to amend the APA, but there's no need for his amendments, in fact, his amendments in our submission are just -- they simply add nothing to this transaction.

THE COURT: Okay. So are you saying that he has just put more specifically what is contained in this Diavik joint venture agreement under 3.2(a); is that what you are saying?

MR. RUBIN: Yes, what I will say, is in our view the APA is clear. Mr. Collins has attached his material and email from the Monitor which the Monitor has expressed their understanding of what the transaction is. Mr. Wasserman and I have spoken to Mr. Collins yesterday, we've included -- it's clear in the APA we're not buying the Diavik joint venture agreement. We've got an override provision in the order which I'll take you to and nothing else needs to be changed in the APA to make it clear what is occurring.

THE COURT: Okay.

MR. RUBIN: Okay. So that paragraph sets out the excluded assets and then we scroll down to the next page, page 25, these are the assumed liabilities and you can see on page 25 in 3.3 the purchaser is assuming all of the liabilities in (a) for any assigned contracts, in paragraph (b) they're assuming trade payables as defined and set out therein, in (c) they're assuming the liabilities for transferred employees; so that's all fairly standard stuff.

THE COURT: Right.

MR. RUBIN: And then what I would like to do is turn to paragraph 4.1, which is on page 30 of the APA so it's down about four or five pages.

THE COURT: Right.

MR. RUBIN: And Article 4, this is purchase price and payment, so you can see what the purchaser is doing here, is they are -- the purchase price of the aggravate of these amounts, the pre-filing indebtedness, that's the $70 million US that's owing to Mr. Wasserman's client, that is the first lien lenders, they're owed more than $70 million, but that's what this number references; (b) the amount of the indemnity

assumption, so they're assuming the obligations to the Sureties, that's the Canadian $280 million amount.

THE COURT: Sorry about that -- that is the -- that is problem with this hearing, right? It is never a good hearing if you do not hear a dog. Sorry, about that.

MR. RUBIN: So the purchase price there, these are obviously very significant amounts that are being assumed by the purchaser in 4.1. And then on the next page in 4.3, you can see that in section 4.3, that the purchaser is going to make a new working capital facility available to Dominion in the amount of US $70 million, that's in 4.3. So the purchaser is also going to fund working capital of the business going forward.

THE COURT: Right.

MR. RUBIN: Right and so then, My Lady, if I can ask you to turn to, it might be better for you to find the page for this one, 17.2-66 and 17-2.66 (sic) --

THE COURT: Sorry about that -- okay -- I am with you now, where are at now, 4.6?

MR. RUBIN: 17.2-66, so this is Article 7.1 and again it's 17.2-66.

THE COURT: Okay. Give me a second. Okay.

MR. RUBIN: And at the bottom of that page you can see there's reference, the last two paragraphs, to a wind down account and Diavik realization account. And so what is being done is there's going be $250,000 set aside to, you know, close out the *CCAA* and the estate in (iii) and in paragraph 4, there's $1 million that will be set aside and this Diavik realization account is going to be a bank account that will cover the cost to, as it says, administer the Diavik realizations assets. Someone has to monitor, you know, whether there are funds coming in from DDMI and in what amounts and so all of this has been set out.

And again, this is essentially an account in order to monitor that receivable and to ensure that that receivable makes its way to Dominion or that assignee to the extent again that it's payable pursuant to your prior orders.

Next, if I can go to page -- CaseLines page 81, so it's 17.2-81, so 17.2-81, and this is the termination provision in the APA and again, we wanted to bring this paragraph to your

attention is that at the bottom of page 57 of the APA, if you're there, My Lady?

THE COURT: Yes, almost. We need your assistant to be working the -- so we don't have to scroll so much.

MR. RUBIN: Why don't I try to use the --

THE COURT: I am there, I am there now, termination of agreement. It just is easier if you use that find function anyways -- I am there. Thank you.

MR. RUBIN: Okay. So the bottom of the page, termination by bidders and you can see here the one of the termination rights of the bidders is if the sale order has not been issued on or prior to December 11th. And again, the reason for that date is the need to get the mine operating by the end of January and because of the significant amount of money that needs to be spent and the authorizations and the process and the consultants we need to do -- that needs to occur.

THE COURT: What is that date? Oh yes, okay, termination by bidders -- by bidders the sale order shall not have been issued on or prior to December 11th.

MR. RUBIN: Yes.

THE COURT: Okay, got it.

MR. RUBIN: And the reason obviously is we're coming into Christmas --

THE COURT: Right.

MR. RUBIN: -- and again, in order to get this mine up and running in the next six to seven weeks a lot needs to occur and a lot of money needs to be spent.

THE COURT: Okay.

MR. RUBIN: Just turning over or down I guess, two page, to page 59.

THE COURT: Okay.

MR. RUBIN: And there's a break-up fee and this agreement has a break-up fee whereby the bidders would be paid $2.5 million US, which is the same break-up fee that that stalking horse bidder was going to get and which this Court already approved, in the context of the stalking horse bid, but it's only payable in certain circumstances that are set out in 12.4(a). It's only payable if the agreement is terminated, other than because of the bidder's non-compliance. There also has to be an alternate transaction within 9 months, in (ii) and importantly that alternate transaction has to result in the first lien lenders, their pre-filing credit agreement being repaid in full, in cash, which this transaction doesn't do.

There are a lot of things that would have to happen in order for that break fee to be paid, but it is something that the company has agreed to and the Monitor has supported, as well. And then in paragraph (b) there is a charge that is being sought to backstop that break-up fee and I'll take you to that in the court order.

I will also say this, when we're talking about the amount of fees here. The fees are significant, there's no doubt -- there is no doubt about that. The fees, as I said, are significant, My Lady. And there are a variety of reasons for that, they include things such as the number of parties that are involved, you know, we have the company, we have the first lien lenders, we have the stalking horse bidder and we have the Ad Hoc Group, we have the noteholder trustee, there's some Monitor costs, they are small in comparison. It's also expensive, as a result of the fact that many of the secured creditors, the stalking horse bidder, the note trustee have foreign based operations and so in many cases, there are Canadian and US counsel involved and some of these agreements are governed by US law.

It's also complicated by the -- the complexity of this asset and the sales process and the fighting that's gone on. That being said there is no value in this estate for unsecured creditors and there's no value for the secured noteholders as a group and so while these costs are significant they are, in effect, being borne by the first lien lenders and the purchaser and they're both supporting this transaction. But again, getting back to urgency, we do need to stop the *CCAA* costs as soon as we can, we need to get back into an operating state, we need to close this transaction.

There are conditions to closing, My Lady, I'm not going to take you to them in the APA, but as I mentioned earlier wo do have these Sureties Support Confirmations so that is a significant step forward. One of the conditions to closing is obviously Court approval and then there's the regulatory approvals, obtaining the consents that might be necessary down the road to assign key contracts, but obviously a significant step forward.

I do want to, I think, take you to the independent Director's affidavit and that is Mr. Bell and I will direct you to there, I hope and let's see if this works a bit better, My Lady.

THE COURT: I am there actually, I got it.

MR. RUBIN: Very good. So I am just going to scan through Mr. Bell's affidavit, just starting in the first, at the introduction, but I am just going to just give you a sense of what Mr. Bell has done in his affidavit. You can see on page 3 of his affidavit that he outlines Dominion sales efforts and the process. You've heard a lot about this, you approved the sale process, but Mr. Bell does go through that process and the work that was undertaken. On page 4, he talks about the Washington stalking horse bid and the SISP and he goes through what -- what occurred with respect to that bid and the sales process.

On page 5 of the affidavit between paragraphs 17 and 18, he talks about the unavailability, that's the heading of the Washington stalking horse bid and how the company then pursued alternate restructuring options. You've already heard about this; you've heard about the impasse that was reached with the sureties at that time. We now don't have the issue, but he does talk about new efforts that were made to pursue those alternative transactions.

THE COURT: Right.

MR. RUBIN: And then he goes onto talk about the Ad Hoc Group transaction in paragraph 7. Now, I won't go through this because I've actually taken you to -- I've taken you to the APA and many of the key provisions in that APA, but Mr. Bell does set out some of the key terms there in a chart format to help the reader.

And then scrolling down past the chart, I'm into about paragraph 31 now and at paragraph 31, Mr. Bell talks about how saving Dominion's business is in the best interest of its stakeholders. At paragraph 32, My Lady, he talks about this is a unique asset, he talks about how it's a material taxpayer, that is Dominion, how it's the second largest non-governmental employer, with 40 percent of its employees being Northern residents. He talks about a continuation of the mine in paragraph 32, as a going concern is critical to the Northwest Territories, Northern based employees, its contractors, communities generally and he says that importance cannot be overstated.

He has said in paragraph 33, that given its strategic importance once of his primary considerations has been trying to find a restructuring path that provides the best opportunity to restart and we have done that now and this is before you today. He talks about in paragraph 34, how the purchase agreement contemplates the purchaser will assume a number of going forward obligations and I've already taken you through to that -- to those portions in the APA.

At paragraph 37, he talks about the market exposure, he talks about how he's been in prior review processes and he references his prior affidavits. And he says at paragraph 38, that with the stalking horse bid no longer being available, based on his knowledge and his experience in the diamond mining industry including participating in three prior strategic processes, in his view the transaction contemplated is the best executable alternative for this time and in the circumstances and is in the best interests of Dominion and its stakeholders.

That is the evidence from Mr. Bell along with the various other affidavits that you have seen.

THE COURT: Okay. Thank you Mr. Rubin.

MR. RUBIN: I would like to turn to, I think the order, My Lady, and just take you through that I will again try to direct you to the order.

THE COURT: Okay.

MR. RUBIN: And see if this works.

THE COURT: Approval and vesting orders number 6, 17.24, it is listed there, so it’s an easy one to find, its listed there so …

MR. RUBIN: Excellent. And so we served this form of order on -- a form of order on Sunday, we then have made three changes to this form of order that is the one that you're on right now, we sent this out earlier this morning. So there are three changes and they are generally -- we had some discussions with one of the royalty holders and we worked through an agreement with them and you'll see that paragraph. We've included the override provision that deals with DDMI that I referenced earlier, I drafted that provision and it was sent to Mr. Collins I think around 7:00 -- 7:00 my time, might have been 8:00 his time last night. He's not in favour, does not agree with our language, but we believe that our language does the trick and that no more is needed and I'll take you to that.

And then what we've also done is moved some of the lien settlements we've had onto the permitted encumbrance list. So attached to the approval and vesting order is a list of things that are vested off and we've come to settlements with a number of these critical vendors and we've moved them to the permitted encumbrances, so that their charges will remain on title because we have settlements with them.

And so if I could take you through this form of approval and vesting order and you know,

much of it is, sort of, model form language and I will start with paragraph 3, which is the approval of the transaction, do you have that My Lady?

THE COURT: Yes I do, let's see paragraph 3, page 17.3-432?

MR. RUBIN: Yes.

THE COURT: Okay.

MR. RUBIN: And so this fairly standard language which approves the transaction in its entirely and in the middle of the paragraph, I talks about how the sellers, which is our clients, are authorized to complete the transaction. It authorizes us to take such additional steps as may be necessary to complete the transaction. So that's fairly standard.

The vesting paragraph, from paragraph 4, is again uses the standard language which is, you know, the use of a Monitor's certificate and once you have that the assets are purchased free and clear from any other encumbrances and as you scroll down to the next page on page 4, the encumbrances which are being vested off are set out in (a), (b) and (c), in a general way, but then what it does after paragraphs (a), (b), (c) and (d), is that it allows certain permitted encumbrances. So this paragraph vests of personal property, security interests, land title interests, any other charges, any other liens, but it permits the permitted encumbrances in Schedule E.

Paragraph 5, is a new paragraph and a different paragraph, not in the model order and what it does is it references Schedule E, which is that list of permitted encumbrances and it says: (as read)

> If Schedule E to this order designates any permitted encumbrances and if prior to closing those are determined to relate to agreements that are not assigned contracts or the company is not taking a contract, then such permitted encumbrances shall become encumbrances and the seller shall give prompt notice thereof to the beneficiaries and they have to be given at least ten days prior written notice.

So what this does is, is that if there's a change then ten days notice has to be given and has to be given to those parties in writing and those parties can then, if they've got an issue, can raise it. But the idea here is that they're given written notice, ten days prior to closing to the extent that they are going to know longer be assigned contracts.

THE COURT: Okay. So when is the closing again, if you could

remind me?

MR. RUBIN: January 29th, I believe, is the anticipated closing date, it might be the 28th but probably the 29th.

THE COURT: Okay.

MR. RUBIN: Paragraphs 6 and 7, again are model order type language, so is paragraph 8 and so is 9 and 10, so these are the usual paragraphs that assist us in closing our transaction providing direction to applicable registrars et cetera to assist in closing. Paragraph 11, if you want to stop there -- so paragraph 11 talks about how upon completion of the transaction, anyone who has claims of any kind whatsoever with respect to the acquired assets, save and except permitted encumbrances, of course, shall stand absolutely and forever barred. So this is just the language that makes sure that once those assets are transferred, if they're transferred free and clear, people are barred from coming after the purchaser.

And then I do want us to go to paragraph 15. So this is the new paragraph, you can see it should be in blue.

THE COURT: Okay.

MR. RUBIN: So this is the paragraph that we have added to provide that comfort, additional comfort to DDMI and so I just want to read this paragraph and I'll stop as I go through it: (as read)

> So notwithstanding anything in this order [so this is the overriding paragraph] notwithstanding any other provision in this order, any encumbrances [so these are DDMI encumbrances] which DDMI may hold pursuant to the joint venture agreement against Dominion or the application's share of the Diavik Diamond Mine production or proceeds therefrom pursuant to your order. [So again, this is any encumbrance with DDMI holds] pursuant to the agreement against our share of diamonds or pursuant to the order your previously granted or which have never been or which have never been required to be released or delivered to Dominion or any replacement assignee, [those are the undelivered diamonds] shall subject to DDMI's compliance to all orders of this Court be unaffected.

And so what this does, is it says if DDMI is not required to deliver diamonds or proceeds of diamonds, if they're not required to deliver them to Dominion, 'cause you've already

made orders on this and if they're not required to deliver them then they're unaffected. Nothing in here will take away DDMI's rights, 'cause those are unaffected by this order, this is the middle of the paragraph "and shall continue to attach to the undelivered diamonds".

So this protects it, this makes again abundantly clear that their security remains as against the undelivered diamonds and then it says, "until such time as" and that's in the middle of the paragraph and so "until such time as the undelivered diamonds are or required to be released and delivered to the applicants". So what that means is, pursuant to your prior orders, June 19th, I think -- again we're going back to June 19th as challenged on October 30th and dismissed, but once those diamonds are required or proceeds are required to be delivered to Dominion, then DDMI's security does not attach to those.

And that was the very argument that we had on June 19th and that we had on October 30th. And so what this order does is it protects DDMI and makes it clear that they don't have to deliver diamonds pursuant to the orders that you've made, no issues, we're not trying to vest off those interests.

And I want to make a couple of comments, 'cause Your Ladyship asked about this earlier, DDMI is now suggesting that they retain their security interest in diamonds even after they're delivered to Dominion pursuant to your orders. I want to repeat that. They're now suggesting that they retain a security interest in the diamonds even after they're required to send them, if they're required, cause they haven't sent any yet, pursuant to your orders on June 19th and November 4th.

THE COURT: Right, I understand what they're saying, even the ones that are delivered they want to continue their security interest over it because they say possession doesn't change their security interest. Because the bottom line was that they say that they have, under the agreement, they have security over all the diamonds, all 40 percent, not just the ones that cover the cover payments et cetera, right?

MR. RUBIN: And of course -- yes of course, and their position is simply in our submission, just not supportable and is very surprising. This issue, in our submission, this issue has been heard and decided. This was the very issue; this is why we had the dispute on June 19th and this is why they tried to set aside your order again on October 30th. In our submission, this is them taking a third kick at the can and it's a further attempt to have you change your prior court orders.

As I said, they first tried this on the 19th, they tried it on October 30th, when they asked to vary your order, 'cause they made an argument that they weren't -- they didn't feel that they were secured, there was evidence on the DICAN valuation about how they were over

secured. And in our submission, this is really actually the only issue before the Court and I think one that you have to decide and that is, whether DDMI continues to hold their security interest even after diamonds are delivered pursuant to your prior orders and we say, that issue has already been decided by you.

There's nothing to decide, it's already been decided and, in fact, the reason that they were fighting so hard on June 19th and then again on October 30th, was because they did not want to have to deliver diamonds. You will recall that, My Lady, because they argued they would be exposed. The evidence before you was they wouldn't be, you heard all of the arguments, you balanced all of the interests, you balanced the interests of not just DDMI and Dominion, but all of the stakeholders, that's in your November 4th endorsement.

THE COURT: M-hm --

MR. RUBIN: You considered the evidence that was before you and you made your order and in our submission, they don't get to come back now on this application and argue it again. This issue has already been decided and I want to say this. If DDMI's position is correct, that is that they -- they still hold security even though diamonds are delivered to Dominion in accordance with your prior orders, what was the purpose of our previous fights? Why were we even arguing on June 19th and October 30th? Because if their position is right, what it means is, that the only issue was, who is holding diamonds for DDMI? That wasn't what was argued.

And if what they're saying is right, there would've been no point to your prior orders, it would've been a complete waste of time, it was waste of all of the stakeholders' time to fight this, it was a waste of the Court's time and there's point to the order.

THE COURT: No I do not -- I think -- when I went back and just quickly, 'cause I have not had a lot of time to review any of this, but their position earlier and I will put this to Mr. Collins and he can discuss it, was that they were going to be seriously prejudiced if they delivered the diamonds to you. But now they are saying they would not be prejudiced at all 'cause they continue to have security. So anyways it was a bit of an interesting -- but I mean you have got to give credit to Mr. Collins, who you know, keeps coming up with another -- another way of looking at things. But also to be fair, you indicated at that time that you would not sell the diamonds, that they would -- you would remain and remember that you consented to that at the time, right so …

MR. RUBIN: Yes, My Lady, very good point and thank you for raising that, because that is a provision that was in the November 4th order, that the diamonds when they were delivered they would be held by Dominion.

THE COURT: Right.

MR. RUBIN: And you recall, My Lady, and you may hear from Mr. Wasserman on this, the reason for that provision was not to give DDMI another kick at the can, a third kick at the can, it was because there were other creditors like lien claimants, pensions, Government of the Northwest Territories and reclamation obligations; people were saying, hey, wait a minute, should the first lien lenders actually get those diamonds once they're delivered to Dominion? Maybe the others should have an ability to argue that they might have priority over the first lien lenders and so --

THE COURT: This was because of the waterfall issue to summarize?

MR. RUBIN: Yes, exactly.

THE COURT: Right?

MR. RUBIN: That's exactly right.

THE COURT: Okay.

MR. RUBIN: And so Mr. Wasserman actually -- and to give him credit for this, of course, you know, said well let's just hold the diamonds and if those other parties are challenging our priority position they can raise it at the time. It was not to give --

THE COURT: Okay. I understand. So but the bottom line is, is that they never delivered these diamonds based on --

MR. RUBIN: We don't have any diamonds not yet; they haven't delivered any diamonds and they may never deliver diamonds. I certainly hope that they do because it will -- but at this point there are no diamonds. But in the future, if diamonds are delivered, again we -- those diamonds are being purchased and that that's receivable that we're talking about.

And we say that this paragraph here, paragraph 15, completely protects DDMI and but of course our paragraph does contemplate what we say were your prior orders and that is, once those diamonds are delivered DDMI does lose their security and they are then purchased assets free and clear of any encumbrances.

Just quickly then, My Lady, going to paragraph 16 of the order, I won't take you to this,

but this is a paragraph that we've agreed on with royalty holder, Sandstorm Gold Inc., it should be Ltd., we'll correct that, to permit them to raise any issues they may have with respect to the royalty and whether it should stay on title.

THE COURT: Thank you.

MR. RUBIN: And then finally, My Lady, if I could turn just over the page to the break-up, well paragraph 19, there's a paragraph in 19 to deal with the Sureties Support Confirmations, I've referenced before, it's a short paragraph, I'm not going to go through it. But it is really the break-up being charged I want to talk about. So this is the break-up fee and the charge that we referenced earlier.

THE COURT: Right.

MR. RUBIN: Again, I don't believe that this paragraph prejudices Mr. Collins, at all, and I want to take you to paragraph 22 and if you have paragraph 22 of the order, you can see that the break-up fee charged shall rank in priority subsequent to the security securing both the charges any indebtedness under the pre-filing credit agreement. So what this means, is this new charge ranks after the existing charges.

THE COURT: So after DDMI's security?

MR. RUBIN: Yes, because of the way the term "charges" is defined.

THE COURT: Okay. All right.

MR. RUBIN: Charges is defined -- the reference is paragraph 56(a) of the SARIO and so many of the existing charges do not rank ahead of DDMI under paragraph 56(a) of the SARIO. So this is again, another non-issue, in our submission.

My Lady, I -- the last thing I wanted to do is, I wanted to reference the memorandum of argument. I think what I'm going to do though is, I'm not going to take you to it, I would just maybe leave a note with you that there really are two issues. The first is, should the transaction be approved under section 36 of the *CCAA*? In our submission, all of those factors are met and that's referenced at paragraphs 50 to 88, 5-0 to 88 of our argument. All of the law is there, all of the factors support this. The alternative is liquidation, people are much worse off, thorough process, supported by the Monitor, in our submission, there is just simply, there's no -- there's no basis upon which this transaction should not be approved.

As I mentioned at the outset, this is the very purpose of the *CCAA* to find these kind of solutions and we found one that it is the best transaction that we have. We've consulted with stakeholders the Monitor has approved, as I mentioned before, and the *Soundair* and section 36 factors and (INDISCERNIBLE).

And then my last point on the argument was, we do need an extension of the stay, we're seeking an extension until the beginning of March, which is set out in the draft order and that is March 1st and that is, of course, to allow the transaction to close and if any extensions are needed, whether its regulatory reasons or not, we want to make sure we have a stay in place to March 1st.

And so the test is also set out at paragraph 90 of our order and the circumstances exist to make the order -- in our submission and of course, in our submission we're acting in good faith and with due diligence.

And My Lady, the last point I want to make in closing is just I want to reiterate two things. One, this is a good news story, this is a great news story and in our submission and I appreciate that Mr. Collins' client, you know, may be a competitor to DDMI, I appreciate they're in close proximity to us, but I think the issues that they're raising, whether you call them throwing wrenches into our restructuring, or not, his client is just protected. His client is in the position that they were in, as the result of prior orders. There's nothing in here that negatively impacts them and we really do need this transaction going forward and there is absolute urgency. I want to repeat on the urgency point because the cash -- under the cash shows a company is down to $4 million in cash at the end of January. And we have to close the -- we have to get out of the *CCAA*, we need to move forward.

I know there was a lot there --

THE COURT: Okay. No that is fine. I have got it.

MR. RUBIN: Okay.

THE COURT: If you would not mind, could we take like a 10 minute break right now and then I will come back to the next parties that need to speak.

MR. RUBIN: I think that counsel for the purchasers and maybe the first lien lenders and other will want to speak, but thank you, My Lady.

THE COURT: Okay, give me 10 here, we will come back at 3:17. All right. Thank you.

(ADJOURNMENT)

THE COURT: Thank you, Mr. Clerk.

Submissions by Mr. Wasserman

MR. WASSERMAN: Good afternoon, My Lady, it's Mark Wasserman on behalf of the first lien lenders, I will be agent for the first lien lenders. I'm happy to -- I'll be very quick, I'm happy to go next if that suits you?

THE COURT: Okay. Sure.

MR. WASSERMAN: Okay. So we're obviously in support of this, you'll see there's a support agreement that's attached as a schedule to the APA that we've signed with the purchasers and WAMCO, the third party that Mr. Rubin indicated.

You know, this is the culmination of a lot of work under, you know, trying circumstances and that's because, you know, we came into this transaction or into this case, you know, there was the Washington deal, there was $100 million plus in diamond inventory, you know, the pandemic closed the diamond markets. The Washington Group, you know, tried to close the transaction and there were, you know, reasons why that transaction couldn't close. The Diamonds markets opened, a significant portion of the diamonds were sold to reply that DIP facility, the $60 million DIP facility and now more diamonds are being utilized to (a) restart the mine early and (b) continue to fund this case and (c) you know, close the transaction.

All that, frankly I mean there's lots of stakeholders, there potentially were going to be priority fights, I'm not here to argue whether, you know, one stakeholder has priority over another stakeholder, but all of that value, right is gone and it doesn’t come back. And so, surprisingly there are people that, you know, are opposed to certain provisions of this transaction, in particular, obviously the largest one is DDMI. And when you level set and you think about what's happened in this case, where we are, how much time and effort has been spend, who DDMI is, the relationship that Dominion has had with DDMI, it continues to be surprising to me that we spend so much time dealing with that issue. So much time, every hearing.

And where we are today, I mean you made a comment to Mr. Rubin, you said, you know this is DDMI coming up with different arguments, you know, with respect, I'm not sure that's what it is. It's DDMI continuing to do the same thing, continuing to make the same point. So whose compromised in this case? The lienholders, they've done a deal, their taking risks associated with the transaction. The sureties are taking some risks associated

with the transaction. The bondholders are certainly taking risks associated with the transaction, the second liens. My clients are taking risk, we're not getting our cash, we're rolling our debt. Whose taking no risk? Who hasn't contributed to one commercial outcome? An $80 billion joint venture partner that the company has had issues with for the past 20 years and you know what? Maybe we all see why now.

The order -- this transaction is irrelevant to them. The only issue is the one that Mr. Rubin identified, which is the security interest, which would be an absolute absurdity if the nature and the way Mr. Collins' client interprets your order was correct, in my view, because we spent hours upon hours arguing about the delivery of the diamonds. We told you when we argued that that the joint venture agreement says when the diamonds are delivered the security interest no longer attaches, you'd be reading into a provision of the joint venture agreement which doesn't exist, but we've had that discussion already in front of you, so I don't think we should do it again.

And the reason why Mr. Rubin says they may never deliver diamonds is because the other interpretation issue is that they're saying there's a timing difference between when you calculate the amount of the cover payments that are owed and DICAN valuation you use. And that goes to Mrs. Paplawski's submissions, if you recall, on the feedback loop, which we anticipated was going to happen and it has and we're back where we were before.

So it's 5:20 on a Friday evening in Toronto, which is where I am, I know it's only 3:20 there --

THE COURT: Still early here.

MR. WASSERMAN: -- it's the second night of Hanukkah and I'd love to be able to light to candles with my family and I implore you not to give this any time today because it's just -- we have settled, we have resolved the issue and the ambiguity in the contract in a way that makes sense. I think you'll hear from the Monitor that the Monitor supports that and we ought to let this company and all the stakeholders around the table here move on. And we can come back and address, you know, you may call it creative arguments, I call it the same argument over and over again, Mr. Collins' argument around the timing of the DICAN valuation versus the cover payments, which there's letters that have been submitted by Mr. Collins and Mr. Rubin on that issue that are on CaseLines, I'm not sure if you've had an opportunity to read those or not, but that's not an issue for today.

So this is a good day and we should try to resolve this quickly so that the company can move on, they can make a good announcement that they have a transaction, the employees are going to be employed, they've recalled employees already. The mine is going to get restarted, right? Hopefully my client will recover the money that's agreed to rollover into

this transaction -- we're still going to have to deal with all those LLC exposures on the Diavik mine which I assume, you know, if history repeats itself there's going to be a number of different hearings and arguments on that going forward for a period of time. But we really shouldn't allow this situation to continue in this court anymore.

And those are my submissions, I don't know if you have any questions.

THE COURT: No, Happy Hanukkah Mr. Wasserman.

MR. WASSERMAN: Thank you very much. You know, I'll bring you into the kitchen when we light the candles if we're still online.

THE COURT: Okay. All right. Who would like to be next?

Submissions by Mr. Kashuba

MR. KASHUBA: I can, My Lady, it's Kashuba, initial K.

THE COURT: Hello, Mr. Kashuba, you are tired of me probably today.

MR. KASHUBA: Nothing near the case, My Lady.

THE COURT: After all day yesterday. All right. Anyways …

MR. KASHUBA: My Lady, as you're aware we're counsel for the Ad Hoc Group of Bondholders. They are in the second position behind the first lien and a major creditor in these proceedings. You've heard much from me on behalf of my clients over the last nine months.

Well, today I'm pleased to announce that we have another designation and that's as purchaser under this asset purchase agreement that's before the Court for its consideration today. Let's begin and be clear, My Lady, if it wasn't previously, my clients are here to support the deal in its proposed form.

I echo Mr. Rubin's comments on this particular point and the proposed form of order that has been put forward and the proposed form of APA. In particular, with respect to section 3.1(b) and 3.2(a) and the proposed working in the APA surrounding the Diavik Joint Venture Agreement, Mr. Rubin's done a commendable job in taking, My Lady, through the APA's key and heavily negotiated terms. Those are the terms of the APA that should exist and that should be approved by the Court.

Now, with respect to our position on the approval of the asset purchase agreement, I know that there's a lot of counsel still on the call, there's a number of issues to be dealt with, so I'll be clear and quick. As we look back, My Lady, it's been nearly nine months in these proceedings and there's been a lot of twists and turns, it's been a lengthy road, but there's good news for my client. This is their deal, it's a long time coming. It's not just the only deal, it's a good deal, excellent deal, it's a critical deal, enormously beneficial to a large number of the company's stakeholders whom you'll hear from today and we need this approval and we need it today.

Now why is this a deal that needs to be done? Mr. Rubin spoke at length on this so I won't repeat all the points. But this deal provides for the continuation of the Ekati Mine operation and its related business as a going concern. People keep jobs. Pensions get assumed. The Government of Northwest Territories and the Aboriginal Community deals get honoured. The Sureties are supportive. A considerable consideration goes to the 1-L's and it's a good story all around.

Now, to use the metaphor that my friend Mr. Rubin made earlier, the ice cube has been melting, but we're due today and there's still a deal to be had but only if it happens today.

Now, for a frame of reference on our proposed deal, this Court is obviously familiar with the Washington bid that was before the Court and was to be before the Court for approval back in October. Now, I can tell you, My Lady, that the deal that is being proposed by my clients is simply just much better than the Washington bid. It puts more value in the first liens hands, they're getting $70 million, yes, they get that plus $15 million in cash and $18 million in additional consideration from the purchaser. My clients, on top of this, are leaving $1.25 million in further funds to pursue wind-up matters, including a $10.5 million to be paid on closing. Now, these amounts go to ensure proper capitalization of the purchaser, in turn this assists stakeholders such as Dominion suppliers.

Now, My Lady, we've stepped up like we said we would and we're here to close. And on top of this, we have a bunch of employee (INDISCERNIBLE) deal today, the Sureties and the Government of Northwest Territories are onside. We're posting security for reclamation obligations. This is obviously a major requirement and its to the benefit of the estate and to the proceedings. The company has done an outstanding job of bringing together, to the table, a superior deal.

Now, along the way, my clients have spent huge amounts of internal resources, now these are limited resources, but we have sophisticated financial minds that have been of mass assistance that have been dedicated wholeheartedly in getting to today's deal. My clients have assumed a number of expenditures, they're personally invested and they're stepping

forward and in a nutshell, My Lady, this is abundantly evident that there's a huge benefit here under today's terms of the deal.

Now why else must this deal be done today, it cannot wait, it's for real and I cannot be more adamant on this point; the only way that any of this works is that if the company has enough money to get a closing, it can start the Ekati Mine and we get there by January 29th. This has to stay on track or its Armageddon. The deadlines that we're talking about are very real. Mrs. Buttery will be speaking to a couple of points on this matter in the Government of Northwest Territories submissions.

If we don't have an order granted today, we don't have enough time to get governmental approvals. The company is in liquidation. There's a 45 day notice period that needs to start to get to that January 29th date and even with this, it's somewhat touch and go, but we're here to work and this includes with respect to the First Nations organizations and the consultation process (INDISCERNIBLE), it's a tremendous amount of work, but we're here and we're ready to go.

Those are my submissions, My Lady, it is the second day of Hanukkah, Christmas is around the corner, this deal is a gift to everyone but it's one we've worked very hard for. Subject to any questions arising, My Lady, those are my submissions.

THE COURT: Thank you Mr. Kashuba. Okay, Ms. Buttery, your name came up, I am going to turn to you on behalf of the Northwest Territories.

Submissions by Ms. Buttery

MS. BUTTERY: Good afternoon, My Lady.

THE COURT: Good afternoon.

MS. BUTTERY: So my submissions are quite brief and I just wanted to make two points and the first is one that's already been referenced by Mr. Wasserman and Mr. Kashuba. But the timing is frankly one of the most acute matters for the Government, because when we heard that there was a transaction that was proposed and the first question from my clients, was what is the timing? Because as you can imagine, there's several levels of approval that have to proceed before the mine can start operating.

My client's very supportive of the sale, very excited about the prospect of the mine restarting, but of course, it can't be fettered in its discretion to have these approval process proceed in the normal course. And my client has advised me that the minimum amount of time that they need to do that is 45 days. So we were very happy to see the motion being

set down today because that will get us just narrowly into the end of January and that's not even 100 percent, I mean there's certain -- for example, the Water Board, we can't fetter the discretion of it, it's quasi-judicial, but that is generally a guideline for how long it takes for the various approvals that have to happen.

And so it's crucial if this mine is to restart and if this transaction is to proceed, it's crucial that this matter be approved today in order for the government to take steps for its approval.

And on that note, the only other comment I have is -- and I do have the agreement of the purchaser on this, but nothing in the order as I understand it, is anticipated to fetter the discretion of the Government or its authority to make independent assessment of the approvals that have to be made for the purposes of this transaction.

THE COURT: No, I think it is conditional on those approvals not fettering --

MS. BUTTERY: Correct.

THE COURT: -- the Northwest Territory Government discretion.

MS. BUTTERY: Yes. Thank you My Lady.

THE COURT: Thank you Ms. Buttery.

Submissions by Mr. Regush

MR. REGUSH: My Lady, if I may, it's John Regush, Dentons Canada LLP. I'll be very brief. We're counsel for Hay River Heavy Truck Sales Limited and Dene Aurora Mining Limited. My clients are counterparties to contract that will be assigned to the purchaser and I'm supportive in accordance with the application this afternoon.

I've simply been asked to put a brief point on the record. I understand that my clients and the company have already arrived at the commercial terms to permit the assignment, that is the schedule of assigned contracts could not be included in the application materials, my clients just asked me to clarify that they support the application based on the representations that the company has made that the contracts to which they and the company are party, will be in the basket of the assigned contracts when the schedules are finalized. I understand this is consistent with the company's intention, it's reflected in the fact that my client's DPR registrations and certainly the miner's lien registrations are in the

permitted encumbrances list in the order sought.

So I'd simply ask that if for some reason the assignments were not to proceed, my clients would have the ability to appear before Your Ladyship to speak to whatever relief might be appropriate in that circumstances and in such an application, there wouldn't be any prejudice based on their support today. But my clients are supportive of the application and just asked me to put that point on the record.

THE COURT: Okay. Tremendous. Thank you Mr. Regush.

MR. REGUSH: Thank you, My Lady.

THE COURT: Anybody else on this side?

MR. WARNER: My Lady, Terry Warner on behalf --

THE COURT: Mr. Warner.

Submissions by Mr. Warner

MR. WARNER: Good afternoon, you've heard from me before on this matter.

THE COURT: Yes.

MR. WARNER: But we're on for Dene Dyno Nobel and Dyno Nobel Canada Inc. We have entered into an agreement with the purchaser -- I guess ultimately with the purchaser that permits our client to settle the existing obligations and to continue to supply the mine as it starts up -- restarts its operations in the future. We believe that this arrangement is for the best of all parties and are strongly in support of this agreement.

THE COURT: Good. Well, I am glad to hear that. There was a lot of millions of dollars, is what I recall.

MR. WARNER: It is, we're the largest lienholder.

THE COURT: Right.

MR. WARNER: And obviously a critical supplier, but we think that this is the best for all parties.

THE COURT: Great. Thank you Mr. Warner.

MR. WARNER: Thank you.

Submissions by Mr. Astritis

MR. ASTRITIS: My Lady, it's Andrew Astritis on behalf of the Public Service Alliance of Canada and the Union of Northern Workers.

I just wanted to briefly state on record that the Union is supportive of this agreement. It carries the mine forward on a going concern basis, which is critical, it protects the workers' pensions, their collective agreements and we would urge this Court to approve this order as soon as -- to approve this order today so that we can move forward and that this going concern not be jeopardized.

Thank you.

THE COURT: Thank you Mr. Astritis. All right. Anyone else in support before I turn to Mr. Collins and then I will go to the Monitor last. Mr. Collins, you are probably feeling like a minority there or you are the minority in this situation.

MR. COLLINS: Nothing has changed, good afternoon, My Lady, Collins.

THE COURT: Nothing's changed, no. That's right.

Submissions by Mr. Collins

MR. COLLINS: Collins, initial S., for the record appearing today on behalf of DDMI. Yes, you're correct, My Lady, nothing has changed and a common theme from DDMI in this case has been ardent support of a sale for Ekati. DDMI did not oppose the stalking horse transaction, it pointed out what it perceived as problems with the executability of the stalking horse transaction by the Washington Corp. Group, that difficulty ultimately came to pass.

But today, as well, My Lady, and it's clear in the bench brief that we filed, DDMI does not oppose the sale of Ekati, My Lady.

THE COURT: All right. I saw that, so thank you very much. I understand that you are not opposed to it.

MR. COLLINS: Yes, the sole interest is to ensure that its rights are not trampled upon by the proposed transaction structure and My Lady, the form of the proposed transaction structure would do exactly that. It extinguishes rights of DDMI, far from the assurances that counsel to Dominion and counsel to the first lien lenders, without getting into the particular specifics have given you, My Lady.

The fact of the matter is, is that there are issues with this transaction and rather than engaging with DDMI in respect of its concerns and trying to find a way to address those concerns, My Lady, what we get is broad brushed, visceral almost (INDISCERNIBLE) attacks on DDMI that are clearly, My Lady, without merit, which will be borne out by these submissions.

My Lady, the protestations over DDMI making submissions to protect its interest in a situation where it is an involuntary creditor that is now owed $148 million post-filing, My Lady, making it the singular most significant stakeholder in our submission given that which is at stake, $148 millions that has been spent on Dominion's behalf to assure the continued operation of the Diavik Mine. To do the very things at Diavik that are being put to the Court today as being beneficial in the Ekati transaction, employing over a thousand people during a global pandemic, My Lady, continuing compliance with health and complying with safety and notably producing collateral of diamonds for the benefit of Dominion.

So, My Lady, I'm confident that the Court will not allow Credit Suisse to dictate the processes of Your Ladyship's Court and the procedures to be followed in Your Ladyship's Court. That is something that is solely in the domain of Your Ladyship and we would appreciate and do appreciate the opportunity to bring forward legitimate concerns of DDMI today, My Lady, and we'll do so.

THE COURT: All right. Well, you have my ear. I have read your brief and reviewed your position though, just so you know, so that is one bonus of this CaseLines system, I do not have to wait for it to be sent to me in the morning.

MR. COLLINS: Thank you.

THE COURT: I was not reading to midnight last night although you would not be the first this week that has filed material after 10 PM. Anyways it has been one of those weeks as often is the case I am sure for all of you heading into Christmas and Hanukkah for Mr. Wasserman's sake and his compatriots. So okay go ahead then and get to your basic issues here so that we can deal with them.

MR. COLLINS: All right. The structure of the transaction, My Lady, put simply, obliterates the pre-filing and long held contractual rights that DDMI holds. DDMI has made proposals to facilitate the objective of those that are in favour of this transaction, in terms of obtaining Court approval today, My Lady.

I will say this, there's a certain sense of false urgency being urged upon this Court and there always in, in connection with sale approval applications, My Lady, and it's for this reason; there is a signed asset purchase agreement, there is a deal, My Lady, it is conditional, My Lady, there are 15 conditions precedent in favour of the purchasers. One of those, My Lady, is that Court approval be provided today and hopefully we get there, My Lady, but DDMI joins issue and disputes the urgency. It's not a linear process, My Lady, where they get Court approval and then they have to move ahead, My Lady, to deal with the other 15 things.

And I want to mention just some of the conditionality in this deal, only to assist, as well, with the stay extension application, I don't want to take too much time on it, but there is an important point to be made and that is, people will take a different view of the fact -- the issues that are engaged by a debtor in a process not paying post-filing obligations, whether that represents a debtor proceeding with good faith and in due diligence, My Lady. People will take issues with the fact that there is no intention to continue to pay cover payments, there is no intention to pay the $35 million closure security that's due on January 15th, but we have to be practical, DDMI agrees with that and the stay needs to be extended.

The issue, My Lady, really comes down one of, for how long and the conditionality that attends in this transaction. Because this transaction in many ways is no different in its current formulation than the much ballyhooed transaction with Washington Corp. that was before this Court for approval that was approved and didn't -- didn't -- didn't close.

So what I've done, My Lady, is I've asked you to follow along the affidavit of Fredrick Vescio on October 7th, 2020. Mr. Vescio is the Ad Hoc's financial advisor with the Houlihan Lokey firm. This affidavit --

THE COURT: Okay.

MR. COLLINS: -- was filed by the Ad Hoc Group in opposition to the approval of the Washington Court bid. At paragraph 6, in connection with that deal, what Mr. Vescio said was that he reviewed the asset purchase agreement, and leaving aside the issue of purchase price, he noted the following - there was no deposit or other discipline that the proposed purchasers would want in the transaction. That's the same case here. The company hasn't disclosed any information about the credit worthiness at solvency or the structure of the proposed entity, unknown what the leverage of the capital structure would

be. That's the case here. There's repeated desirability of restarting operations at ACADI (phonetic), that's common cause, My Lady, and not disputed.

In (d), the testimony at the time proffered by the Ad Hoc Committee in opposition to the transaction was the EPA contains numerous substantive closing conditions. These include important conditions regarding the need to entering into undefined agreements acceptable to the proposed purchaser with both governmental authorities and Surety companies like critical reclamation liabilities, the need to obtain regulatory approvals for anti-trust, competition law and other matters, details of which have not been provided, and to receive governmental approvals for the transfer of all leases, permits, licences, and other operating authorizations.

So we have precisely the same thing before you today, My Lady, with respect to the conditionality of this transaction. And let's be clear, DDMI is hopeful that these conditions will be waived but it is by no means certain. Appreciate everybody's optimism wanting to drive ahead to close this transaction, but these are serious and weighty conditions. This transaction contains a COVID closure condition, My Lady, as well. So if the mine is closed due to a COVID shutdown, then the purchaser has the ability to not close -- to close the transaction.

So quickly on the stay extension, My Lady, March 1st, in the circumstances, in a situation where there is a possibility that this transaction will not close and there's a lot of work to do, seems to be a long period of time, and what DDMI would propose in terms of the stay extension, My Lady, is as follows - is that the stay should expire on the earlier of the date that is two weeks following the termination of the asset purchase agreement or March 1st, 2020. That way, My Lady, if we find ourselves in the same situation as we did with the very similar deal that didn't close in the summer, then we give Dominion two weeks to be able to figure out what it's going to do. But they come back to court with the onus to demonstrate in the face of yet another failed transaction, My Lady, why the stay should be extended and they would show the burden there.

So I wanted to highlight the conditionality of this agreement both in terms of the stay extension application and --

THE COURT: So you are arguing for over two weeks, Mr. Collins, basically. Or if it falls through before, then two weeks after that; right?

MR. COLLINS: That's right. That's right. But the point of the conditionality, My Lady, is there is a lot of work to do here today and Court approval today is not a precondition for that work to be done. The work presumably has been underway and will continue to be done. Let's see if we can get the Court approval today, My Lady.

THE COURT: So one of the things we did the last time to satisfy some concerns about timing of the stay was to have the Monitor provide reports, which he did do, so that people were more advised as to what was going on. So that might be one way to deal with that again. I am just throwing that out there.

MR. COLLINS: It may be. The point is, is if we find ourselves -- this is a company that, on its own, cashflows is going to be perilously close to being out of money and if we get to a place in say -- for example, January 15th, where the sellers walk because, you know, I've heard there's a Surety support agreement, My Lady, what I haven't heard is whether that Surety condition has been satisfied and I doubt that it has. And by being in hopes brings eternal that it will be.

THE COURT: Well they sound like they are further along than they were last time --

MR. COLLINS: Sure.

THE COURT: -- which is the part that brought that to a halt last time. Mr. Rubin indicated that that hurdle has been overcome. So that is what I will, you know, I take for the record.

MR. COLLINS: Right. Right. And again --

THE COURT: I understand there are many conditions that still need to be dealt with, one of which is the Northwest Territories that we just heard from for instance.

MR. COLLINS: Absolutely. So the point quite simply is if -- is if the purchasers, you know, determine that conditions won't be satisfied or waived and the agreement is terminated, My Lady, say that were to occur on February 1st, just accelerate the time for a determination as to whether the stay should be extended to February 15th in my example as opposed to March 1st, you know, giving the company again the burden to do so.

THE COURT: Okay.

MR. COLLINS: So those are all the submissions I wish to make on that front, My Lady.

Let's talk a bit about DDMI's position with respect to the current structure of the deal. And

let's just start with some first principles, I'll go over them very quickly because they're common cause and I don't think they're controversial save and except one.

Again, we've said the cover payments at last evidence were 120 million, they're now 148 million. That cover payment security, My Lady, represents the first charge over the diamonds and that's pursuant to the provisions of the joint venture agreement article 9.4(c). Also, My Lady, notably both Credit Suisse and the indenture trustee for the second lien lenders have entered into subordination agreements with DDMI that subordinates their interest in --

THE COURT: Right. Right.

MR. COLLINS: -- in and to DDMI's security under the joint venture agreements.

THE COURT: I understand that, Mr. Collins.

MR. COLLINS: All right. And those -- if those subordination agreements are in the supplemental affidavit of Mr. Croese that was filed on April 20th, My Lady.

THE COURT: Right.

MR. COLLINS: When we talk about the structure of this transaction, it is one thing for the parties, my friends on behalf of Dominion and the first lien lenders, to say that there is an intention -- there isn't an intention to convey anything other than DDMI's right to receive production -- or Dominion's right to receive production. It's quite another thing when we look at those provisions to see if they withstand the scrutiny of that bald submission, My Lady, and they don't. And that is why DDMI has made what it views to be minimally intrusive suggested amendments that if the Court were to direct they be made, you know, we could all go home early this Friday afternoon.

The structure of the joint venture arrangement, My Lady, is one that allocates the production, the receivables, in return for payment of all obligations under the joint venture agreement. It's axiomatic, it goes without saying, that to be a participant under the joint venture agreement one has to accept its share of the obligations that attend with the mining operation.

The -- it -- the definition of participating interest under the joint venture agreement, My Lady, is highly relevant to this analysis and so I'm going to take you to the confidential exhibit, My Lady, that has the provision in particular.

THE COURT: Okay. I wonder if I have to open that other file because it is not in the main file; right?

MR. COLLINS: Correct. Yes, My Lady, you'd have to open the confidential matter.

THE COURT: Confidential. Okay. Hold on. Okay. I am there so you can send me to what you are looking at. Definition of participating --

MR. COLLINS: Interest? Yes. Have you been directed there?

THE COURT: No, unfortunately, because I just opened it, sorry, so probably when you sent it to -- there we go.

MR. COLLINS: I'm scrolling down to 1.23.

THE COURT: Okay.

MR. COLLINS: The participating interest, My Lady, means an undivided beneficial interest in the assets, assets includes diamonds, and all rights and obligations arising under the agreement. So the rights under the agreement, My Lady, include -- include the right to receive diamond production and receivables. And the importance of that, My Lady, is that it dovetails with two provisions in article 15 and those we've reproduced in our brief so I'll take -- I'll take everyone to those provisions. I've gone to -- I've gone to DDMI's brief of December 10th and it addresses at paragraph 17; do you see that, My Lady?

THE COURT: Paragraph 17, yes, I am there. Yes.

MR. COLLINS: All right. This is -- this is reproduced directly from sections 15 of the joint venture agreement and it deals with dispositions of interests. What it provides, My Lady, is that each participant shall have the right to transfer to any third party any or all of its participating interests solely as provided in this article. And 15.2(a), My Lady, relates that there cannot be a transfer of a participating interest or -- and we'll leave the other language aside. There cannot be a transfer of the participating interest unless the pre-emptive rights are engaged in the following section and also, My Lady, that the transferee as of the effective date of the transfer must commit in writing to be bound by the provisions of the joint venture agreement to the same extent as the transferor.

Now, DDMI recognizes that the stated intention of the parties is not to engage a transfer of

the participating interest but when we get to the provisions of the asset purchase agreement and the vesting order, My Lady, it is anything but clear as to whether or not the -- a transfer of the participating interest is engaged.

The other significant provision in section 15.2, My Lady, is (e). What this deals with, My Lady, is if there is the disposition of products, an assignment of the receivable as my friends say from the sale of products, upon distribution to a participant in accordance with article 11 which is the provision that allows a party to take in kind, a security interest in those products or proceed, i.e. in this case the security interest that arises in favour of the first lien lenders, shall be subject to the terms and conditions of this agreement. And I'm not sure I can say it any better than it's written in paragraph 18, My Lady. The import of that section is that with the assignment of the Diavik realization assets, which is the defined term for part of that which is being purchased by the purchasers, must comply with 9.4 of the JVA which provides that the DDMI security and respective cover payments shall rank prior to the first lien lenders and the second lien lenders.

So, those are the overriding principles. I think we can move quickly then to the six changes to the asset purchase agreement that DDMI is recommending, My Lady.

THE COURT: All right.

MR. COLLINS: I'm going to direct you in the first instance to the asset purchase agreement and the definition without our change because I think it's important to see it this way before you see the proposed change. So are you at the top of page 22 of the asset purchase agreement?

THE COURT: Let's see. Where is the asset purchase agreement? Oh, here it is. Yes, okay. So you want to go to page 22?

MR. COLLINS: Yeah. I thought I directed to 17.2-46, shall I try that again?

THE COURT: Yes, I did not pop up. I do not know why, that is weird. I have got two files open here because ...

MR. COLLINS: Yeah. This is no longer in the confidential file.

THE COURT: Right. No, I understand that. I have got the other one open. But, anyway, which page is it that we are going to?

MR. COLLINS: We're going to page 17.2-46.

THE COURT: Right. I am there. Okay.

MR. COLLINS: So this is in a list of the acquired assets. So acquired assets is in defined terms and acquired assets is what vests into the purchaser free and clear of all encumbrances including the DDMI encumbrances, My Lady, in the current formulation. If you look at that provision, it's: (as read)

> An assignment of all the 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 which are realizable by or on behalf of the sellers.

That's the defined term Diavik realization assets. And it says that they'll be: (as read)

> Assigned to the purchaser subject only to the continuing liens and charges with 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.

Again, the game here for Credit Suisse, because they're undercollateralized, My Lady, and don't have security to recover the 105 million other than the 20 million in cash collateral that they hold with respect to issued LCs is any dollar that they can extract from DDMI in this process will serve to reduce their exposure under their LCs, My Lady.

Now there's two problems with this provision and let me just note as an overview contacts were made, My Lady, by counsel to Dominion that they're assigning in respect of the Diavik realizations are receivables to the extent there are receivables.

THE COURT: Right.

MR. COLLINS: Under the (INDISCERNIBLE). It's nothing more than that. And it's telling that counsel didn't take you to this provision because it does so much more than just merely conveying an interest in receivables.

The phrase "recoveries from or in respect of the Diavik joint venture interest" --

THE COURT: Okay, you have lost me where you are.

MR. COLLINS: I'm sorry, I'm back in the definition, so (b). So let's just parse this --

THE COURT: What page? What page are you at?

MR. COLLINS: It's 17.2-46.

THE COURT: Dash 2, I was at point 5.

MR. COLLINS: It's back to the definition of Diavik realization assets, My Lady.

THE COURT: Okay. I am not on the -- like, you are looking at the APA, mine is -- maybe I have the wrong. I have appendix A, DDMI's proposed revision to the APA.

MR. COLLINS: We can go there.

THE COURT: You are in a different document altogether. You are in the original one.

MR. COLLINS: You know what, let's go --

THE COURT: That is why we are having trouble here.

MR. COLLINS: Let's -- let's go -- let's go to our proposal. I just -- as I'd indicated, I thought it was more clear without the blacklining but we can -- we can go to ours.

THE COURT: I do not know why this is not coming up. It pops up in the one file but does not pop up in the other one. Weird.

Okay. So in 17.5, what page is it?

MR. COLLINS: 17.5-61.

THE COURT: Sixty-one. It is not popping up. Maybe what I will do is close this -- I do not need to look at this joint venture agreement right now, do I? Okay. So if you can try again to popping to the right document then maybe it will pop up

on this one.

MR. COLLINS: That work?

THE COURT: There. That worked. Okay. So what was your point?

MR. COLLINS: So assignment (INDISCERNIBLE) Dominion's interests in relation to receipts of realizations and recoveries from or in respect of --

THE COURT: M-hm.

MR. COLLINS: -- My Lady, that's more than conveying receivables. Because -- because when you're conveying interest in respect of the Diavik JV interest that includes, for example, the ability to take assets in kind and, again, there's no corresponding liability, My Lady, to pay the obligations with respect to this acquisition. So that's -- the proposed amendment of DDMI, My Lady, makes it very clear that which is being assigned is -- are proceeds from products.

THE COURT: Well what is the difference between receipt of realizations recoveries from proceeds from products? Frankly --

MR. COLLINS: Proceeds from products if my language, My Lady.

THE COURT: I know.

MR. COLLINS: So --

THE COURT: So why does it need to be changed? You have not convinced me why it needs to be changed.

MR. COLLINS: Okay.

THE COURT: And, in any event, this is an APA the people have agreed to; right? So --

MR. COLLINS: I understand, but --

THE COURT: Like I cannot change the APA, I can change the order --

MR. COLLINS: (INDISCERNIBLE).

THE COURT: -- or I can not approve the APA; right?

MR. COLLINS: That's correct.

THE COURT: So, you know, really this exercise is a bit -- this is what you would like to see here but there are a lot of parties to this agreement.

MR. COLLINS: Well there are two parties. There's a vendor and a purchaser to the agreement, My Lady.

THE COURT: Right.

MR. COLLINS: You've named what the Court can do.

THE COURT: Right.

MR. COLLINS: Like I say, I'm not approving the APA, I wouldn't be inclined to approve an APA with this provision.

THE COURT: But you said to me that you agree with this process and you want some changes. So let's focus perhaps on the order, the things I actually have control over, as opposed to changing the terms of an APA. I cannot do that. It is interest for you to put this forward for your friends but they have said that they will not do it. So I understand what you are doing or trying to do.

MR. COLLINS: The APA is inextricably linked to the vesting order because if the vesting order is approved and it vests the assets in the name of the purchaser free and clear, what DDMI says is that it's in contravention of its rights under the joint venture agreement. So one of the tests under section 36, My Lady, which wasn't highlighted in the submissions made by counsel to Dominion, is the Court has to have regard to the impact of the proposed transaction and vesting on other creditors. This provision, if approved and manifested in the vesting order, is prejudicial and it's overly broad, My Lady. Realizations --

THE COURT: Prejudicial, just so we are clear here, you are saying it is prejudicial because the whole of all the diamonds cannot be held as security because under the orders you have to send anything beyond the cover payments; right?

MR. COLLINS: No, I'm sorry --

THE COURT: Is that not the bottom line?

MR. COLLINS: That's coming but that's not -- that's not the difficulty with this provision.

THE COURT: Okay. So I do not quite understand what the difficulty is. I understand that other argument very, very well but --

MR. COLLINS: The --

THE COURT: -- what is the other problem then?

MR. COLLINS: The definition of Diavik realization assets, My Lady, fits into participating interest. There can't be a conveyance of the participating interest unless the assignee agrees to assume the obligations. That's obviously not going to happen here, My Lady. This amendment would make it clear that, firstly, there's not going to be noncompliance with the terms of the joint venture agreement; but, secondly and importantly, My Lady, the -- the transfer needs to be done of the Diavik realization assets. It needs to be subject to not just the first lien lenders' liens, My Lady, but the terms and conditions of the Diavik joint venture agreement. And that's what's been difficult with the provision.

Let's move, My Lady, to the definition of inventory because it's even more stark that what is -- that this does not align -- this transaction does not align with what has been represented by the Court. So if you go down to page 22, there's another component of the acquired assets all capital 'I' inventory. Let's have a look at the definition of "inventory".

THE COURT: Okay. I have my page 22, "All inventory"; right?

MR. COLLINS: So now I'm taking you to the definition of "inventory", you've been directed there at page 17.2-36.

THE COURT: Oh, here we are. Okay.

MR. COLLINS: All right. The sellers are purchasing all inventory, the vesting order approves the APA and vests all inventory into the sellers free and clear of DDMI's encumbrances. Here's the definition of "inventory": (as read)

> All diamonds and other inventory of any kind or nature.

So it's all diamonds, any other inventory including: (as read)

> ... stockpiles and goods maintained, held, or stored by for any seller whether or not prepaid and wherever located or held including any goods in transit.

My Lady. So if you stop there, if you approve this transaction, DDMI will be required to deliver up not just assets, diamonds that are subject to cover payment security, but all of the diamonds. This is all of the diamonds.

THE COURT: Well, no, Mr. Collins, that is not what Mr. Rubin was saying. He is saying, look, this covers all of Dominion Diamonds' diamonds.

MR. COLLINS: That's correct.

THE COURT: Right? And Dominion Diamonds' diamonds are, you know, the diamonds that they have the rights to and there are certain diamonds they do not have the right to and certain of those are the ones that are secured for these cover payments; right? And he is saying, look, to the extension that you have dispute over what those diamonds are, and apparently you still do, so fair enough, the amount of that can be determined at another day.

MR. COLLINS: My Lady --

THE COURT: But it should not stop this transaction from going through.

MR. COLLINS: This is important. My Lady, the definition of "inventory" includes diamonds over which there's no dispute that DDMI is entitled to hold. It's --

THE COURT: Well it does not say that.

MR. COLLINS: It says, "Inventory means all diamonds," My Lady. And the diamonds we hold are diamonds --

THE COURT: Well they can only sell diamonds that they have ownership in. They cannot sell diamonds that they do not own.

MR. COLLINS: Sure, for some --

THE COURT: If you are trying to say "inventory" means all diamonds, what, all diamonds of the world? It makes no sense.

MR. COLLINS: No, the issue here is they're selling diamonds that Dominion owns that are subject to the cover payment security and asking the Court to vest out the security; right? This is a sale of diamonds owned by Dominion --

THE COURT: Just excuse me for one second. Okay. So what were you saying? Like, I do not get your argument, Mr. Collins, I am having trouble with this.

MR. COLLINS: All right. They're selling --

THE COURT: Obviously the only diamonds that they can sell are diamonds that they have legal title to; okay? So suggesting all of a sudden that these diamonds include all diamonds over the Diavik mine, even the ones that are there security for your cover payments, makes no sense to me.

MR. COLLINS: Well, no, because the diamonds that is security for our cover payment, My Lady --

THE COURT: Yes?

MR. COLLINS: -- they have legal title to those diamonds.

THE COURT: Yes. But they are also covered by an order, like, that deals with those diamonds and you have security in those diamonds.

MR. COLLINS: We do today.

THE COURT: We have spent a lot of time arguing over your security rights in those diamonds already.

MR. COLLINS: If you signed the order today, My Lady, then it eliminates our security is the point.

THE COURT: Okay. Well, let me hear from, I want to just interrupt your argument if you do not mind so we can get to the bottom of that, can I hear from Mr. Rubin on this point? I will come back to you, Mr. Collins.

Mr. Rubin?

MR. RUBIN: Thank you, My Lady.

THE COURT: What is your position on this?

MR. RUBIN: I agree with --

THE COURT: He is saying that he is going to lose all the security over the diamonds.

MR. RUBIN: No, he's not.

THE COURT: The way this is drafted.

MR. RUBIN: No, he's not. And, in fact, I took you to paragraph 15 of the order which you do, as you mentioned, have control over.

THE COURT: Right.

MR. RUBIN: The new paragraph 15 that I took you to specifically says that the security which they hold over the diamonds, pursuant to your prior orders, they maintain that security and it's unaffected by this order. And so they maintain their security. We can't sell what we don't have the right to sell, we can't sell what we don't have. They will hold the diamonds, they will hold them pursuant to your prior orders, and this order, including the new paragraph 15, protects them. I don't know what else to say, My Lady.

THE COURT: That is what I understood so let me just go back to Mr. Collins.

Okay. Mr. Collins, so what is wrong with paragraph 15?

MR. COLLINS: All right. Let's --

THE COURT: You will recall we went through that earlier.

MR. COLLINS: Sure. Okay.

THE COURT: And I think it was in effort to reply to your concerns; right? I understand that this is a big transaction in terms of your client and they

want to make sure that the security, you know, there has been changes to the JVA, I understand that by my former orders and, you know, the days that we have spent arguing about this, I have not been arguing, that you have been arguing and I have had to make certain decisions on these things. But, anyways, I want to make sure that your client continues to have security. I thought paragraph 15 did that. What is wrong with that paragraph 15 of the order?

MR. COLLINS: Well, there's a few things that are wrong with paragraph 15, My Lady.

THE COURT: Okay.

MR. COLLINS: And that is, again, there are provisions in this catchall that, again, don't address the issues with the drafting; right? It's unclear and it doesn't do much more than that. Let's look, for example, to start, My Lady, with the provision that makes the purported non-interference of rights conditional. It starts in the middle. It says --

THE COURT: Okay. So we go to the proposed draft order?

MR. COLLINS: Yeah. Go to paragraph 15, we'll jump ahead.

THE COURT: Approval and vesting order. Okay. Just hold on. I think this is it. Yes. Okay. So paragraph 15. Okay. I am there. Thank you. Okay. So what is your problem with this proposed, I mean, I know that you have made an effort to, you know, make an order that would comply with your concerns but here is another effort here.

MR. COLLINS: So -- so this isn't in CaseLines I don't believe so I'm just looking at the PDF, paragraph 15. So if you go right after "Undelivered DDM diamonds" --

THE COURT: It is in CaseLines.

MR. COLLINS: Okay.

THE COURT: Page 17.42437, just so you know.

MR. COLLINS: I think we're looking at the same thing. If you go to the --

THE COURT: Okay.

MR. COLLINS: -- middle, "Undelivered DDM diamonds," so --

THE COURT: Okay.

MR. COLLINS: -- if we can just focus on the phrase, "Subject always to DDMI's compliance," --

THE COURT: Yes. Yes. M-hm.

MR. COLLINS: So DDMI's security is stated to be conditional upon its compliance with orders of this Court. Let me be crystal clear. DDMI is in compliance with orders of the *CCAA* Court and that matter will come to pass. But the conditionality, My Lady, is overly broad and has the potential to, again, extinguish the protection. Again, DDMI's compliance with all orders of this Court, is it the *CCAA* Court, My Lady, or is it all orders of the Court of Queen's Bench of Alberta? If DDMI, My Lady, is in default of an order that requires it to submit a brief by a certain date doesn't lose its protection. In this case, My Lady, if there were a foot foul, My Lady, if DDMI, again, didn't comply with a scheduling direction, DDMI didn't comply with --

THE COURT: Okay. Mr. Collins, so what would you prefer for it to say? Orders by me? I think I have made every order --

MR. COLLINS: (INDISCERNIBLE).

THE COURT: -- in this application, quite frankly.

MR. COLLINS: Okay. All right.

THE COURT: So, is that what you want?

MR. COLLINS: I think that provision doesn't work as well because what -- really, to get to it they're saying if you don't hand over diamonds and you were supposed to hand over diamonds then you've lost the protection of the -- of your encumbrance. That preordains I suppose a sanction for noncompliance with an order. And, again, we say we're not in noncompliance with an order, My Lady, but that's $148 million penalty today. So that's -- that's the difficulty with that provision.

THE COURT: I think that you are slaying at ghosts here, Mr. Collins.

MR. COLLINS: All right.

THE COURT: So what would you suggest here to make it more clear in this paragraph?

MR. COLLINS: Well, we've made suggestions as to a catchall provision in the order and I can either take you to that, My Lady, but -- or we can continue with these submissions. These provisions, My Lady, are overly broad, I know there is a desire to get to the transaction, to get to the end of the day, I'm having difficulty I can sense with the Court in trying to demonstrate what the fundamental problems are here.

THE COURT: Right, you are.

MR. COLLINS: There are -- there are provisions here, My Lady, that have either intended or unintended consequences that down the road which will have the result of extinguishing DDMI's rights. And the other difficulty with this proposal, My Lady, relates to a situation that says you've got the protection with respect to diamonds that have never been required to be delivered or which have never been required to be delivered. And we know, My Lady, in early days of this case the position has been that DDMI has been required to deliver Dominion's share of production to it.

I think -- I think where we should go, My Lady, then is to the main issue that, My Lady, which is DDMI has valid and perfected security in the entirety of the production to secure the obligations owing to it. And we reject the suggestion, My Lady, that this matter was determined by Your Ladyship by any orders made in these proceedings that the parties have joined in issue on the point and that the effect of the order requiring delivery of excess collateral leads to the conclusion that excess collateral comes free and clear of DDMI's security interest.

You've read the provisions of our brief, My Lady.

THE COURT: Well then why did you argue so much in that last hearing that you were so prejudiced? I went back to your briefs and, you know, my decision. If it did not make any difference because you felt that you had security over those diamonds anyways, why did, as others have pointed out, waste everybody's time over that?

MR. COLLINS: You got close to it, My Lady, is because diamonds are high value collateral that are very mobile goods, My Lady; right? It's not a situation that when we deliver these diamonds to Dominion certainly wasn't contemplated back in October until the order was made that those diamonds would remain in the Northwest Territories. So unlike, for example, aircraft objects, My Lady, that have an

international security regime, when these diamonds leave the Northwest Territories --

THE COURT: M-hm.

MR. COLLINS: -- our security doesn't follow them to India, for example, and that's where Dominion transports its diamonds. That is why we argued so strenuously to be able to maintain possession of the diamonds. Remember, the formulation of the excess collateral wasn't suggested by DDMI. DDMI has always asked you, My Lady, to allow it to withhold all of production because that assures its security.

THE COURT: Right. I understand that.

MR. COLLINS: Delivery of the diamonds to Dominion in the Northwest Territories does not extinguish the security. At the moment those diamonds leave the Northwest Territories, My Lady, then we get into issues as to whether or not when those diamonds are sold in India, transferred intercompany among the Dominion groups of company or an (INDISCERNIBLE) to whether or not Dominion -- DDMI is protected. That is the reason, My Lady.

THE COURT: Okay. Well your friends seem to have a different view of it. Your friends appear to think that once the delivery happens then they take control of the diamonds. That is sort of the way that it works. So can we push this on to another time, Mr. Collins, and make this order not subject to this debate?

MR. COLLINS: Well, if Your Ladyship takes our suggestions in the approval and vesting order I think we can, My Lady, have this debate. Just on this issue, My Lady, is, again, because it was determined by Your Ladyship that diamonds had to be passed -- excess collateral has to be passed over to Dominion. The order that was issued you'll recall that the first lien lenders had sought in that order the ability to sell those diamonds. The order that you issued said two things - one was that the diamonds can't be sold, and also that they have to remain in the Northwest Territories.

THE COURT: Right. And, as they said, there was issues at the hearing, there was issues about that monetization order that we spent some time on but we could not finish it. That was a solution there in terms of the waterfall because there was other people that did not want the money going back to Dominion directly; right? So --

MR. COLLINS: I think that's --

THE COURT: But I sorted that problem out so that the diamonds would be held and then there could be a debate at a later date if necessary about

what happened to the collateralization of those diamonds.

MR. COLLINS: That's a convenient revision of that which was submitted by Credit Suisse on October 30th. And I directed you, My Lady, to the transcript as to what was asked for in the first instance.

THE COURT: No, I do not think there is any dispute that at first there was quite a waterfall suggestion; right? There was quite a --

MR. COLLINS: It wasn't quite --

THE COURT: And during the hearing they both consented to the diamonds being held; right?

MR. COLLINS: The issue was, My Lady, the submission was that the diamonds in the first instance should be sold following delivery free of DDMI's security and the Court rejected that. There's been no determination, My Lady, with respect to how delivery of diamonds subject to a valid and perfected security interest in respect of an obligation that's in default, how that mere act extinguishes the security. And you've read that in our brief but I would commend you, My Lady, again, to go back and read the submissions on that point.

THE COURT: All right. Listen, we did not discuss that particular issue that I recall or it was not determined, I would agree with you, Mr. Collins, because it was not raised by you or claimed by you at that time.

MR. COLLINS: But why would it be raised, My Lady? I was -- DDMI's position was that it should retain the collateral.

THE COURT: Correct. I know. But you did not make that as an alternate argument.

MR. COLLINS: (INDISCERNIBLE) because it's the law. It's just by operation of law our security -- our security continues, My Lady.

THE COURT: All right. Fair enough. Mr. Wasserman just wanted to cut in for a minute, I will just allow him to say what he wanted to say.

MR. WASSERMAN: Thank you, My Lady. Just given that Mr. Collins is referencing submissions that I made, at no time, at no time, did I ever think that Mr. Collins would raise an argument that his security interests in the diamonds would continue

if possession was delivered to DDMI. The monetization issue is a fight among creditors of Dominion with (INDISCERNIBLE). If you recall --

THE COURT: I understand that.

MR. WASSERMAN: -- the monetization program that we agreed to with the diamonds that Mr. Collins' clients hold that he gets to go and monetize. His client gets to go and monetize.

THE COURT: Right.

MR. WASSERMAN: There's a distinction. There is a big distinction here. Anyways, I just wanted to make that point clear. I do encourage you if you think it's necessary to go back and read the record, but as far as I'm concerned, this decision included that. It was an adjunct in the decision, it was not raised, it's res judicata. It's rewriting the terms to the joint venture agreement and unfortunately, you know, if this was all about -- if Mr. Collins' submissions were all about that and one clause in an order requiring him to be in compliance with your orders, I don't know how we've spent an hour on this.

MR. COLLINS: Wait a second, My Lady. This is not reordering or rewording the joint venture agreement and I'll invite counsel for the first lien lenders if Your Ladyship wants to hear from them to direct Your Ladyship to the provision of the joint venture agreement that says when diamonds that are subject to our security are provided to Dominion that that security interest is extinguished. You'll be looking a long time for that provision because it's not in there.

THE COURT: Okay. You both have different views of how this joint venture agreement works, you know, that is loud and clear. I do not know that needs to be decided today. I think that the important thing is, Mr. Collins, is that your client is protected in this order. It looks to me like this section 15 does the trick, you know, you have a different way of putting it. It is hard to put one against the other because it is, you know ...

MR. COLLINS: Well, My Lady, it's hard to put one together against the other for a few reasons. You know, one is we were not consulted as were the other parties in respect of this transaction. We had no idea that this transaction was going to occur, My Lady. Candidly, I've never been involved in a *CCAA* proceeding where there has been so little consultation with a major stakeholder with respect to matters that materially impact it. Dominion's and the first lien's position vis-à-vis DDMI on this file has been to adopt a litigation posture, they are entitled to do that, but we can't then, My Lady, as well hamstring DDMI from its ability to make detailed arguments around why this

structure prejudices it at 4:30 PM on a Friday during the holiday season. That's the point there.

THE COURT: Okay. So, well, I thought that they did have discussions with you and that is in part why they put that paragraph in, to try to rely some of your concerns that they did not agree with but they were trying to allay your concerns. So I do not know that they would say you were not consulted. Are you saying that you were not, that you did not have a discussion? Like, I am starting to wonder what is going on here.

MR. COLLINS: What I'm saying, My Lady, is we weren't consulted in advance. We got this on Sunday night at 9 PM and we had discussions yesterday and I got their wording at 8 PM yesterday. And really just the process point is this, I mean, Mr. Rubin speaks of the 7-day service requirement, that's Vancouver practice, that's not Calgary practice. These materials, to be in compliance with the Calgary commercial list, should've been served last Monday and maybe we had more time. But we are where we are, My Lady, and I think what we can do is have a look at our proposed catchall provision which is at paragraph 24 of our proposed markup. I've tried to direct the Court there.

THE COURT: Yes. Yes. Thank you.

MR. COLLINS: All right. So this is what we've put forward, My Lady, and in answer to your question what can we do? Well, we can -- we can accept this wording. So, again, it reserves nothing in the purchase agreement and the answering document or this order shall transfer, convey, or assign the seller's interest in the Diavik mine, the Diavik joint venture, the Diavik joint venture interest and the Diavik leases to any person. That cannot be offensive to the parties we're joined in issue with there because it's true.

In terms of prejudice, nothing prejudice, extinguish or otherwise affects the rights and remedies of DDMI under the joint venture agreement; all right? If that's what they're saying the impact of this is, then let's see it. We can't relieve the sellers of any of their indebtedness or liability under the Diavik joint venture agreement and that's clear in the joint venture agreement. We have to be in a situation where we're still able to enforce the inevitable ongoing and continued defaults of the sellers. Nothing should affect the rights, remedies or priorities to the Diavik realization assets as established by the subordination agreement, the acknowledgment of lien dated November 1st, 2017 --

THE COURT: Okay. Just hold on if you would not mind. Can we just put these up side by side so we can take a look at the difference? It is hard, you

know, partly because I do not have this paper, which is fine, we can put them up side by side. So instead of you just reading what -- now I have lost it. Sorry, so your paragraph 24 and their paragraph what again?

MR. COLLINS: Fifteen. Sixteen -- no 15, My Lady. Fifteen.

THE COURT: Okay. So they put it earlier on in the order. So I have got the two. All right. Okay. So theirs is more directly, nothing in this order may hold pursuant to the Diavik joint venture agreement against the applicant's share of the Diavik diamond mine production as ordered on November 4th. Then they have some extra things saying that you have not released or delivered these diamonds to the applicants which is true I understand; right? They have not been released or delivered yet; right?

MR. COLLINS: That's not what their provision says, My Lady. Yes, it's correct, but that's not what the provision's designed to do.

THE COURT: By this Court on November 4th. Okay. Which have never been released or delivered. Okay. Shall, subject always with DDMI's compliance with all orders of the Court, you do not like that but I do not why you are complaining about having to comply with an order. If there is any issue, if you suggest that it is because they are late in filing a document, I am sure that you can come to court and get that dealt with, Mr. Collins. But, anyway, it is be unaffected by this order, shall continue to attach the undelivered DDMI diamonds. Okay.

All right. And you say --

MR. COLLINS: I say our (b) accomplishes that far more elegantly and in accordance with the terms of the joint venture agreement.

THE COURT: Okay. Whatever they may be, because you guys are arguing about what those are, but we can put that to another day.

MR. COLLINS: Precisely. Precisely. The resistance to relatively simple propositions, My Lady, is, to me, telling.

THE COURT: Do not ask me. Do not ask me about that. But perhaps, Mr. Collins, if you do not mind again, if I can interrupt you and then go to the Monitor and see what they have to say. Mr. Simard I know is online and ...

MR. SIMARD: Just unmuting, My Lady.

THE COURT: Yes.

MR. SIMARD: You can hear me now?

THE COURT: Yes, I can.

Submissions by Mr. Simard

MR. SIMARD: Okay. Great. I won't repeat anything we said in the Monitor's report about the support for the transaction. You've seen why we've said it, it's really the only option here and the best option but I'm not hearing any parties objecting to the approval of the transaction. So I'll go right to the DDMI issues and give you the Monitor's view.

THE COURT: That is sort of why I am interrupting at this point.

MR. SIMARD: Sure.

THE COURT: Sorry to put you on the spot, Mr. Simard.

MR. SIMARD: No. Okay. I'll cut to the chase. As Mr. Collins said, he and I and our clients had a call at 9 AM on Tuesday morning. He raised the issues that they've now put before the Court. We went back to him the next day after talking to the company, the Ad Hoc Group and the first lien lenders with the email confirmation that he's put in his affidavit, and then -- and then there were further communications throughout the week to try to address these concerns.

So I'll deal with two points. First, is the suggested amendments to the APA and the interpretation issues on the APA and then I'll deal with the competing proposed revisions to the vesting order.

On the APA, what Mr. Collins essentially is arguing and advanced this week is a position that there are certain provisions in the APA that could be interpreted in a way that would prejudice DDMI and he took you through that interpretation.

THE COURT: Right.

MR. SIMARD: But I think it's fair to say that those provisions can also be interpreted in a way that do not prejudice DDMI at all and so the discussions and the process we went through this week resulted in the confirmation of the company and the first lien lenders and the Ad Hoc Group that, yes, they interpreted the provisions in

a way that would not prejudice Mr. Collins' client. You've heard that on the record today from Dominion and I would submit that admission on the record gives DDMI protection. We commonly deal with issues like that in an efficient and practical manner in these type of proceedings where there's possible interpretations. Parties will put their view on the record. I would suggest that it will be virtually impossible for Dominion or the purchaser to come back later and try to take a contrary position to what they've told you today. So we don't think there needs to be an amendment to the APA on that basis and we do believe that the interpretation of the company and the first lien lenders and the Ad Hoc Group have confirmed does not prejudice DDMI.

And as you've stated, there's plenty of jurisprudence warning Courts of the danger of descending into a negotiated agreement like this and trying to tweak some provisions. There could be unforeseen consequences. And as we've heard from Dominion and the Ad Hoc Group today, they wouldn't agree to the provisions suggested by my friend, Mr. Collins. So we don't think there needs to be an amendment to the APA.

Turning to the vesting order, we do -- we've looking at the competing proposed revisions, the Monitor believes that paragraph 15 in the company's proposed form of order does provide sufficient clarity and protection for DDMI. Mr. Rubin walked you through that provision. It draws a clear line between two things: (1) diamonds or proceeds of diamonds that DDMI is not obligated to deliver under your existing orders; and then on the other side of the line the diamonds and the proceeds that it is obligated to deliver. So we think why -- the reasons why that form of order is preferable, it refers back to your November 4th order which, as we've heard today, was heavily argued and was decided, that is, that is the governing order that specifically deals with monetization of diamonds and proceeds and has a specific waterfall.

I'll just -- no one's brought it up today so I think it's useful to look at the waterfall. The waterfall is in CaseLines. I'll try to direct you there. It is page 3-263. Okay. I'll try and direct you there. Did that work? I can't hear you, My Lady, I don't know if you're muted or if I have an audio problem here.

THE COURT: Yes, it does. No, it is me. I was muted. Yes, it worked. It just seems to have a little bit of lag. I think my computer is tired out, it has been a hard week.

MR. SIMARD: So if you look at clause 8, this is clause 8 to the monetization procedure attached in the schedule to your order.

THE COURT: Right.

MR. SIMARD: And what it says, obviously DDMI can take the diamonds, they can sell Dominion's share of the diamonds alongside their own and then this -- this is the waterfall, if they turn those diamonds into cash proceeds, first, you know, taxes, royalties have to be paid in (a); second, fees, costs and expenses including their 1 percent fee in (b); third, the two charges from your amended and restated initial order that rank ahead of DDMI's security interest were the admin charge in DNO. So then that's next in the waterfall. And then, fourth, the DDMI and satisfaction of outstanding cover payments and interest thereon, et cetera. So that's the payment of their -- their security, their cover payment security. And then you go to (e), and (e) is fifth to Dominion and as we've heard a lot of discussion about today to be held in a segregated trust account.

So I look at that order, I wasn't at that application, but I look at that order and it's clear that for proceeds, you only get to (e), you only get to handing diamond proceeds over to Dominion after the existing cover payment security has been paid out. So that's why we say that's been dealt - that process - and so the paragraph 15 that Mr. Rubin has suggested in his draft order we think is preferable because it dovetails with that existing process which has already been considered and dealt with by the Court. And I think that's what Mr. Rubin was getting at - the receivable that Dominion has sold or will sell to the purchaser if this agreement is approved and the closing occurs is the receivable basically in paragraph 8 (e).

The DDMI form of order, I guess some of the reasons why the Monitor does not prefer it, it doesn't refer to your November 4th order. It, instead, refers to the joint venture agreements and other agreements so it sets up I guess a set of rules that potentially could conflict with your November 4th order and there could be potential confusion going forward. So, for those reasons, the Monitor believes that the company's form of order is the preferable form and does fully protect DDMI.

THE COURT: Ironically wider, this is what Mr. Collins is complaining about in the other one. But, anyways, all right. Well thank you for that interruption there, Mr. Simard.

Okay. Back to you, Mr. Collins, then. Is there anything you wanted to add, or?

Submissions by Mr. Collins

MR. COLLINS: My Lady, we'll let the record stand with respect to DDMI's view on the issues.

THE COURT: Okay.

MR. COLLINS: But we do want to discuss the break fee because

the submissions of counsel to Dominion are incorrect. If you go, and I'll direct you to our proposed change to the order, My Lady --

THE COURT: I thought the main thing was is that your DDMI security is ahead of the break fee, that is the key; right?

MR. COLLINS: It's not.

THE COURT: Oh, okay.

MR. COLLINS: Because the break fee ranks in priority subsequent to securing both the charges. And under -- under -- first off, the break fee is secured against the property, My Lady, which is a different definition. It includes all of Dominion's assets. Secondly, My Lady, DDMI is subordinate to the admin charge, the DNO charge, it's also subordinate to the financial advisor's charge. So if the intention here is for DDMI's cover payment security to rank in priority to the break fee charge, which it should, My Lady, if the purchasers here were purchasing the Diavik interest and agreeing to assume the obligations under the agreement then there might be a different bases for arguing that DDMI's collateral should stand as security for the break fee charge but there's no bases to encumber the DDMI collateral. If you look at our change, My Lady, it simply just makes it very clear that the break fee is subordinate to the indebtedness under the Diavik joint venture agreement.

MR. WASSERMAN: My Lady, it's Mark Wasserman again, I apologize for interrupting. But, you know, on this particular issue, I mean, we don't have a problem with Mr. Collins' submissions. You know, the break fee is only payable in the circumstances where we're paid in full so I don't know whether my friends have the same circumstances but in an effort to try to finalize this hearing today, we're okay with Mr. Collins' submissions on this point.

THE COURT: Okay. Mr. Rubin, do you have any problem with changing it so it is clear where the Diavik joint venture indebtedness ranks? I do not think there has been any debate about that, quite frankly.

MR. RUBIN: There isn't because (INDISCERNIBLE) charges (INDISCERNIBLE) break fee charge ranks after all of the charges. By definition in the SARIO, the charges rank after Mr. Collins' clients.

THE COURT: Well they are ahead, right, they are ahead of his --

MR. RUBIN: No --

THE COURT: Sorry, no, they are behind his. Sorry. Behind. And so --

MR. RUBIN: Yeah.

THE COURT: -- if the break fee is subsequent to them then it necessarily means they are behind Diavik.

MR. RUBIN: Exactly. And so if Mr. Wasserman's fine with this, it already protects him because of the definition of the charges, happy to include that. But it's not needed, but if it makes it easier (INDISCERNIBLE).

THE COURT: Okay. All right. Thank you.

Okay. Back to you, Mr. Collins. All right. So there is no problem with making that change although I did not think there was an issue. But if you want to be clear, let's put it in there, you know, they do not have a problem with that so all right.

MR. COLLINS: We'll move on, My Lady.

My Lady, the other changes in the vesting order relate to the provision that's vesting the purchased assets free and clear of the DDMI security. But, you know, in fairness, My Lady, that change and I've directed you to it where we say DDMI security be added to Schedule E. Like, in fairness, there's a lot that comes with that, My Lady. I just think for the purpose of the record, you know, to the extent that we have to look at this again, it's very important that DDMI not be taken to be relenting on that which should be included in the approval and vesting order.

THE COURT: Okay.

MR. COLLINS: And the reason for that inclusion, again, is the effect of the order will be to vest the acquired assets free and clear of the DDMI security which DDMI says, when you consider the transaction as a whole, is extremely prejudicial to it.

THE COURT: Okay.

MR. COLLINS: And paragraph 14, My Lady, of our suggested changes, it would presuppose -- the issue is that the current draft of paragraph 14, if you

don't put DDMI in there and it says they have no claim against the sellers, My Lady, then you're -- the effect of that is to say not just claims up to today but following the closing of the transaction we have no claim against the sellers. Sellers are Dominion. They're going to continue in existence, they're going to continue to default in their obligations under the joint venture agreement and that is the rationale for the request for including DDMI in parties that continue to have claims against the sellers.

THE COURT: Okay. All right.

MR. COLLINS: There's a provision in paragraph 6 of the vesting order, My Lady.

THE COURT: Okay. So going backwards, okay.

MR. COLLINS: Yeah. It ties into the asset purchase agreement. The definition of "Business" relates to all of Dominion's assets. And, again, without a fix there and the fix was in the asset purchase agreement, the effect of this provision is that any assets used in connection with the Business or that would otherwise (INDISCERNIBLE) the acquired assets vest in the name of the purchaser. So, again, we get into the fact that there's a definition of "business" in the APA that's overly broad and when you -- if you were to approve that provision and paragraph 6 of the vesting order, again, it's prejudicial to and completely opposite to the rights and entitlements of DDMI under the joint venture agreement.

THE COURT: The business again, like we discussed earlier with the earliest comment, is Dominion's business; right?

MR. COLLINS: My Lady, it's a defined term and there's a lot that's wrapped up into that provision and anything used or useful in connection with Dominion's business. Again, we have assets that are used or useful in connection with Dominion's business in our possession, My Lady, that are subject to the cover payment security.

THE COURT: Okay. I take your point. Thank you. Anything else?

MR. COLLINS: No, My Lady, those are all my submissions.

THE COURT: Thank you, Mr. Collins.

Okay. So I will go back to you, Mr. Simard, because you sort of were dealing with that.

We were dealing with that one section. Is there anything else that you wanted to add?

Submissions by Mr. Simard

MR. SIMARD: There are a few things, My Lady, thank you. With respect to the submissions Mr. Collins made about the other provisions of the order in his -- in his form of markup, with respect, we don't think those are necessary. If you look at paragraph 15 in Mr. Rubin's form of order, there's a very robust notwithstanding clause at the start of that provision. So the other -- the issues Mr. Collins raises with the other provisions of the order, we think those all fall away because of the protection they're given in paragraph 14 overrides all those other -- those other concerns he's identified in other paragraphs.

I just want to speak very briefly to the stay extension because he raised a couple of points in his submissions.

THE COURT: Right.

MR. SIMARD: As you've seen, we're fully supportive of the March 1st extension. In the event that this transaction doesn't close, of course Dominion can come back to court, we can issue a report. I don't know that we need a specific provision in the order like we had earlier this fall. The Monitor is obligated to report back to the Court and the stakeholders if there's a material adverse development and, of course, we'll be plugged into the process and we will -- we will do so.

THE COURT: Okay.

MR. SIMARD: So we think the stay extension is sufficient as is and don't think it would be wise to grant a stay extension of an unknown length as suggested by Mr. Collins.

And then the only other -- those were all my submissions. Mr. McConvey, who was the individual bondholder appears to have dropped off. Mr. Salmas, who is on for --

MS. WANNIAPPA: Hi.

MR. SIMARD: Hi.

MS. WANNIAPPA: Sorry, it's Angela Wanniappa, the CFO of -- I'm talking on behalf of Mr. Daniel McConvey.

MR. SIMARD: Hi, Angela.

MS. WANNIAPPA: Should I go ahead?

MR. SIMARD: Sure, so I -- just let me finish speaking to the Judge for a moment, Angela.

MS. WANNIAPPA: Sure.

MR. SIMARD: So what I was going to say, My Lady, is Mr. Salmas who's on the for the Indenture Trustee for the second lien bonds, he had asked that he -- he has very short submissions but he asked that any submissions of his follow those from the bondholder. So if it's appropriate, we could hear from Ms. Wanniappa at this point on behalf of the bondholder.

THE COURT: Instead of Mr. Salmas? Okay. All right.

Okay. All right. Ms. Wanniappa?

Submissions by Ms. Wanniappa

MS. WANNIAPPA: My name is Angela Wanniappa, the CFO for Rossport Metals and Mining Fund. Daniel McConvey had to leave to attend his son's birthday party. On behalf of Rossport Metals and Mining Fund, a minority bondholder, I would like to say that we do not want to hold this process up as clearly a lot of work has been done on it and many months have passed. However, we, and I'm sure other bondholders, (INDISCERNIBLE) Ad Hoc Group (INDISCERNIBLE) the offer was not constructed in a way that we and other minority bondholders can also participate. For the record, we would be interested in participating in this deal on a pro rata basis. Thank you very much.

THE COURT: All right. That is noted for the record. Thank you, Ms. Wanniappa. You never know, this thing seems to have a life of its own forever so you have been heard.

Okay. So, Mr. Salmas?

Submissions by Mr. Salmas

MR. SALMAS: Good evening, My Lady. John Salmas, Dentons Canada, on for Wilmington Trusts National Association, the indebted Trustee under the

second lien notes. Also in attendance with me at this hearing is my colleague, Sam Roberts.

My Lady, while the Trustee has not filed any materials in connection with today's application, we wish to advise the Court that after receiving the application record late on Sunday, December the 6th, the Trustee drafted and submitted a notice to depository trust company known as DTC which is a service that is customarily utilized by entities such as the Indenture Trustees to provide notices to the holders of securities such as the second lien notes. The Trustee had previously provided a notice by the DTC service earlier in the case notifying all holders about the Dominion Diamond *CCAA* proceedings. We understand that the most recent notice was published by DTC early on Tuesday, December the 8th, and such notice has been available to be viewed by all second lien noteholders since Tuesday morning.

In that notice, the Trustee noted, and I quote from the notice: (as read)

> The transaction does not provide recovery to the noteholders under the Indenture and the liens provided under the Indenture will be discharged as against the acquired assets in the contracting purchasers. The Trustee does not intend to file an objection or other responses to the application.

The notice also provided that the holders were notified: (as read)

> That the Trustee will take no further action under the Indenture save in its sole and absolute discretion without any direction indemnity (INDISCERNIBLE) the Trustee from the holders of the notes.

At the time of this court appearance, My Lady, the Trustee has not received any sort of Indenture informing direction or indemnity.

So, likely as a result of that recent DTC notice and perhaps in light of the uploading of the application materials to the Monitor's Dominion Diamond's case website, approximately three parties, one of which is the Rossport Metals and Mining Fund that you just heard from, had reached out to the Trustee asserting (INDISCERNIBLE) and have spoken either to the Trustee or its counsel via email. While such holders have taken the opportunity to voice their disappointment, the proposed transaction does not provide recovery to second lien notes. A disappointment that the Trustee shares. Most of the holders' primary reasons for contacting the Trustee appear to be to express an interest in participating in some fashion in connection with the purchase transaction as just heard from Ms. Wanniappa.

We have advised the proposed purchase counsel of such second lien noteholders'

communications and in the cases which we were asked to do so we have put the holders in touch with the proposed purchasers counsel. We understand that the purchasers and their counsel are amenable to receive such requests and the Trustee is supportive if such discussions occur.

We also note that prior to the service of the sale approval application, we in fact one or more non-purchaser noteholders had made similar inquiries of the proposed purchasers, i.e. in respect of the opportunity for all noteholders to participate in respect of the transaction. We understand the proposed purchasers are considering the noteholder (INDISCERNIBLE) requests and we understand that neither the transaction itself for which Your Ladyship's approval is being sought today with the form of sale approval order forecloses the opportunity for such a noteholder and purchaser discussions to occur.

We believe that one of the reasons we received the types of communications from those noteholders was due to the nomenclature utilized in the court materials in respect of the sale approval application. That was a point that we wanted to clarify today, My Lady, in terms of the -- our understanding of the sale transaction. It is the Trustee's understanding that in respect of the proposed transaction, the purchasers are not acting in the capacities as noteholders under the second lien note indenture and they are not, as mentioned previously, credit bidding any of their notes which is a structure that might have once been contemplated. Under the current structure, they are acting in capacities not as noteholders but solely as purchasers. And toward that end, the purchasers are assuming certain obligations and putting up their own money in connection with capitalizing the proposed purchasing entity in order to buy the acquired assets.

As such, the Trustee is of the view that it was inaccurate to identify the purchasers as "the Ad Hoc Group" and the transaction to be characterized as the "Ad Hoc Group transaction". It appears from our communications with the noteholders, the use of such nomenclature has caused a bit of confusion over the last few days and we just wanted to make sure today that we got heard from the parties the Trustee's understanding of the nature of the transaction and the identity and capacity of the bidder/contracting parties and proposed purchaser was accurate. And in hearing submissions from counsel today, it does appear the parties have clarified the Trustee's understanding of the transaction and the capacity of the purchaser entity to be correct.

So, subject to any questions My Lady might have for me, those are my submissions.

THE COURT: Okay. Thank you very much.

Submissions by Mr. Kashuba

MR. KASHUBA: My Lady, Kashuba, initial K. with Torys.

THE COURT: M-hm.

MR. KASHUBA: I have four matters I need to speak to. One relates to the Rossport submissions and the submissions just made by Mr. Salmas.

THE COURT: Okay.

MR. KASHUBA: So, for the record, and I thought it was clear but let it be clear now, unlike when my clients were proposing a deal previously as a credit bid, the present deal on the table in no way relates to our clients' standing as second lien noteholders. While it's true that my clients are second lien noteholders and they've lost a significant amount of funds somewhere in the area of $240 million US, the fact is that us being second lien noteholders is completely irrelevant to the sale application. This is all about putting new money on the table, this is new money for my clients and it's real consideration. Has nothing to do with their second lien noteholders.

THE COURT: Okay. Thank you, Mr. Kashuba.

MR. KASHUBA: Thank you. And I will speak to just three matters raised by Mr. Collins while I have the floor. Mr. Collins raised the Washington deal and Mr. Vescio's affidavit.

THE COURT: M-hm.

MR. KASHUBA: Unlike Washington, our deal does not have an extremely relevant Surety condition. Unlike the Washington deal, we have also fully baked deals with virtually all the critical suppliers. And, unlike what Mr. Collins suggested, my clients have made real commitments regarding the capitalization of the purchasers. The purchaser will have $70 million of funding from our clients, they are well capitalized and that is very different than the Washington transaction.

THE COURT: All right.

MR. KASHUBA: With respect to the DDMI and markups to the APA, they go well beyond unnecessary, they're entirely unacceptable to the purchasers. They rewrite the deal. DDMI shouldn't be allowed to insinuate themselves into the APA, they're only issue is maintenance of whatever security they currently have on non-delivered Diavik inventory. They get that in the AVO that was presented to the Court, paragraph 15 speaks directly to it.

And, lastly, My Lady, the purchaser has listened to the submissions on paragraph 24 that Mr. Collins has proposed. We will not proceed with paragraph 24 that's being put forward to the Court. It's simply wrong. For example, paragraph 24(a) is --

THE COURT: Is this to do with the break fee? You are saying paragraph 24 instead of 15.

MR. KASHUBA: Fifteen instead of 24.

THE COURT: Right.

MR. KASHUBA: Yes.

THE COURT: I understand your position.

MR. KASHUBA: So I can answer My Lady's question on paragraph -- with respect to the break fee. We're in agreement with what my friends have agreed to and what Mr. Collins has proposed. That paragraph --

THE COURT: That is paragraph 20 I think. Right.

MR. KASHUBA: I believe so, yes, My Lady.

THE COURT: Right. But 24 you object to. I understand that. Okay. So you support what others have objected to in terms of --

MR. KASHUBA: Yes, My Lady. And just by way of quick example, paragraph 24(a) is too broad. It says there's no transfer of anything related to the Diavik joint venture interest, that definition includes production, i.e. the diamonds from Diavik. We are in fact buying that. So if the order must be satisfactory to the purchasers and we will not proceed on the basis of paragraph 24 as it's been suggested.

To be clear, on the other very short points with respect to the changes to the AVO, there's no way to include any DDMI encumbrance in Schedule E, that's the permitted encumbrances as referenced in paragraph 4, we object to that.

With respect to the definition of capital 'B' business in paragraph 6, we suggest that Mr. Collins is incorrect here. We buy all business assets of Dominion whether directly related to the Ekati mine or not. Any change to that definition is also unacceptable to the purchasers.

My Lady, those are my further submissions on response to those points raised by my friends.

THE COURT: Okay. Thank you.

Anybody else? Mr. Collins, did you have anything else to add? Or Mr. Rubin?

MR. RUBIN: No, My Lady, it's Peter Rubin for the company. The only thing I might add was I was going to give you an update on liens. During the last couple of hours we have resolved two more liens which is fantastic and so we will be moving, if the order's granted, two entities to Schedule E which are permitted encumbrances. And those are SMS Equipment and a numbered company 507170. Don't know that it matters but we would -- we just wanted to put that on the record that we have reached settlements of those two additional critical vendor lien claimants which is fantastic news.

THE COURT: Okay. Great.

MR. COLLINS: My Lady, I don't have anything further. Thank you very much.

THE COURT: Thank you, Mr. Collins.

Decision

THE COURT: All right. Okay. So with respect to these two applications in front of me, with respect to the first one, the approval of the sale that is on the table - the purchase agreement - I will approve the sale of the purchase agreement. In my view, the granting of this purchase agreement in the order, and I will come to a couple of details in the order, is in the best interests of all of Dominion's stakeholders. Generally, and including but not limited to the interests of the Northern communities, the Northern Indigenous groups, the employees, the contractors, the Northern base employees and contractors in particular, the environment, the creditors, and all parties involved in this very complicated *CCAA* that has gone through lots of ups and downs over the last few months.

Further, in terms of the order, it appears to me that the most important thing to me is that the mine will continue as a going concern. The Ekati mine is supposed to open hopefully no later than January 29, 2021.

There are some losers in all of this and that, unfortunately, is the way it goes in these kinds

of operations. But, overall, this is a very good result and I commend all parties for the amazing efforts that have been put into making this work. It looked very grim there sort of mid to late October and I was very happy to see that you were able to pull things together.

Now, with respect to Mr. Collins' client DDMI, Mr. Collins, you are doing an admirable job to put forward your client's concerns and, unfortunately, I reject most of the changes that you have suggested and will go ahead with the change that was suggested in paragraph 15 compared to paragraph 24 that you suggested, Mr. Collins. I agree that the suggestion that you have made is too wide at various points and paragraph 15 flows through better with the other decisions that have been made by this Court and balancing acts that have had to be decided to try to make this situation as fair as possible to all.

Now, there may be ongoing disputes which would not surprise me with respect to the diamonds, costing of the diamonds, delivery of the diamonds, sale of the diamonds, et cetera, and with paragraph 15, DDMI is protected, in my view. So, but you can come back and continue to seek further decisions if necessary on those important details.

The only change that I would allow is the amendment that Mr. Collins has suggested in paragraph 20 of his proposed amended sale agreement order, that is the one dealing with a break fee.

The other changes, I just do not agree are appropriate in this situation and may derail the sale. So, it does not go to the root of the protection but I think certainly I can understand why Mr. Collins was seeking as much detail in his client's favour as possible, but in the circumstances I am not prepared to make those requested changes at this time. So that deals with that particular order.

The second part is with respect to the stay extension. I will extend the *CCAA* stay protection under March 1, 2021. To that extent, I heard your concerns, Mr. Collins, and your objections, but I also feel confident in the Monitor in this situation and to the extent that if there is a breakdown of this conditional APA that the Court will be contacted and you could return to have the stay extension reviewed if necessary.

As a Court, we try to extend it longer rather than shorter so you do not have to come back to get the stay extensions done. In fact, today I think was supposed to just be a stay extension application. But because of the hard work of everybody it will also luckily a sale approval application.

Okay. I do not have a lot of long reasons, I do not plan to write any further reasons on this. I am accepting, for the most part, the propositions that were put forward by Dominion in their brief and I have tried to deal very quickly with the objections that you have made, Mr.

Collins. But I do thank you for setting them out in writing and getting them to me even though it was late in the night. I know everybody was under a lot of time pressure so I thank you for your efforts in that regard.

All right. So I guess that concludes our matters for today and hopefully for 2020.

MR. RUBIN: Yes. Thank you, My Lady. I appreciate it is late and I thank you for taking the time.

THE COURT: Not as late for others that are joining us from the east that is for sure. It is a reasonable time here.

And I want to thank the clerk for stepping in to work overtime so that we could get this matter completed today. I want to congratulate you all and good luck with getting all of these conditions sorted out. Hopefully we will be working towards discharge of the *CCAA* before you know it. Thank you very much everyone.

PROCEEDINGS CONCLUDED

Certificate of Record

I, (INDISCERNIBLE), certify that this record is the record made of the evidence held in the proceedings in the courtroom 1104, at Calgary, Alberta, on the 7 -- on the 11th day of December, 2020, that I was the official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Nicole Carpendale, certify that

(a) I transcribed the record, which was recorded by a sound recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record and

(b) the Certificate of record for these proceedings was included orally on the record and is transcribed in this transcript.

TEZZ TRANSCRIPTION, Transcriber
Order Number: AL6192
Dated: December 16, 2020

APPENDIX “E”

Notice of Civil Claim filed in the DDM Action
on June 16, 2020

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.

APPENDIX “F”

Court Services Online File Summary Report
in relation to DDM Action

BRITISH COLUMBIA

Court Services Online

File Summary Report

Requested by: CS55576 - REBECCA WOOD

Date / Time: 05OCT2021 10:24 AM

File Number: VLC-S-S-206419

Your Cross Reference Number: 76142.10

General File Details

Date File Opened: 16JUN2020

Style of Cause: DOMINION DIAMOND MINES ULC v DIAVIK DIAMOND MINES (2012) INC.

Location: Vancouver Law Courts

Level of Court: Supreme

Class of Court: Supreme Civil (General)

Initiating Documents: Notice of Civil Claim

Parties on File

Seq. #	Date Entered	Party Name	Party Role	Counsel Name	Also Known as Names / Other Legal Representatives
1	24JUN2020	DIAVIK DIAMOND MINES	Defendant		
2	24JUN2020	DOMINION DIAMOND MI	Plaintiff		

Documents Filed

Seq. #	Date Entered	Document Description	Initiating Document?	Amended Document?	Claim Amount	Filing Parties
15	22SEP2020	Order	No	No		
14	22SEP2020	Reasons For Judgment	No	No		
13	02SEP2020	Requisition	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
11	25AUG2020	Affidavit	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.

Terms of Order: Order

1	1- Diavik's application for security for costs is adj gen. 2- at liberty to reset application for a date convenient to both after Nov 7, 2020 3- the action shall be stayed in the interim, with exception that Diavik has liberty to set a trial date. 4- the may be lifted by the mutual consent of the parties, or further order of the court 5- Costs in the cause
2	Reserved Judgement
3	referred to Justice Horseman - Dec 3 2020 - WL
4	signed (efiled) - Dec 4 2020 - WL

Seq. #	Date Entered	Document Description	Initiating Document?	Amended Document?	Claim Amount	Filing Parties
10	25AUG2020	Affidavit	No	No		(Plaintiff) DOMINION DIAMOND MINES ULC
9	25AUG2020	Application Response	No	No		(Plaintiff) DOMINION DIAMOND MINES ULC
12	25AUG2020	Electronic Filing Statement - Supreme	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
7	14AUG2020	Affidavit	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
6	14AUG2020	Electronic Filing Statement - Supreme	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
5	14AUG2020	Notice of Application	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.

Document Hearings:

Date	Time	Location	Reason	Results
27AUG2020	09:45 AM	Vancouver Law Courts	Chambers Application	Adjourned Generally

4	14AUG2020	Electronic Filing Statement - Supreme	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
3	14AUG2020	Affidavit	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
8	14AUG2020	Notice of Application	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.

Document Hearings:

Date	Time	Location	Reason	Results
22SEP2020	09:00 AM	Vancouver Law Courts	Decision of a Judge on an Application	The end or conclusion of planned appearances
16SEP2020	09:45 AM	Vancouver Law Courts	Chambers Application	Adjourned to a specific date
27AUG2020	09:45 AM	Vancouver Law Courts	Chambers Application	Adjourned Generally

2	15JUL2020	Response to Civil Claim	No	No		(Defendant) DIAVIK DIAMOND MINES (2012) INC.
1	16JUN2020	Notice of Civil Claim	Yes	No		(Plaintiff) DOMINION DIAMOND MINES ULC

Hearing and Results

Hearing Date: 22SEP2020

Hearing Time: 09:00 AM

Hearing Location: Vancouver Law Courts

Documents Scheduled:

Seq. #	Document Description	Reason	Results	Canc.
8	Notice of Application	Decision of a Judge on an Application	The end or conclusion of planned appearances	

Hearing Date: 16SEP2020
Hearing Time: 09:45 AM
Hearing Location: Vancouver Law Courts
Documents Scheduled:

Seq. #	Document Description	Reason	Results	Canc.
8	Notice of Application	Chambers Application	Adjourned to a specific date	

Hearing Date: 27AUG2020
Hearing Time: 09:45 AM
Hearing Location: Vancouver Law Courts
Documents Scheduled:

Seq. #	Document Description	Reason	Results	Canc.
5	Notice of Application	Chambers Application	Adjourned Generally	
8	Notice of Application	Chambers Application	Adjourned Generally	

Terms of Order

1	1- Diavik's application for security for costs is adj gen. 2- at liberty to reset application for a date convenient to both after Nov 7, 2020 3- the action shall be stayed in the interim, with exception that Diavik has liberty to set a trial date. 4- the may be lifted by the mutual consent of the parties, or further order of the court 5- Costs in the cause
2	Reserved Judgement
3	referred to Justice Horseman - Dec 3 2020 - WL
4	signed (efiled) - Dec 4 2020 - WL

Transfers

AVAILABLE INFORMATION
Court Services Online (CSO) provides access to the following court record information:

Civil court information - Supreme and Provincial Court
Court record information on civil Provincial and Supreme Court activity throughout the province with the exception of family proceedings in Provincial Court.

Court information - Court of Appeal
Court record information on civil and criminal Court of Appeal activity for appeals filed after 1 January 2004.

Disclaimer
The court record information available through CSO is not the official court record. For confirmation of information contact the specific court registry.

The data is provided "as is" without warranty of any kind, either express or implied. The Province does not warrant the accuracy or the completeness of the data, nor that CSO will function without error, failure or interruption. Users of CSO acknowledge that some data may suffer from inaccuracies, errors or omissions. Users of CSO rely on the data at their own risk.

Every effort is made to ensure that the court record information is or remains consistent with statutory and court-ordered publication and disclosure bans. However the posting of court record information on this site in no way is a representation, express or implied, that the information conforms with publication and disclosure bans. As bans may be

granted at any stage in the proceeding, the court record information will not include details of a ban granted in court on that day. It is the responsibility of persons using or relying on the court record information to personally check with the applicable court clerk or registry for bans and ensure that they comply with any bans on publication or disclosure.

Publication or disclosure of information contrary to a court-ordered ban may result in legal action, including prosecution.

LIMITATION OF LIABILITIES
No action may be brought by any person against the Province for any loss or damage of any kind caused by any reason or purpose including, without limitation, reliance on the completeness of the data or the functioning of CSO.

PROHIBITED USE
Court record information is available through CSO for public information and research purposes and may not be copied or distributed in any fashion for resale or other commercial use without the express written permission of the Office of the Chief Justice of British Columbia (Court of Appeal information), Office of the Chief Justice of the Supreme Court (Supreme Court information) or Office of the Chief Judge (Provincial Court information). The court record information may be used without permission for public information and research provided the material is accurately reproduced and an acknowledgement made of the source.

Any other use of CSO or court record information available through CSO is expressly prohibited. Persons found misusing this privilege will lose access to CSO and may be subject to legal action, including prosecution.

File Summary Report

APPENDIX “G”

Response to Civil Claim filed by DDMI
in the DDM action on July 15, 2020

NO. S206419
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DOMINION DIAMOND MINES ULC

PLAINTIFF

AND

DIAVIK DIAMOND MINES (2012) INC.

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: The defendant, Diavik Diamond Mines (2012) Inc. ("**DDMI**")

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 2 (except as to market capitalization, which is incorrectly calculated), 4, and 14 (page 3) of Part 1 of the notice of civil claim are admitted.

2. The facts alleged in paragraphs 2 (as it relates to market capitalization), 5, 6 - 11, 13, 14 (page 4), and 15-20 of Part 1 of the notice of civil claim are denied.

3. The facts alleged in paragraphs 1, 3, and 12 of Part 1 of the notice of civil claim are outside the knowledge of DDMI.

Division 2 – Defendant's Version of Facts

Overview

4. The plaintiff, Dominion Diamond Mines ULC ("**Dominion**"), is insolvent, following an overly leveraged buyout by its owner, the Washington Companies. The buyout left Dominion thinly capitalized and financially exposed. Dominion has obtained relief under the *Companies'*

Creditors Arrangement Act ("**CCAA**") from the Alberta Court of Queen's Bench. Dominion now sues in this Court to attempt to deflect attention from the Washington Companies' failed acquisition strategy and Dominion's own failure to meet its financial obligations, including in relation to its joint venture with DDMI.

5. The attempt is unjustified: Dominion's action is devoid of merit. DDMI did not owe Dominion fiduciary duties as alleged. Nor was DDMI grossly negligent or engaged in wilful misconduct. At all times, DDMI duly performed its obligations under the parties' joint venture agreement. Indeed, DDMI continues to perform its obligations and is now the sole source of liquidity for the parties' joint venture in light of Dominion's defaults.

6. The action should be dismissed, with costs.

The parties

7. DDMI is a wholly owned indirect subsidiary of Rio Tinto plc, part of an international metals and mining corporate group with operations in 36 countries (collectively, "**Rio Tinto**").

8. Rio Tinto is a leading, innovative mining company. It has operated for over 150 years, with a reputation for delivering superior returns to shareholders, meeting customers' needs, working closely with all stakeholders, allocating capital with discipline, and responsibly investing in high-quality projects and in industries with robust, long-term fundamentals. For over 40 years, Rio Tinto has operated a global diamond mining and marketing business, from exploration through to closure. Rio Tinto is one of the world's largest producers of rough diamonds.

9. In or about November 2017, Dominion's predecessor was acquired by an entity affiliated with the Washington Companies, a group of privately held North American businesses founded by an American industrialist, Dennis Washington. The bulk of the Washington Companies' business had been in the transportation, not mining, sector. The transaction took the form of a leveraged buyout–*i.e.*, the Washington Companies used a significant amount of borrowed money to meet the cost of acquisition, and pledged Dominion's assets as collateral for the borrowing.

The JVA for the Diavik Mine

10. Dominion and DDMI are successors in interest to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended pursuant to

    (a) Amending Agreement dated as of December 1, 1995, between Kennecott Canada Inc. and Aber Resources Limited;

    (b) Amending Agreement (NO.2) dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber Diamond Mines Limited (a wholly owned subsidiary of Aber Resources Limited); and

    (c) Amending Agreement (NO.3) dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber Diamond Mines Limited

    (collectively, the "**JVA**").

11. The JVA's purpose is the exploration and evaluation, and if feasible, the development of mineral resources within the Diavik Diamond Mine and various surrounding exploration properties in the North Slave Region of the Northwest Territories (collectively, the "**Diavik Mine**"). The JVA specifies how that is to occur.

12. Pursuant to the JVA, DDMI has a 60% interest in the Diavik Mine and Dominion has a 40% interest as tenants in common. Each is a "**Participant**" under the JVA. Section 4.1 of the JVA provides explicitly that DDMI and Dominion are not partners and neither owes a fiduciary duty to the other:

> 4.1 No Partnership
>
> Nothing contained in this Agreement shall be deemed to constitute any Participant the partner of the others, nor, except as otherwise herein expressly provided, to constitute any Participant the agent of legal representative of the others, nor to create any fiduciary relationship among them. It is not the intention of the Participants to create, nor shall this Agreement be construed to create, any mining, commercial or other partnership. None of the Participants shall have any authority to act for or to assume any obligation or responsibility on behalf of the others, except as otherwise expressly provided herein. The rights, duties, obligations and liability of the Participants shall be several and not joint or collective. Each Participant shall be responsible only for its obligations herein as set out and

> shall be liable only for its share of the cost and expenses as provided herein, it being the express purpose and intention of the Participants that their ownership of Assets and the rights acquired hereunder shall be as tenants-in-common.

13. A "**Management Committee**" for the JVA consists of one member appointed by each Participant. Each Participant, acting through its appointed member, has a vote equal to its participating interest. Decisions of the Management Committee are decided by majority vote.

14. The JVA tasks the Management Committee with determining overall policies, objectives, procedures, methods and actions under the JVA, and gives it the "ultimate authority to determine all management matters" (section 6.5). The JVA provides that the Management Committee must meet at least once per year. In reality, DDMI and Dominion met regularly on joint venture matters, by way of both regularly scheduled formal quarterly Management Committee meetings, *ad hoc* meetings between peers of both Participants, and collaboration meetings, as required. For example, in addition to the formal quarterly meetings, Richard Storrie (President and COO of DDMI) and Patrick Merrin (acting CEO of Dominion) met weekly and the parties most recently attended an all-day collaboration meeting on or about February 26, 2020.

15. DDMI is the "**Manager**" of the Diavik Mine pursuant to article 7 of the JVA. As such, DDMI must manage, direct, and control operations in respect of the Diavik Mine under the general guidance of the Management Committee. DDMI's powers and duties as Manager are set out in section 7.2 of the JVA and include implementing decisions of the Management Committee; making necessary expenditures to carry out adopted programs; and purchasing or otherwise acquiring all material, supplies, utilities, and transportation services required for operations.

16. Section 7.3 of the JVA articulates the standard of care applicable to DDMI as Manager. It explicitly precludes DDMI's being held liable for any act or omission unless it constitutes "wilful misconduct or gross negligence":

> 7.3 Standard of Care
>
> The Manager shall conduct all Operations in a good, workmanlike and efficient manner, in accordance with sound mining and other applicable industry standards and practices, and in accordance with the terms and

provisions of leases, licenses, permits, contracts and other agreements pertaining to Assets. The Manager shall not be liable to the other Participants for breach of this Agreement or any other act or omission resulting in damage or loss unless the same constitutes the Manager's wilful misconduct or gross negligence.

17. Article 8 of the JVA requires DDMI as Manager to prepare "**Programs**" and "**Budgets**" setting out, respectively, operations and anticipated expenses for each budgetary period.

18. Each Participant reviews and the Management Committee approves each Program and Budget proposed by DDMI as Manager.

19. DDMI as Manager must incur (and assume all liability for) "**Costs**" of operating the Diavik Mine until the Participants pay the "**Cash Calls**" (as defined below) that include those Costs. Under section 1.8 of the JVA, "**Costs**" means "all items of outlay and expense whatsoever, direct or indirect, with respect to Operations".

20. Under section 9.2 of the JVA, DDMI as Manager must issue, and each Participant must pay, "**Cash Calls**" for estimated upcoming Costs payable under the approved Program and Budget:

> 9.2 Cash Calls
>
> Prior to the last day of each month the Manager shall submit to each Participant which has elected to contribute to the Program and Budget then in effect a billing for such Participant's share of estimated Costs for the next month. Within 20 days after receipt of each billing, each Participant shall advance to the Manager such estimated amount. Time is of the essence of payment of such billings. If the amount billed for the estimated Costs was less than the actual Costs incurred or charged during that month, the Manager may bill the Participants for the difference at any time, which the Participants will pay within ten days following receipt of billing. With the concurrence of the Management Committee, the Manager may establish more frequent billing cycles to minimize account balances.

21. By a resolution effective December 22, 2008, the Management Committee changed the billing cycle. On or about the beginning and middle of each calendar month, DDMI as Manager must issue to each Participant a Cash Call invoice for that Participant's share of estimated Costs under the Program and Budget then in effect. Each Cash Call covers the ensuing period of approximately two weeks, and must be paid within 7 days.

22. Under section 9.4, if a Participant defaults in its payment of a Cash Call, then the non-defaulting Participant may satisfy the defaulting Participant's obligation by making a "**Cover Payment**" on its behalf. A Cover Payment constitutes indebtedness owing by the defaulting Participant to the non-defaulting Participant.

23. Article 11.1 of the JVA provides that each party shall take in kind or separately dispose of its share of all "Products", which is defined as "all ores, minerals and mineral resources produced … including, without limitation, diamonds".

DDMI's management of the Diavik Mine

24. The Diavik Mine is located approximately 300 kilometres northeast of Yellowknife, Northwest Territories and 220 kilometres south of the Arctic Circle.

25. The Diavik Mine began production in 2003. It is a large-scale operation that counted 1,124 employees and contractors in 2019. For over 16 years, DDMI has successfully operated the Diavik Mine as a joint venture. As a long-time operator and manager, DDMI has accumulated expertise, benefits from Rio Tinto's institutional expertise, and retains technically competent individuals, consultants and experts, as needed.

26. The Diavik Mine is currently projected to cease production in 2025.

27. At all times, DDMI has conducted operations of the Diavik Mine in accordance with the JVA, including

    (a) in a good, workmanlike, and efficient manner;

    (b) in accordance with sound mining principles and all other applicable industry standards and practices; and

    (c) in accordance with the terms and provisions of leases, licenses, permits, contracts, and other agreements pertaining to the Assets, as defined in the JVA.

28. DDMI has implemented the stretch plan and all other plans, strategies, budgets, and measures agreed to by the Management Committee in accordance with the JVA. All Cash

Call invoices issued to Dominion are consistent with the 2020-2025 Program and Budget approved by the Management Committee.

29. In response to paragraph 16 of the notice of civil claim and the notice of civil claim generally, DDMI denies that it has refused or neglected to provide relevant information to Dominion. As described above, DDMI and Dominion have regularly met to discuss all aspects of the joint venture. In addition to the meetings described above, DDMI has provided monthly performance reports to the Participants that include a summary of key performance indicators, a statement of operating costs, a balance sheet, and cash flow statements. Dominion also has access to joint venture documentation generally, including resource and reserve reconciliation. Further, DDMI provides regular updates regarding the ongoing reclamation pre-feasibility study, which has not been finalized. DDMI has responded to all specific information requests from Dominion relating to the ongoing reclamation pre-feasibility study. Before finalizing the reclamation pre-feasibility study, DDMI will provide it to Dominion for review, comments, and questions, then will provide it to the Management Committee for approval.

30. In response to paragraphs 18 and 19 of the notice of civil claim and the notice of civil claim generally, DDMI's response to the COVID-19 pandemic was prudent, well considered, and consistent with the response of other mine operators in the area:

    (a) in January 2020, DDMI began a formal Trigger Action Response Plan to ensure it was prepared to respond to the COVID-19 pandemic should it impact the Diavik Mine operations;

    (b) in March 2020, DDMI commenced a formal business resilience program, which included proactive preparations that enabled additional health control measures to be developed and implemented in full consultation with governmental authorities and other stakeholders (including employees, suppliers, northern communities, and indigenous governing bodies); and

    (c) also in March 2020, DDMI conducted a comprehensive review of the operating strategy at the Diavik Mine. DDMI analyzed alternative operating strategies during the COVID-19 pandemic, including continuing to operate normally and entering care and maintenance status. From this review, DDMI concluded that the best outcomes for the Participants, for the Diavik Mine's workforce and their communities, and for

stakeholders generally were most likely to be realized by continuing to operate consistently with the 2020-2025 Program and Budget, while simultaneously implementing additional health and safety controls.

31. In further response to paragraphs 18 and 19 of the notice of civil claim, DDMI denies that it has contributed to Dominion's liquidity crisis. Dominion's liquidity crisis stems from the Washington Companies' overly leveraged buyout and specifically Dominion's inability, upon encountering economic headwinds, to meet the heavy debt obligations that the Washington Companies inflicted on it. In its CCAA proceedings, Dominion has described its liquidity crisis as having been caused by its "highly leveraged capital structure" and the "COVID-19 pandemic".

32. In further response to paragraphs 17 through 19 of the notice of civil claim, DDMI denies that it has inappropriately prioritized its interests or knowingly contributed to Dominion's liquidity crisis. Dominion did not communicate to DDMI any concerns regarding Dominion's alleged inability to pay Cash Calls before seeking protection under the CCAA, despite having had ample opportunity to do so. Days before applying under the CCAA, Dominion asked that the payment of the pending Cash Call be delayed without referring to any risk of non-payment. DDMI was never privy to Dominion's internal financial affairs.

33. In response to paragraph 10 of the notice of civil claim and the notice of civil claim generally, the JVA specifies a process for determining overall policies, objectives, procedures, methods, and actions of the joint venture. Pursuant to the JVA, Dominion is an active participant in the management of the joint venture. Without limiting the generality of the foregoing,

    (a) Dominion has the opportunity to consider and approve all Programs and Budgets for the joint venture, after having reviewed and considered historical and projected cash flow statements, balance sheets, detailed cash forecasts, and other relevant financial and operational records of the Diavik Mine;

    (b) Dominion attends regular meetings concerning the joint venture, as described in paragraph 14 above; and

(c) Dominion receives monthly performance reports for the joint venture. These reports include a summary of key performance indicators, a statement of operating costs, a balance sheet, and cash flow statements.

Dominion's default and CCAA proceedings

34. On April 9, 2020, pursuant to the JVA, DDMI issued a Cash Call invoice to Dominion in the amount of $16 million.

35. On April 13, 2020, Dominion requested that the payment schedule be altered such that the deadline for payment of the $16 million Cash Call invoice would be deferred from April 15, 2020 to April 22, 2020. DDMI agreed to Dominion's request.

36. On April 22, 2020, Dominion and its affiliates sought and obtained creditor protection under the CCAA from the Alberta Court of Queen's Bench.

37. Before seeking and obtaining creditor protection under the CCAA, Dominion did not advise DDMI of its intention to do so, despite having informed others that it wanted to engage in strategic discussions about restructuring by no later than April 17, 2020.

38. On the same day that Dominion sought and obtained CCAA protection, it defaulted on the $16 million Cash Call invoice. To date, Dominion has not sought interim financing in the CCAA proceedings to permit it to pay post-filing JVA obligations to DDMI. Dominion has not otherwise made any payments on account of its post-filing obligations to DDMI arising under the JVA.

39. Dominion has not made any payments in respect of its JVA obligations since April 6, 2020.

40. With the approval of the court in Dominion's CCAA proceedings, DDMI has made Cover Payments on Dominion's behalf in accordance with the JVA. Dominion is currently indebted to DDMI in the amount of $69.6 million, plus interest and costs. Dominion's indebtedness is being addressed within the CCAA proceedings.

Division 3 – Additional Facts

41. N/A

PART 2: RESPONSE TO RELIEF SOUGHT

42. DDMI does not consent to the granting of any of the relief sought in the notice of civil claim.

43. DDMI opposes the granting of all of the relief sought in the notice of civil claim.

44. DDMI maintains the plaintiff's action should be dismissed with costs.

PART 3: LEGAL BASIS

45. The JVA and related agreements, consents, and protocols entered into by Dominion and DDMI govern the relationship between and the rights and obligations of Dominion and DDMI.

46. DDMI denies that it has breached the JVA, as alleged or at all. At all times, DDMI has acted in accordance with the JVA.

47. In response to paragraphs 22-24 of the notice of civil claim, the only expectation that Dominion could reasonably have had is that DDMI would act in accordance with the JVA and related agreements, consents, and protocols entered into by Dominion and DDMI. DDMI did so. To the extent Dominion expected that DDMI would act otherwise, those expectations were unreasonable and any breach of those expectations does not give rise to a legal claim.

48. In response to paragraph 25 of the notice of civil claim, DDMI denies that it owed Dominion a fiduciary duty as alleged. The JVA expressly provides that it does not create any fiduciary relationship among the Participants.

49. In response to paragraphs 26 and 27 of the notice of civil claim, DDMI has conducted all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices, in accordance with the JVA. DDMI denies any wilful misconduct or gross negligence, as alleged or at all.

50. In the alternative, if DDMI engaged in any actionable wrongdoing (which is denied), Dominion did not suffer any loss or damage as a result. Rather, Dominion's losses result from the Washington Companies' decision to acquire Dominion by way of a leveraged buyout under different market conditions than those prevailing today.

51. In the further alternative, Dominion has failed properly to mitigate any loss or damage caused by actionable wrongdoing by DDMI (the existence of which is denied).

52. Further, DDMI specifically pleads and relies on the limitation of liability contained in section 7.3 of the JVA, which is quoted in paragraph 16 above. If any wrongdoing by DDMI (the existence of which is denied) caused loss or damage to Dominion, it did not comprise wilful misconduct or gross negligence. It therefore is not actionable and DDMI is not liable for it.

Defendant's address for service:

Address for service:	McCarthy Tétrault LLP Barristers & Solicitors Suite 2400, 745 Thurlow Street Vancouver BC V6E 0C5 **Attention: Michael Feder, Q.C.**
Email address for service (if any):	mfeder@mccarthy.ca

DATED: 15/JUL/2020

MICHAEL FEDER, Q.C.
Counsel for the Defendant
Diavik Diamond Mines (2012) Inc.

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 “H”

BCSC's September 22, 2020 Order

NO. S206419
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DOMINION DIAMOND MINES ULC

PLAINTIFF

AND

DIAVIK DIAMOND MINES (2012) INC.

DEFENDANT

ORDER MADE AFTER APPLICATION

BEFORE	THE HONOURABLE MADAM JUSTICE HORSMAN	TUESDAY, THE 22nd DAY OF SEPTEMBER, 2020

ON THE APPLICATION of the defendant coming on for hearing at Vancouver, British Columbia by teleconference on the 16th day of September, 2020 and on hearing Michael Feder, Q.C. and Val Lucas, counsel for the defendant; and Joe McArthur and Ariel Solose, counsel for the plaintiff; AND JUDGMENT BEING RESERVED TO THIS DATE;

THIS COURT ORDERS that:

1. The defendant's application for security for costs is adjourned generally;

2. The defendant is at liberty to reset the application at a date convenient to both parties after November 7, 2020;

3. The action shall be stayed in the interim with the exception that the defendant is at liberty to set a trial date;

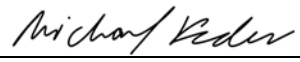
4. The stay may be lifted by the mutual consent of the parties or further order of the court; and

5. Costs of this application are in the cause.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

JOE McARTHUR
Counsel for the plaintiff

BY THE COURT



MICHAEL FEDER, Q.C.
Counsel for the defendant

REGISTRAR

No. S206419
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DOMINION DIAMOND MINES ULC

PLAINTIFF

AND:

DIAVIK DIAMOND MINES (2012) INC.

DEFENDANT

ORDER

Michael Feder, Q.C.
McCarthy Tétrault LLP
Suite 2400, 745 Thurlow Street
Vancouver, British Columbia V6E 0C5
Tel: 604-643-7100
Fax: 604-643-7900

AGENT: Dye & Durham

APPENDIX “I”

BCSC's Reasons for Judgment

Court Services Online
Purchase Documents Online Request

Date: 05-OCT-2021

Sent From:

Vancouver Law Courts
800 Smithe St.
Vancouver BC V6Z2E1
Canada

Request Details:

Request Id: 465829
Transaction Id: 73919292
Court File #: VLC-S-S-206419
Date Requested: 05-OCT-2021
Requested By: BENNETT JONES LLP

Attention:

SIMARD, CHRIS
BENNETT JONES LLP
Fax #: 1-403-265-7219

Documents Requested:

Reasons For Judgment (22-SEP-2020)	05-OCT-2021

Comments: FAXED ON 5OCT21
- MM

Thank-you for using Court Services Online

Total Pages sent including cover sheet: 10

ORIGINAL

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dominion Diamond Mines ULC v. Diavik Diamond Mines (2012) Inc.*, 2020 BCSC 1509

Date: 20200922
Docket: S206419
Registry: Vancouver

Between:

Dominion Diamond Mines ULC

Plaintiff

And

Diavik Diamond Mines (2012) Inc.

Defendant

Before: The Honourable Madam Justice Horsman

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff appearing by teleconference:	J.C. McArthur A. Solose
Counsel for the Defendant appearing by teleconference:	M. Feder, Q.C. V. Lucas
Place and Date of Hearing:	Vancouver, B.C. September 16, 2020
Place and Date of Judgment:	Vancouver, B.C. September 22, 2020

[1] **THE COURT:** This is my ruling on the application.

INTRODUCTION

[2] The defendant, Diavik Diamond Mines (2012) Inc. ("Diavik") applies for an order for security for costs against the plaintiff, Dominion Diamond Mines ULC ("Dominion") pursuant to s. 236 of the *Business Corporations Act*, S.B.C. 2002, c. 57.

[3] Dominion filed its notice of civil claim on June 16, 2020. Dominion alleges that Diavik breached the terms of a Joint Venture Agreement between the parties that concerns the exploration and development of certain mineral resources within the Diavik Diamond Mine in the Northwest Territories. Diavik is the mine manager under the Joint Venture Agreement. Dominion alleges that Diavik breached its fiduciary obligations in exercising its duties as mine manager and that its actions amounted to wilful misconduct and gross negligence.

[4] Diavik filed its response to civil claim on July 15, 2020. Diavik denies that it owes fiduciary obligations to Dominion and says that it has acted in accordance with industry standards and practices in discharging its duties as mine manager.

[5] The action is still in its early stages, no trial date has been set, and the parties have not exchanged lists of documents.

[6] The backdrop to Diavik's application for security for costs is that Dominion has sought and obtained creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended [*CCAA*], in the Alberta Court of Queen's Bench. Diavik says there is a strong *prima facie* case that Dominion will be unable to pay any costs if its claim is dismissed as Dominion is insolvent and has no exigible assets in British Columbia. Diavik says that a conservative estimate of its recoverable costs and disbursements in this action is around $257,000. Applying a discount based on the potential for early resolution, Diavik seeks an order that Dominion pay $150,000 into court as security for costs with Diavik at liberty to apply to dismiss the action if security for costs is not provided within 30 days.

[7] Diamond raises a number of points in opposition to Diavik's application. As a preliminary objection, Diamond says that this application should be adjourned pending the outcome of a sale process that is close to completion in the *CCAA* proceeding. In my view, Diamond's request for an adjournment should be addressed first on this application. If an adjournment is granted, then I need not and should not address the substantive merits of Diavik's application for security for costs.

BACKGROUND

[8] The relevant background to Diamond's adjournment request is as follows.

[9] On June 19, 2020, the Alberta Court of Queen's Bench issued a Second Amended and Restated Initial Order in the *CCAA* proceeding (the "*CCAA* Order"). Among other things, the *CCAA* Order approves the sale and investment solicitation process for Dominion's assets, property, and undertakings. A qualified bid, which is referred to in the material as the "Stalking Horse Bid," has been received. No other qualified bids were received within the deadline under the *CCAA* Order.

[10] I was advised by counsel for Diamond at the hearing of this application that an announcement had just been made that the sale process would proceed with the Stalking Horse Bid. The timelines under the *CCAA* Order have been, or would be, accordingly altered somewhat. Counsel advises that it is presently anticipated that the date for court approval of the sale will be extended from September 28 to October 12, 2020, and the completion date for the sale will be extended from October 31 to November 7, 2020. The situation remains fluid as the *CCAA* process is ongoing.

[11] Dominion says that its financial position can only be determined once the sale process is complete. Accordingly, Dominion seeks an adjournment of this application until after the completion date of November 7, 2020. Dominion says there is no prejudice to Diavik in an adjournment. The litigation is in its early stages, pleadings have only just closed, and no trial date has been set. Dominion agrees that it would be reasonable as a term of any adjournment to stay the litigation during the period of

the adjournment so that Diavik is not required to incur costs before its application can be heard.

[12] As a further basis for its adjournment request, Dominion points out that there is a provision in the *CCAA* Order which precludes the exercise of rights and remedies against Dominion during a "stay period" other than with leave of the Court. The relevant term provides:

> 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 ...

[13] The *CCAA* Order defines the Stay Period as ending on September 28, 2020, or such later date as the court may order. I understand that the Stay Period is presently expected to extend to the date for the completion of the sale which is November 7, 2020.

[14] Dominion says that Term 14 on its face applies to an application for security for costs which seeks a statutory remedy that could impact other creditors. If the application is adjourned until after November 7, 2020, the Stay Period will have expired and there will be no concern with a requirement for Diavik to seek leave of the *CCAA* Court in order to bring an application for security for costs. Dominion says hearing the application now, when leave has not been granted to Diavik to seek the remedy of security for costs, would contravene Term 14 of the *CCAA* Order.

[15] Diavik opposes any adjournment of its application. Diavik says it is entitled to bring the application for security for costs to preserve its position, having been sued by a company with no assets in British Columbia and no apparent ability to pay a future costs order. Diavik argues that Dominion's suggestion that its financial position may improve with the sale is speculative. In any event, such potential change in position can, in Diavik's submission, be anticipated within the terms of the order it seeks by extending the deadline for Dominion to pay security into court to 60

or 90 days. Diavik disputes Dominion's interpretation of Term 14 of the *CCAA* Order and says there is no requirement to seek leave of the court to bring an application for security for costs.

DECISION

[16] In my view, the balance of convenience favours adjourning the hearing of this application until after the November 7, 2020, completion date for the sale. Three factors are of particular relevance to my assessment of the balance of convenience:

1. Diamond's financial position may change as a result of the pending sale. While I accept Diavik's submission that there is no evidence before me to establish as a fact that Diamond's financial situation will improve, that does not make the sale irrelevant as a factor for this Court's consideration. Absent some demonstrated prejudice to Diavik in an adjournment, the Court should hear the application for security for costs with a complete understanding of the plaintiff's financial situation. Whatever other uncertainties exist, what can be said with certainty is that there will be a change in circumstances in some form with the completion of the sale.

2. There is no prejudice to Diavik that I can discern in an adjournment of this application for a period of approximately two months, particularly at this early stage in the litigation. Diavik's concern in applying for security for costs is that it will have to incur costs defending this action which are ultimately unrecoverable. Diavik will not incur potentially unrecoverable costs if it is a term of the adjournment that the action is stayed in the interim.

3. Even absent the pending sale, I would, in any event, have adjourned this application to permit Diavik time to seek leave of the Alberta Court of Queen's Bench pursuant to Term 14 of the *CCAA* Order to pursue the remedy of security for costs against Diamond. In saying this, I make no determination of whether an application for security for costs

> falls within the scope of the *CCAA* Order. It seems to me that the point is at least arguable. To the extent that there is uncertainty about the scope of a term in the *CCAA* Order, in my view, that uncertainty should be resolved by the Alberta Court of Queen's Bench within the context of the *CCAA* proceeding and not by this Court in the context of an interlocutory application for security for costs.

[17] Accordingly, my orders on this application are as follows:

1. Diavik's application for security for costs is adjourned generally.

2. Diavik is at liberty to reset the application at a date convenient to both parties after November 7, 2020.

3. The action shall be stayed in the interim with the exception that Diavik has liberty to set a trial date.

4. The stay may be lifted by the mutual consent of the parties or further order of the court.

[18] Counsel, my preliminary view is that the costs of this appearance should be in the cause. Do either party seek an alternative order?

[19] MR. McARTHUR: That is acceptable to the plaintiff, My Lady.

[20] MR. FEDER: And likewise the defendant, My Lady.

[21] THE COURT: All right, then costs shall be in the cause.

Horsman J.

APPENDIX “J”

ACDC APA

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

TABLE OF CONTENTS

LIST OF SCHEDULES

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 (5^{th}) 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

_____

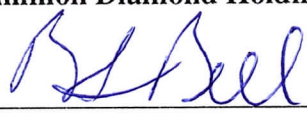
By:
Its:

Brigade Capital Management, LP, on behalf of certain funds and accounts that it manages and/or advises

By: Aaron Daniels
Its: GC/CCO

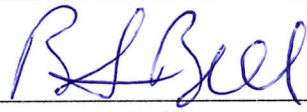
SELLERS:

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

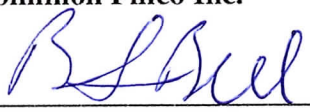
Dominion Diamond Marketing Corporation

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

APPENDIX “K”

DDMI's Bench Brief dated December 10, 2020

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 DIAVIK DIAMOND MINES (2012) INC.**
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 / Pantelis Kyriakakis / Nathan Stewart Tel: 403-260-3531 / 3710 / 3536 / 3534 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

Clerk's Stamp

BENCH BRIEF OF DIAVIK DIAMOND MINES (2012) INC.

IN RESPONSE TO THE APPLICATION SEEKING A SALE APPROVAL AND VESTING ORDER TO BE HEARD BY THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK

December 11, 2020 at 2:00 P.M.

154213/516250
MT DOCS 21035370

TABLE OF CONTENTS

I. INTRODUCTION

1. Dominion Diamond and the other CCAA Applicants have filed an application (the "**Application**") seeking, *inter alia*, the approval of the Asset Purchase Agreement, dated December 6, 2020 (the "**APA**"), between the CCAA Applicants, as vendors, and DDJ Capital Management, LLC and Brigade Capital Management, LP (collectively with any nominee of such parties, the "**Purchaser**"), as purchasers. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the APA.

2. DDMI has serious and valid concerns with various elements of the APA and the proposed form of Approval and Vesting Order (the "**AVO**"). Having said this, DDMI's intention in surfacing its concerns is solely related to ensuring its bargained for rights are not eradicated by the proposed transaction. DDMI's concerns are easily addressed by amendments it proposes to the APA and AVO. DDMI has no desire to interfere with a going-concern transaction for the Ekati Mine.

3. Consistent with this position, following service of the Application it engaged with the Sellers, the First Lien Lenders and the Monitor in an effort to create clarity and finality in respect of both the Acquired Assets and the Encumbrances subject to vesting. The Monitor, the Sellers and the First Lien Lenders have all advised DDMI that the APA does not intend to convey any of Dominion Diamond's interest in the Diavik Joint Venture to the Purchaser; rather, what is being conveyed by Dominion Diamond to the Purchaser are receivables that Dominion Diamond may receive from the Diavik Joint Venture.

4. DDMI seeks language in the transaction documents that is consistent with the representations made by the Sellers and First Lien Lenders. DDMI faces a circumstance where it is owed in excess of $119 million in Cover Payment indebtedness and, given the failure of the SISP to bring forth an offer for the Diavik Mine, its only recoveries will be through Dominion Diamond's share of diamond production. It will not take the risk that its future recoveries will be prejudiced by inexact drafting or competing interpretations of the APA and the AVO.

5. The draft form of AVO attached as Schedule "A" to the Application would vest certain Acquired Assets in the Purchaser, free and clear of all Encumbrances other than the Permitted Encumbrances, with the seemingly unintended effect of vesting DDMI's valid and subsisting

security. The drafting is clumsy and does not square with the representations that have been made to DDMI.

6. Unless DDMI's proposed discrete amendments are accepted, both the APA and the AVO, in their current form, are fundamentally flawed:

(a) while the Monitor, Sellers and First Lien Lenders have advised DDMI that the APA is not intended to effect a conveyance of Dominion Diamond's interest in the Diavik Joint Venture to the Purchaser, the materials submitted in support of the Application state the exact opposite. Mr. Bell testifies that the transaction provides for "…a going concern sale of substantially all of the Applicants' assets (but not including joint venture obligations related to the Diavik Mine)." This testimony clearly evinces an intention that what the Sellers are conveying is the Diavik Mine in a manner that is not permitted by the Diavik Joint Venture Agreement. The APA itself creates ambiguity, including by virtue of the fact that neither the Diavik Joint Venture Interest nor the Diavik Mine are identified as Excluded Assets and that the Diavik Realization Assets include broad, overreaching and vague references to rights relating to the Diavik Joint Venture Interest;

Affidavit No. 6 of Thomas Croese, sworn on December 10, 2020, at para. 4(d) ["Croese Affidavit #6"].

Affidavit of Brendan Bell, sworn on December 7, 2020, at para. 5.

(b) DDMI's security interest under the Diavik Joint Venture Agreement (the "**DDMI Security**") ranks senior to the First Lien Lenders. However, the proposed APA and accompanying AVO preserves the security in favour of the First Lien Lenders on the Diavik Realization Assets and purports to extinguish DDMI's Cover Payment security.

7. Since DDMI understands that stakeholders see value in a broader going-concern transaction involving the Ekati Mine, it is prepared to be flexible and rather than opposing the approval of the APA and AVO, DDMI is thus proposing that a metaphorical scalpel be used to excise the broad-axe drafting contained in the AVO and APA (collectively, the "**Proposed Revisions**"). A blackline of the APA, containing DDMI's Proposed Revisions, is attached as

Appendix "A" to this Bench Brief. A blackline of the AVO, containing DDMI's Proposed Revisions, is attached as **Appendix "B"** to this Bench Brief.

II. BACKGROUND

8. The DDMI Security constitutes a valid and perfected security interest which is first-ranking as against DDMI's collateral, including pursuant to the Intercreditor Agreements. The stay of proceedings in favour of Dominion Diamond has not extinguished that interest, which can only be extinguished by Dominion Diamond discharging the obligations secured thereby. The Proposed Revisions are therefore necessary to avoid a confiscation, however unintentional, of DDMI's rights as a secured creditor.

Eighth Report of the Monitor, dated October 29, 2020 at para. 26(a).

Copies of the Intercreditor Agreements are attached to the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, as Exhibits "A" and "B" thereto.

9. The Application materials were served at approximately 9 p.m. on Sunday, December 6, 2020. The CCAA Applicants provided their response to the issues and concerns raised by DDMI at 8 p.m. Thursday, December 10, 2020. As a result, the Proposed Revisions are preliminary in nature pending further review of the APA by DDMI, and further engagement with the interested parties. DDMI reserves its right to make further submissions with respect to the Proposed Revisions in light of its ongoing review of the APA.

Croese Affidavit #6, *supra*, at paras. 4(a)-(c), (e).

III. ISSUES

DDMI's position with respect to the issues to be determined is:

(a) The AVO and APA should not be approved in their current forms in preference to accepting DDMI's Proposed Revisions.

IV. ARGUMENT

A. APA Amendments

(i) Definition of Diavik Realization Assets

10. The APA currently defines "Diavik Realization Assets" as follows:

> "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:
>
> …
>
> (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;
>
> …"

Application (Approval and Vesting and Stay Extension Orders), at Schedule "A" (Approval and Vesting Order) ["AVO"], at Schedule "A" (Asset Purchase Agreement dated as of December 6, 2020), at s. 3.1 ["APA"].

11. The Proposed Revisions need to be viewed through the lens of the following undisputed facts. First, the assets conveyed by the Sellers to the Purchaser that relate to the Diavik Joint Venture are subject to the DDMI Security. Second, the DDMI Security under the Diavik Joint Venture ranks in priority to the security of the First Lien Lenders.

12. DDMI's Proposed Revisions seek to clarify that the term Diavik Realization Assets refers only to proceeds which are otherwise payable to Dominion Diamond from the Diavik Joint Venture. DDMI also seeks confirmation that, in accordance with the terms of the Diavik Joint

Venture Agreement and the Intercreditor Agreements, the DDMI Security continues in the diamonds and proceeds which will be sold under the court-approved Monetization Process.

13. The First Lien Lenders are subordinate to DDMI insofar as it relates to the Cover Payment Security. The current draft of the APA, however, keeps the First Lien Lenders' security intact while at the same time purporting to extinguish the DDMI Security. This is an impermissible reordering of priorities.

14. In *U.S. Steel Canada Inc. (Re)*, the Ontario Court of Appeal stated:

> ***There is no support for*** the concept that the phrase "any order" in s. 11 provides ***an at-large equitable jurisdiction to reorder priorities*** or to grant remedies as between creditors. The orders reflected in the case law have addressed the business at hand: the compromise or arrangement.

U.S. Steel Canada Inc. (Re), 2016 ONCA 662 at para. 82.

15. The Diavik Joint Venture Agreement contains restrictions on the alienability of interests thereunder.

16. The Diavik Joint Venture Agreement defines "Transfer" as follows:

> "1.29 "Transfer" means sell, grant, ***assign***, encumber, pledge or otherwise commit or dispose of." [emphasis added].

[TAB 1, Diavik Joint Venture Agreement Excerpts].

17. Sections 15.1 and 15.2 of the Diavik Joint Venture Agreement address the Transfer of Participating Interests under the Diavik Joint Venture Agreement, and state:

> "15.1 General
>
> Each Participant shall have the right to Transfer to any third party all or any part of its Participating Interest solely as provided in this Article 15.
>
> 15.2 Limitations on Free Transferability
>
> The Transfer right of a Participant in Section 15.1 shall be subject to the following terms and conditions:
>
> (a) no transferee of all or any part of the Participating Interest of a Participant, a Control Interest in a Participant or an Affiliate or the Net Profits Royalty shall have any rights hereunder unless and until the transferring Participant has provided to the other Participants notice of the Transfer, and except as provided in Section 15.2(d)

and 15.2(e), the transferee, as of the effective date of the Transfer, has committed in writing to be bound by this Agreement to the same extent as the transferring Participant;

(b) ***no transfer permitted by this Article 15 shall relieve the transferring Participant of any liability***, whether accruing before or after such Transfer, ***which arises out of Operations conducted prior to such Transfer***;

(c) in the event of a Transfer of less than all of a Participating Interest, the transferring Participant and its transferee shall act and be treated as one Participant;

(d) if the Transfer is the grant of a security interest by mortgage, deed of trust, pledge, lien or other encumbrance of the Participating Interest or Net Profits Royalty of a Participant to secure a loan or other indebtedness, such security interest shall be subordinate to the terms of this Agreement and the rights and interests of the other Participants hereunder. Upon any foreclosure or other enforcement of rights in the security interest the acquiring third party shall be deemed to have assumed the position of the encumbering Participant with respect to this Agreement and the other Participants, and it shall comply with and be bound by the terms and conditions of this Agreement; and

(e) ***if a sale or other commitment or disposition of Products or proceeds from the sale of Products by a Participant upon distribution to it pursuant to Article 11 creates in a third party a security interest in Products or proceeds therefrom prior to such distribution, such sales, commitment or disposition shall be subject to the terms and conditions of this Agreement***." [emphasis added].

[TAB 1, Diavik Joint Venture Agreement Excerpts].

18. The import of section 15.2(e) is that with the assignment of the Diavik Realization Assets must comply with section 9.4 of the JVA, which provides that the DDMI Security in respect of Cover Payments shall rank prior to any and all other mortgages and security interests granted by or charging the property of Dominion Diamond.

[TAB 1, Diavik Joint Venture Agreement Excerpts].

(ii) Definition of Business

19. The APA contemplates a going concern transaction for the Ekati Mine, but the definition of "Business" is broader and includes the Diavik Mine business.

(iii) Definition of Inventory

20. The term "Inventory" is currently defined in the APA as follows:

> "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."

APA, *supra* at s. 1.1.

21. The definition of "Inventory" in the APA is such that all of the Dominion Production (as defined in the Monetization Process), which constitute "diamonds … maintained, held or stored by or for any Seller … wherever located or held", shall be vested in the Purchasers, free and clear of the DDMI Security. The approval of the APA including this definition and the accompanying vesting provisions would work the absurd result of vesting all of the Dominion Production free and clear of the Cover Payment Security. The Monitor, Sellers and First Land Lenders have all advised that Inventory is not intended to apply to any collateral held at the PSF.

22. DDMI's Proposed Revision expressly excludes the diamonds produced by the Diavik Mine, and other inventory of the Joint Venture of any kind or nature held at the PSF, or elsewhere, from the definition of Inventory.

(iv) Definition of Permitted Encumbrances

23. DDMI requires that the DDMI Security be added to the definition of Permitted Encumbrances in the same way and with the same rights afforded to the First Lien Lenders. The proceeds being conveyed by the Sellers to the Diavik Realization Assets are subject to the security interest in favour of DDMI, to the extent that any Cover Payment indebtedness remains outstanding.

(v) The Diavik Joint Venture Interest, Diavik Mine, and Related Assets as Excluded Assets

24. Pursuant to section 3.2 of the APA, the "Diavik Joint Venture Agreement" is an Excluded Asset. The APA does not include the Diavik Mine, nor the "Diavik Joint Venture Interest", the

"Diavik Leases", or the "Diavik Joint Venture" as Excluded Assets which creates ambiguity as to whether those interests are included.

B. AVO Amendments

(i) DDMI Security as a Permitted Encumbrance

25. For the same reasons as set out above with respect to the APA, DDMI requires that the DDMI Security be added to the list of Permitted Encumbrances attached as Schedule "E" to the AVO.

26. In connection with this Proposed Revision, paragraph 14 of the AVO needs to be amended to provide DDMI with the same treatment as the First Lien Lenders, namely that DDMI's claims against the Sellers shall continue. This is necessary because paragraph 14 of the AVO currently provides that "[i]mmediately upon Closing … 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".

(ii) Catch-All Provision Limiting Prejudice

27. DDMI proposes adding a new paragraph 24 to the AVO, as a catch-all provision providing that nothing in the AVO or APA shall transfer, convey or assign the Sellers' interest in the Diavik Joint Venture, or operate to prejudice, extinguish or otherwise affect the rights and remedies of DDMI under the Diavik Joint Venture Agreement.

(iii) The Break-Up Fee and Charge Should Not Prime the DDMI Security

28. Section 20 of the AVO states:

> The Break-Up Fee Charge shall rank in priority subsequent to the security securing both the (i) Charges; and (ii) indebtedness under the Pre-filing Credit Agreement.
>
> **AVO, *supra* at para. 20.**

29. The "Pre-filing Credit Agreement" refers to Dominion Diamond's credit agreement with the First Lien Lenders. There is no reference to the priority of the DDMI Security, and no clarification that the Break Fee Charge applies only to the Acquired Assets under the APA. There is no reasonable justification for such a charge obtaining priority over the DDMI Security.

C. The Proposed Revisions Are Consistent With the Parties' Relative Priorities and the Law Applicable to Liquidations

30. The Monetization Process Order approved a liquidation of the DDMI Collateral. Liquidations must proceed in accordance with the relative priorities of creditors. As the Supreme Court of Canada stated in *Century Services Inc. v Canada (Attorney General)*:

> "… Certain legal proceedings become available upon insolvency, which typically allow a debtor to obtain a court order staying its creditors' enforcement actions and attempt to obtain a binding compromise with creditors to adjust the payment conditions to something more realistic. Alternatively, ***the debtor's assets may be liquidated and debts paid from the proceeds according to statutory priority rules***. …" [emphasis added].

***Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at para. 12.**

D. Delivery of the DDMI Collateral to Dominion Diamond Does Not Extinguish the DDMI Security

31. DDMI understands that the First Lien Lenders have taken the position that any DDMI Collateral delivered to Dominion Diamond pursuant to paragraph 16 of the SARIO shall be conveyed free and clear of the DDMI Security. That position is incorrect, and is contrary to the terms of the SARIO and the Order (Dismissal of Continuation of September 25 Order), issued on November 4, 2020 (the "**Dismissal Order**"); the *Personal Property Security Act*, SNWT 1994, c. 8; and, the well-established tenets of the law of secured transactions.

32. A security interest is perfected when it attaches and all steps for perfection have been completed, regardless of the order of occurrence. Registration of a financing statement perfects a security interest in collateral.

***Personal Property Security Act*, SNWT 1994, c. 8 at ss. 19, 25 ["NWT PPSA"].**

33. Attachment occurs when value is given, the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party, and the security agreement has been signed.

NWT PPSA, *supra* at ss. 12(1), 10(1)(d)(i).

34. The security agreement has been signed and a financing statement has been registered. The DDMI Security is thus perfected as against the DDMI Collateral upon Dominion Diamond

obtaining rights in the DDMI Collateral pursuant to the Diavik Joint Venture Agreement and Splitting Protocol.

35. The First Lien Lenders have suggested that any excess collateral transferred to Dominion Diamond extinguishes the DDMI Security because title to the excess collateral will be transferred to Dominion Diamond upon delivery. Leaving aside, for the moment, the fact that title actually transfers once the Diamonds are split, title is irrelevant under the modern law of secured transactions. In *Re Giffen*, the Supreme Court of Canada stated:

> "26 The Court of Appeal did not recognize that the provincial legislature, in enacting the PPSA, has set aside the traditional concepts of title and ownership to a certain extent. T. M. Buckwold and R. C. C. Cuming, in their article "The Personal Property Security Act and the Bankruptcy and Insolvency Act: Two Solitudes or Complementary Systems?" (1997), 12 Banking & Finance L. Rev. 467, at pp. 469-70, underline the fact that provincial legislatures, in enacting personal property security regimes, have redefined traditional concepts of rights in property:
>
> > Simply put, the property rights of persons subject to provincial legislation are what the legislature determines them to be. While a statutory definition of rights may incorporate common law concepts in whole or in part, it is open to the legislature to redefine or revise those concepts as may be required to meet the objectives of its legislation. This was done in the provincial PPSAs, which implement a new conceptual approach to the definition and assertion of rights in and to personal property falling within their scope. The priority and realization provisions of the Acts revolve around the central statutory concept of "security interest". The rights of parties to a transaction that creates a security interest are explicitly not dependent upon either the form of the transaction or upon traditional questions of title. Rather, they are defined by the Act itself. [Emphasis added.]" [emphasis original].

Re Giffen, [1998] 1 SCR 91 at para. 26.

36. There is no requirement that a secured creditor maintain possession of assets subject to a security interest which has been perfected by registration, in order to preserve its security interest. The determinative factor is registration, except in cases where the secured party's interest has been perfected solely by possession.

NWT PPSA, *supra* at ss. 23(1), 25.

37. Moreover, delivery of the DDMI Collateral to Dominion Diamond is not an ordinary course sale which would otherwise serve to extinguish the DDMI Security in the DDMI Collateral or its proceeds. The Dismissal Order is not a sale or lease; it is an order of this Honourable Court,

which implicitly recognizes the continued perfection of the DDMI Security by requiring that Dominion Diamond segregate, secure and retain in the Northwest Territories any DDMI Collateral delivered to it under the SARIO.

Order (Dismissal of Continuation of September 25 Order), issued on November 4, 2020, at para. 3.

V. RELIEF REQUESTED

38. DDMI respectfully requests that this Honourable Court approve the Proposed Revisions to the AVO and APA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of December, 2020

McCarthy Tétrault LLP

Per: *"McCarthy Tétrault LLP"*
Sean F. Collins / Walker W. MacLeod / Pantelis Kyriakakis / Nathan Stewart
Counsel for Diavik Diamond Mines (2012) Inc.

VI. LIST OF AUTHORITIES

Evidence

1. Diavik Joint Venture Agreement excerpts.

Cases

2. *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662;

3. *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60;

4. *Re Giffen*, [1998] 1 SCR 91.

Legislation

5. *Personal Property Security Act*, SNWT 1994, c. 8.

APPENDIX A

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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LIST OF SCHEDULES

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 extracted from the Ekati Diamond Mine 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 ot 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~~but shall not include (i) diamonds produced from the Diavik Mine and other inventory of any kind or nature of the Diavik Joint Venture and held by DDMI at the Diavik Production Splitting Facility in Yellowknife, Northwest Territories pursuant to the terms of the Amended and Restated Initial Order at Closing; and (ii) diamonds produced from the Diavik Mine and other inventory of any

kind or nature of the Diavik Joint Venture ~~Interests and whose title has transferred to Sellers.~~that has been transported by DDMI to Antwerp, Belgium pursuant to the terms of the Order (Approval of Monetization Process) issued in the CCAA Proceedings on November 4, 2020.

"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 or with respect to 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 DDMI pursuant to the Diavik Joint Venture and 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(a).

"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~~proceeds from Products (as such term is defined in the Diavik Joint Venture Agreement) upon distribution to the Sellers pursuant to Article 11 of the Diavik Joint Venture ~~Interest~~Agreement (including, without limitation, all proceeds from 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 (i) the terms and conditions of the Diavik Joint Venture Agreement, including the continuing liens and charges of DDMI pursuant to the Diavik Joint Venture Agreement; and (ii) 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 Diamond Mine;

(b) the Diavik Joint Venture;

(c) ~~(a)~~ the Diavik Joint Venture Agreement;

(d) the Diavik Joint Venture Interest;

(e) the Diavik Leases;

(f) ~~(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");

(g) ~~(c)~~ all Excluded Contracts;

(h) ~~(d)~~ Sellers' rights under this Agreement, and under any Ancillary Documents;

(i) ~~(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;

(j) ~~(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;

(k) ~~(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

(l) ~~(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:

[Signature Page to Asset Purchase Agreement]

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

[Signature Page to Asset Purchase Agreement]

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

[Signature Page to Asset Purchase Agreement]

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 (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 5(a)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)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)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 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)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 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

[1] All amounts in US$ millions, unless otherwise noted. This is a non-exhaustive list of key economic terms and conditions

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

SCHEDULE C

APPROVED EKATI RESTART EXPENDITURES

SCHEDULE D

COMPANY'S EKATI RESTART BUDGET

Document comparison by Workshare Compare on Thursday, December 10, 2020 9:30:38 PM

Input:	
Document 1 ID	PowerDocs://DOCS/21032857/1
Description	DOCS-#21032857-v1-Asset_Purchase_Agreement
Document 2 ID	PowerDocs://DOCS/21032857/2
Description	DOCS-#21032857-v2-Asset_Purchase_Agreement
Rendering set	MTStandard

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

Statistics:	
	Count
Insertions	45
Deletions	30
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	77

APPENDIX “L”

Ninth Cash Flow Statement

Appendix L
Dominion Diamond Mines
Ninth Cash Flow Statement

Eighth Cash Flow Statement For the Fifty-Seven Week Period Ending March 4, 2022 *($ thousands)*	Notes	Week 1 to Week 34 Actuals	Week 35 Oct-01 Forecast	Week 36 Oct-08 Forecast	Week 37 Oct-15 Forecast	Week 38 Oct-22 Forecast	Week 39 Oct-29 Forecast	Week 40 Nov-05 Forecast	Week 41 Nov-12 Forecast	Week 42 Nov-19 Forecast	Week 43 Nov-26 Forecast	Week 44 Dec-03 Forecast	Week 45 Dec-10 Forecast	Week 46 Dec-17 Forecast	Week 47 Dec-24 Forecast	Week 48 Dec-31 Forecast	Week 49 Jan-07 Forecast	Week 50 Jan-14 Forecast	Week 51 Jan-21 Forecast	Week 52 Jan-28 Forecast	Week 53 Feb-04 Forecast	Week 54 Feb-11 Forecast	Week 55 Feb-18 Forecast	Week 56 Feb-25 Forecast	Week 57 Mar-04 Forecast	Total
Receipts																										
Sales Proceeds	[1]	$ -	$ 380	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 380
RVO Process Cost Payment	[2]	-	-	-	-	317	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	317
RVO Payment	[3]	-	-	-	-	-	-	-	-	1,902	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,902
Total Receipts		-	380	-	-	317	-	-	-	1,902	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,599
Disbursements																										
Professional Fees	[4]	1,162	77	-	-	-	358	-	-	-	-	125	-	-	-	-	75	-	-	-	75	-	-	-	42	1,914
RVO Process Costs	[2]	-	-	-	-	-	-	-	-	317	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	317
Other		59	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	64
Total Disbursements		1,221	82	-	-	-	358	-	-	317	-	125	-	-	-	-	75	-	-	-	75	-	-	-	42	2,295
Net Change in Cash		(1,221)	298	-	-	317	(358)	-	-	1,585	-	(125)	-	-	-	-	(75)	-	-	-	(75)	-	-	-	(42)	304
Opening Cash		1,598	377	675	675	675	992	634	634	634	2,219	2,219	2,094	2,094	2,094	2,094	2,094	2,019	2,019	2,019	2,019	1,944	1,944	1,944	1,944	1,598
Ending Cash		$ 377	$ 675	$ 675	$ 675	$ 992	$ 634	$ 634	$ 634	$ 2,219	$ 2,219	$ 2,094	$ 2,094	$ 2,094	$ 2,094	$ 2,094	$ 2,019	$ 2,019	$ 2,019	$ 2,019	$ 1,944	$ 1,944	$ 1,944	$ 1,944	$ 1,902	$ 1,902

Notes:
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] Sales Proceeds relate to a requested advance from the 1L Lenders to fund professional costs secured by the Administration Charge in the CCAA Proceedings.
[2] RVO Process Cost Payment receipt and Process Costs disbursement is the Canadian dollar equivalent of the US $250,000 Process Cost payment to be made by Washington to Dominion upon execution of the RVO Term Sheet to fund reasonable and documented professional fees relating to the execution of the RVO Transaction.
[3] RVO Payment is the Canadian dollar equivalent of the US $1.5 million payment to be made by Washington to Dominion upon the entry of the RVO Transaction.
[4] Professional fees include disbursements related to the 1L Lenders, the Monitor and the Monitor's Legal Counsel.