

Clerk's Stamp:



COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN C112875  
BANKRUPTCY AND INSOLVENCY

JP

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS LLC, DOMINION FINCO INC., and DOMINION DIAMOND MARKETING CORPORATION

DOCUMENT **TRANSACTION APPROVAL AND REVERSE VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219

I hereby certify this to be a true copy of the original Order

Dated this 16 day of Nov 2021

Jesse Peterson  
for Clerk of the Court

**DATE ON WHICH ORDER WAS PRONOUNCED:**

TUESDAY, NOVEMBER 16, 2021

**LOCATION OF HEARING OR TRIAL**

CALGARY COURTS CENTRE

**NAME OF JUDGE WHO MADE THIS ORDER:**

THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK

UPON THE APPLICATION of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the “**Monitor**”) in these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (this “**Order**”), *inter alia*, approving the transaction (the “**Transaction**”) contemplated by the Definitive Term Sheet for RVO Transaction (as it may be amended in accordance with this Order, the “**Agreement**”) between the Monitor and Washington Diamond Investments Holdings II, LLC (“**Washington**”), a copy of which is attached as Appendix “N” to the October 19, 2021 Supplemental Report to the Sixteenth Report of the Monitor, filed (the “**Monitor’s Report**”) and vesting the Transferred Assets, subject to the Claims and Encumbrances, to the Monitor in trust for the benefit of the creditors of the Dominion Entities (the “**Creditor Trust**”);

AND UPON READING the Monitor’s Report; AND UPON hearing the submissions of counsel for the Monitor, Washington, Arctic Canadian Diamond Company Ltd. and such other counsel as were present;

**IT IS ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of the application for this Order and the Monitor’s Report is hereby abridged and deemed good and sufficient, no other Person is required to have been served with notice of this application, and this application is properly returnable today.

**DEFINED TERMS**

2. The following capitalized terms used in this Order shall have the following meanings:
  - (a) “**ACDC APA**” has the meaning given to it in the Monitor’s Report;
  - (b) “**ACDC Claims**” means any Claim arising under the ACDC APA;
  - (c) “**Applicants**” means the applicant debtor companies in these proceedings;
  - (d) “**Claims**” means all claims, liabilities, indebtedness, actions, causes of action, demands, judgments, executions, assessments or reassessments, damages, losses, expenses, commitments and obligations of any kind or nature whatsoever (whether

direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, due or not yet due, in law or equity and whether based in statute or otherwise) whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, or otherwise, including without limitation the ACDC Claims;

- (e) “**Closing Payment**” means a cash payment of US\$1,500,000 made by Washington to the Monitor on closing of the Transaction;
- (f) “**DDM**” means Dominion Diamond Mines ULC;
- (g) “**Diavik APA**” has the meaning given to it in the Agreement;
- (h) “**Diavik Assets**” has the meaning given to it in the Agreement;
- (i) “**Diavik Joint Venture**” means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the “Diavik Diamond Mine”;
- (j) “**Diavik Joint Venture Agreement**” means the 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, as amended from time to time;
- (k) “**Diavik Liabilities**” has the meaning given to it in the Agreement;
- (l) “**Dominion Entities**” means, collectively, (i) Washington Diamond Investments, LLC, (ii) Dominion Diamond Holdings, LLC, (iii) DDM, and (iv) Dominion Diamond Marketing Corporation, each of which is a “**Dominion Entity**”;
- (m) “**Encumbrances**” means all security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts (including statutory, constructive or deemed trusts), reservations of ownership, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges,

interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreement, 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, including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by the Initial Order or any other orders granted in the within CCAA Proceedings;
- (ii) any charges, security interests or claims evidenced by registration, filing or publication pursuant to the *Personal Property Security Act*, SNWT 1994, c. 8 (NWT); the *Personal Property Security Act*, RSO 1990, c. P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c. P-7 (Alberta); the *Personal Property Security Act*, RSBC 1996, c. 359 (British Columbia); the Uniform Commercial Code (U.C.C.); the *Land Titles Act*, RSNWT 1988, c. 8; the *Northwest Territories Mining Regulation*, SOR/2014-68; and any other personal or real property registry system in any jurisdiction (collectively, “**Security Registrations**”); and
- (iii) any liens or claims of lien under the *Miners Lien Act*, RSNWT 1988, c. M-12 (NWT) or the *Garage Keepers’ Lien Act*, RSA 2000, c. G-2 (Alberta);
- (n) “**Equity Interest**” means, with respect to a Person, all shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person, or securities convertible into, exchangeable or exercisable for any such shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person;
- (o) “**First Lien Agreements**” has the meaning given to it in the Agreement;

- (p) **“First Lien Liabilities”** has the meaning given to it in the Agreement;
- (q) **“Initial Order”** means the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020, as amended and restated on May 1, 2020, further amended on May 15, 2020, further amended and restated on June 19, 2020, and further amended on March 4, 2021, as it may be further amended, restated or supplemented from time to time;
- (r) **“Intercompany Claim”** means any Claim that is owed by one Dominion Entity to another Dominion Entity, and, for greater certainty, Intercompany Claim does not include the approximately \$92.8 million intercompany indebtedness formerly owing by DDM to Dominion Diamond Canada ULC;
- (s) **“Person”** means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority (including any Governmental Authority), or natural person;
- (t) **“Retained Assets”** means the right, title and interest of any Dominion Entity in and to the following:
  - (i) the organizational documents, corporate books and records, minute books, income tax returns, and corporate seal of such Dominion Entity;
  - (ii) any records that are required by applicable law to be retained by such Dominion Entity;
  - (iii) the tax attributes, including all operating, non-operating, and capital loss balances or carry forwards, of such Dominion Entity;
  - (iv) any Equity Interest in any other Dominion Entity;
  - (v) any Intercompany Claim owing to such Dominion Entity by another Dominion Entity;
  - (vi) all current or former director and officer insurance policies, including all rights, coverage and entitlements thereunder, of such Dominion Entity or

pursuant to which such Dominion Entity had any rights, coverage or entitlements;

- (vii) the Agreement or this Order with respect to the Transaction; and
- (viii) subject to paragraph 10 of this Order, any other asset, property or undertaking designated as a Retained Asset by Washington in writing to the Monitor prior to the Effective Time;
- (u) **“Retained Claims”** means, in respect of a Dominion Entity, the following Claims and any related Encumbrances:
  - (i) any Intercompany Claim owing by such Dominion Entity to another Dominion Entity; and
  - (ii) subject to paragraph 10 of this Order, any other Claim designated as a Retained Claim by Washington in writing to the Monitor prior to the Effective Time;
- (v) **“Transferred Assets”** means all assets, properties, interests and undertakings of the Dominion Entities of any kind or nature whatsoever other than the Retained Assets, which Transferred Assets shall include, without limitation:
  - (i) the Closing Payment;
  - (ii) all right, title and interest of the Dominion Entities in and to the Diavik Assets, including, without limitation, the Diavik Joint Venture Agreement and the Diavik Joint Venture;
  - (iii) all right, title and interest of the Dominion Entities under the ACDC APA;
  - (iv) the First Lien Agreements; and
  - (v) all Equity Interests in any Person other than a Dominion Entity, including, without limitation, all Equity Interests in the Transferred Subsidiaries; and

- (w) **“Transferred Subsidiaries”** means (i) Dominion Finco Inc., (ii) Dominion Diamond Delaware Company LLC, (iii) Dominion Diamond Canada ULC, and (iv) Dominion Diamond (Luxembourg) S.a.r.l.

### **APPROVAL OF THE TRANSACTION**

3. The Agreement and the Transaction are hereby approved. The execution of the Agreement by the Monitor, on its own behalf and on behalf of the Applicants, is hereby authorized, ratified, confirmed and approved, with such amendments as the Monitor and Washington may deem necessary or desirable. The Monitor and the Applicants are hereby authorized and directed to complete the Transaction subject to the terms of the Agreement, to perform their obligations under the Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction. In the event of any conflict between the terms of the Agreement and this Order, this Order shall govern.
4. This Order shall constitute the only authorization required in respect of the Applicants to proceed with and complete the Transaction, and no shareholder, director or other approval in respect of the Dominion Entities shall be required in connection therewith.

### **VESTING OF TRANSFERRED ASSETS AND CLAIMS AND ENCUMBRANCES**

5. Upon delivery of a Monitor’s certificate to Washington substantially in the form set out in Schedule “A” hereto (the **“Monitor’s Certificate”**), the following shall occur and be deemed to occur commencing at the time of delivery of the Monitor’s Certificate (the **“Effective Time”**) in the following sequence:
- (a) all right, title and interest of the Dominion Entities in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively without recourse in the Creditor Trust;
  - (b) all Claims and Encumbrances in respect of the Dominion Entities other than the Retained Claims shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in the Creditor Trust, and (i) such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same

nature and priority as they had immediately prior to the Effective Time, (ii) such Claims and Encumbrances equal to the fair market value of the Transferred Assets shall be transferred to and assumed by the Creditor Trust in consideration of the Transferred Assets, and (iii) the remaining Claims and Encumbrances shall be transferred to and assumed by the Creditor Trust for no consideration as part of, and to facilitate, the implementation of the Transaction and the conclusion of these CCAA proceedings;

- (c) all Claims and Encumbrances other than the Retained Claims shall be irrevocably and forever expunged, released and discharged as against the Dominion Entities and the Retained Assets;
- (d) without limiting subparagraph 5(c), any and all Security Registrations against any Dominion Entity (other than any Security Registrations in respect of a Retained Claim) shall be and are hereby forever released and discharged as against such Dominion Entity, and all such Security Registrations shall attach to the Transferred Assets vested in the Creditor Trust and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the Effective Time, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by the Creditor Trust of such Security Registrations; and
- (e) the Dominion Entities shall cease to be Applicants in the CCAA Proceedings and shall be released from the purview of the Initial Order and all other orders of this Court granted in these CCAA Proceedings.

6. As of the Effective Time:

- (a) the Dominion Entities shall continue to hold all right, title and interest in and to the Retained Assets, free and clear of all Claims and Encumbrances other than the Retained Claims; and
- (b) the Dominion Entities shall be deemed to have disposed of the Transferred Assets and shall have no right, title or interest in or to the Transferred Assets. Without



limiting this Order, from and after the Effective Time the Dominion Entities shall not have any right or interest of any kind or nature whatsoever, including any equity or ownership interest, in or with respect to the ACDC APA, the Diavik Joint Venture, the Diavik Joint Venture Agreement or the Creditor Trust.

7. For greater certainty, any Person that, prior to the Effective Time, had a Claim or Encumbrance other than a Retained Claim against the Dominion Entities or their assets, properties or undertakings shall, as of the Effective Time, no longer have any such Claim or Encumbrance against or in respect of the Dominion Entities or the Retained Assets, but shall have an equivalent Claim or Encumbrance, as applicable, against the Transferred Assets to be administered by the Creditor Trust from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Claim or Encumbrance had immediately prior to its transfer to the Creditor Trust, and nothing in this Order limits, lessens, modifies (other than by change in debtor) or extinguishes the Claim or Encumbrance of any Person as against the Transferred Assets to be administered by the Creditor Trust.
8. From and after the Effective Time, the Dominion Entities shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Dominion Entities and the Retained Assets of the Claims and Encumbrances that are transferred to and vested in the Creditor Trust pursuant to this Order, including the Security Registrations.
9. Upon the delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Dominion Entities, the Retained Assets or the Transferred Assets (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to give effect to the terms of this Order and the completion of the Transaction and to discharge and release all Claims and Encumbrances other than Retained Claims against or in respect of the Dominion Entities

and the Retained Assets, and presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.

10. Washington shall have the right, at any time prior to the Effective Time, by notice in writing to the Monitor and without any adjustment to the Closing Payment, to deem, for all purposes of this Order and the Agreement, (a) any asset, property or undertaking of the Dominion Entities other than the Closing Payment to be a Retained Asset (including any asset, property or undertaking that is otherwise identified herein as a Transferred Asset), (b) any asset, property or undertaking of the Dominion Entities to be a Transferred Asset (including any asset, property or undertaking that is otherwise identified herein as a Retained Asset), and (c) any Retained Claim to be a Claim and Encumbrance that is transferred to and vested in the Creditor Trust and released and discharged as against the Dominion Entities and the Retained Assets. Notwithstanding anything to the contrary in this Order or the Agreement, none of the ACDC APA, First Lien Agreements or Diavik Assets may be designated as Retained Assets and none of the ACDC Claims or First Lien Liabilities or Diavik Liabilities may be designated as Retained Claims.

## **INJUNCTIONS**

11. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Dominion Entities or the Retained Assets, in any way relating to, arising from or in respect of:
  - (a) the Transferred Assets;
  - (b) any and all Claims or Encumbrances other than the Retained Claims against or relating to the Dominion Entities, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time;
  - (c) the insolvency of the Dominion Entities prior to the Effective Time;
  - (d) the commencement or existence of the CCAA Proceedings; or

- (e) the completion of the Transaction.

## **CREDITOR TRUST**

- 12. The Creditor Trust created pursuant to this Order shall be named the “Dominion Residual Asset Trust”. The Creditor Trust shall be instituted and administered in accordance with the Trust Settlement attached as **Schedule "B"** hereto.
- 13. At the Effective Time, the style of cause for these proceedings shall be changed to:

IN THE MATTER OF THE COMPANIES’ CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE ADMINISTRATION OF THE  
DOMINION RESIDUAL ASSET TRUST

- 14. The administration of the Creditor Trust shall remain subject to the Court’s oversight and these proceedings. The Initial Order and the Order (Expansion of Monitor’s Powers) of this Court dated January 27, 2021 (the “**Expanded Powers Order**”) shall apply *mutatis mutandis* to the Creditor Trust, the Transferred Assets and the Monitor.
- 15. In addition to and without limiting the rights and protections afforded to the Monitor pursuant to the CCAA, the Initial Order and the Expanded Powers Order, the Monitor and its employees and representatives shall not incur any liability as a result of acting in accordance with this Order or administering the Creditor Trust, save and except for any gross negligence or wilful misconduct on the part of any such parties.

## **MISCELLANEOUS**

- 16. The Monitor is directed to file with the Court a copy of the Monitor’s Certificate forthwith after delivery thereof to Washington provided, however that, subject to further Court order, the Monitor shall not execute, deliver or file the Monitor's Certificate until after the completion of the transactions contemplated by the Diavik APA.
- 17. Notwithstanding:
  - (a) the pendency of these proceedings;

- (b) any application for a bankruptcy order or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “**BIA**”) or otherwise and any bankruptcy or receivership order issued pursuant to any such application; or
- (c) the provisions of any federal or provincial statute,

the execution of the Agreement and the implementation of the Transaction shall be binding on any trustee or other administrator in respect of the Creditor Trust and any trustee in bankruptcy or receiver that may be appointed in respect of any Dominion Entity and shall not be void or voidable by creditors of the Creditor Trust or the Dominion Entities, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation or at common law, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 18. The Monitor, Washington and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order and to assist and aid the parties in completing the Transaction.
- 19. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Agreement and all amendments thereto, in connection with any dispute involving the Dominion Entities or the Creditor Trust, and to adjudicate, if necessary, any disputes concerning the Dominion Entities or the Creditor Trust related in any way to the Transaction.
- 20. This Court hereby requests the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor and the Dominion Entities and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully

requested to make such orders and to provide such assistance to the Dominion Entities and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order.

21. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.



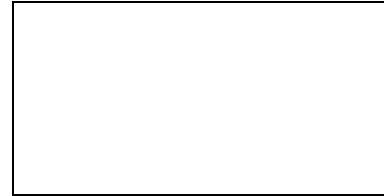
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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE A**

**FORM OF MONITOR'S CERTIFICATE**

Clerk's Stamp:



COURT FILE NUMBER 2001-05630

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

JUDICIAL CENTRE CALGARY

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

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

DOCUMENT MONITOR'S CERTIFICATE

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT **BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219

**RECITALS**

- A. Pursuant to an Order of the Honourable Madam Justice K. Eidsvik of Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 22, 2020, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of the Applicants

in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

- B. On November 16, 2021, the Court granted a Transaction Approval and Reverse Vesting Order approving a Definitive Term Sheet for RVO Transaction (the “**Agreement**”) between the Monitor and Washington Diamond Investments Holdings II, LLC (“**Washington**”) and the transaction completed thereby (the “**Transaction**”).
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Agreement.

**THE MONITOR CERTIFIES** the following:

- 1. The Monitor has received the Cash Payment from or on behalf of Washington and the Closing Conditions have been satisfied or waived;
- 2. The Transaction has been completed to the satisfaction of the Monitor; and
- 3. This Certificate was delivered by the Monitor at [TIME] on [DATE].

**FTI CONSULTING CANADA INC., in its  
capacity as Monitor and not in its personal or  
corporate capacity**

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE B**  
**CREDITOR TRUST SETTLEMENT**



## CREDITOR TRUST SETTLEMENT

### RECITALS

On April 22, 2020, the Court of Queen's Bench of Alberta (the "**CCAA Court**") granted an Initial Order (subsequently amended and restated, and hereinafter the "**SARIO**") under the *Companies' Creditors Arrangement Act* in Action No. 1901-13767 (the "**CCAA Proceedings**") that, among other things, appointed FTI Consulting Canada Inc. (the "**Monitor**") as 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**").

On January 27, 2021, the CCAA Court granted an Order (the "**Expanded Powers Order**"), pursuant to which the Monitor has been authorized, among other things 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 CCAA Court as may be required pursuant to the SARIO.

On November 16, 2021, the CCAA Court granted a Reverse Vesting Order (the "**RVO**") that, among other things, approved a Term Sheet dated November 16, 2021 entered into between Washington Investments Holdings II, LLC ("**Washington**") and the Monitor, in its capacity as the Monitor of the CCAA Debtor Entities (the "**RVO Transaction Term Sheet**").

The RVO Transaction Term Sheet contemplates a transaction (as defined in the RVO Transaction Term Sheet, the "**RVO Transaction**") which includes, among other things: (i) the establishment of a trust for the benefit of the creditors of the CCAA Debtor Entities (the "**Creditor Trust**"); (ii) the transfer to the Creditor Trust of certain liabilities of the CCAA Debtor Entities (the "**Transferred Liabilities**"); (iii) the payment by Washington of 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 and obtaining Court approval of the RVO Transaction and implementing the RVO Transaction (the "**Process Costs**"); and (iii) the payment by Washington of US\$1,500,000 in trust for the benefit of the creditors of the CCAA Debtor Entities (the "**RVO Payment**").

This Trust Settlement is intended to be appended to and form part of the RVO, for the purpose of furthering the RVO Transaction, including but not limited to governing the manner in which the Creditor Trust shall be established, effective on the closing of the RVO Transaction, and administered thereafter.

## **ARTICLE 1 ESTABLISHMENT OF THE CREDITOR TRUST**

### **1.1 Settling the Creditor Trust**

The Creditor Trust shall be named the "Dominion Residual Asset Trust" and shall be settled by the delivery by Washington of the RVO Payment, in the amount of US\$1,500,000 (the "**Settlement Funds**") to the Monitor, on behalf of one or more of the CCAA Debtor Entities.

### **1.2 Appointment of the Trustee**

The Monitor shall be the trustee of the Creditor Trust (the "**Trustee**") and shall hold the Settlement Funds in trust for the creditors of the CCAA Debtor Entities (the "**Creditor Trust Beneficiaries**"), subject to the terms of this Trust Settlement. The Trustee shall have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the Creditor Trust.

### **1.3 Purpose of the Creditor Trust**

The purpose of the Creditor Trust is for the Trustee to hold the Settlement Funds, assume the Transferred Liabilities, and to distribute the Settlement Funds to the Creditor Trust Beneficiaries, in accordance with their respective priorities, rights and entitlements as against the CCAA Debtor Entities.

## **ARTICLE 2 THE TRUSTEE**

### **2.1 Authority of Trustee**

The Trustee shall have all powers and authorities necessary to carry out the purpose of the Creditor Trust as set out in Article 1.3. The Trustee may from time to time apply to the CCAA Court for advice and directions as to the discharge of its powers and duties hereunder.

### **2.2 Compensation of the Trustee**

The Trustee shall be compensated for its services, and reimbursed for its expenses, including the reasonable costs and expenses of its legal counsel, first from the Process Costs and second, if necessary, from the Settlement Funds.

### **2.3 Standard of Care; Exculpation**

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

### **ARTICLE 3 INDEMNIFICATION**

#### **3.1 Indemnification of Trustee and others**

To the fullest extent permitted by law, the Creditor Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Trustee, and each of its respective directors, members, shareholders, partners, officers, agents, employees, counsel and other professionals (collectively, the "**Indemnified Persons**") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including reasonable fees and expenses of counsel and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Creditor Trust, except to the extent that the loss, cost, damage, expense or liability resulted from the Indemnified Person's gross negligence or wilful misconduct.

### **ARTICLE 4 TERM; TERMINATION OF THE CREDITOR TRUST**

#### **4.1 Term; Termination of the Creditor Trust**

- (a) The Creditor Trust shall commence on the date that the RVO Transaction closes, and shall terminate no later than the first anniversary thereof; provided, however, that, on or prior to the date that is 90 days prior to such termination, the Trustee may extend the term of the Creditor Trust if it is necessary to the efficient and proper administration of the Creditor Trust in accordance with the purposes and terms of this Trust Settlement, by filing a notice of such extension with the CCAA Court, and serving such notice on interested parties.
- (b) The Creditor Trust may be terminated by the Trustee earlier than its scheduled termination if the Trustee has distributed all Settlement Funds and performed all other duties required by this Trust Settlement. Upon termination of the Creditor Trust, any and all remaining portion of the Process Costs shall be paid to Washington.

### **ARTICLE 5 AMENDMENT AND WAIVER**

#### **5.1 Amendment and Waiver**

The Trustee may amend, supplement or waive any provision of this Trust Settlement, without notice to or the consent of the Creditor Trust Beneficiaries or the approval of the CCAA Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Trust Settlement; (ii) to comply with any legal (including tax) requirements; and (vi) to achieve any other purpose that is not inconsistent with the purpose and intention of this Trust Settlement.

**ARTICLE 6  
MISCELLANEOUS PROVISIONS**

**6.1 Laws as to Construction**

This Trust Settlement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

**6.2 Jurisdiction**

Without limiting any Person's right to appeal any order of the CCAA Court with regard to any matter, (i) the CCAA Court shall retain exclusive jurisdiction to enforce the terms of this Trust Settlement and to decide any claims or disputes which may arise or result from, or be connected with, this Trust Settlement, or the matters contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the CCAA Court.

**6.3 Irrevocability**

The Creditor Trust is irrevocable, but is subject to amendment and waiver as provided for in this Agreement.