

**Court File No. 08-CL-7355**

**TAHERA DIAMOND CORPORATION  
AND BENACHEE RESOURCES INC.**

**NINTH REPORT TO THE COURT OF A. FARBER &  
PARTNERS INC. AS MONITOR**

**January 12, 2010**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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  
TAHERA DIAMOND CORPORATION  
BENACHEE RESOURCES INC.

**NEW MONITOR'S NINTH REPORT TO THE COURT SUBMITTED BY  
A. FARBER & PARTNERS INC.  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On January 16, 2008, Tahera Diamond Corporation ("**Tahera**") and its wholly owned subsidiary, Benachee Resources Inc. ("**Old Benachee**") (collectively referred to herein as the "**Applicants**" or the "**Companies**", which terms shall include, where the context requires, Newco (defined below)), made an application under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). On such date, an initial order (the "**Initial Order**") was granted by the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") providing for, *inter alia*, a stay of proceedings against the Companies until February 14, 2008 (the "**Stay Period**") and appointing PricewaterhouseCoopers Inc. ("**PWC**") as monitor. By order dated December 12, 2008 (the "**December 12 Order**") the Court, *inter alia*, appointed A. Farber & Partners Inc. as monitor ("**Farber**" or the "**Monitor**") in place of PWC. The proceedings commenced by the Companies under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. The Stay Period has been extended on a number of occasions since the date of the Initial Order and presently expires March 31, 2010.
3. On March 6, 2009 the Court granted an order (the “**March 6 Order**”), *inter alia*, approving a Final Letter of Intent (“**Final LOI**”) with AG Growth Income Fund (“**AG Fund**”) (originally ordered sealed but now able to be disclosed) in respect of a transaction to realize on certain non-strategic tax losses. The Final LOI provided for an interim DIP financing loan (“**AG DIP Loan**”) from AG Fund in an amount sufficient to allow time for due diligence to be completed under the Final LOI, a definitive agreement be entered into, and to close a transaction.
4. On April 19, 2009 the Applicants and their advisors confirmed that they had entered into a definitive agreement with AG Fund, hereinafter referred to as the “**CBCA Arrangement Agreement**”. The transaction contemplated in the CBCA Arrangement Agreement will be referred to herein as the “**AG Transaction**”.
5. On April 28, 2009, the Court granted an order approving the CBCA Arrangement Agreement between Tahera, Benachee and AG Fund and the transaction contemplated therein (the “**April 28 Order**”). Pursuant to the CBCA Arrangement Agreement, the AG Transaction was to close no later than June 30, 2009.
6. As part of the AG Transaction approved in the April 28 Order, a subsidiary of Tahera, 7166893 Canada Ltd. (“**Newco**”), was incorporated under the *Canadian Business Corporations Act* (“**CBCA**”). The CBCA Arrangement Agreement contemplates, as a step in the AG Transaction, and the April 28 Order gives effect to, a transfer and vesting of the assets of Old Benachee to Newco and an assumption by Newco of the liabilities of Old Benachee (save for certain intercompany indebtedness). The April 29 Order added Newco as a debtor in the CCAA Proceedings, subject to the appointment of the Monitor and all of the protections of the stay of proceedings in the Initial Order.

7. On May 8, 2009 an order was made extending the Stay Period to June 30, 2008 to permit, *inter alia*, the AG Transaction to be completed. On that same date, in separate proceedings brought under the CBCA by certain AG Fund related entities, an interim order was obtained under the CBCA addressing the manner in which security holders of AG Fund would meet and vote on the CBCA Plan of Arrangement contemplated in the AG Transaction.
8. On June 3, 2009 the Court granted a final order approving the Plan of Arrangement under the CBCA relating to the AG Transaction. The AG Transaction was completed on that same date.
9. Through the AG Transaction, the Companies met their stated initial goal of realizing on their non-strategic tax assets. Completing the AG Transaction has provided the Companies with a source of funding and additional time to move forward with the stated ultimate goal in these CCAA Proceedings: a potential restart or sale of a certain mining property, hereinafter referred to as the “**Jericho Mine**”. As part of that objective, pursuant to a April 28 Order, the Court approved a letter agreement, pursuant to which Tahera engaged Cormark Securities Inc. (“**Cormark**”) as its financial advisor in connection with a potential transaction involving an equity or debt financing and/or direct or indirect sale or disposition of the Jericho Mine.
10. By order dated June 17, 2009, the Court replaced the former Chief Restructuring Officer, 2192640 Ontario Inc., with a new Chief Restructuring Officer, 2208932 Ontario Inc., (the “**CRO**”), of which Mr. Thomas Pladsen is the controlling shareholder, officer and director.
11. Since late September 2009, the Companies, in concert with various advisors, have undertaken and completed an extensive review of the Jericho Mine and adjacent properties and have finalized mining and business plans and engineering reports (collectively, the “**Mining Plan**”). Following completion of the Mining Plan, the Companies and their advisors began to actively pursue a potential transaction

involving debt or equity financing and/or the direct or indirect sale or other disposition (a “**Mine Transaction**”) of the Jericho Mine.

12. On December 9, 2009, the Court granted an extension of the Stay Period to March 31, 2010 to allow the Companies and their advisors to actively pursue a potential Mine Transaction. In addition, the Court authorized and approved a Purchase and Sale Agreement between Golden River Resources Corporate and Golden Bull Resources Corporation effective December 18, 2009 (the “**Golden River Transaction**”), subject to a further supplementary Report from the Monitor as to the fairness and reasonableness of the consideration for that transaction, to be submitted by January 30, 2010.

#### **PURPOSE OF REPORT**

13. The purpose of this, the Ninth Report to the Court of A. Farber & Partners Inc. (the “**Ninth Report**”), is to report to the Court the following:
  - provide an overview of a proposed sales process (“**Sales Process**”) and recommend Court approval of same.

#### **TERMS OF REFERENCE**

14. In preparing this Ninth Report, the Monitor has relied upon unaudited, internally prepared financial information, the Applicants’ records and discussions with management of the Applicants. The Monitor has not performed an audit, review or other verification of such other information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information relied upon in this report is based on the Companies’ assumptions regarding future events and actual results achieved will vary from this information and the variations may be material. Unless otherwise stated, dollars referenced in these materials are in Canadian funds.

## **SALES PROCESS OVERVIEW**

15. A proposed Sales Process is set out in detail in the Affidavit of Thomas Pladsen dated January 6, 2010 (the “**Pladsen Affidavit**”), which was filed in support of the Companies’ motion of the same date. We have attached hereto as Exhibit A the proposed Sales Process for ease of reference. In summary, it contemplates a marketing process being run from January 15, 2010 with a deadline of up until March 1, 2010 for submission of offers.
  
16. The salient terms of the proposed Sales Process are as follows:
  - the Companies will post all available documents including the recently prepared Mine Plan on the Companies’ web site no later than January 15, 2010;
  - immediately following Court approval of the Sales Process, advertisements will be placed in the national edition of the Globe & Mail and the Northern Miner a global mining newspaper (published weekly);
  - a list of qualified potential purchasers or interested parties, will be compiled, based on input from Cormark, the Companies and the Monitor, and those parties will be contacted and advised of the Sales Process;
  - Interested Parties will be provided a template form of an offer (“**Template Offer**”);
  - the Companies will assist in arranging site visits to the Jericho Mine for interested parties during the weeks of February 15 and 22, 2010 to be completed by February 26, 2010;
  - Offers will be accepted up until March 1, 2010, provided however that the Companies reserve the right, at any time during the Sales Process, in consultation with the Monitor, to end the Sales Process, accept an offer and negotiate a transaction prior to March 1, 2010, if to do so would be in the interests of the stakeholders;

- The Companies will notify the successful bidder or bidders on or prior to March 8, 2010 and enter into negotiations with respect to one or more definitive purchase and sale agreements (“**Purchase Agreement**”);
- The Companies will return to this Honourable Court in March 2010 to seek approval of a Purchase Agreement, with transaction or transactions scheduled to close on or before March 30, 2010.

### **MONITOR’S ASSESSMENT OF THE PROPOSED SALES PROCESS**

17. As part of assessing the appropriateness of the proposed Sales Process, Farber has reviewed the Pladsen Affidavit filed in support of same, consulted with the Companies and their advisors, including Cormark, a specialist investment dealer in the mining and resource sector, which was retained in April 2009 to assist the Companies in pursuing a Mine Transaction. Farber has also considered the extent of the previous marketing process undertaken in 2008 as part of the CCAA Proceeding. Commentary on the Monitor’s assessment of the proposed Sales Process is set out below.
18. The Monitor’s review confirms that there was a marketing process approved by the Court in February 2008<sup>1</sup>, wherein Blair Franklin Capital Partners Inc. was retained as lead advisor to assist with the marketing process to identify potential purchasers or investors with a view to completing a transaction for the refinancing, recapitalization or sale of Tahera and the Jericho Mine. This marketing process was conducted from March through to September 2008 (the “First Marketing Process”) with 88 parties contacted. Ultimately a party was identified and approved to sponsor a CCAA Plan. However, in October 2008 that party withdrew and the overall process was terminated. During this time the market was extensively canvassed but for various reasons, including at that time, a depressed market for financing in general and in respect of diamond exploration, no transaction was able to be finalized.

19. At the present time, a comprehensive list of qualified interested parties is being completed with input from Cormark, the Companies and Monitor, which will have regard to those parties contacted as part of the First Marketing Process, those parties Cormark has canvassed informally to date, as well as parties who have contacted the Companies and the Monitor directly regarding the marketing of the Jericho Mine. Immediately after Court approval of the Sales Process, this list of parties will be contacted and invited to review the Jericho Mine opportunity. This process, augmented by the planned advertisements and planned press release, is expected to result in an extensive canvassing of the market both within North America and globally.
20. Based on discussions with Cormark, the general market conditions for a Mine Transaction effective January 2010 appear to be much improved over 2008. An active market for the financing of diamond exploration and mining in general underpin those improved current market conditions. Also, the diamond market itself has improved (rough and cut diamonds) after rising in 2008 and then dropping in early 2009.
21. A recent survey of mining executives profiled in the Northern Miner (January 11 to 17, 2010)<sup>2</sup> reports a much improved sentiment than a year ago, with access to capital much improved, with most mining executives surveyed bullish on both the short and long term outlook for the sector. The survey also indicates the priority areas for improved access to capital and use of same will be on (i) expanded focus on exploration and development and (ii) the “hunt” for acquisitions.
22. As reported above and in the Monitor’s Eighth Report, the Companies and their advisors now have an updated Mining Plan in place, which will facilitate more detailed due diligence on the part of interested parties. To further facilitate the due diligence process for interested parties, the Companies and advisors intend to coordinate access to the consultants involved in completion of the Mining Plan,

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<sup>1</sup> Note that the CCAA Monitor at the time of the First Marketing Process was PricewaterhouseCoopers Inc. The Monitor, A. Farber & Partners Inc., was appointed as replacement Monitor on December 12, 2008.

including SRK Consulting (a mining engineering consulting firm), Procon Mining and Tunnelling (which would likely undertake the ultimate mining project if the determination is made to re-start operations at the Jericho Mine) and AMEC Engineering (a mill designer and operator).

23. The deadline for submission of offers of March 1, 2010 is considered appropriate given the anticipated desire of prospective purchasers to access the Jericho Mine by way of winter roads that are open only until late April (to facilitate both pre-bid due diligence and post-closing requirements for a successful bidder), and the desire to identify and approve a transaction within the current Stay Extension period of March 31, 2010. Further, the deadline should assist in motivating interested parties to complete due diligence, formulate and submit bids in an expedient manner. The Monitor considers this time frame to be reasonable for the above reasons and also because this is not a new filing and the prospect of a sale has been well known in the industry for some time. Interested parties will likely already have turned their minds to the possibility of making a bid for the Tahera assets.
24. Given the proposed timetable, the Companies and Cormark want to ensure ease of access to detailed information on the Companies' web site to as many parties as possible, without restrictions in the form of confidentiality agreements and virtual data room password protocols which often inhibit timely access. The Monitor is advised and has confirmed that this practice is common in the context of marketing of public mining companies. Farber will also post a notice on its web site and have a link to the Companies' web site for interested parties enquiring about the Sales Process.
25. In the course of reviewing the Sales Process with the Companies and their advisors, the Companies have undertaken to provide regular reporting to Indian and Northern Affairs Canada ("INAC") on the status of the Sales Process, given its role as a key stakeholder in the Jericho Mine including its extensive care and

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<sup>2</sup> Executive survey of mining executives undertaken by the Mining Recruitment Group, December 2009.

maintenance program undertaken through 2009 to complete the winterization and temporary shut down of the Jericho Mine.

## **OTHER MATTERS**

26. The Monitor has retained an independent third party firm, Micon International Limited (which among other areas specializes in providing valuation of mining properties and rights), to provide a valuation report in order to assist the Monitor in reporting on the fairness and reasonableness of the consideration offered for the Golden River Transaction. The Monitor is to submit a report in this matter by January 30, 2010. The Monitor has previously reported that a number of parties hold letters of credit totalling approximately \$11 million securing claims they may have against the Jericho Mine, with cash collateral held by the Toronto Dominion Bank ("**TD Bank**"). The majority of the beneficiaries under these letters of credit are government authorities. The Monitor reports that INAC as a beneficiary under irrevocable demand letters of credit issued by the TD Bank, securing obligations of the Companies, did on December 11, 2009, provide notice to the TD Bank of its intent, pursuant to the terms and conditions of these letters of credit, to make partial draw-downs under the letters of credit on December 21, 2009 of a total of \$1,701,858.
27. There remain 15 letters of credit totalling close to \$9.3 million, securing claims parties may have against the Jericho Mine.

## **CONCLUSION AND RECOMMENDATIONS**

28. The Monitor believes given combination of: (i) the current market conditions; (ii) the extensive exposure the Jericho Mine has already had to the market; (iii) the time constraints imposed by the ice road, which is vital to the ability to access the Jericho Mine to undertake due diligence and potentially close a transaction over the winter months; (iv) the availability of the updated Mining Plan; and (v) the CCAA stay expiry of March 31, 2010, that the proposed Sales Process provides

an orderly, efficient and timely process by which to sell or dispose of the Companies' assets, in particular, the Jericho Mine, and maximize realizations for all stakeholders.

29. The Monitor is of the view the Companies and advisors are acting in good faith and with due diligence and having achieved Goal One during 2009 of the stated restructuring, are now taking appropriate steps to move towards achieving Goal Two – a Mine Transaction resulting in the reopening of the Jericho Mine.
30. Having regard to the above, the Monitor recommends that this Honourable Court approve the proposed Sales Process.

The Monitor respectfully submits to the Court this, its Ninth Report.

Dated this 12 day of January, 2010.

**A. Farber & Partners Inc.  
in its capacity as Monitor of  
Tahera Diamond Corporation  
and Benachee Resources Inc.**

A Farber & Partners Inc.

# Exhibit A

### Exhibit A - Proposed Sale Procedures

1. Set forth below are the sales procedures to be employed with respect to the sale of any or all, in whole or in part, of the assets of Tahera Diamond Corporation and Benachee Resources Inc. (collectively, the "Companies") as either a sale *en bloc* to facilitate a reopening of the Jericho Mine or, in the alternative, as a liquidation, in whole or in part, including the following assets (collectively the "Purchased Assets"):
  - (a) all licenses, leases, permits and authorizations in respect of or relating to, directly or indirectly, all of the Companies' interests in mining claims and mining leases within the Northwest Territories and Nunavut including the property known as the "Jericho Property" and the diamond mine known as the "Jericho Diamond Mine" encompassed therein and the properties in Nunavut known as the "Polar Project Lands" and the "Rockinghorse Property" and including all related agreements, leases, licenses, permits, indentures, contracts and other instruments;
  - (b) all fixed assets, including the milling facility located at the Jericho Diamond Mine;
  - (c) all residual interests of the Companies in any and all letters of credit and other security posted;
  - (d) all equipment and equipment leases;
  - (e) all accounts receivable;
  - (f) all inventory;
  - (g) all books and records; and
  - (h) all intangible rights and assets, including goodwill.

### **Marketing Process**

2. The Companies will seek approval from the Ontario Superior Court of Justice (the "Court") of the sale process for the Purchased Assets set out herein (the "Sale Process") on or before January 15, 2010. Upon court approval of the Sale Process, the Companies will immediately commence the following:
  - (a) prior to January 15, 2010, the Companies, in consultation with the Monitor, will assemble all relevant information required for due diligence for inclusion on the Companies' website. Such information will include: the recently finalized comprehensive mining plan, geological information, historical operating statistics, financial statements, descriptions of equipment, feasibility and similar studies, legal and title information, a template form of offer and a detailed description of the Sale Process;

- (b) an advertisement will be placed in the national edition of the Globe & Mail, a nationally distributed newspaper, and the Northern Miner, a global mining newspaper, immediately following court approval of the Sale Process;
- (c) a notice will be placed on the website of the Monitor informing the public of the Sale Process;
- (d) with the assistance of Cormark Securities Inc. and the Monitor, the Companies will compile a list of qualified potential purchasers and interested parties and contact those persons to notify them of the Sale Process;
- (e) as of January 15, 2010, all prospective purchasers will have access to the Companies' website containing detailed information regarding the Purchased Assets and the business to enable prospective purchasers to perform their due diligence;
- (f) the Companies, in consultation with the Monitor, will assist with arranging site visits to the Jericho Mine for interested parties during the weeks of February 15 and 22, 2010; and
- (g) interested parties will be provided with a template form of an offer (the "Template Offer").

#### **Bid Procedures**

3. Any interested party that wishes to make an offer (an "Offeror") to purchase all or any part of the Purchased Assets shall deliver its offer to the Companies at any time, but not later than noon (eastern time) on March 1, 2010.
4. All offers should be in the form of the Template Offer and include:
  - (a) an offer to purchase the Purchased Assets, or a portion thereof, for consideration in the form of cash, securities, future royalties or any combination thereof; and
  - (b) a deposit of at least 5% of the consideration, by way of certified cheque drawn on a Schedule I Canadian Chartered Bank or wire transfer payable to the Monitor, in trust, or other form of consideration acceptable to the Companies, in consultation with the Monitor. This amount will either (i) be applied to satisfy the purchase price; (ii) be returned to the Offeror if its offer is not successful or if the offer is not approved by the Court; or (iii) be forfeited to the Companies in the event the Offeror breaches its obligations pursuant to the Purchase Agreement (as defined below); and
  - (c) an outside closing date that is on or before March 30, 2010.
5. The Companies, in consultation with the Monitor and such affected stakeholders as they deem appropriate, will determine in their sole discretion if an offer meets the above requirements, and will determine if any offer or offers should be accepted.

6. The Companies reserve their right, at any time during the Sale Process, in consultation with the Monitor and such affected stakeholders as they deem appropriate, to end the Sale Process, accept an offer and negotiate a transaction or transactions if they believe that to do so would be in the best interests of the Companies and their stakeholders.
7. The Companies reserve their right not to accept any offer, nor the highest or best offer.
8. The Companies, in consultation with the Monitor, will notify any successful Offeror on or prior to March 8, 2010.

**Purchase and Sale Agreement(s) and Closing**

9. Upon receipt of any acceptable offer from any Offeror, the Companies, in consultation with the Monitor and such affected stakeholders as they deem appropriate, will enter into negotiations with respect to a definitive Purchase and Sale Agreement or Agreements (“Purchase Agreement(s)”).
10. The Companies will return to the Court in March 2010 to seek approval of the Purchase Agreement(s) and authorization to carry out the transaction contemplated therein.
11. The closing of the transaction, as contemplated in the Purchase Agreement(s), will be on or before March 30, 2010, unless the parties to any Purchase Agreement(s) agree otherwise.