

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHEN APPEL, Individually and on Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

DAVID J. BERKMAN, STEPHEN J. CLOOBECK,  
RICHARD M. DALEY, FRANKIE SUE DEL PAPA,  
JEFFREY W. JONES, DAVID PALMER, HOPE S. TAITZ,  
ZACHARY D. WARREN, ROBERT WOLF, LOWELL D.  
KRAFF, and APOLLO MANAGEMENT VIII, L.P.,

Defendants.

C.A. No. 12844-VCMR

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF THE COMMON STOCK OF DIAMOND RESORTS INTERNATIONAL, INC. WHO HELD OR OWNED SUCH STOCK AT ANY TIME DURING THE PERIOD BEGINNING ON AND INCLUDING JUNE 29, 2016 THROUGH AND INCLUDING SEPTEMBER 2, 2016 (THE “CLASS PERIOD”), INCLUDING ANY AND ALL OF THEIR RESPECTIVE SUCCESSORS-IN-INTEREST, SUCCESSORS, PREDECESSORS-IN-INTEREST, PREDECESSORS, REPRESENTATIVES, TRUSTEES, EXECUTORS, ADMINISTRATORS, ESTATES, HEIRS, ASSIGNS AND TRANSFEREES, IMMEDIATE AND REMOTE, AND ANY PERSON ACTING FOR OR ON BEHALF OF, OR CLAIMING UNDER, ANY OF THEM, AND EACH OF THEM, TOGETHER WITH THEIR PREDECESSORS-IN-INTEREST, PREDECESSORS, SUCCESSORS-IN-INTEREST, SUCCESSORS, TRANSFEREES, AND ASSIGNS, BUT EXCLUDING ALL EXCLUDED PERSONS (AS DEFINED BELOW).**

**IF YOU HELD COMMON STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.**

The purpose of this Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) is to inform you of (i) the pendency of the above-captioned action (the “Action”), which was brought in the Court of Chancery of the State of Delaware (the “Court”) by a former stockholder of Diamond Resorts International, Inc. (“Diamond” or the “Company”) asserting claims on behalf of and for the benefit of a class of former Diamond stockholders; (ii) the Court’s determination to preliminarily certify the Action as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iii) the proposed settlement of the Action (the “Settlement”), subject to Court approval and other conditions of the Settlement being satisfied, as provided for in a Stipulation and Agreement of Compromise, Settlement, and Release dated November 1, 2019 (the “Settlement Stipulation”), which was filed with the Court and is publicly available for review; and (iv) your right to participate in a hearing to be held on February 20, 2020, at 1:30 p.m., before the Court at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (the “Settlement Hearing”).<sup>1</sup> The purpose of the Settlement Hearing to be held by the Court is to determine: (i) whether to certify the Class for settlement purposes only; (ii) whether Plaintiff and Class Counsel have adequately represented the Class; (iii) whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Class and in the best interests of the Class; (iv) whether the Action should be dismissed with prejudice and all Defendant Released Claims against the Defendant Released Parties should be released; (v) whether an Order and Final Judgment approving the Settlement should be entered; (vi) whether and in what amount any Fee and Expense Award (defined below) should be paid to Class Counsel out of the Settlement Amount (defined below); and (vii) whether and in what amount any incentive fee (the “Incentive Award”) should be paid to plaintiff Stephen Appel (“Plaintiff”) with such payment coming solely out of any Fee and Expense Award.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE LITIGATION REFERRED TO IN THE CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS, OR ADEQUACY OF THE PROPOSED SETTLEMENT, AND FROM PURSUING THE DEFENDANT RELEASED CLAIMS.**

The Settlement Stipulation was entered into as of November 1, 2019, by and among (i) Plaintiff, on behalf of himself and the putative Class (as defined below); and (ii) defendants David J. Berkman, Stephen J. Cloobek (“Cloobek”), Richard M. Daley, Frankie Sue Del Papa, Jeffrey W. Jones, David Palmer, Hope S. Taitz, Zachary D. Warren, Robert Wolf, (collectively, the “Director Defendants”), Lowell D. Kraff (“Kraff”) and Apollo Management VIII, L.P. (“Apollo”) (collectively, “Defendants,” and together with Plaintiff, the “Parties”).

<sup>1</sup> Capitalized terms not defined in the Notice have the meaning set forth in the Settlement Stipulation, which is publicly available as indicated in paragraph 63 below.

This Notice describes the rights you may have in the Action and pursuant to the Settlement Stipulation and what steps you may take, but are not required to take, in relation to the Settlement. If the Court approves the Settlement, the Parties will ask the Court at the Settlement Hearing to enter an Order and Final Judgment dismissing the Action with prejudice in accordance with the terms of the Settlement Stipulation.

#### WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Action, the terms of the proposed Settlement, and how the Settlement affects the legal rights of Diamond stockholders and Class Members (as defined below).

2. In a class action, one or more people and/or entities who were stockholders at the time the claim arose sue on behalf of and for the benefit of the individual class members, seeking to enforce the class members' legal rights.

3. As described more fully in paragraph 61 below, Class Members have the right to object to the proposed Settlement and the application by Plaintiff's counsel (the "Fee Application") for an award of fees and expenses (the "Fee and Expense Award"). Class Members have the right to appear and be heard at the Settlement Hearing, which will be held before the Delaware Court of Chancery on February 20, 2020, at 1:30 p.m., at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801. The purpose of the Settlement Hearing to be held by the Court is to determine: (i) whether to certify the Class for settlement purposes only; (ii) whether Plaintiff and Class Counsel have adequately represented the Class; (iii) whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Class and in the best interests of the Class; (iv) whether the Action should be dismissed with prejudice and all Defendant Released Claims against the Defendant Released Parties should be released; (v) whether an Order and Final Judgment approving the Settlement should be entered; (vi) whether and in what amount any Fee and Expense Award should be paid to Class Counsel out of the Settlement Amount; and (vii) whether and in what amount any Incentive Award should be paid to Plaintiff with such payment coming solely out of any Fee and Expense Award.

4. The Court has reserved the right to adjourn or continue the Settlement Hearing, including consideration of the application by Plaintiff's counsel for a Fee and Expense Award, without further notice to you other than by announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Action. The Court has further reserved the right to approve the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

#### WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY OR MAY NOT WISH TO TAKE IN RELATION TO THIS LITIGATION.**

5. On June 29, 2016, Diamond announced that it had entered into an Agreement and Plan of Merger (the "Merger Agreement") with affiliates of certain funds managed by affiliates of Apollo Global Management, LLC ("AGM"), pursuant to which such funds would acquire the outstanding common shares of Diamond for \$30.25 per share (the "Merger Consideration") (such transaction, the "Merger").

6. On July 14, 2016, Diamond filed a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments thereto, the "Schedule 14D-9") with the U.S. Securities and Exchange Commission (the "SEC") in connection with the Merger.

7. Also on July 14, 2016, Dakota Merger Sub, Inc., a subsidiary controlled by certain equity funds managed by AGM, (1) commenced a tender offer for shares of Diamond common stock by filing a Tender Offer Statement on Schedule TO and Offer to Purchase (together with all amendments thereto, the "Tender Offer") with the SEC; and (2) filed a Registration Statement on Form S-4 (the "Registration Statement") with the SEC, of which the Tender Offer forms a part.

8. On August 6, 2016, Plaintiff sent Diamond a books and records demand pursuant to Section 220 of the Delaware General Corporation Law relating to the Tender Offer, Merger, and Schedule 14D-9.

9. On September 2, 2016, the Merger was consummated and became effective, and each share of Diamond common stock was converted into the right to receive \$30.25 in cash.

10. On October 21, 2016, Plaintiff initiated a putative class action lawsuit on behalf of former Diamond stockholders under the caption *Appel v. Berkman, et al.*, C.A. No. 12844-VCMR by filing a Verified Class Action Complaint (the "Initial Complaint"), alleging, *inter alia*, that: (1) the Director Defendants breached their fiduciary duties in connection with the Merger; (2) the financial advisor to the special committee that reviewed the Merger, Centerview Partners LLC ("Centerview"), aided and abetted those alleged fiduciary breaches; (3) the Merger Consideration was unfair; and (4) the sales process leading up to the Merger and the Merger Agreement was flawed and unfair. Among other things, Plaintiff alleged that the Director Defendants breached their fiduciary duties by making misleading public disclosures, or by failing to make certain material disclosures, which purportedly deprived Diamond stockholders of their right to make a fully-informed decision as to whether to tender their common stock of Diamond in connection with the Merger.

11. On June 8, 2017, following the parties' submission of briefing, the Court held oral argument on the Director Defendants' and Centerview's motions to dismiss Plaintiff's Initial Complaint, and on July 13, 2017, the Court entered an order dismissing Plaintiff's Initial Complaint in its entirety.

12. On August 11, 2017, Plaintiff filed with the Supreme Court of the State of Delaware (the "Delaware Supreme Court") a notice of appeal of the Court's July 13, 2017, order dismissing Plaintiff's Initial Complaint, and following briefing and oral argument, on February 20, 2018, the Delaware Supreme Court reversed and remanded the Court's decision dismissing Plaintiff's Initial Complaint.

13. On March 9, 2018, the Director Defendants filed renewed Motions to Dismiss Plaintiff's Initial Complaint. On March 9, 2018, the Director Defendants also filed a Motion to Stay Discovery in the Action (the "Motion to Stay") until the resolution of their renewed Motions to Dismiss. On April 4, 2018, after the parties' submission of briefing, the Court issued an order denying the Director Defendants' Motion to Stay.

14. Beginning on April 20, 2018, the Director Defendants and third parties commenced producing documents in response to Plaintiff's requests for documents, interrogatories, and subpoenas *duces tecum*. Throughout the course of this Action, Defendants and third parties produced to Plaintiff a total of 1,065,385 pages of discovery.

15. On June 26, 2018, the Parties convened for a mediation session with Gregory P. Lindstrom of Phillips ADR. The mediation session failed to produce a resolution of the Action.

16. On July 23, 2018, another purported former stockholder of Diamond filed a putative class action in the United States District Court for the District of Nevada against Diamond and certain of its former directors in an action styled *Local 705 International Brotherhood of Teamsters Pension Fund v. Diamond Resorts International, Inc.*, Case No. 2:18-cv-01355 (the "Nevada Action"), asserting claims on behalf of a putative class of "shareholders who held, sold, or tendered Diamond common stock . . . from the period beginning on July 14, 2016, through September 1, 2016[.]" The class action complaint in the Nevada Action alleged, among other things, that Diamond's disclosures in connection with the Merger and the sales process leading to the Merger were false and misleading, purportedly in violation of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934.

17. On August 29, 2018, Plaintiff filed a Verified Amended Class Action Complaint (the "Amended Complaint"), adding Kraff and Apollo as Defendants in the Action and alleging, *inter alia*, that: (1) the Director Defendants and Kraff breached their fiduciary duties in connection with the Merger; (2) Apollo aided and abetted those alleged fiduciary breaches; (3) the Merger Consideration was unfair; and (4) the sales process leading up to the Merger and the Merger Agreement was flawed and unfair. Among other things, Plaintiff alleged in the Amended Complaint that the Director Defendants breached their fiduciary duties by making misleading public disclosures, or by failing to make certain material disclosures, which purportedly deprived Diamond stockholders of their right to make a fully-informed decision as to whether to tender their common stock of Diamond in connection with the Merger.

18. On October 15, 2018, Defendants Apollo and Cloobek filed motions to dismiss the Amended Complaint. From October 16, 2018, through February 15, 2019, Kraff and certain of the Director Defendants filed answers to the Amended Complaint.

19. On December 17, 2018, the Lead Plaintiffs in the Nevada Action filed an amended class action complaint against Diamond and certain of its former directors and officers on behalf of a putative class of "all persons and entities that sold Diamond's publicly traded common stock during the period from June 29, 2016, to September 2, 2016, . . . and were damaged thereby," excluding certain individuals specified in that amended class action complaint. The amended class action complaint in the Nevada Action alleges, among other things, that Diamond's disclosures in connection with the Merger and the sales process leading to the Merger were false and misleading, purportedly in violation of Sections 10(b), 14(e), and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

20. Following a January 7, 2019, in-person meeting among counsel for Plaintiff and counsel for Defendants to discuss discovery in the Action, Plaintiff and Defendants agreed on a schedule for 19 depositions to be conducted between February 26, 2019, and May 3, 2019.

21. On January 15, 2019, Plaintiff filed his omnibus opposition to Apollo and Cloobek's Motions to Dismiss.

22. On February 26 and March 6, 2019, respectively, Class Counsel took the depositions of Defendants Jones and Berkman.

23. On or about March 8, 2019, the Parties to the Action agreed to temporarily suspend the deposition period to explore a potential resolution of the Action.

24. After further negotiations, the Parties reached an agreement in principle to settle the Action. The Lead Plaintiffs in the Nevada Action also agreed to the terms of the proposed settlement and agreed not to object to Court approval of the Settlement. On October 3, 2019, Lead Plaintiffs in the Nevada Action stipulated to the stay of the Nevada Action in connection with this Settlement, and the court in the Nevada Action so ordered the stay on October 4, 2019.

#### WHAT ARE THE TERMS OF THE SETTLEMENT?

25. Set forth below is a summary of the principal terms of the proposed Settlement, as agreed to by the Parties, subject to the approval of the Court. The following statements are a summary. Please refer to the Settlement Stipulation, which is publicly available as indicated in paragraph 63 below, for a full and complete statement of the terms of the Settlement.

#### Certain Relevant Definitions:

26. "Class" means a non-opt-out class for settlement purposes only, and pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), consisting of any record holders and all beneficial owners of the common stock of Diamond who held or owned such stock at any time during the period beginning on and including June 29, 2016, through and including September 2, 2016 (previously defined herein as the "Class Period"), including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns. Excluded from the Class are (i) Defendants and their immediate family members, affiliates, legal representatives, heirs, estates, successors, or assigns, (ii) any entity in which any Defendant has had a direct or indirect controlling interest, and (iii) any holder of Diamond common stock who exercised his, her, or its right to appraisal pursuant to 8 *Del. C.* § 262 (the "Appraisal Petitioners"), and any successors-in-interest thereto (each an "Excluded Person," and collectively, the "Excluded Persons").

27. "Eligible Closing Date Beneficial Holder" means the ultimate beneficial owner of any shares of Diamond common stock held of record by Cede & Co. at the time such shares were (i) tendered in connection with the Tender Offer or (ii) converted into the right to receive the Merger Consideration in connection with the closing of the Merger, provided that no Excluded Person may be an Eligible Closing Date Beneficial Holder. For the avoidance of doubt, Eligible Closing Date Beneficial Holders shall not be required to submit proofs of claim ("Proof of Claim") to the Administrator to be eligible to participate in this Settlement, unless they also qualify as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders (as defined below), in which case they would be required to submit a Proof of Claim to recover for the shares that qualify them as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders.

28. "Eligible Closing Date Record Holder" means the record holder of any shares of Diamond common stock, other than Cede & Co, at the time such shares were (i) acquired through the Tender Offer or (ii) converted into the right to receive the Merger Consideration in connection with the closing of the Merger, provided that no Excluded Person may be an Eligible Closing Date Record Holder. For the avoidance of doubt, Eligible Closing Date Record Holders shall not be required to submit Proofs of Claim to the Administrator to be eligible to

participate in this Settlement, unless they also qualify as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders, in which case they would be required to submit a Proof of Claim to recover for the shares that qualify them as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders.

29. “Eligible Closing Date Stockholder Shares” means shares of Diamond common stock owned by an Eligible Closing Date Stockholder that were converted into the Merger Consideration either through the closing of the Tender Offer or Merger.

30. “Eligible Closing Date Stockholders” means Eligible Closing Date Beneficial Holders and Eligible Closing Date Record Holders.

31. “Eligible Category 1 Selling Stockholder” means any Class Member who: (i) beneficially owned shares of Diamond common stock before June 30, 2016, and sold such shares prior to Closing; and (ii) submits a valid Proof of Claim to the Administrator by the deadline set forth herein.

32. “Eligible Category 1 Selling Stockholder Shares” means shares of Diamond common stock owned by an Eligible Category 1 Selling Stockholder before June 30, 2016, and sold by the Eligible Category 1 Selling Stockholder prior to Closing.

33. “Eligible Category 2 Selling Stockholder” means any Class Member who: (i) purchased shares of Diamond common stock after June 29, 2016, and sold such shares prior to Closing; and (ii) submits a valid Proof of Claim to the Administrator by the deadline set forth herein.

34. “Eligible Category 2 Selling Stockholder Shares” means shares of Diamond common stock purchased by an Eligible Category 2 Selling Stockholder after June 29, 2016, and sold prior to Closing.

35. “Final,” when referring to any order or award entered by the Court, means that one of the following has occurred: (i) the time for the filing or noticing of any motion for reconsideration, appeal, or other review of the order or award has expired without any such filing or notice; or (ii) the order or award has been affirmed in all material respects on an appeal or after reconsideration or other review and is no longer subject to review upon appeal, reconsideration, or other review, and the time for any petition for reconsideration, reargument, appeal, or review of such order or award (or any order affirming it) has expired; provided, however, that any disputes or appeals relating solely to the amount, payment or allocation of attorneys’ fees and expenses shall have no effect on finality for purposes of determining the date on which the Order and Final Judgment became Final, and shall not otherwise prevent, limit, or otherwise affect the Order and Final Judgment.

36. “Net Settlement Amount” means the Settlement Amount as defined herein plus any interest accrued thereon after its deposit in the Account less any Administrative Costs and any Fee and Expense Award.

37. “Settlement Payment Recipients” means all (a) Eligible Closing Date Stockholders; (b) Eligible Category 1 Selling Stockholders; and (c) Eligible Category 2 Selling Stockholders.

#### **The Settlement Amount:**

38. In consideration for the full and final release, settlement, dismissal, and discharge of any and all Released Claims (defined below) against the Released Parties (defined below), the Parties agreed to a payment of twenty-five million five hundred thousand dollars and no cents (\$25,500,000.00) (the “Settlement Amount”) to be paid by Defendants.

#### **Distribution of Settlement Amount/Proof of Claims/Plan of Allocation:**

39. Eligible Category 1 Selling Stockholders and Eligible Category 2 Selling Stockholders are required to have submitted valid Proofs of Claim to the Administrator by no later than February 11, 2020, in order to be able to receive Settlement proceeds. A particular stockholder may submit claims for and/or receive a distribution for Eligible Closing Date Stockholder Shares, Eligible Category 1 Selling Stockholder Shares, and Eligible Category 2 Selling Stockholder Shares, as the submission of claims or receipt of a distribution based on any of these categories of shares does not exclude the submission of claims or receipt of a distribution under any other of these categories.

40. As soon as reasonably practicable after the deadline for the submission of Proofs of Claim by Eligible Category 1 Selling Stockholders and Eligible Category 2 Selling Stockholders, the Administrator shall determine the total number of shares of Diamond common stock held by: (a) all Eligible Closing Date Stockholders; (b) all Eligible Category 1 Selling Stockholders; and (c) all Eligible Category 2 Selling Stockholders. In determining when a particular stockholder’s shares were sold, the Administrator shall match purchases and sales on a first-in, first out basis. The Administrator shall then determine the “Total Weighted Eligible Shares” by adding (1) the total number of Eligible Closing Date Stockholder Shares; (2) the total number of Eligible Category 1 Selling Stockholder Shares; and (3) one-quarter of the total number of Eligible Category 2 Selling Stockholder Shares.

41. To determine the size of the settlement distribution (the “Settlement Distribution Amount”) to each Eligible Closing Date Stockholder, the Administrator shall divide the number of Eligible Closing Date Stockholder Shares owned by the Eligible Closing Date Stockholder by the Total Weighted Eligible Shares and multiply the quotient by the Net Settlement Amount.

42. To determine the size of the Settlement Distribution Amount to each Eligible Category 1 Selling Stockholder, the Administrator shall divide the number of Eligible Category 1 Selling Stockholder Shares owned by the Eligible Category 1 Selling Stockholder by the Total Weighted Eligible Shares and multiply the quotient by the Net Settlement Amount.

43. To determine the size of the Settlement Distribution Amount to each Eligible Category 2 Selling Stockholder, the Administrator shall divide the number of Eligible Category 2 Selling Stockholder Shares owned by the Eligible Category 2 Selling Stockholder by four times the Total Weighted Eligible Shares and multiply the quotient by the Net Settlement Amount; provided, however, that in no event shall the Settlement Distribution Amounts to all Eligible Category 2 Selling Stockholders exceed two-million five-hundred and fifty-five thousand dollars (\$2,555,000) (the “Category 2 Cap”). If the Settlement Distribution Amounts to all Eligible Category 2 Selling Stockholders computed under the foregoing formula exceeds the Category 2 Cap, then the amount in excess of the Category 2 Cap shall be allocated to the Eligible Closing Date Stockholders and Eligible Category 1 Selling Stockholders on a per-share basis and included in their Settlement Distribution Amounts; and the Settlement Distribution Amount to each Eligible Category 2 Selling Stockholder shall be determined by dividing the number of Eligible Category 2 Selling Stockholder Shares owned by the Eligible Category 2 Selling Stockholder by total number of Eligible Category 2 Eligible Shares and multiplying the quotient by the Category 2 Cap.

44. For Eligible Closing Date Beneficial Holders whose Merger consideration was distributed through Cede & Co., as nominee for DTC, Settlement Distribution Amounts shall be sent to DTC for distribution.

45. The Administrator shall instruct DTC Participants to distribute the Settlement Distribution Amounts to Eligible Closing Date Beneficial Holders in a similar manner to that in which the DTC Participants distributed proceeds in connection with the Tender Offer and/or the Merger.

46. The Administrator shall provide DTC Participants with a list of Excluded Persons and direct the DTC Participants not to distribute any payment to any Excluded Person.

47. DTC's sole obligation in connection with the Settlement shall be to distribute the Settlement Distribution Amounts to DTC Participants in accordance with the Settlement Stipulation and DTC rules and procedures, and DTC shall not be responsible for any errors in the calculation of the Settlement Distribution Amounts or for any failure by the Administrator, Defendants, or Class Counsel to identify the Excluded Persons.

48. For Eligible Closing Date Record Holders, Settlement Distribution Amounts shall be sent to the address listed on the stockholder register or other relevant books and records of Diamond or its transfer agent.

49. For Eligible Category 1 Selling Stockholders and Eligible Category 2 Selling Stockholders, Settlement Distribution Amounts shall be sent to the address provided in the relevant Proof of Claim.

50. Defendants shall have no responsibility or liability for any claims, payments, or determinations that the Administrator makes with respect to any Class Member claims for payment.

#### WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?

51. The Settlement set forth in the Settlement Stipulation reflects the results of the Parties' negotiations and the final terms of their agreement, which was reached only after arm's-length negotiations among the Parties, who were all represented by counsel with extensive experience and expertise in stockholder class action litigation.

52. The Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation. This Settlement is not evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or of any wrongdoing by any of the Defendants or of any damages or injury to Plaintiff or any Class Member.

53. Plaintiff believes that the Defendant Released Claims had merit when filed and continue to have merit, and Plaintiff is settling the Defendant Released Claims because he believes that the Settlement will provide substantial value to Class Members. Plaintiff has concluded that the Settlement is fair, reasonable, and in the best interests of Class Members, and that it is reasonable to pursue the Settlement based on the terms and procedures outlined herein.

54. Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability, or damage with respect to all claims asserted or that could be asserted in the Action or any other action, in any court or tribunal, relating to the Merger, including any allegations that Defendants have committed any violations of law, that they have acted improperly in any way, and that they have any liability or owe any damages of any kind to Plaintiff and/or the Class. Defendants maintain that their conduct was at all times proper, in the best interests of Diamond and its stockholders, and in compliance with applicable law, and that if the case proceeded to trial and a decision were issued by the Court, they would have prevailed on all claims asserted against them. Defendants further deny any breach of fiduciary duties or aiding and abetting any breach of such duties. Defendants affirmatively assert that the Merger provided Diamond and its stockholders, including Plaintiff and the Class, with substantial benefits. Defendants also deny that Diamond or its stockholders were harmed by any conduct of Defendants alleged in the Action or that could have been alleged in the Action. Each of the Defendants asserts that, at all relevant times, they acted in good faith and in a manner believed to be in the best interests of Diamond and all of its stockholders. Defendants are entering into the Settlement in order to, among other things, eliminate the uncertainty, burden, inconvenience, expense, and distraction of further litigation; and to terminate all claims that were or could have been asserted by Plaintiff or any other Class Member against Defendants in the Action or in any other action, in any court or tribunal, relating to the Merger or the sales process leading to the Merger.

#### WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?

55. If the Settlement is approved, the Court will enter the Order and Final Judgment approving the Settlement in accordance with the Settlement Stipulation, at which time the Action will be dismissed with prejudice on the merits.

56. As of the Effective Date, the following releases will occur:

Plaintiff, all Class Members, and Defendants on behalf of themselves, and any and all of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

As of the Effective Date, (a) the Released Parties shall be deemed to be released and forever discharged from all of the Released Claims, and (b) Plaintiff and all Class Members shall be deemed to have covenanted not to sue the Defendant Released Parties with respect to any Defendant Released Claims and to be forever barred and enjoined from commencing, maintaining, prosecuting, instigating, or in any way participating in the commencement, continuation, or prosecution of any action asserting any Defendant Released Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Defendant Released Parties.

#### **Relevant Definitions:**

“Defendant Released Claims” means any and all claims for relief, damages, compensation, demands, suits, actions, injuries, losses, costs, expenses, and/or causes of action of any kind or character, including Unknown Claims, whether at law or in equity, regardless of legal theory, whether foreseen or unforeseen, contingent or actual, liquidated or unliquidated, known or unknown, which any Party or any Class Member, ever had, now has, or may have against any of the Defendant Released Parties, whether class or individual in nature, whether based on state, local, foreign, federal (including but not limited to any state or federal securities laws), statutory, regulatory, common, or other law or rule (including, but not limited to, any claims that could be asserted derivatively on behalf of Diamond), which are based upon, arise out of, involve, directly or indirectly, or relate in any way to any of the facts, allegations, conduct, actions, inaction, breaches of fiduciary duty or other obligations, statements, misrepresentations, omissions, transactions, events, or occurrences that were, could have been, or in the future could be alleged, asserted, or claimed in the Action, or that relate to the subject matter thereof, including, but not limited to, the Merger, the sales process leading to the Merger, the Merger Agreement, the Merger Consideration, the Tender Offer, and any disclosure, failure to disclose, statement, or securities filing by any Person relating to the Merger (including, but not limited to, the Tender Offer, Registration Statement, and Schedule 14D-9), in any court (whether state or federal), tribunal, forum, or proceeding; provided, however, that the Defendant Released Claims shall not include the right to enforce the Settlement Agreement or the Settlement. For the avoidance of doubt, it is the Parties’ intent that all claims in the Action and all claims in the Nevada Action fall within the definition of “Defendant Released Claims.”

“Defendant Released Parties” means Defendants, Diamond, Apollo, AGM, and each of their respective past or present affiliates, parents, and subsidiaries, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

“Plaintiff Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, against any Plaintiff Released Parties (i) arising out of and/or relating in any way to Plaintiff’s prosecution of, participation in, and/or settlement of the Action and/or Plaintiff’s conduct as a representative plaintiff in the Action, or (ii) that otherwise in any way relate to the subject matter of the Action. For the avoidance of doubt, the Plaintiff Released Claims shall not include the right to enforce the Settlement Agreement or the Settlement.

“Plaintiff Released Parties” means Stephen Appel and his past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, affiliates, associated entities, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

“Released Claims” means Plaintiff Released Claims and Defendant Released Claims, collectively or individually.

“Released Parties” means Plaintiff Released Parties and Defendant Released Parties, collectively or individually.

“Unknown Claims” means any claim that any Party or any Class Member does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement or to object or not to object to the Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that, upon the occurrence of the Effective Date, the Parties and, by operation of the Order and Final Judgment, each Class Member shall be deemed to have, and shall have, expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Parties, and by operation of law Class Members, to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Defendant Released Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of Defendants in entering into the Settlement Agreement.

**WHO ARE THE MEMBERS OF THE CLASS?**

57. The Court has provisionally ordered that the Action shall be maintained as a non-opt-out class action pursuant to Court of Chancery Rule 23 on behalf of a class consisting of any record holders and all beneficial owners of the common stock of Diamond who held or owned such stock at any time during the period beginning on and including June 29, 2016, through and including September 2, 2016, including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns, and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns.

58. Excluded from the Class are (i) Defendants and their immediate family members, affiliates, legal representatives, heirs, estates, successors, or assigns, (ii) any entity in which any Defendant has had a direct or indirect controlling interest, and (iii) any holder of Diamond common stock who exercised his, her, or its right to appraisal pursuant to 8 Del. C. § 262 and any successors-in-interest thereto.

**HOW WILL THE ATTORNEYS BE PAID?**

59. Concurrent with seeking final approval of the Settlement, Class Counsel intends to make a Fee Application to the Court for a Fee and Expense Award in an aggregate amount of up to 25% of the Settlement Amount plus reimbursement of expenses incurred in connection with the Action and as part of the Fee Application request an Incentive Award for Plaintiff in an amount up to \$5,000.00 to be paid solely from any Fee and Expense Award granted to Class Counsel. The Parties acknowledge and agree that the Fee and Expense Award shall be paid solely from, and not in addition to, the Settlement Amount. The Fee Application shall be the only request for attorneys' fees and expenses filed by or on behalf of Plaintiff and their counsel.

**WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

60. The Court will consider the Settlement and all matters related to the Settlement, including the Fee Application, at the Settlement Hearing. The Settlement Hearing will be held before the Delaware Court of Chancery on February 20, 2020, at 1:30 p.m., at the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

61. Any Class Member who objects to the Settlement or the Fee Application by Class Counsel, or who otherwise wishes to be heard, may appear in person or through his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no such person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Order and Final Judgment to be entered thereon, or the allowance of fees and expenses to Class Counsel, or otherwise be heard with respect to the matters considered at the Settlement Hearing unless, no later than ten (10) business days before the Settlement Hearing, such person files with the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, Delaware, 19801, the following: (a) proof of ownership of Diamond stock during the Class Period; (b) a written and signed notice of the Objector's intention to appear, which states the name, address, and telephone number of the Objector and, if represented, his, her, or its counsel; (c) a detailed statement of the objections to any matter before the Court; and (d) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider. Any such filings with the Court must also be served upon each of the following counsel (by hand, first class U.S. mail, or express service/email) such that they are received no later than ten (10) business days prior to the Settlement Hearing:

<p>Peter B. Andrews, Esq. ANDREWS &amp; SPRINGER LLC 3801 Kennett Pike Building C, Suite 305 Wilmington, Delaware 19807 (302) 504-4957 <i>Counsel for Plaintiff</i></p>	<p>Joanne P. Pinckney, Esq. PINCKNEY, WEIDINGER, URBAN &amp; JOYCE LLC 3711 Kennett Pike, Suite 210 Greenville, Delaware 19807 (302) 504-1497 <i>Counsel for Defendant</i> <i>David J. Berkman</i></p>	<p>Daniel A. Mason, Esq. PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP 500 Delaware Avenue, Suite 200 P.O. Box 32 Wilmington, Delaware 19899 (302) 655-4410 <i>Counsel for Defendant Apollo Management VIII, L.P.</i></p>
<p>Raymond J. DiCamillo, Esq. RICHARDS, LAYTON &amp; FINGER, P.A. 920 North King Street Wilmington, Delaware 19801 (302) 651-7700 <i>Counsel for Defendants Richard M. Daley, Frankie Sue Del Papa, Jeffrey W. Jones, David Palmer, Hope S. Taitz, Zachary D. Warren, Robert Wolf, and Lowell D. Kraff</i></p>	<p>Stephen B. Brauerman, Esq. BAYARD, P.A. 600 N. King Street, Suite 400 P.O. Box 25130 Wilmington, Delaware 19899 (302) 655-5000 <i>Counsel for Defendant</i> <i>Stephen J. Cloobek</i></p>	

62. Unless the Court otherwise directs, any person who fails to object in the manner prescribed above shall be deemed to have waived his, her, or its right to object and shall be forever barred from raising any objection to the Settlement or the application by Class Counsel for an award of attorneys' fees and expenses, or any other matter related to the Settlement, in the Action, or in any other action or proceeding.

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

63. This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Action, you may inspect the pleadings, the Settlement Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, during regular business hours of each business day, or [www.diamondstockholderlitigation.com](http://www.diamondstockholderlitigation.com) and <http://www.andrewspringer.com>. If you have questions regarding the Settlement, you may write, email, or call the Administrator: A.B. Data, Ltd., PO Box 173088, Milwaukee, WI 53217, [info@DiamondStockholderLitigation.com](mailto:info@DiamondStockholderLitigation.com), (800) 949-0148.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE**

**NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS**

64. Brokerage firms, banks, and other persons or entities who held shares of Diamond common stock as record owners, but not as beneficial owners, are directed to either (a) promptly request from A.B. Data, Ltd. ("A.B. Data") sufficient copies of this Notice to forward to all such beneficial owners and after receipt of the requested copies promptly forward the copies of the Notice to all such beneficial owners; or (b) promptly provide a list of the names and addresses of all such beneficial owners to A.B. Data, after which A.B. Data will promptly send copies of the Notice to such beneficial owners. Copies of this Notice may be obtained from A.B. Data by emailing [fulfillment@abdata.com](mailto:fulfillment@abdata.com) or by calling toll-free at 866-561-6065.

BY ORDER OF THE COURT OF CHANCERY OF THE STATE OF  
DELAWARE:

Dated: December 13, 2019