

COURT FILE NUMBER 1701-05131

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF PRIVATE EQUITY OAK LP by its General Partner PE12PXPE (OAK) GP LTD.

DEFENDANT OAK POINT ENERGY LTD. KEMEX LTD., KEMEX TECHNOLOGIES LTD., 1NSITE TECHNOLOGIES LTD.

DOCUMENT **APPROVAL AND VESTING ORDER
(Sale by Receiver)
RESTRICTED COURT ACCESS ORDER**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT OSLER, HOSKIN & HARCOURT LLP
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I hereby certify this to be a true copy of the original Order
Dated this 28 day of November, 2017

_____ for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: November 27, 2017
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER: Madam Justice C. Dario

UPON THE APPLICATION by Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, properties and undertakings of Oak Point Energy Ltd. Kemex Ltd., Kemex Technologies Ltd. and 1nSite Technologies Ltd. (collectively the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Suncor Energy Inc. (the "**Purchaser**") dated November 22, 2017 and appended to the confidential appendix to the First Report of the Receiver dated November 22, 2017 (the "**Confidential Appendix**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");

AND UPON HAVING READ the Receivership Order dated April 13, 2017 (the "**Receivership Order**"), the Confidential Appendix, the First Report of the Receiver, dated November 22, 2017 (the "**Report**") all other prior materials filed in the within proceedings, and the Affidavit of Service of Elena Pratt; **AND UPON HEARING** the submissions of counsel for the Receiver and the Purchaser, and no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service, filed; **AND UPON** capitalized terms used but not defined in this Order having the same meaning as in the Sale Agreement;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

APPROVAL OF TRANSACTIONS

2. The Transaction is hereby approved and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser.

VESTING OF PROPERTY

3. Upon the delivery of a Receiver's certificate to the Purchaser substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**"), subject only to the permitted encumbrances, caveats, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**"), and approval of the transfer of applicable licences, permits, and approvals by the Alberta Energy Regulator (the "**AER**") pursuant to section 24 of the *Oil and Gas Conservation Act* (Alberta) and section 18 of the *Pipeline Act* (Alberta), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "C"** shall vest absolutely in the name of the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, royalties, gross overriding royalties, pledges, options, privilege, interests, assignments, actions, executions, levies, taxes, judgments, writs of execution, lease, reservation of ownership, rights of pre-emption, claims (whether financial, monetary or otherwise), charges, or other financial or monetary claims whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Receivership Order or any other Order in these proceedings;
 - (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
 - (c) those claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances); and

for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets, whether such Claims or Encumbrances came into existence prior to, subsequent to or as a result of any previous Order of the Court.

4. The Minister of Energy for Alberta, acting pursuant to the *Mines and Minerals Act* (Alberta), shall cancel and discharge all Claims registered against the interests of the Debtors in respect of the Purchased Assets and, without limiting the generality hereof, the Minister of Energy shall cancel and discharge all security notices and all assignments under section 426 (formerly section 177) of the *Bank Act* (Canada).
5. The Minister of Energy for Alberta, acting pursuant to the *Mines and Minerals Act* (Alberta), shall cancel and discharge all Claims in the nature of builders' liens against the interest of the Debtors in and to the Purchased Assets located in the Province of Alberta.
6. All of the Purchased Assets that are assigned or conveyed by the Receiver to the Purchaser pursuant to this Order and the Sale Agreement shall, upon such assignment or conveyance, be free and clear of and from any and all Claims and any and all rights of first refusal in relation to the Purchased Assets.
7. The sale of the Purchased Assets to the Purchaser does not trigger any rights of first refusal and no Person may object or subsequently challenge the sale of the Purchased Assets to the Purchaser on the basis that it has a right of first refusal.
8. The closing of the Transaction shall be effected in accordance with the terms of the Sale Agreement and such amendments to the Sale Agreement as may be agreed to in writing between the Purchaser and the Receiver.
9. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
10. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtors.
11. The Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by or through or against the Debtors.
13. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtors.

14. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.

CONFIDENTIALITY AND RESTRICTED COURT ACCESS

15. The requirements of Part 6, Division 4 of the *Alberta Rules of Court* Alta Reg 124/210 shall not apply to this Order and are hereby dispensed with.
16. The Sale Agreement and the Confidential Appendix shall be sealed on the Court file and not form part of the public record.
17. The Clerk of the Court shall file the Sale Agreement and the Confidential Appendix, in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED BY ALVAREZ & MARSAL CANADA INC. IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF THE ASSETS, UNDERTAKINGS AND PROPERTY OF OAK POINT ENERGY LTD., KEMEX LTD., KEMEX TECHNOLOGIES LTD., AND INSITE TECHNOLOGIES LTD.; and

THE CONFIDENTIAL MATERIALS ARE SEALED UNTIL FURTHER ORDER PURSUANT TO ORDER OF THE HONOURABLE JUSTICE C. DARIO MADE ON NOVEMBER 27, 2017.

18. Paragraphs 15 through 20 of this Order shall remain in effect subject to further Order of the Court made on notice to the Purchaser and the Receiver, an application for which may be brought by any interested party only following the filing by the Receiver of the Receiver's Certificate confirming closing (if any) of the transaction to which the Confidential Appendix relates.
19. The Confidential Appendix with the Sale Agreement shall remain sealed on the Court file until further order of the Court.
20. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying or varying the terms of this Order, with such application to be brought on notice to the Receiver and any other affected party in accordance with the *Alberta Rules of Court*.

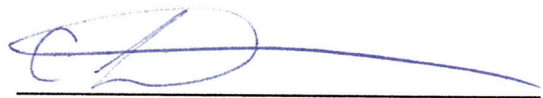
MISCELLANEOUS MATTERS

21. Notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtors,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. The Receiver, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
23. ~~Subject to paragraph 3 hereof, no authorization or approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement, other than authorizations, approvals or exemptions from requirements therefor previously obtained and currently in force, if any.~~
24. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
25. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
26. Service of this Order on any party not attending this Application is hereby dispensed with.



J.C. C.Q.B.A.

Schedule "A"

Form of Receiver's Certificate

COURT FILE NUMBER	1701-05131	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	PRIVATE EQUITY OAK LP by its General Partner PE12PXPE (OAK) GP LTD.	
DEFENDANT	OAK POINT ENERGY LTD. KEMEX LTD., KEMEX TECHNOLOGIES LTD., 1NSITE TECHNOLOGIES LTD.	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	OSLER, HOSKIN & HARCOURT LLP 2500, 450 – 1 st Street SW Calgary, AB T2P 5H1 Attn: Randal Van de Mosselaer Telephone: 403-260-7060 Facsimile: 403-260-7024 E-mail: rvandemosselaer@osler.com	

RECITALS

- A. Pursuant to an Order of the Honourable Justice K.D. Yamauchi of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 13, 2017, Alvarez & Marsal Canada Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties of Oak Point Energy Ltd. Kemex Ltd., Kemex Technologies Ltd. and 1nSite Technologies Ltd. (collectively the "**Debtors**").
- B. Pursuant to an Order of the Court dated November 27, 2017, the Court approved the agreement of purchase and sale made as of November 22, 2017 (the "**Sale Agreement**") between the Receiver and • (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article [8] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section [8] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [Time] on [Date].

Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver of the assets, undertakings and properties of Oak Point Energy Ltd. Kemex Ltd., Kemex Technologies Ltd. and 1nSite Technologies Ltd., and not in its personal or corporate capacity.

Per: _____

Name:

Title:

Schedule "B"

Permitted Encumbrances

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

Permitted Encumbrances mean:

- (a) easements, rights of way, servitudes, permits, licenses and other similar rights in land, including rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph and cable television conduits, poles wires and cable;
- (b) the right reserved to or vested in any Government Authority by the terms of any Title and Operating Document, lease, license, franchise, grant or permit or by any Applicable Law, to terminate any such Title and Operating Document, lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof;
- (c) the right reserved to or vested in any Government Authority to levy taxes on Petroleum Substances or any of them or the income or revenue attributable thereto and governmental requirements and limitations of general application as to production rates on the operations of any property and rights reserved to or vested in any Government Authority to control, limit or regulate production rates or the operation or use of any property in any manner;
- (d) rights reserved to or vested in any Government Authority to control or regulate any of the Assets in any manner;
- (e) liens granted in the ordinary course of business to a public utility or Government Authority in connection with operations on or in respect of the Lands;
- (f) the express or implied reservations, limitations, provisos and conditions in any original grants from the Crown of any of the Lands or interests therein and statutory exceptions to title;
- (g) all royalty burdens, liens, adverse claims, penalties, conversions and other Encumbrances identified in the Land Schedule; and
- (h) the terms and condition of the Leases and the Title and Operating Documents.

Additionally, the following items must be identified in the Land Schedule to qualify as a Permitted Encumbrance: (A) any overriding royalty, net profits, preferential right of purchase or right of first refusal, or other similar encumbrance applicable to the Oil Sands Rights for which the Purchaser will assume the obligation for payment; (B) any existing potential alteration of the Debtor Companies' interests in the Assets because of a payout conversion or farm-in, farm-out or other similar agreement; and (C) any security interest which would not be a Permitted Encumbrance under the preceding paragraphs of this Schedule "B".

Schedule "C"**Purchased Assets**

All of the Debtors' right, title, estate and interest in the Oil Sands Rights, the Tangibles and the Miscellaneous Interests, as each term is defined in the Sale Agreement.

Schedule "D"

Encumbrances

[None]