

Clerk's stamp

Court File Number 1701- 05131
Court COURT OF QUEEN'S BENCH OF ALBERTA
Judicial Centre CALGARY
Applicant PRIVATE EQUITY OAK LP by its General Partner PE12PXPE (OAK) GP LTD.
Respondents OAK POINT ENERGY LTD., KEMEX LTD., KEMEX TECHNOLOGIES LTD. and 1NSITE TECHNOLOGIES LTD.
Document APPLICATION BY PRIVATE EQUITY OAK LP
Address for Service and Contact Information of Party Filing this Document STIKEMAN ELLIOTT LLP
Barristers & Solicitors
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Calgary, Canada T2P 5C5

CLERK OF THE COURT
FILED
APR 12 2017
JUDICIAL CENTRE
OF CALGARY

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Lawyers for the Applicant, Private Equity Oak LP
File No.: 125561-1003

NOTICE TO RESPONDENT

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below.

Date: April 13, 2017
Time: 12:00pm
Where: Calgary Courts Centre, Calgary, Alberta
Before Whom: Justice K. D. Yamauchi

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought:

1. An order, substantially in the form of the draft Receivership Order attached hereto as Schedule "A":
 - (a) Abridging, if necessary, the time for service of this application and deeming service good and sufficient.
 - (b) Appointing Alvarez & Marsal Canada Inc. ("A&M") as receiver (in such capacity, the "Receiver") to the assets, undertakings and property of Oak Point Energy Ltd. (the "Borrower") and Kemex Ltd., Kemex Technologies Ltd. and InSite Technologies Ltd. (collectively the "Guarantors" and each a "Guarantor").
 - (c) Awarding costs of this application to the applicant, Private Equity Oak LP by its General Partner PE12PXPE (Oak) GP Ltd. (the "Holder"), on a solicitor and his own client, full indemnity basis.
 - (d) In the alternative, granting costs to the Holder pursuant to Schedule "C" of the *Alberta Rules of Court*.
2. Such further and other relief, advice, and directions as counsel may advise and this Honourable Court deems just.

Grounds For Making This Application:

A) The Respondents

3. The Respondents are Alberta corporations which are part of a group of companies which carries on business as an energy service provider specializing in technology solutions for the heavy oil industry.
4. Each of the Respondents either carries on business in or has assets in Alberta.

B) The Debenture

5. On December 23, 2013, a *Debenture* was issued by the Borrower in favor of the Holder (the "Debenture"). Under the terms of the Debenture, the Holder agreed to provide the Borrower with a 15.0% senior secured redeemable convertible debenture in the principal amount of twenty million dollars (\$20,000,000) due December 23, 2015 (the "Initial Maturity Date") all on the terms set out in the Debenture.
6. On or about May 23, 2014, the Debenture was amended and restated in order to, *inter alia*, increase the principal amount to twenty-two million dollars (\$22,000,000) and on or about July 4, 2014, the Debenture was amended and restated in order to, *inter alia*, increase the principal amount to twenty-five million dollars (\$25,000,000).
7. On or about September 28, 2015, a *Third Amended and Restated Debenture* was entered into between the Holder and the Borrower (The "Third Amended and Restated

Debenture"). The Third Amended and Restated Debenture provides, *inter alia*, for an extension of the Initial Maturity Date to December 31, 2016 (the "Maturity Date").

C) The Security

8. As security for the payment of all amounts owed to the Holder under the Third Amended and Restated Debenture and all other present and future indebtedness, fees, expenses and other liabilities due by the Borrower to the Holder (collectively, the "Obligations"), the Borrower mortgaged and charged and granted to and in favour of the Holder a continuing first priority security interest in and to all of its present and after-acquired property, assets and undertaking (the "Borrower Security") including:
 - (a) all of the Borrower's right, title, estate and interest in and to the oil sands leases described in Exhibit "D" to the Third Amended and Restated Debenture and all extensions, renewals, replacements or amendments thereto; and
 - (b) all of the Borrower's patents, trademarks, copyrights, industrial designs software, firmware, trade secrets, know-how, show-how, concepts, information and other intellectual and industrial property including the intellectual property rights described in Exhibit "D" to the Third Amended and Restated Debenture.
9. On or about September 28, 2015, the Guarantors executed a *Guarantee and Security Agreement* (the "Guarantee Agreement") pursuant to which they agreed to irrevocably and unconditionally guarantee to the Holder the punctual, complete and irrevocable payment when due, and at all times thereafter, of all of the Borrower's obligations under the Third Amended and Restated Debenture. As continuing security for the payment of all of its obligations under the Guarantee Agreement, each Guarantor granted to the Holder a security interest over, and assigned, mortgaged, charged, hypothecated and pledged all of its property, assets, effects and undertaking, whether owned or after acquired including without limitation, accounts, general intangibles, goods (including inventory, equipment and fixtures), chattel paper, investment property, documents of title, instruments, money, cash and cash equivalents, trade-mark, copyrights, patents, license and other intellectual property or intangibles (the "Guarantor Security" and, together with the Borrower Security, the "Security").
10. The Holder perfected the Security by the following:
 - (a) registrations under the *Alberta Personal Property Security Act*, RSA 2000, c P-7; and
 - (b) registrations under the *Alberta Mines and Minerals Act*, RSA 2000, c M-17.
11. The Holder is the only registered secured creditor of the Borrower and Guarantors.

D) The Borrower's Defaults and Demand for Repayment

12. As of the date hereof, the Borrower is in default under Section 9.1(b) of the Third Amended and Restated Debenture as a result of its failure to pay the amounts owed under the Third Amended and Restated Debenture on the Maturity Date.
13. On January 26, 2017, the Holder, through its counsel, issued and delivered to the Borrower the following notices (collectively, the "Notices"):
- a) a demand for repayment of the Obligations in which the Borrower and the Guarantors were advised that an event of default had occurred and was continuing without cure under the Third Amended and Restated Debenture and Guarantee Agreement; and
 - b) a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, in which the Borrower and the Guarantors were formally advised that, as a result of the continuing event of default under the Third Amended and Restated Debenture, the Holder intended to enforce its rights pursuant to the Third Amended and Restated Debenture, the Guarantee Agreement and the Security (collectively with any and all agreements, documents and instruments at any time executed or delivered in connection with or related to the Third Amended and Restated Debenture and the Guarantee Agreement, the "Loan Documents").
14. The 10-day notice period referred to in the Notice of Intention to Enforce Security issued by the Holder has passed and the indebtedness owing by the Borrower remains outstanding.

E) The Indebtedness

15. As at the date hereof, despite the Notices, the Borrower has failed to pay the outstanding indebtedness under the Third Amended and Restated Debenture (the "Indebtedness"), which Indebtedness, including capital, interest, but excluding fees was as follows as at March 31, 2017:

<u>Description</u>	<u>Amount</u>
Convertible Debenture:	\$25,000,000.00
Interest:	\$7,364,420.10
Total:	<hr/> \$32,364,420.10

16. The Borrower is insolvent and has been unable to meet its obligations as they generally become due.

F. The Appointment of a Receiver

17. The Holder holds the Security over the Borrower's property to secure repayment of the Indebtedness, pursuant to the Loan Documents.
18. The Borrower was recently advised that the Borrower and the Guarantors have ceased to operate their business in the normal course. On or about March 31, 2017, all but two of the employees of the Borrower tendered their resignations. One of the two employees was terminated on March 31, 2017. The remaining employee, the Borrower's President and CEO, has indicated his intention to resign effective once a receiver has been appointed or an alternative arrangement has been agreed upon.
19. The Borrower and the Guarantors have extremely limited liquidity and cannot continue to preserve and protect their own assets, including meeting their payment of rent, fees for patent rights, and storage fees for critical core samples.
20. The Borrower is also in arrears for wages and unpaid vacation pay for their remaining employee.
21. In addition, the Borrower shares rental space with another company, Nauticol Energy Ltd. ("Nauticol"), which would be in the process of leaving the premises. The Holder has recently become aware that Nauticol's employees have access to and control over the computer systems and files of the Borrower and Guarantors.
22. The Borrower's counsel has advised that the directors agreed at a meeting last week to resign effective today.
23. In light of the above, counsel for the Borrower and the Guarantors has advised that the Borrower and the Guarantors will not oppose this application to appoint a receiver.
24. By the terms of the Loan Documents, the Holder is entitled to the Court's appointment of a receiver over the Borrower's assets, upon, *inter alia*, the Borrower's insolvency or when the Borrower ceases to carry on business.
25. The appointment of A&M as receiver over all of the assets, undertakings and property of the Borrower and the Guarantors is also just, equitable, convenient and necessary to preserve the Holder's Security, and to effect the sale of the Borrower's and Guarantors assets in the interest of all of their stakeholders.
26. A&M has consented to act as receiver over the assets, undertakings and property of the Borrower and the Guarantors.
27. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence to be Relied on:

28. All pleadings and proceedings, including the Statement of Claim filed in the within action.
29. The Affidavit of Kate Malcom sworn April 11, 2017, filed.
30. The Affidavit(s) of Service, if any, filed.
31. The Consent to Act as Receiver, executed by a duly authorized representative of A&M.
32. The proposed form of Receivership Order, attached hereto as Schedule "A".
33. The inherent jurisdiction of this Honourable Court to control its own process.
34. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

35. Rules 6.3(1), 6.9(1)(a), 6.47, and 11.27 of the *Rules of Court*, as amended.

Applicable Legislation:

36. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and particularly s. 243 thereof.
37. The *Business Corporations Act*, RSA 2000, c B-9, as amended, and particularly s. 99(a) thereof.
38. The *Judicature Act*, RSA 2000, c J-2, as amended, and particularly s. 13(2) thereof.
39. The *Personal Property Security Act*, RSA 2000, c P-7, as amended, and particularly s. 65(7) thereof.
40. Such other Rules, Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied on:

41. None.

How the Application is Proposed to be Heard:

42. This application is proposed to be heard by the Presiding Justice in Chambers, in person, with all parties present.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Holder what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the dates and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the Holder.

SCHEDULE "A"

Court File Number	1701-	Clerk's stamp
Court	COURT OF QUEEN'S BENCH OF ALBERTA	
Judicial Centre	CALGARY	
Applicant	PRIVATE EQUITY OAK LP by its General Partner PE12PXPE (OAK) GP LTD.	
Respondents	OAK POINT ENERGY LTD., KEMEX LTD., KEMEX TECHNOLOGIES LTD., 1NSITE TECHNOLOGIES LTD.	
Document	RECEIVERSHIP ORDER	
Address for Service and Contact Information of Party Filing this Document	STIKEMAN ELLIOTT LLP Barristers & Solicitors 4300 Bankers Hall West, 888-3rd Street S.W., Calgary, Canada T2P 5C5 Attention: Guy P. Martel / David M. Price gmartel@stikeman.com / dprice@stikeman.com Tel: (514) 397-3163 / (403) 266-9093 Fax: (514) 397-3493 / (403) 266-9034 Lawyers for the Applicant, Private Equity Oak LP File No.: 125561-1003	

DATE ON WHICH ORDER WAS PRONOUNCED:	April 13, 2017
NAME OF JUDGE WHO MADE THIS ORDER:	Mr. Justice K. D. Yamauchi
LOCATION OF HEARING:	Calgary, Alberta

UPON the application of Private Equity Oak LP by its General Partner PE12PXPE (Oak) GP Ltd. ("PEO") in respect of Oak Point Energy Ltd., Kemex Ltd., Kemex Technologies Ltd. and InSite Technologies Ltd. (collectively the "Debtors"); AND UPON having read the Application, the Affidavit of Kate Malcolm; and the Affidavit of Service of ●, filed; AND UPON reading the consent of Alvarez & Marsal Canada Inc. ("A&M") to act as receiver (the "Receiver") of the Debtors, filed; AND UPON hearing counsel for PEO; AND UPON noting the Debtors do not oppose the application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the application for this order is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), and section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, A&M is hereby appointed Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part other business, or cease to perform any contracts of the Debtors;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court.
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c P-7 shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to file a voluntary assignment to the benefit of creditors under the BIA in respect of any of the Debtors;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

- 4. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
- 5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a

payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and this Court directs that the Receiver

shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act, S.C. 2005, c.47 ("WEPPA").
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors,

but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the

appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

- A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

16. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

17. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, incurred both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
18. The Receiver and its legal counsel shall pass their accounts from time to time.
19. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but

subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

21. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
22. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Annex "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
23. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

24. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

25. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
27. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

28. 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 and 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.
29. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
31. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

32. This Order is issued and shall be filed in Court of Queen's Bench Action No. 1701-●, and, if determined to be necessary or advisable, in the Court of Queen's Bench in Bankruptcy, which actions are not consolidated. All further proceedings shall be taken in both actions unless otherwise ordered.

33. The Receiver shall establish and maintain a website in respect of these proceedings at www.alvarezandmarsal.com/oakpoint and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publically available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

Justice of the Court of Queen's Bench of Alberta

ANNEX "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of [DEBTOR'S NAME] appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the ____ day of _____, (the "Order") made in action numbers _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ●.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2017.

[RECEIVER'S NAME], solely in its capacity as
Receiver of the Property (as defined in the
Order), and not in its personal capacity

Per: _____

Name:

Title: